



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Mercantile Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: WRG0021/LNI41B0
<u>SEMESTER</u>	: Second
<u>EXAM</u>	: November 2021

<u>DATE</u>	: 8 November 2021	<u>SESSION</u>	: 12:30-15:30
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<u>ASSESSOR(S)</u>	: Prof SF du Toit (UJ)
	: Prof CF Hugo (UJ)

<u>EXTERNAL MODERATOR(S)</u>	: Prof CM van Heerden (UP)
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<u>DURATION</u>	: 3 HOURS	<u>MARKS</u>	: 60
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NUMBER OF PAGES: 5

INSTRUCTIONS:

1. Refer to court decisions, authors and other authority to substantiate your answers, where applicable.
 2. This is an open-book examination. This means you may have all the prescribed material, including your own summaries of such material, and any other sources, available during the examination.
 3. **The UJ regulations for examinations apply to this examination. In particular, you may not be in contact in any way with any student or any other person for the duration of the examination and you may not receive assistance in completing the examination from any student or any other person. Failure to adhere to the regulations will lead to disciplinary action.**
 4. Your answers will be tested for plagiarism – both against the work of other students and against other sources. Do not copy and paste from any sources or summaries of the work that are not your own.
 5. After completion your answers must be submitted **not later than 15h30** on 8 November 2021 in a single document on Blackboard. The submission link will be in the folder “Banking Law Examination”. Make sure that you receive a receipt confirming submission on Blackboard. Should you experience difficulties in submitting your examination on Blackboard, you can email the examination to the departmental secretary at ebooyesen@uj.ac.za not later than 15h30 on 8 November 2021. Only email your examination if you are unable to submit on Blackboard.
 6. Answer all the questions.
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SECTION A

QUESTION 1

[5]

Critically discuss how section 9 of the Conduct Standard for Banks, 2020 changed and/or developed the law relating to the closing of bank accounts as set out in *Bredenkamp v Standard Bank of South Africa Ltd* 2010 4 SA 468 (SCA). [You can assume the examiner is familiar with the *Bredenkamp* decision – do not discuss the case; focus on changes and developments brought about by the Conduct Standard. Answer in your own words – sections copied from the Conduct Standard will not be marked.]

QUESTION 2

[10]

X uses her Nedbank credit card to buy groceries costing R450 from Checkers. Use these parties to explain and distinguish between the following ways in which the legal nature of payment by credit card can be construed: (1) conditional payment; and (2) novation (including the further expansion and refinement of the novation construction by Cornelius). Your answer should also deal with the legal consequences attached to each construction. [Do not refer to any cases as part of your answer.]

QUESTION 3

[15]

A logs on to her Internet banking account with Standard Bank. She attempts to add the account of C at ABSA Bank as a beneficiary, but because she mistakenly substitutes a “3” in the account number with an “8”, the person linked as beneficiary is in fact D, who has an account with that number at ABSA Bank. A does not provide the name of the beneficiary account to Standard Bank – only the account number is supplied. A transfers R10 000 to D, even though she wanted to pay C. At the time D’s account is overdrawn by R5 000. The transfer extinguishes the overdraft, leaving D’s account with a credit balance of R5 000.

A only realises much later that C has never been paid. A informs both banks of what had happened, but when trying to recover the money from D, was informed that D had been declared insolvent and that the same R5 000 remains in D’s account at ABSA Bank. Prior to this, the banks were completely unaware that A had mistakenly transferred the money to D.

A considers a claim in delict against ABSA Bank and an enrichment claim against either the insolvent estate of D or ABSA Bank. A approaches you for legal advice. Explain briefly to her why a delictual claim against ABSA Bank will not succeed and then advise A fully as to whether she will be able to succeed with an enrichment claim. Distinguish clearly between the success of enrichment claims against D’s insolvent estate and ABSA Bank respectively, and if one of the enrichment claims were to be successful, be specific about the amount she will be able to claim.

SECTION B

QUESTION 4 (Financial crime)

[8]

The Financial Intelligence Act, since its amendment in 2017, has applied the so-called “risk-based approach” towards combatting money laundering and terrorist financing. Part of this approach entails “due diligence” in relation to banks’ relationships with their customers. In some instances, “due diligence” must be escalated to “enhanced due diligence” (or additional due diligence measures). Discuss your understanding of “enhanced due diligence” and the factors that may give rise to it being required.

QUESTION 5 (Payment in and financing of international trade)

[9]

Write notes differentiating briefly between:

- 5.1 factoring and forfaiting as discounting transactions encountered in the financing of international trade; (5 marks); and
- 5.2 acceptance credits and deferred payment credits. (4 marks)

QUESTION 6 (Guarantees)

[13]

The following clauses form part of the JBCC “Guarantee for Construction”:

“3.0 The Guarantor acknowledges that: -

3.1 Any reference in this Guarantee for Construction to the Agreement is made for the purpose of convenience and shall not be construed as any intention to create an accessory obligation or any intention to create a suretyship.

....

5.0 Subject to the Guarantor’s maximum liability the Guarantor undertakes to pay the Employer the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand notice from the Employer to the Guarantor at the Guarantor’s physical address calling up this Guarantee for Construction stating that:-

5.1 The Agreement has been terminated due to the Contractor’s default and that the Guarantee for Construction is called up in terms of 5.0. The demand notice shall enclose a copy of the notice of termination; or

5.2 A provisional sequestration or liquidation court order has been granted against the Contractor and that the Guarantee for Construction is called up in terms of 5.0. The demand notice shall enclose a copy of the court order.”

Write an essay analysing these clauses. Your essay should indicate the extent to which the foundational principles of demand guarantees (independent guarantees) are reflected in them and should discuss relevant South African case law relating to the quoted clauses (or similar clauses).

[Total: 60]