

2 NOVEMBER 2006 EXAMINATION PAPER

LML407-U

October/ November 2006

BANKING LAW AND USAGE (LLB)

Duration: 2 Hours

100 Marks

EXAMINERS:

First: WG Schulze Second:

Mr EA Fredericks

This paper consists of 2 pages.

ANSWER ALL THE QUESTIONS

INSTRUCTIONS:

- Refer in your answers to the necessary case law.
- The length of your answers to the different questions should depend on the number of marks allocated to each question. Thus, you should spend a maximum of 6 minutes on a 5-mark question; 12 minutes on a 10-mark question; and 30 minutes on a 25-mark question etc.

QUESTION 1

- (a) Compile a list of the capacities in which a bank renders professional services to its clients 10

Section 10 of the South African Reserve Bank Act 90 of 1989 contains a detailed list of the powers of the Reserve Bank. List these powers. (10)

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[20]

QUESTION 2

Write an essay in which you explain the following aspects:

- (i) The distinction between customary law and a trade usage.

The requirements for a trade usage to be enforced against a party who did not know about the existence of the trade usage. ^ (10)

- i3 (iii) The application of trade usages in the sphere of banking. Your answer must include a reference to the possible relevance in this regard of the South African Banking Code.

(10)
[30]

QUESTION 3

The fraud exception to the doctrine of autonomy of the letter of credit is well established and acknowledged. Write an essay in which you discuss this exception by explaining the following aspects:

- (i) The relevance of the fraud exception to the two underlying principles to letter of credit.

(5)

(10)

- (ii) The different types of fraud that one gets in dealing with the fraud exception.

- (iii) The current legal position in terms of South African case law as regards the parameters of the fraud exception.

(15)

[30]

QUESTION 4

Local Bank concluded a contract with a number of South African suppliers, including "Incredible Rip-off", a business that sells cellular telephones. The contract provided that the suppliers would accept credit cards issued by Local Bank as "a method of payment". Local Bank issued credit cards to a number of clients, including Mr Dummy and Ms Mo. Mr Dummy uses his credit card to buy a state of the art cellular phone from "Incredible Rip-off" in the amount of R3000. Ms Mo uses her credit card to buy cellular software from "Incredible Rip-off" in the amount of R2000. Two months after these purchases have been made, Mr Dummy receives an account from Local Bank for R3000 and Ms Mo receives an account for R2000. These amounts were for the purchases made by them with their credit cards at "Incredible Rip-off". Mr Dummy has a credit balance on his current account with Local Bank. Ms Mo's current account with Local Bank shows a debit balance of R500. Before either Mr Dummy or Ms Mo has paid their accounts with Local Bank, "Incredible Rip-off" was placed under liquidation.

Explain the rights and obligations of the different parties under the following headings:

- (i) The relationship between "Incredible Rip-off" and Local Bank.

(ii)

The relationship between "Incredibile Rip-off" and Mr Dummy and Ms Mo.

The relationship between Local Bank and Mr Dummy and Ms Mo.

[20]

TOTAL: 100