

LML407-U

October/November 2007

BANKING LAW AND USAGE (LLB)

Duration : 2 Hours

100 Marks

EXAMINERS :

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SECOND : PROF EA FREDERICKS

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This paper consists of 2 pages.

**Answer all the questions. Note the division of marks and use the available time accordingly. Refer in your answers to the necessary authorities (court cases, articles, case notes etc).**

**Please note that NO marks will be awarded if your answers are not divided into numbered paragraphs as indicated in each question.**

**QUESTION 1**

- (a) 5 O<sup>ur</sup> courts have described a **fixed deposit** as a loan to a bank repayable on a certain date (the maturity date), usually bearing interest. Discuss the legal position where a customer needs the amount of a fixed deposit **before** the maturity date of the deposit.  $\wedge$  (10)  $\wedge$
- (b) S When a customer makes a deposit at a bank over the counter, he will receive a deposit slip, which amounts to an admission of receipt by the bank and as such would serve as an evidential advantage to the customer in the event of a dispute. Discuss **in detail** whether this is also the position in respect of **autoteller deposits**. (10) A [20]

**QUESTION 2**

X is an entrepreneur and the owner of various businesses. X's businesses include, amongst others, the following:

1. XFinancial Safe Services which offers safekeeping facilities for clients for small amounts of cash against a fee;
2. XSA Retail which imports fabric from India for the local market; and
3. XCredit Facilities which supplies credit guarantees on behalf of clients on request.

(TURN OVER)

X approaches you for legal advice. Answer the following questions in detail:

- (a) Is the Banks Act 94 of 1 990 applicable to the services being offered to the public by XFinancial Safe Services? Explain. (10)
- (b) Which methods of payment are available to the parties to a contract of international sale? (5)
- (c) X employs documentary letters of credit as method of paying the purchase price for the imported Indian fabric. May X revoke payment of a letter of credit if the imported fabric is of an inferior quality? (10)
- (d) Is the National Credit Act 34 van 2005 applicable to the services which XCredit Facilities offers to the public? Explain. (5)
- [30]

### QUESTION 3

Y wants to purchase XFinancial Safe Services from X for R900 000. X and Y agree that payment will occur on transfer. The contract between X and Y further stipulates that Y will deliver to X a guarantee for the purchase price of R900 000 before 1 December 2007. X is informed that Y obtained a letter of undertaking from his bank.

- (a) Describe the legal nature of a letter of undertaking issued by Y's bank to X. (5)
- (b) Explain the role of a letter of undertaking to X. In your answer you must refer to relevant case law. (15)

### QUESTION 4

X must pay various bills each month. He is considering a variety of payment mechanisms. Explain to X the nature of his **obligations** under the following payment mechanisms:

- (a) Credit cards; (10)
- (b) Stop orders; (5)
- (c) Debit orders. (5)
- [20]

### QUESTION 5

Write a **short** note where you discuss the following:

- (a) **Credit agreements** which are illegal in terms of the National Credit Act 34 of 2005; (5)
- (b) Unlawful provisions in credit agreements in terms of the National Credit Act 34 of 2005. (5)
- [10]

**TOTAL: 100**