

LML4807

October/November 2012

BANKING LAW AND USAGE

Duration 2 Hours

100 Marks

EXAMINERS
FIRST
SECONDMRS AN WAGENER
PROF WG SCHULZE

Closed book examination

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This paper consists of 3 pages

INSTRUCTIONS:

- **Answer ALL the questions.**
- **Refer in your answers to the necessary case law and other prescribed materials.**
- **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; 24 minutes on a 20-mark question etc.**
- **Questions which consist of clearly indicated sub-questions must be answered accordingly. Marks will be deducted if answers to sub-questions are lumped together in a single answer.**

QUESTION 1

- 1 1 Write a short note in which you explain the relevance of English law in South African banking law (5)
- 1 2 If a defaulting customer (eg, a customer who fails to repay a loan to the bank) has two or more accounts with the bank, one of which is in debit, the bank may wish to apply any credit balance on one of the other accounts in reduction of the debit balance. This is generally referred to as the bank's right to set-off

Explain, with specific reference to South African case law, whether there are exceptions to the bank's right to set-off.

(15)

[20]

[TURN OVER]

QUESTION 2

Super Bank issued an ATM card to Tego, who is one of its clients. Two weeks after the ATM card has been issued to Tego, it was stolen and the thief made a number of unauthorised withdrawals with the card.

Explain fully who bears the loss of these unauthorised withdrawals (15)
[15]

QUESTION 3

Charles is a prospective university student. In order to register as a first year student for 2013, Charles has to pay the university a deposit of R3 000. He approaches his mother, Lea, who agrees to grant Charles a loan on the terms that he will pay it back in ten monthly instalments (which shall include interest). The first instalment becomes payable on 31 January 2013.

- 3.1 Explain to Charles if the agreement is a credit agreement in terms of the National Credit Act 34 of 2005. Explain your answer. (6)
- 3.2 Irrespective of your answer in 3.1 assume that the National Credit Act 34 of 2005 applies to the agreement between Charles and Lea. What type of credit agreement is it? Explain your answer and provide the definition for the specific type of agreement. (5)

Happy Loans, a business specializing in office automation finance, enters into a credit agreement with Peter, an attorney. Happy Loans has also concluded twenty other credit agreements, to which the National Credit Act applies. The total outstanding debt of all these credit agreements is R 10 million.

- 3.3 Explain to Peter if Happy Loans had to register as a credit provider with the National Credit Regulator. (4)
- 3.4 Assume Happy Loans is not registered as a credit provider with the National Credit Regulator but had to register. What is the sanction where a credit agreement is concluded by a credit provider who is required to be registered, but who is not registered? (5)
[20]

QUESTION 4

Briefly discuss the following prescribed case.

- 4.1 *Durr v ABSA Bank and Another* 1997 (3) SA 448 (SCA)

The allocation of marks of the discussion is as follows:

- 1) Facts of the case (4)
- 2) The decision of the court (6)
[10]

QUESTION 5

- 5.1 Lerato's tripartite credit card was stolen and she immediately notified B-bank thereof. Subsequently, the thief purchased groceries with her credit card at Checkers in the amount of R2 000, and forged her signature on the billing slip. Briefly discuss whether B-Bank, Checkers or Lerato would have to bear the loss of the R2 000 (5)
- 5.2 Explain the legal nature of the relationship between the customer (the cardholder) and his or her bank in an EFTPOS transaction (5)
- 5.3 Briefly explain possible consequences for a cardholder in the event that he or she loses his or her electronic purse (5)

QUESTION 6

- 6.1 Yolandi, an employee of B-Bank, has been charged in terms of s 52 of the Financial Intelligence Centre Act 38 of 2001 ("FICA") for failing to report a suspicious or unusual transaction. Section 69 of FICA provides for a defence for such a charge. Advise Yolandi as to the defence that she may raise (3)
- 6.2 Yolandi is successful with her defence raised in terms of s 69 of FICA. B-Bank is now being investigated. Name the possible consequences for B-Bank (3)
- 6.3 Briefly comment on the Financial Advisory and Intermediary Services Act 37 of 2002 in view of its relevance for banks (5)
- 6.4 Briefly compare the activities of banks (regulated by the Banks Act 94 of 1990), and mutual banks (regulated by the Mutual Banks Act of 124 of 1993), respectively (4)
- 6.5 Explain a central bank's function as bank of discount and also its function as lender of last resort (5)

[20]**TOTAL: [100]**