



<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>	: January 2021

<u>DATE</u>	: 22 January 2021	<u>SESSION</u>	: 8h00-11h00
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<u>ASSESSOR(S)</u>	: Prof SF du Toit (UJ)
	: Prof CF Hugo (UJ)

<u>EXTERNAL MODERATOR(S)</u>	: Prof R Brits (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 11h00** on 22 January 2021 in a single document on Blackboard. The submission link will be in the folder “Banking Law Supplementary Exam”. 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 chugo@uj.ac.za not later than 11h00 on 22 January 2021. Only email your examination to the lecturer if you are unable to submit on Blackboard.
 6. Answer all the questions.
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SECTION A

QUESTION 1

[15]

Write an essay in which you critically discuss a bank's duties when opening and monitoring bank accounts, with specific reference to case law relevant to these duties.

QUESTION 2

[15]

A, a client of Nedbank, instructs Nedbank in writing to transfer R100 000 from A's account to account number 0202216657 at Standard Bank. A further indicates that the beneficiary is C. A intends to pay C, but due to an administrative error the account number supplied is that of X. A does not owe X any money and does not intend to pay X. X is fully aware that he is not entitled to the money, but nevertheless refuses to agree to refund the amount to A, and furthermore informs Nedbank that A did indeed owe the money to him. Before A approaches a court, X is declared insolvent, and A was unable to recover any money from the insolvent estate.

A approaches you for legal advice. Advise A whether she will be able to succeed in a claim against the beneficiary's bank based on contract, delict and/or enrichment.

SECTION B

QUESTION 3

[6]

Discuss the meaning of “equitable ownership” as it has emerged in the latest amendments to the Financial Intelligence Centre Act 38 of 2001, and the reason why this concept has received the attention it has.

QUESTION 4 (documentary collections, letters of credit)

[12]

Sunlar (Pty) Ltd (“Sunlar”) is a South African company that specializes in the provision of solar energy to residential homes. Buzz GmbH (“Buzz”) is a German manufacturer of invertors used in solar-energy installations. Sunlar orders (purchases) 100 invertors from Buzz at a price of 2000 Euro per invertor, that is for a total price of 200 000 Euro. In terms of the contract payment is to take place by an acceptance letter of credit to be issued by the X Bank in South Africa and advised to Buzz by the Y Bank in Germany which is also to act as the nominated bank on which the relevant bill of exchange (the banker’s acceptance) is to be drawn. The parties further agree that the bill of exchange to be utilised must mature 90 days after sight.

- (a) Against this background, and with reference to the parties described above, explain the operation of payment by acceptance credit briefly. **(3)**
- (b) Does this form of payment enable Buzz to receive payment before maturity of the bill of exchange (the banker’s acceptance). Explain your answer briefly. **(3)**
- (c) Draft the front and reverse side of the bill of exchange (banker’s acceptance) as it is likely to appear after completion of the transaction. **(6)**

Guidance for question 5(c):

- (i) Drafting the bill means writing the terms of the instrument down in a comprehensible manner from which the parties (drawer, drawee, acceptor, indorser), the date of issuance and the date of maturity appear. You do not, therefore, need to spend time in order to present something in a neat rectangle resembling a typical bill of exchange.
- (ii) The parties on the bill, however, must conform with the facts of this question – in other words, if Sunlar and/or Buzz and/or X Bank and/or Y bank are parties to the bill, this must emerge from your draft.
- (iii) Insofar as the bill requires parties not named in the facts, you may use any name of your choice.
- (iv) In place of a signature simply use three capital letters, for example “PPP” or “QQQ”.

QUESTION 5 (guarantees)

[12]

The pro forma “Performance Guarantee” of the *General Conditions of Contract for Construction Works* contains, amongst others, the following provisions:

- 3 *The Guarantor hereby acknowledges that:*
- 3.1 *any reference in this Performance Guarantee to the Contract is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a suretyship:*
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- 5 *Subject to the Guarantor’s maximum liability referred to ... [above] the Guarantor undertakes to pay to the Employer the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand from the Employer to the Guarantor at the Guarantor’s physical address calling up this Performance Guarantee, such demand stating that:*
- 5.1 *the Contract has been terminated due to the Contractor’s default and that this Performance Guarantee is called up in terms of 5; or*
- 5.2 *a provisional or final sequestration or liquidation court order has been granted against the Contractor and that the Performance Guarantee is called up in terms of 5; and*
- 5.3 *the aforesaid written demand is accompanied by a copy of the notice of termination and/or the provisional/final sequestration and/or the provisional liquidation court order.*

Write an essay focusing on these provisions of this guarantee. Your essay should deal mainly with two issues: (a) the importance of differentiating this guarantee from an accessory guarantee (with reference to par 3 quoted above); and (b) the question as to what constitutes a complying demand (with reference to par 5 quoted above). It should also refer to and discuss relevant case law.

[Total: 60]