HIDDEN KNOWLEDGE

(The facts on money- and credit creation)

1. HOW CREDIT IS CREATED

1. What is Credit?

National Credit Act, 34 of 2005 - definitions
"credit", when used as a noun, means-
(a) a deferral of payment *of money* owed to a person, or *a promise to defer* such a payment; or
(b) *a promise to advance or pay money* to, or, at the direction of another person;

***Credit Money*:**

"Credit money is monetary value created as the result of some future obligation or claim. As such, credit money emerges from the extension of credit or issuance of debt. In the modern fractional reserve banking system, commercial banks are able to create credit money by issuing loans in greater amounts than the reserves they hold in their vaults.

There are many forms of credit money, such as IOU`s, bonds and money markets. Virtually any form of financial instrument that cannot or is not meant to be repaid immediately can be construed as a form of credit money.

According to recent research done in economic history, anthropology, and sociology, scholars now believe that ***credit was the first form of money***, preceding coin or paper currency. (https://www.investopedia.com/terms/c/credit-money.asp)"

Therefore, credit money can be described the incorporeal right to be paid, a non-physical form of money. And, as credit was the first form of money, existing long before the establishment of any banks, no bank today can rightfully claim they have the "sole authority" on creating credit-money.

2. What is Payment?

"Payment" : *The fulfillment of a promise; the performance of an agreement. A* ***delivery of money****,* ***or its equivalent*** *in either specific property or services, by a debtor to a creditor.*

West's Encyclopedia of American Law, edition 2., https://legal-dictionary.thefreedictionary.com/Payment

3. What is Legal Tender?

SOUTH AFRICAN RESERVE BANK Act 90 of 1989 S.17 Legal tender:

(1) A *tender, ***including*** a tender by the Bank itself, of

(a) *(***a tender of)* a ***note of the Bank***, or

(b) *(***a tender of)* of *an* ***outstanding note of another bank*** (for which the Bank has assumed liability in terms of section 15(3) *(c)* of the Currency and Banking Act) or,

(c) **in terms of any agreement entered into with another bank** *(***the tender could be by notes or electronic credit),* before or after the commencement of this Act,

shall be a ***legal tender of payment*** of an amount equal to the amount specified on the note.

(****Note***: *Tender is to* ***unconditionally offer money or performance to meet an obligation****. The term most commonly arises in the context of the contractual sale of goods.* https://www.law.cornell.edu/wex/tender)

(****Note:*** *Inclusio unius est exclusio alterius :-* The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others*.* *Burgin v. Forbes, 293 Ky. 456, 1 69 S.W.2d 32 1 , 325.*

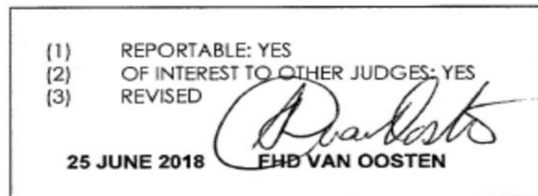
"Including" within statute is interpreted as a word of enlargement **or** of illustrative application, as well as a word of limitation.
Premier Products Co. v. Cameron, 240 Or. 123, 400 P.2d 227, 228. - Blacks Law Dictionary 5th Edition)

(*** *additional emphasis added by author*)

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 33541/2017


(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

25 JUNE 2018 **EHD VAN OOSTEN**

In the matter between

ORIGO INTERNATIONAL (PTY) LTD **APPLICANT**

and

SMEG SOUTH AFRICA (PTY) LTD **RESPONDENT**

Does a tender to pay constitute performance?

[16] The tender in the present matter must be considered against the background facts and in particular that the applicant was in terms of the agreement, liable to pay the December invoices by 16 January 2017. A tender to pay is a promise or an undertaking to pay and, accordingly, does not constitute actual payment. The applicant's tender, leaving aside the correctness of the amount tendered, accordingly, did not constitute payment.

4. What is Money?

"Money" is normally a general term - used to refer to ***all types*** of "means of payment" – both in physical form, like coins and bank notes, and in non-physical form, like credit entries in bank accounts.

However, in a specific legal sense, "money" is defined as follows:

SOUTH AFRICAN RESERVE BANK Act 90 of 1989 S.17

(2) A tender, including a tender by the Bank itself, of an undefaced and unmutilated ***coin*** which is lawfully in circulation in the Republic and of current mass, shall be a legal tender of ***payment of money***-

(b) in the case of other (other than gold) coins, in settlement, per individual transaction, of a total amount *not exceeding*-

(i) fifty rand, where coins of the denomination of one rand or higher are so tendered.

1. An understanding of how, especially banks, ***extend credit*** - (not "loan" money) - is necessary to show, prima facie, that the bank operates contrary to public opinion, and misrepresents itself to the extent that is *contra bonos mores (contrary to good morals)*.

2. According to my personal research, knowledge and understanding, these are the ways in which a loan may be provided:

   i) Via a *bookkeeping entry,* initiated with a customer`s promissory note (financial security instrument);
   ii) Via the process of *securitization*, also initiated with a promissory note;
   iii) A combination of the above;
   iv) With the bank physically lending its own money.

3. According to my research, the fourth method is no longer practiced in modern times. Not the SOUTH AFRICAN RESERVE BANK, nor any commercial bank, is allowed by law, to make loans (of their own money) against their own shares. (Refer the SOUTH AFRICAN RESERVE BANK Act 90 of 1989, s 13 (a), and the BANKS Act 94 of 1990, s 78 (1) (b).)

4. In both the first and the second instance, money (coins) is not "loaned" in the ordinary sense of the word. As bizarre as it may seem, money was not transferred from the bank's account, or from any of it`s customer`s accounts, into my account.

5. The Bank of England admits outright that when a bank loan is created, brand new money is created: http://www.newera.org.za/our-economic-textbooks-are-wrong-saysbank-of-england/. Judges, lawyers, economists and school children are misled.

6. Even in South Africa, the Governor of the South African Reserve Bank, Dr. Chris Stals, explained to the NEDLAC Executive Council in Johannesburg on 28/2/1997 –

> *"In modern sophisticated financial systems, **surrogates (alternatives) for real money** (bank notes and coin) **developed, such as bank cheque-accounts, credit cards and electronic transfers.***
>
> ***Private banking institutions now create more money (means of payment) than the central bank……***
>
> ***In South Africa today, bank notes and coin in circulation account for less than 5 % of the money supply. – (this was in 1997, at the time of the speech)***

The rest is money created by banking institutions over which the Reserve Bank has but an indirect control."

"As previously indicated, ***money is created, in South Africa, mainly through the actions of the private commercial banking institutions. When they give credit to their clients, they create money****. The Reserve Bank's obligation to control the money supply, therefore, extends to a control over the total amount of* ***new credit is extended by banking institutions.****" (Dr. Chris Stals, former Governor of the SA Reserve Bank, from BIS Review 24/1997)*

7. I will demonstrate that public perception differs significantly from the reality of how banks actually operate. Banks enjoy huge profits as a result of this manipulation of words – misrepresentation, and fraudulent deception through non-disclosure of the full material facts.

8. Banks do not make ordinary "loans" and neither I, nor anyone else in South Africa, could be considered to be ordinary "borrowers." In a nutshell, money is created via nothing more than a book-keeping entry.

"Each and every time a bank makes a loan, new bank credit is created – new deposits – brand new money." Graham F Towers. Governor, Bank of Canada (1934-1954).

9. Credit is "advanced", or "extended" to the `borrower` using a promissory note, (*an original issue financial security-for-money instrument*), ***signed and provided by the "borrower" himself***, (*taken by the bank – pretending that it provided consideration (gave value) for it, or that it was given to the bank as a donation –* see Bills of Exchange Act 34 of 1964, S81(4)), which the bank then records as it`s own asset on their books. If the bank does not give up it`s own property in payment for this instrument, it has the effect of increasing (*unjustly enriching*) the bank`s assets in the amount of the instrument.

10. Banks then, via a process known as double-entry book-keeping, simply make a book-entry in an account under the customer`s name, as a bank liability (*the amount that the bank owes the customer*) - to off-set / balance the value of the security instrument it received, (*the promissory note / credit agreement provided by the client*) - in the form of a credit to the `borrower`s` account.

This amount is where the "credit extended" by the bank originates from, which the bank calls "a loan", which can then be spent by the `borrower`.

In other words, there was not a "loan", - there was a "swap" or exchange - of the "borrower`s" original issue paper credit (*promise-to-pay*), for the bank`s electronic credit (*promise-to-pay*). The difference between an "exchange" and a "loan" in the ordinary English language, is extremely significant.

11. From an accounting perspective, a promissory note - the asset - requires a balancing entry on the bank`s books. This "*balancing entry = bank liability = credit extended = means of payment = the "money loaned"*", which reflects in the borrowers account.
A bank's liability (*what the bank owes*), was thus created using a mere book-keeping entry, and no actual physical "money" was provided or handed over. The credit amount created, is not money, but used in the same way, as an equivalent for, or *AS IF IT WAS MONEY*.

12. The impact of this on the public (*the "borrowers"*) at large is extraordinary. Not only is it contrary to public perception, who are under the impression that :-
(1) the bank is going to "loan" them "money" in order to make a substantial purchase, and
(2) that the bank, or it`s customers, are at risk of losing money, if the "loan" is not repaid, but it also means that the primary control of both

i) the money creation process and
ii) where and how that money is spent in the economy,

rests substantially with commercial banks. They would conceivably wield more influence than government policy.

13. While I accept that some aspects of the **Usury Act** have been repealed by the National Credit Act, I reference it here to show a specific and relevant distinction.
Section 10 of the Usury Act mentions "*a money lending transaction* ***or*** *a credit transaction."* As such, there must be a difference between the two.
Lending money and advancing credit are two different things.

14. I believe the following example alludes to the fact that the above is accurate:

i) If I am in the process of buying a property, *but I do not yet own it,* it is not possible for me to sign it over as security. Yet somehow, the property is paid for, and transferred into my name, thus allowing me to sign it over as surety. As I need the security in order to borrow the money used to pay for it, clearly something does not make sense.

ii) It seems obvious that the title deed for the property can only be transferred once it has been paid for. However, in theory it cannot be paid for until the loan has been granted. The loan cannot be granted unless I place the property (which I do not yet own because it has not been paid for) as security.

iii) This catch-22 situation can only be explained if banks are able to "extend credit", or create money (as a means of payment) - using a book-keeping entry, guaranteed against a promissory note.
This is a highly secretive process which the bank refuses to answer when questioned about it.

iv) A “loan”, created from a book-keeping entry, originates from a negotiable security instrument (promissory note), signed by and delivered by the “borrower”. Contrary to popular belief, it is not paid with the banks own money, or from the savings of one of the bank`s other customers.

In fact, after reading the definition of “money” in the SOUTH AFRICAN RESERVE BANK Act, 90 of 1989, s 17 (1) and (2), it is clear that no physical money, *which is coins only*, changes hands in such a transaction.

15. Further, it would be *impossible* for the bank, to make a loan of actual, physical money – given the limited amount of available (minted) money / coins in circulation, in relation to the amount of promises being issued for the actual delivery of those coins, - and *against the provisions of the law*, as the act limits the amount of money / coins to be used in any transaction, to an “amount *not exceeding fifty rand*”.

16. This is contrary to the bank’s own advertising and public communications, which clearly promotes “home loans” and “lending money” on street boards, in the print-media and during many prime time TV shows.

17. While the Bank may be the “credit provider”, the “borrower”, by their signature on the instrument, was the “original credit-issuer / originator.”

It was not disclosed to me, anywhere in the agreement, that I was the one who would be creating the funds for my own home loan!

18. **Ralph Hawtrey, Secretary of the British Treasury** stated that: ***“Banks lend by creating credit. They create the means of payment out of nothing.”***

19. Prima facie evidence that all this is true - in my specific case is the simple fact that the bank refuses to answer the questions I put to them. If the transaction was not secret, without malice, deceitful, and possibly fraudulent due to misrepresentation, I would imagine it to be a very simple matter to explain it to me.
Instead, the bank makes all efforts to evade the questions, and not provide the truth, yet, immediately instigated legal action against me.

20.The Federal Reserve Bank of Chicago published a workbook entitled **Modern Money Mechanics** [Dorothy M Nichols, 1961, revised in 1992] that outlines precisely how the money / credit creation process works in banks:
“Deposits are merely book entries... Transaction deposits are the modern counterpart of bank notes. It was a small step from printing notes to making book entries crediting the deposits of borrowers, which the borrowers in turn could spend by writing checks, thereby printing their own money.”

21. Although Modern Money Mechanics is a US document, the definition of a promissory note is virtually identical in almost every country in the world, as follows:

***'note'** means a promissory note as defined in section 87; - s. 1 (h) of Act 56 of 2000*

Bills of Exchange act 34 of 1964, s.87 Promissory note defined
(1) A promissory note is an unconditional promise, in writing, made by one person to another, signed by the maker, and engaging to pay - on demand, or at a fixed or determinable future time, a sum certain in money, (NOT in credit or legal tender, but in money), to a specified person or his order, or to bearer.
(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.
(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell it or dispose thereof.

22. The South African **Bills of Exchange Act 34 of 1964,** [as amended by Act 64 of 2000] is founded on the UK Bills of Exchange Act, stretching out in its similarity across the globe as far as India, Australia and New Zealand. It is therefore reasonable to assume, prima facie, that the system used to process negotiable instruments here in South Africa is equally similar. I will know for certain once I obtain expert testimony, interview witnesses and request the relevant documents.

2. THE FULL LEGAL MEANING AND RAMIFICATIONS OF THE ORIGINAL AGREEMENT WERE NOT DISCLOSED

2.1 My intent, perception and understanding of the mortgage bond is - that I offer my property (*as security to re-pay*) the “borrowed” money, (*which I believed, as a result of the misrepresentation by the bank*) was money that belonged to the bank, or the bank`s customers.
The bank, I believed, earns it`s money, through its ordinary course of business (*through deposits, fees, or by borrowing from other banks, such as the Reserve Bank at lower interest rates*), which it then provides to me as a loan.

2.2 It was my understanding that a failure to repay a “loan” would result in a real financial loss to the bank, or it`s customers. This risk of loss would justify the pledging of a real asset as security to guarantee the loan, and perhaps justify the bank’s somewhat aggressive approach to its debt collection procedures. After all, the bank has employees that need to be paid.

2.3 This misconception creates a strong emotional and moral obligation to repay one’s “bank-debt”. One morally feels that it will be gravely detrimental to society and the employees of the bank if a loan is not repaid.

2.4 In reality however, the word “re-pay” is totally misleading. The word is expected by ordinary people to mean something like *“I physically handed you money from my wallet, so you must physically re-pay it back to me.”* However the bank’s meaning of the word is very different. It is more along the lines of *“You must make payments over and over again, regardless of whether there is an original debt or not, and regardless of whether or not the bank provided you with anything in return.”*

2.5 The Continuing Covering Mortgage Bond, which a Bank brings forth as evidence in Court, only has one signature on it (*which is not even my own*). As such, the constant re-payments that I have been making are not re-payments of a debt in the ordinary every-day sense of the word. This is because the mortgage bond does not require any consideration or obligation from the bank's side. It is a totally one-sided transaction!

2.6 "***Banks do not take security for any loans or mortgages. The credit beneficiary or nominal borrower pledges his own security as a guarantee of his performance, i.e., as security for his payment obligations, not as security for the credit/loan granted by the bank. Technically, this is extremely important from the bank's perspective***" **(Modern Money Mechanics)**.

2.7 My property, which was supposedly placed as security for a loan, is actually there to enforce a stream of payments and nothing more. This is completely contrary to public perception, who honestly believes that re-payments are for a true and honest debt.

2.8 The obligation to continue making repayments is NOT linked to money that was physically loaned, (see point 1.2 above) - which is precisely why the bank cannot and will not prove to me that they loaned me money. (*There is another reason for this, securitization, which I will deal with separately*). In the meantime, let me explain the former:

i) The security (*my property*) pledged to the bank, is believed by most South Africans (*including me*), to be the guarantee for the re-payment of money loaned in the ordinary sense of the word.

ii) However, the security is provided only to guarantee a stream of payments. It is not connected to the borrowing of actual money. This became apparent to the public when the concept of "*securitization*" came into the spotlight after the stock market crash of 2008.

iii) Banks can only securitize a string of re-payments which are on-sold in an outright or "true sale" to a third party investor. A bank is therefore required to separate the *obligation* (*the string of payments*) from the *debt* (*the money supposedly lent*) so it can be on-sold.

This is achieved simply by the fact that there is actually no debt from which it must be split! This leaves a clean string of repayments, not attached to any debt, open and ready to be sold to a third party investor.

iv) The bank does have one dilemma: They must also separate - from the string of re-payments - the security that was pledged for it.
That way, if a default occurs, the bank is seen, prima facie, to have the power to foreclose on the secured property. They look like they are the proprietor of the loan, but in reality they are not, and this is a key aspect of my case.

v) Even if securitization did not occur (*and the note was not sold to a third party*), once the bank monetized my original issue asset (*the credit agreement / promissory note*), only then could the property be transferred into my name. Once the property was in my name, a continuing covering mortgage bond could be signed in favor of the bank by a person who should have power of attorney to do so.

vi) The property must have been paid for - before it was transferred into my name. This can only be achieved if I actually funded the purchase price by way of a negotiable instrument, and not by the banks own money. This is how the bank overcomes the catch-22 situation outlined earlier.

vii) I was moved, under complete misrepresentation, thus – by mistake - to sign a one-sided, unilateral promise, to keep making a stream of payments to the bank (let's call this (TRANSACTION 1).

Then, when the property was transferred, that real asset was signed over to the bank as a guarantee to keep making those payments (TRANSACTION 2).

This looked to me as if it was to repay a loan, but this cannot possibly be true, because the bank needs to sell the stream of payments, but still keep the right to the secured property, if there is a default. How the bank manages to pull this off can only be explained using the term "magic trick."

2.9 To use an analogy: The bank has attempted to split the atom. The obligation to repay the loan has been split from the security. What is left is a shell of the original transaction which makes it appear as if it is the full and complete agreement. In nearly every case, this is mistakenly ratified by a defendant who, by way of sheer apathy and lack of knowledge, concedes that there is a legitimate loan in place.

2.10 In my opinion, the above gives rise to a claim of *non est factum.*

2.11 In the US case **Credit River Decision** [284 Minn.567, 171 N.W.2d 818 (1969)], which I appreciate is substantially removed from this case, at least demonstrates that such a notion is not new to a Court of law. In this case, the bank manager:
"…admitted that all of the money or credit which was used as a consideration was created upon their books, that this was standard banking practice exercised by their bank."

2.12 The Bank generally brings to court two documents:
i) a "Home Loan Agreement" and
ii) a "Continuing Covering Mortgage Bond."

2.13 With reference to s10 (2) of the **Usury Act of 1968**, I put the following to The Bank: *"Which of these two documents, if any, is the instrument of debt?"*

"s10 (2) On a written demand by a borrower or a credit receiver or a lessee and against payment of an amount prescribed by the minister, a moneylender, excluding the holder of a debenture, or credit granter or lesser shall, at any time during the currency of an agreement in connection with a money lending transaction or a credit transaction, furnish to such borrower or credit receiver or lessee or to any person named in such demand, a true copy of the Instrument of debt concluded in connection with such transaction."

2.14 Walker F Todd was called in as an expert witness in the US case **Bank One v. Harshavardhan Dave and Pratima Dave** [03-047448=CZ]. He is an attorney and former officer for the Federal Reserve Bank, and recognized expert on the history of banking and financial instruments.

His affidavit was made to the court on December 5th
2003. In his affidavit he stated:

"*Banks are required to adhere to Generally Accepted Accounting Principles (GAAP). GAAP follows an accounting convention that lies at the heart of the double entry bookkeeping system called the Matching Principle. When a bank accepts bullion, coin, currency, checks, drafts, promissory notes, or any other similar instruments (hereinafter "instruments") from customers and deposits or records the instruments as assets, it must record offsetting liabilities that match the assets that it accepted from customers."*

*"The liabilities represent the amounts that the bank owes the customers, **funds accepted from customers**."*

"In a fractional reserve banking system (like the United States) banking system, most of the funds advanced to borrowers (assets of the banks) are created by the banks themselves and are not merely transferred from one set of depositors to another set of borrowers."

…the bookkeeping entries required by application of GAAP…should trigger close scrutiny of The Applicant's [the bank's] apparent assertions that it lent it funds, credit or money."

"…In light of these facts, I conclude that Plaintiff (the bank) and Defendants exchanged reciprocal credits involving money of account and not money of exchange; *no lawful money [gold, silver and official currency notes] was, or probably ever would be, disbursed by either side of the covered transactions."*

"…it remains to be proven whether the bank has incurred any financial loss or actual damages."

"…*The narrow view that money is limited to legal tender is rejected*."

"…*In my opinion, the best sources of information on the origins and use of credit as*

money are in Alfred Marshall, MONEY, CREDIT & COMMERCE 249-251 (1929) and Charles P. Kindleberger, A FINANCIAL HISTORY OF WESTERN EUROPE 50-53 (1984)."

"*Thus, credit money…….functions as money in the current monetary system."*

"It is not an unreasonable argument to state that Plaintiff (the bank) apparently changed the economic substance of the transaction - from that contemplated in the credit application form, agreement, note(s), or other similar instrument(s) that the Defendants executed, - thereby changing the costs and risks to the Defendants."

" The bank's original bookkeeping entry should show an increase in the amount of the asset credited on the asset side of its books, and a corresponding increase equal to the value of the asset on the liability side of its books. This would show that the bank received the customer's signed promise to repay as an asset, thus monetizing the customer's signature and creating on its books a liability in the form of a demand deposit or other demand liability of the bank."

"Cash (money of exchange) is money, and credit or promissory notes (money of account) become money when banks deposit promissory notes with the intent of treating them like deposits of cash."

"The Plaintiff (the bank) in fact never lent any of its own pre-existing money, credit, or assets, as consideration to purchase the Note or credit agreement from the Defendants. (Robertson Notes: I add that when the bank does the forgoing, then in that event, there is an utter failure of consideration for the "loan contract".)"

"The Plaintiff (the bank) is trying to use the credit application form or the Note to persuade and deceive the Defendants into believing that the opposite occurred, and that the Defendants were the borrower and not the lender."

"According to the Federal Reserve Bank of New York, money is anything that has value that banks and people accept as money; money does not have to be issued by the government.

For example, David H. Friedman, I BET YOU THOUGHT. . . .9, Federal Reserve Bank of New York (4th ed. 1984) (apparently already introduced into this case), explains that banks create new money by depositing IOUs, promissory notes, offset by bank liabilities called checking account balances. Page 5 says," Money doesn't have to be intrinsically valuable, be issued by government, or be in any special form. . . ."

2.15 David H Friedman in his book **Money and Banking** [4thed, 1984] reiterates that: "When a commercial bank makes a business loan, *it accepts as an asset the borrower's debt obligation (the promise to repay)* and creates a liability on its books in the form of a

demand deposit in the amount of the loan. Therefore, the bank's original bookkeeping entry should show an increase in the amount of the asset credited on the asset side of its books and a corresponding increase equal to the value of the asset on the liability side of its book.

This would show that *the bank received the customer's signed promise to repay as an asset thus monetizing the customer's signature*."

2.16 History has taught us that when we split an atom, it tends to blow up. Such an explosion is evidenced by the stock market crash of 2008, as well as the ensuing chaos in Iceland, Greece, Portugal, Ireland, Spain, Italy, the United States and a host of other countries who face economic collapse.

2.17 The common man, including me, is under the wrong impression that an ordinary debt exists. We are intimidated by harassing sms-messages and phone calls into
i) re-paying (pay back again) a loan that includes interest (another story entirely), and
ii) giving up our real assets if we do not pay.

2.18 I hereby declare and express my natural universal right to ask for the truth, and to stop paying my bond, and thus stop perpetuating what I believe to be a criminal act of un-imaginable proportions, until such time that the bank provides truthful, factual, complete and not misleading answers.

2.19 I truly believe that once the bank representatives are asked, - under oath - to reveal the true nature of its credit creation process, and the relevant documents are produced as evidence, my contentions will be validated.

3. MY LAWFUL RIGHT TO SETTLE THE CLAIM USING A NEGOTIABLE INSTRUMENT

3.1 To cement the above contentions, it is necessary that I demonstrate and explain the use and effect of negotiable instruments, as described in our law.

3.2 This is a body of law that has been quoted as being "notoriously difficult" by numerous law professors, including the late Leonard Gering.

3.3 The Law of Negotiable instruments is governed by the **Bills of Exchange Act 34 of 1964, a**s amended by Act 64 of 2000.

A document entitled **"Overview of the National payment System in South Africa"** from the Bank for International Settlements confirms this (p151 and p156):
"*The banking system, however, is in general terms regulated by commercial law while the banking industry is subject to various laws, regulations and related legislation such as...the Bills of Exchange Act No 34 of 1964….*"

From a payment system point-of-view, the Bills of Exchange Act deals mainly with the use of paper-based security-for-the-payment-of-money - instruments, such as bills of exchange, cheques and promissory notes.

3.4 It seems reasonable to assume, that when dealing with a Mortgage Bond and therefore a "note" (ie. promissory note), that the **Bills of Exchange Act** must apply to the transaction. A detailed understanding of the Act is vital to understanding my argument.

3.5 The Act defines two groups of instruments:
Negotiable Instruments – such as

Promissory Notes (two party promise) and **Bills of Exchange** (three party order)
Maker → Payee   Drawer →Drawee → Payee

3.6 A promise to pay **(promissory note)** is the underlying agreement of a commercial contract, and the **bill of exchange** is the method for its payment.

Department of Mercantile Law

Law of Negotiable Instruments, Intellectual Property and Competition

Only study guide for

MRL4801

Note: Reserve Bank Act 90 of 1989

17.(1) Note of Bank = Legal Tender.

(2) Coin - unmutilated and undefaced, and of current mass = payment of Money.

Development team
Eesa Fredericks
Sunelle Geyer
Michelle Kelly
Alvereen Leonard
Brian Rutherford
Izelde van Jaarsveld

Instructional designer
Mariana Petersen-Waughtal
Jean Mitchell
Jean Grundling

Departmental reviewer
Jopie Pretorius

University of South Africa, Pretoria

These provincial [illegible] replaced by the Bills of Exchange [illegible] amends the laws relating to bills of exchange, cheques and promissory notes. Since its promulgation, this Act has been amended four times. The most recent amendments were made in 2000 by the Bills of Exchange Amendment Act 56 of 2000, which came into effect on 1 March 2001.

3 EXAMPLES OF NEGOTIABLE INSTRUMENTS

A **commercial paper** is an instrument which embodies contractual rights, and the possession of the instrument is required to enforce those rights that are contained in it. Although negotiable instruments (eg bills, cheques, promissory notes, certain bearer debentures, bonds and share warrants) are categorised as commercial paper, not all commercial papers are negotiable instruments. Examples of commercial papers which are not negotiable instruments include bills of lading and share certificates.

Some negotiable instruments can be characterised as instruments of payment (eg bills, cheques and promissory notes) whereas others can be seen as instruments of investment (eg debentures, bonds and share warrants).

Orders Payment to be made.

Orders Bank to move money from 1 account to another.

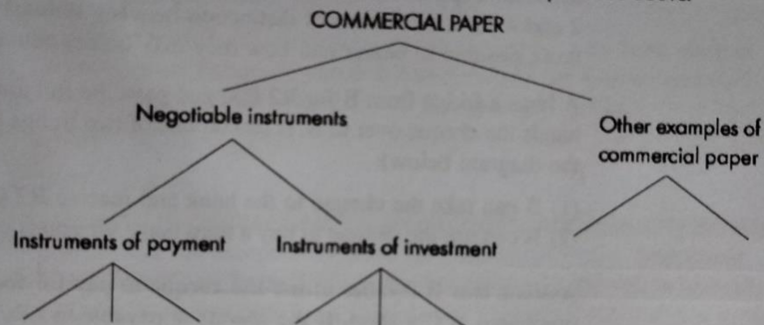
Promise to Pay

Not Money, but they are substitutes for money.

Unit 1: Introduction to the law of negotiable instruments

Activity 1

Complete the following diagram based on the information provided above.



The negotiable instruments section of this module will only focus on three types of negotiable instruments which are all instruments of payment, namely the bill of exchange, the cheque and the promissory note.

3.7 In August 1994, The South African Law Commission published a document called **An Investigation into the payments system in South African Law**. Their opening statement confirmed that: "***A bill of exchange is a financial instrument, necessary for the completion of commercial transactions****... - such transactions, being the act or instance of conducting business, or other dealings, especially the formation, performance or discharge of a contract.* ***No commercial transaction is complete without an instrument of payment.***"

This instrument is normally in the form of an invoice – which is a synonym for the word "bill".

3.8 There are only two categories of instruments: Bills of Exchange and Promissory notes. Therefore, it stands to reason that a bill of exchange (NOT necessarily a cheque) is required to conclude a commercial transaction, initiated by a promissory note.

As such, I am well within my rights to request a bill from the bank like so: *if The Bank believes I owe them money, then they are to please provide me with the original certificate of indebtedness that was used to generate the opening balance (book entry) on the statement that they claim shows that I owe them money, and / or to provide me with a bill so that I may complete the transaction."*

3.9 Legal Definitions:

i) NEGOTIABLE INSTRUMENT: In South African Law, I have found only one definition of a negotiable instrument. This was provided by Professors Denis Cohen and Leonard Gering from the book **Southern Cross: Civil Law and Common Law in South Africa [ISBN 0198260873, p482].** The professors jointly define a negotiable instrument as follows:

"A negotiable instrument is a document of title, embodying rights to the payment of money, or the security for money, which, by custom or legislation, is
(a) transferable by delivery (or by endorsement and delivery) in such a way that the holder pro-tempore may sue on it in his own name and in his own right, and
(b) a bona-fide transferee ex causa onerosa may acquire a good and complete title to the document and the rights embodied therein, notwithstanding that his predecessor had a defective or no title at all.

In the **Handbook on the Law of Negotiable Instruments[Third Edition, ISBN 978 – 702 17263 2 p226]**, Professor Leonard Gering states: "*The phrase 'under onerous title' corresponds with the Latin expression ex causa onerosa."*
The only section of the Bills of Exchange Act in which the phrase '*under onerous title'* appears, is section 25: *"A holder takes a bill for value if he takes it under onerous title."*

Therefore, s25 of the Bills of Exchange Act provides a clear and direct link between The Bills of Exchange Act and the only workable definition of a negotiable instrument in South African Law.

3.10 In 1933, money of substance (ie. money backed by gold) no longer existed in South Africa. Only the instruments themselves (ie. bills, notes and other commercial paper acting as *the security for money*) contained the perceived value that allowed them to be used as currency by banks and the common man.

ii) PROMISSORY NOTE (s87, Bills of Exchange Act): *A promissory note is an unconditional promise in writing made by one person to another, signed by the maker and engaging to pay on demand or at a fixed determinable future time, a sum certain in money, to a specified person or his order, or to bearer.*

iii) NOTE: The word "note" appears in many documents relating to mortgage backed securities and it is pivotal to the securitization process. Most notably, it appears in a series of documents outlining The Bank's very own mortgage backed securities programme entitled: **PROGRAM MEMORANDUM, BLUE GRANITE INVESTMENTS MASTER PROGRAMME together with TRANSACTION SUPPLEMENT.**

Despite multiple references to the word "note" in this and other documents, the word "note" is not specifically defined in any of them, nor is it defined in any of the other statutes that I have researched.

For example:
The word “note” is not defined at all in the **Banks Act** (although s79 discusses “Shares, debentures, negotiable certificates of deposit, share warrants and promissory notes or similar instruments.”)
The Securities Services Act, 2004 includes “notes” in the definition of “securities” (along with a list of several other instruments), but does not specifically define the word “note.”
There is no definition of “note” in the **Collective Investment Schemes Control Act of 2002**, the **Participation Bonds Act** or the **Financial Institutions Act**.

3.11 It seems reasonable to assume that a “note” must therefore refer to one of two things:
1. It refers to a BANK NOTE in the ordinary sense of the word, which people use every day as “money” (eg. a R50 note), for the buying and selling of goods and services. If this is true, then a “note” used by a bank must be an asset of equal value to cash money.

In other words, if a bank accepts a promissory note from a customer, it is treated with the same overall effect as cash.
2. A note must be a “promissory note” as defined in the **Bills of Exchange Act**.
3. An amalgamation of both 1 and 2 above.

iv) BILL OF EXCHANGE (s2): *A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to a specified person or his order, or to bearer.*
I wish to point out that Black’s Law Dictionary defines a **DRAFT ORDER** as almost identical to that of a bill of exchange.

v) CHEQUE (s1): *Cheque means a bill drawn on a bank, payable on demand.*

3.12 If I give the bank a cheque to settle the debt, that would be acceptable because the common perception of a cheque is that it is paid by debiting the customer’s account.

However, in reality, this is not the case. There are actually *two* transactions involved in the payment of a cheque:
1) payment of the cheque by the bank and
2) debiting the customer’s account.
This separation is critical to understand my argument in this section because it shows that it is feasible to contend that a bill of exchange can be paid by a bank without the need for debiting the customer’s account.

This happens by way of a similar same book-keeping entry outlined earlier in the credit creation process.

3.13 The Bills of Exchange Act makes it clear that a cheque and a bill of exchange are

different. A cheque is a bill of exchange drawn on a bank. It has the additional property that it also instructs the bank to debit the customer's account. Paying a debt by cheque will involve two transactions instead of only one.
I will show this in law using three references:
i) Professor Leonard Gering on **The Handbook of Negotiable Instruments** states (p175, with regard to post-dated cheques) that they "…*prevent the drawee banker from paying the cheque and debiting the drawer's account."*

Use of the word "and" instead of "by" in the above quotation implies that there are two transactions involved in honoring a cheque, not just one.

ii) This contention is made even clearer in **Amler's Precedents of Pleadings** [5th edition, ISBN 0409011045, p60]: *"If a client issue a cheque, the banker must pay according to its tenor (provided he [the banker] is in funds) and debit the account of the client.*

Once again we clearly see that the banker pays a bill of exchange and, in a second transaction (presumably by way of prior contractual agreement with the customer), the account is debited. I will return to the issue of the "banker's funds" later in the section on liquidity behind the bill when I show that banks have unlimited funds with which to pay bills of exchange.

iii) On the latest account application form used by Mercantile Bank, the following is stated*:*
2. AUTHORISATIONS - I/We authorise you:
2.1 to pay all promissory notes, bills of exchange and other negotiable instruments drawn, made and accepted by me/us **and** to debit the amount of such instruments to my/our aforesaid account;

Note that authorisation is required by the customer to allow both transactions outlined above. In other words, the customer must authorise the bank to

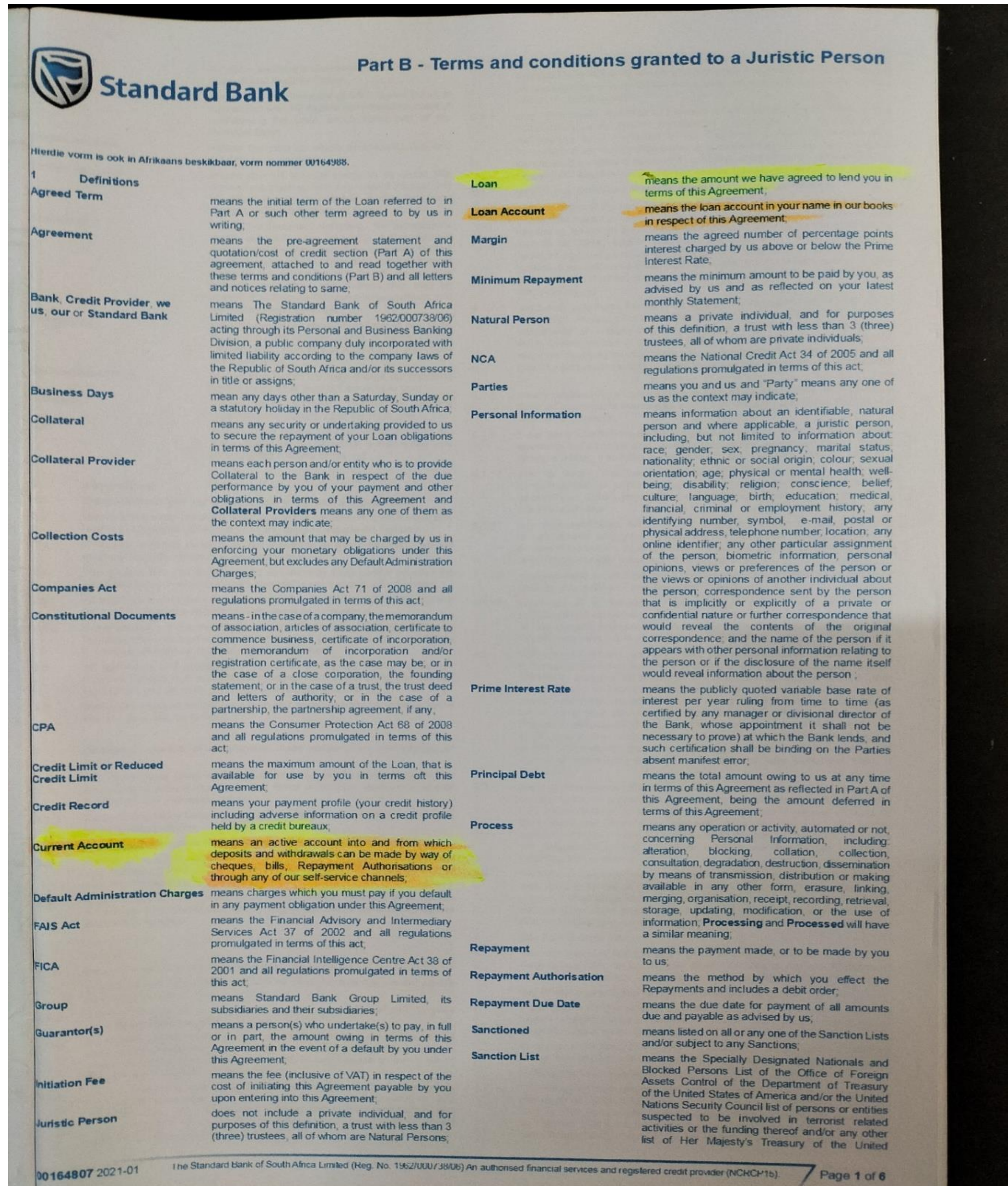
i) pay the cheque and
ii) ii) debit his account.

3.14 Therefore the power of a customer over a bank is substantially greater than the common man has ever been led to believe.

3.15 Based on this research, I maintain that it is therefore plausible, practical and reasonable for me to presume that a bank has the authority to pay (discharge) a bill of exchange – see Bills of Exchange Act 64 of 2000, S. 83, without having to debit a customer`s account, as, once the bill is recorded in the Reserve Bank system, it becomes part of the money supply of the Republic of South Africa.

A bill of exchange, issued by the bank and drawn on me, *held for value,* using s25 of the Bills of Exchange Act, will convert the bill (ie. The piece of paper itself) into ***the security for money.***

More simply put, a bill of exchange, held for value, is used as “money”, because *money* and the *security for money* are the same thing, provided that we operate in a society that uses a form of currency not backed by any physical resource (eg. gold).



Standard Bank

Part B - Terms and conditions granted to a Juristic Person

Hierdie vorm is ook in Afrikaans beskikbaar, vorm nommer 00164988.

1 Definitions

Agreed Term means the initial term of the Loan referred to in Part A or such other term agreed to by us in writing;

Agreement means the pre-agreement statement and quotation/cost of credit section (Part A) of this agreement, attached to and read together with these terms and conditions (Part B) and all letters and notices relating to same;

Bank, Credit Provider, we us, our or **Standard Bank** means The Standard Bank of South Africa Limited (Registration number 1962/000738/06) acting through its Personal and Business Banking Division, a public company duly incorporated with limited liability according to the company laws of the Republic of South Africa and/or its successors in title or assigns;

Business Days mean any days other than a Saturday, Sunday or a statutory holiday in the Republic of South Africa;

Collateral means any security or undertaking provided to us to secure the repayment of your Loan obligations in terms of this Agreement;

Collateral Provider means each person and/or entity who is to provide Collateral to the Bank in respect of the due performance by you of your payment and other obligations in terms of this Agreement and **Collateral Providers** means any one of them as the context may indicate;

Collection Costs means the amount that may be charged by us in enforcing your monetary obligations under this Agreement, but excludes any Default Administration Charges;

Companies Act means the Companies Act 71 of 2008 and all regulations promulgated in terms of this act;

Constitutional Documents means - in the case of a company, the memorandum of association, articles of association, certificate to commence business, certificate of incorporation, the memorandum of incorporation and/or registration certificate, as the case may be; or in the case of a close corporation, the founding statement; or in the case of a trust, the trust deed and letters of authority, or in the case of a partnership, the partnership agreement, if any;

CPA means the Consumer Protection Act 68 of 2008 and all regulations promulgated in terms of this act;

Credit Limit or Reduced Credit Limit means the maximum amount of the Loan, that is available for use by you in terms oft this Agreement;

Credit Record means your payment profile (your credit history) including adverse information on a credit profile held by a credit bureaux;

Current Account means an active account into and from which deposits and withdrawals can be made by way of cheques, bills, Repayment Authorisations or through any of our self-service channels;

Default Administration Charges means charges which you must pay if you default in any payment obligation under this Agreement;

FAIS Act means the Financial Advisory and Intermediary Services Act 37 of 2002 and all regulations promulgated in terms of this act;

FICA means the Financial Intelligence Centre Act 38 of 2001 and all regulations promulgated in terms of this act;

Group means Standard Bank Group Limited, its subsidiaries and their subsidiaries;

Guarantor(s) means a person(s) who undertake(s) to pay, in full or in part, the amount owing in terms of this Agreement in the event of a default by you under this Agreement;

Initiation Fee means the fee (inclusive of VAT) in respect of the cost of initiating this Agreement payable by you upon entering into this Agreement;

Juristic Person does not include a private individual, and for purposes of this definition, a trust with less than 3 (three) trustees, all of whom are Natural Persons;

Loan means the amount we have agreed to lend you in terms of this Agreement;

Loan Account means the loan account in your name in our books in respect of this Agreement;

Margin means the agreed number of percentage points interest charged by us above or below the Prime Interest Rate;

Minimum Repayment means the minimum amount to be paid by you, as advised by us and as reflected on your latest monthly Statement;

Natural Person means a private individual, and for purposes of this definition, a trust with less than 3 (three) trustees, all of whom are private individuals;

NCA means the National Credit Act 34 of 2005 and all regulations promulgated in terms of this act;

Parties means you and us and "Party" means any one of us as the context may indicate;

Personal Information means information about an identifiable, natural person and where applicable, a juristic person, including, but not limited to information about: race; gender; sex; pregnancy; marital status; nationality; ethnic or social origin; colour; sexual orientation; age; physical or mental health; well-being; disability; religion; conscience; belief; culture; language; birth; education; medical, financial, criminal or employment history; any identifying number, symbol, e-mail, postal or physical address, telephone number; location; any online identifier; any other particular assignment of the person; biometric information, personal opinions, views or preferences of the person or the views or opinions of another individual about the person; correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; and the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person ;

Prime Interest Rate means the publicly quoted variable base rate of interest per year ruling from time to time (as certified by any manager or divisional director of the Bank, whose appointment it shall not be necessary to prove) at which the Bank lends, and such certification shall be binding on the Parties absent manifest error;

Principal Debt means the total amount owing to us at any time in terms of this Agreement as reflected in Part A of this Agreement, being the amount deferred in terms of this Agreement;

Process means any operation or activity, automated or not, concerning Personal Information, including: alteration, blocking, collation, collection, consultation, degradation, destruction, dissemination by means of transmission, distribution or making available in any other form, erasure, linking, merging, organisation, receipt, recording, retrieval, storage, updating, modification, or the use of information; **Processing** and **Processed** will have a similar meaning;

Repayment means the payment made, or to be made by you to us;

Repayment Authorisation means the method by which you effect the Repayments and includes a debit order;

Repayment Due Date means the due date for payment of all amounts due and payable as advised by us;

Sanctioned means listed on all or any one of the Sanction Lists and/or subject to any Sanctions;

Sanction List means the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control of the Department of Treasury of the United States of America and/or the United Nations Security Council list of persons or entities suspected to be involved in terrorist related activities or the funding thereof and/or any other list of Her Majesty's Treasury of the United

00164807 2021-01 The Standard Bank of South Africa Limited (Reg. No. 1962/000738/06) An authorised financial services and registered credit provider (NCRCP15). Page 1 of 6

3.16 In **Allied Credit Trust v Cupido** [1996 (2) SA 843 (C) at 847], Conradie J stated:
"*The fundamental purpose of a negotiable instrument is to be freely negotiable,* ***to serve in effect as money****, and this fundamental purpose is frustrated if the taker of a bill or note is obliged to have regard to matters extraneous to the instrument.*"

3.17 The South African Reserve Bank is a signatory to the **Reform of the Bills of Exchange Act** which was adopted at the UNCITRAL Convention in 1999.
On page 25 it stipulates that:
"***bills and notes are 'commercial' paper money…***"

3.18 The notion that a bill of exchange is considered ***security for money*** is even echoed in the High Court's own rules under **"Incorporeal Property:"**
"Immovable property Rule 45(8)(a): ***Where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money***"

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Neutral citation: *Master Currency v CSARS* (155/2012) [2013] ZASCA 17 (20 March 2013)

Coram: Malan, Leach JJA and Southwood, Schoeman and Van der Merwe AJJA

banknotes cannot today be regarded as promissory notes embodying an incorporeal right against the issuing bank. In *The Bank of Canada v The Bank of Montreal et al*[12] Laskin CJC said:

'What is said to be an unconditional promise to pay a sum certain in money is itself money. The words on the face of the paper money, "I will pay to the bearer on demand", cannot alter its character as money and turn it into a different document which calls for the payment of money.'

3.19 In the SUPREME COURT OF APPEALS CASE - Master Currency v CSARS (155/2012) [2013] ZASCA 17, a Supreme Court of Canada case was cited, at [22] that states: "*The promises to pay to bearer that were contained in some banknotes cannot today be regarded as promissory notes embodying an incorporeal right against the issuing bank. In The Bank of Canada v The Bank of Montreal et al, Laskin CJC said: 'What is said to be* ***an unconditional promise to pay a sum certain in money is itself money****. The words on the face of the paper money, "I will pay to the bearer on demand", cannot alter its character as money and turn it into a different document which calls for the payment of money*. (The Bank of Canada v The Bank of Montreal et al 1978 (1) SCR 1148 at 1154; 76 (3d) 385 at 388).

3.20 Further case law:
A Lord Denning judgement says a bill of exchange - once tendered - has to be treated as cash. The principle is that a bill, cheque or note is given and taken in payment and as such is to be treated as cash, and not as merely given a right of action for the creditor to litigate a counter-claim (see Jackson v Murphy [1887] 4 T.L.R. 92),

"We have repeatedly said in this court that a bill of exchange or a promissory note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary" (see Lord Denning M.R. in Fielding & Platt Ltd v Selim Najjar [1969] 1 W.L.R. 357 at 361; [1969] 2 All E.R. 150 at 152, CA],

Warwick v Nairn (1855) 10 Exch 762 where Pollock CB remarked: "The payment by a bill of exchange is to be taken as the payment of so much cash".

I doubt very much that it can be stated any clearer than that.

3.21 It is trite that what we use and refer to as "money", is actually credit, a promise to pay money, made by a bank (bank obligation / liability). It does, in most cases, not involve the use of physical money. As such the confidence in these instruments is held together by the fact that if people knew the power they had over such instruments, the entire banking system would require a severe overhaul.

To quote **SOUTH AFRICAN RESERVE BANK - HISTORY, FUNCTIONS AND INSTITUTIONAL STRUCTURE** [JannieRossouw - Management of the South African money and banking System (Para 9.1.3: Exit policy and process for managing distress in banks)]:
"The *maintenance of public confidence* in the *stability of the banking system is the cornerstone* of the process of financial intermediation. The emergence of liquidity or solvency problems in a particular bank can *threaten confidence* not only in that particular bank, but also because of the possibility of contagion, in the safety and stability of the system as a whole."

3.22 As we are witnessing first hand across the world, the current financial system is unsustainable. If the confidence of the people, that Mr. Jannie Rossouw refers to, is held together by fraudulent misrepresentation, then an urgent reform of the banking system is required.

On a micro level, an urgent reform of my personal loan account is required.

3.23 I believe that I have every right to demand transparency from my bank. I refuse to sit back and let the financial chaos spreading all over the world reach me here in South Africa to the severe and detrimental effect of me, my family and my community.

4. HOLDER IN DUE COURSE

4.1 It is a common misconception to most people in South Africa, that a bank pays a cheque *by* debiting the customer's account as one single transaction. As I have shown above, the bank first pays the cheque as if it were money, then debits the customer`s account.

This is because a bill of exchange is the *"security for money"* and in modern banking, where money is not backed by substance, "*money"* and the "*security for money"* are synonymous. They are the same thing.

4.2 It is the role of a bank to, on instruction of their client, pay / discount bills of exchange, promissory notes and other negotiable instruments. Therefore, banks are fully capable of monetizing these instruments and, in fact, they do so every day.

This sentiment is echoed in the Reserve Bank Act, Section 10 (g) (1):
"The Bank may, subject to the provisions of section 13 "… buy, sell, discount or re-discount bills of exchange drawn or promissory notes issued for commercial, industrial or agricultural purposes."

4.3 Furthermore, Modern Money Mechanics continues:
"The actual process of money creation takes place primarily in banks... bankers discovered that they could make loans merely by giving their promise to pay, or bank notes, to borrowers. In this way banks began to create money."

4.4 Therefore, a bill of exchange drawn on me, or any other person, when *accepted for value* in the correct way using the procedure described in the Bills of Exchange Act, will become the *security for money* required to set-off and discharge any original accounting entry.
Thus, in the South African Law Commission's own words (stated above), it becomes the *instrument of payment* necessary to complete the transaction.

4.5 Finally, to complete the acceptance of the bill, we must first define acceptance:
"Acceptance means an acceptance completed by delivery or notification" (s1**,** Bills of Exchange Act 34 OF 1964 As amended by Act 56 OF 2000)

4.6 The requirements for delivery of a bill are found in s19:
Delivery as requirement for contract on a bill *(1) No contract on a bill, whether it be the drawer's, the acceptor's, an indorser's, or that of the signer of an aval, shall be complete and irrevocable, until delivery of the instrument in question in order to conclude such a contract: Provided that if an acceptance or an aval is written on a bill and the drawee or the signer of the aval, as the case may be, gives notice to, or according to the directions of, the person entitled to the bill that he has accepted or signed it, the acceptance or aval then becomes* ***complete and irrevocable****.*

4.7 It is my understanding that, by accepting for value and completing by delivery; I have become the holder in due course of the instrument (as per s27, Bills of Exchange Act), and have acquired a better title to the instrument than the bank who originally issued it.
4.8 The notion that I may acquire a better title to the instrument than the issuer of the bill is the fundamental aspect of a negotiable instrument.

Not only is it expressed in the definition outlined earlier, but ***In Impala Plastics v Coetzer, Flemming J said:*** "*Whilst avoiding definition, I must refer to one characteristic which goes to the foundation of negotiable instruments….*

More or less common to all systems and at all times is, however, the fact that the party entitled to the instrument can through a very informal act vest in another party the right, whist "holding" the document, to claim payment in his own name and in his own right from the party liable under the instrument, which right can conceivably be stronger than the rights which the transferor had. A document in respect of which the law tolerates such consequences, which it endows with the latent potential for such consequences, is a negotiable instrument."

4.9 It is submitted that this requirement is correctly stated in Cowan, Law of Negotiable Instruments, general Principles, as follows*:*
"*It is only a transferee who gives value in the sense of taking ex causa onerosa who holds free from defects in the transferor's title. In South African law, a transferee who takes gratuitously will occupy no better position than a mere cessionary of the instrument."*

4.10 Placing one's signature on a piece of paper is an extremely powerful act. In my case, a bill presented to me by another person, must be held for value in order that I may be holder in due course / secured party in the transaction. As "value" is vested in the confidence of the public (ie. me), I give value to the bill simply by accepting and signing it.

The fact that the banks make a profit behind the scenes should not prejudice South Africans who are losing their homes and other assets as a result of misrepresentation of banking activity.

THE USURY ACT OF 1968 - 10 (1) A moneylender… or a credit grantor… shall, within 14 days… deliver or send through the post to the borrower or credit receiver … a duplicate or true copy of the **instrument of debt** was so executed, a duplicate or true copy of a document which has been signed… by the moneylender and borrower or the credit grantor and credit receiver…

4.11 Note again the distinction between borrowing money and receiving credit which are mis-represented by the bank as the same thing. In fact, that same section in The Act refers to *"money lender or a credit grantor," "a money lending transaction or a credit transaction"* and the parties *"moneylender and borrower or the credit grantor and credit receiver."* These distinctions are not defined.

4.12 Therefore, a bill drawn by The Bank on me can be held for value and, on my instruction, they are able to set-off the amount they claim I owe them. For them, it is a simple matter of closing the accounting. I therefore express my right to ask The Bank to justify their "statement of account" / "certificate of balance" by providing me with the instrument that initiated the liability, or at least show accounting evidence that the liability came about by way of an ordinary loan. The bank has not done either.

4.13 Based on the above evidence, I see no reason why I may not set-off the debt using the above payment method. At the very least, when this method was put to the bank, they should have given me a suitable answer as to why I could or could not use it. Instead, they avoided the topic and immediately took legal action against me, under threat to both my land and my community who reside there.

4.14 To conclude, the form of money used to “repay” a loan is irrelevant to an accounting software-system in a bank, because an asset is simply an asset. I originated my own credit and if I initiated the transaction using a signed piece of paper, I must also be able to conclude it in the same way. If banks are able to do it, then it stands to reason that so can I.

What is good for the goose is good for the gander. Is it not guaranteed in The Constitution, Act 108 of 1996, Chapter 2: Bill of Rights:

Equality

9. (1) Everyone is equal before the law and has the right to equal protection *and benefit* of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

Bills of Exchange Act 34 of 1964, as amended by act 56 of 2000:
Section 3 (2) If in a bill, drawer and drawee are the same person, or the drawee is a fictitious person, or a person not having capacity to contract, *the holder may treat the instrument, at his option, either as a bill or as a note*.

Section 5 (3) If the *payee is a fictitious or non-existing person*, or a person not having capacity to contract, the *bill may be treated as payable to bearer*.

Section 43 (1) *(a)* Subject to the provisions of this Act, *a bill must be duly presented for payment* in accordance with the provisions of subsection (2).
(b) If it is *not so presented*, the *drawer and indorsers shall be discharged*.

Section 83 **Effect of payment to or crediting of accounts by bankers of amounts of unindorsed or irregularly indorsed cheques and certain other documents**
(1) If a bank in good faith and in the ordinary course of business *credits the account of its customer with or pays to another bank* the amount of-
(a) any cheque drawn on it;

(b) any other document issued by its customer and intended to enable any person to obtain payment on demand of the sum mentioned in such document from it (or from any bank, if the document was issued on behalf of the State); or
(c) draft payable on demand drawn by such first- mentioned bank upon itself, or upon its agent who is a bank, whether payable at the head office or some other office of its bank or of such agent, it shall not incur any liability by reason only of the absence of, or irregularity in, indorsement thereof, and such cheque, document or draft shall be discharged by such crediting of the account in question or by such payment.

5. LIQUIDITY BEHIND AN INSTRUMENT

5.1 A counter argument I have encountered in my research is that an asset (ie. Promissory note) is only considered valuable because it will be paid at some future date. One of the shocking revelations of our monetary system is there is actually no evidence for this contention. Banks have unlimited funds which are made available by the signature of the customer. The fact that they trade and profit behind the scenes from the illusion that money is scarce nonsense, and is testament to the financial crisis we are experiencing.

5.2 It is clear by world news reports that every hour of every day, the total amount of the world's debt is increasing with no end in sight. Only a physical resource can be finite and as we have no physical resource to back our currency, it is a clear and obvious truth that money is an infinite resource.

5.3 Professor Antal E. Fekete [Professor, Intermountain Institute of Science and Applied Mathematics, Missoula, MT 59806, U.S.A] in his article **Detractors of Adam Smith's Real Bills Doctrine** put it succinctly when he stated:
"*Debt repayable in irredeemable currency is nothing but an interest-bearing promise to pay that is exchangeable at maturity for a non-interest-bearing one. Bonds at maturity are exchanged but for an inferior instrument, insofar as interest-paying debt is considered preferable to non-interest paying debt.*
…But, debt can never be retired under the regime of irredeemable currency. At maturity it is shifted from one debtor to another. People are constructing a Debt Tower of Babel destined to topple in the fullness of times.
…Only if we approach our differences with sufficient humility can we prevail against the evil forces opposing freedom armed, as they are, with the formidable weapon of irredeemable currency."

5.4 It is my understanding that overseas cases may be used as a reference in South Africa, provided that no suitable local case law exists. In **Stanek vs. White** [172 Minn.390, 215 N.W. 784] "*There is a distinction between a 'debt discharged' and a debt 'paid'. When discharged, the debt still exists though divested of its charter as a legal obligation during the operation of the discharge, something of the original vitality of the*

debt continues to exist, which may be transferred, even though the transferee takes it subject to its disability incident to the discharge."

5.5 In other words, payment of a debt instrument (my promissory note to the bank) with another debt instrument (bank promises, promissory notes, or other "money" as we know it) might *discharge* an obligation, but it will not actually *pay* the debt!

This extraordinary revelation implies that

i) not only is there a misrepresentation being undertaken by the banks, but
ii) that I would be acting dishonorably if I were to discharge the obligation in the common way.

5.6 All money must be borrowed into existence which in turn means all money is debt, with interest compounded. Today, the two terms "money" and "debt" are almost synonymous, with the only exception being that, due to the interest factor, there is nowhere near enough "money" in the world to pay off all the "debt" in the world.

"… *our whole monetary system is dishonest, as it is debt-based… We did not vote for it. It grew upon us gradually but markedly since 1971 when the commodity-based system was abandoned.*" **The Earl of Caithness, in a speech to the House of Lords, 1997.**

5.7 All money in circulation is therefore owed by someone, and due to the interest factor, far more people owe money than money is available to pay it. A potentially unlimited supply of money, not backed by any substance or resource whatsoever, is available to the banks at any given time.

My failure to take a stand against such a discrepancy between public opinion and reality would be a dereliction of my duty to myself, my family and my community.

5.8 The bank misrepresented itself to me, as having its own money to lend. I doubt that the bank ever had the intention to hand over physical money, as they only have the *promise to pay money (extend credit).*
Using fractional reserve banking, combined with a book-entry system (disguised by complex legal and internal procedures), they create money "out of thin air."
The stream of repayments made by me (which is a separate, one sided agreement that has nothing to do with the original credit) is then sold into a securitization scheme, where the bank profits overnight and I am none the wiser.

5.9 The notion that money is made "out of thin air" is not new. Stephen Goodson, director of our own **South African Reserve Bank** stated in a recent article**:**
"*Did you know that commercial banks create money out of nothing, and lend it to you at compound interest, and moreover insist that you pledge real assets for such loans? Let me repeat - banks make money out of nothing.*"

5.10 On 10th August 2011 – **Die Beeld newspaper**, published an article in which it quotes Dr. Chris Stals (the previous governor of the SA Reserve Bank):

"*Minister Pravin Gordhan is reg as hy sê dat die lening wat die Reserwebank aan die regering van Swaziland toegestaan het, nie met belastingbetalers se geld gefinansier sal word nie....Dis inderdaad so dat die Reserwebank normaalweg nie belastingbetalers se geld gebruik om enige van sy bedrywighede te finansier nie.*
Die Reserwebank is 'n unieke instelling wat deur spesiale wetgewing van die parlement die reg reg verkry het om geld te kan skep.

Wanneer die Reserwebank 'n lening toestaan, soos aan die regering van Swaziland, krediteer die bank eenvoudig die regering van Swaziland se rekening met die leningsbedrag en debiteer sy rekening vir "lenings en voorskotte".

*Die regering van Swaziland verkry nou die reg om geld uit hierdie rekening te onttrek. In die eenvoudige geval kan hy vra om banknote in rand te onttrek. Die Reserwebank "**skep**" dan die geld deur nuwe banknote te druk en aan Swaziland uit te reik*".

5.11 The 14th edition of Encyclopedia Britannica goes on to state that:
"*Banks create credit. It is a mistake to suppose the bank credit is created by the payment of money into the banks. A loan made by a bank is a clear addition to the amount of money in the community.*"

5.12 Therefore, banks create money by monetizing negotiable instruments. These instruments operate within a bank *virtually like* money, but this is not disclosed to the public. My signature allowed my loan to be created "out of thin air" and this is totally against what I have been led to believe.

5.13 People honestly believe that money is a scarce resource. Even the Grade 5 curriculum at Rivonia Primary School in Johannesburg unwittingly misrepresents the financial system to children when it states:
The World of Money
Money has to comply with a few prerequisites before it can be part of an economy, such as…It must be relatively scarce

6. IN CLOSING

6.1 Please imagine for a moment, a village from ten thousand years ago.
Every morning, the people of the village come to the well and take just enough water needed for the day.
In times of drought, it was a simple case of taking slightly less than what was required, but there was always enough for survival. Then one day an army of bandits attacked the village and took control of the well.

They forced the villages to give their real assets (food, clothing and materials) in exchange for water. During times of drought, the villagers were required to pay more real assets for less water, and the bandits used the resources they acquired to build their own personal empires.

One day, however, a small group of villagers discovered that the bandits had secretly dug the well deeper. In fact, the well was dug so deep that it reached into an underground freshwater aquifer. There was now an unlimited amount of water available, but in order to preserve their hold over the village, the illusion of scarcity had to be maintained.

What did the villagers do when they discovered the misrepresentation? This is precisely the situation we are in right now with global economics.

6.2 The bank has brought to court what they believe to be a simple agreement. Their presumption is that they have a contract that guarantees a string of re-payments to them, in return for a loan granted by them. I am a victim of this misconception and when I approached the bank to get clarity, their response was legal action. I hereby wholeheartedly rebut this presumption.

6.3 When I was a boy, my parents had a relationship with their bank manager. Any problems or issues that needed to be discussed were done so in an amicable and friendly way. This is no longer the case.
Banks are no longer on the side of, or even impartial to the customer. Investors in their precious mortgage backed securities, shadow stakeholders who profiteer behind the scenes and even the bank itself are placed well and truly above the rights of the man being forced to do the hard work.

This is unacceptable to me. My unalienable rights, and those of my family and community, have been thwarted by this fraud we call money, which is perpetuated by a conspiracy of silence.

6.4 On June 4th, 2013, an article was published in the Business Day:
"...*Basel 3 have pushed local banks into focusing on more profitable non-interest income, with increased involvement in the recovery process*."

The banks are therefore about to take the debt "recovery process" to a whole new level. Already the harassment and deception is so bad, that TV shows and mass media are forced to expose the very hand that feeds their advertising revenue (ie. the banks.)

Sadly, our children will not survive the coming "recovery process" unless positive action is taken to rectify the situation.

:Abri: de Oosthuizen