



PROGRAM : NATIONAL DIPLOMA IN CREDIT MANAGEMENT

SUBJECT : BUSINESS LAW 3A

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EXAMINERS : MR SS NKOSI (UJ)

Sanso Number

:

MODERATOR : MR P MAKAKABA (UNISA)

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REQUIREMENTS:

UJ EXAMINATION ANSWER BOOK

INSTRUCTIONS TO CANDIDATES:

1. Use the UJ Examination Book and number your answers correctly.
2. DO NOT use Tip-ex.
3. DO NOT use sms-speak
4. Draw a line to separate answers to different questions.
5. Calculators are permitted.

SECTION A

QUESTION 1

1. A mortgage agreement is a credit agreement:
 - a. secured by a lien
 - b. secured by registration of a bond by the registrar of deeds over an immovable property
 - c. secured by a pledge of an immovable property
 - d. none of the above
 - e. all of the above.
2. The court in *Firststrand Bank Ltd v Carl Beck Estates (Pty) Ltd* was of the view that:
 - a. suretyships fall within the definition of "credit agreement"
 - b. suretyships definitely do not fall within the definition of "credit agreement"
 - c. suretyships fall within the definition of "credit guarantee"
 - d. all of the above
 - e. none of the above.
3. The National Credit Act 34 of 2005 does not apply to_____.
 - a. agreements in which the credit provider is the Reserve Bank
 - b. agreements in which the State is the consumer
 - c. between a stokvel and any of its members
 - d. all of the above
 - e. none of the above.
4. A credit agreement is a large credit agreement if:
 - a. it is a mortgage agreement
 - b. it is a pawn transaction
 - c. the principal debt in respect thereof is equal to, or more than, R250 000
 - d. both (a) and (b) are correct.
 - e. both (a) and (c) are correct.

5. Generally speaking, a credit agreement has the following characteristics:
- a. the granting of credit
 - b. the deferment of payment
 - c. the payment of interest
 - d. all of the above
 - e. none of the above.
6. The functions and duties of the National Credit Regulator include:
- a. monitoring levels of over-indebtedness among consumers
 - b. promoting a fair, transparent, efficient and accessible credit market
 - c. conducting research into the consumer credit market and recommending and recommending legislation
 - d. all of the above
 - e. none of the above.
7. "Debt review" implies that:
- a. the consumer is insolvent
 - b. the debtor may be allowed to pay his debts over an extended period of time
 - c. the credit provider has been reckless in extending credit to the consumer
 - d. both (a) and (b) are correct
 - e. both (b) and (c) are correct.
8. "Continuous service" means_____.
- a. the supply of a utility
 - b. the supply of a utility or service combined with the supply of goods that are essential for the utilisation of that utility or service by the consumer
 - c. the supply of security services from time to time, for example, as determined by the customer
 - d. all of the above
 - e. none of the above.
9. A "public interest credit agreement" is a/an:
- a. combination of credit transactions
 - b. combination of credit agreements
 - c. credit guarantee
 - d. secured loan
 - e. altruistic agreement.
10. The Consumer Court _____.
- a. has the same jurisdiction as the High Court
 - b. is a creature of provincial legislation
 - c. may be used as an alternative to debt counsellors, the Ombud and alternative dispute resolution agents

- d. both (a) and (b) are correct
 - e. both (b) and (c) are correct.
11. An incidental credit agreement involves_____.
- a. the quoting of two prices to the consumer
 - b. the higher price being payable after a certain stipulated date
 - c. a fee, a charge or interest being payable after a certain stipulated date
 - d. all of the above
 - e. none of the above.
12. An entity should be registered as a credit provider if_____.
- a. it sell goods and services to consumers on credit
 - b. it has credit agreements amounting to at least R500 000 in its books
 - c. the number of credit agreements in its books exceed a stipulated threshold
 - d. both (a) and (b) are correct.
 - e. both (b) and (c) are correct.
13. In terms of the National Credit Act 34 of 2005 the following credit agreement/s is/are unlawful:
- a. an agreement with an unemancipated minor without the assistance of the guardian
 - b. an agreement in which the State is the credit provider
 - c. an agreement which amounts to negative option marketing
 - d. (a) and (b) are correct
 - e. (a) and (c) are correct.
14. The National Consumer Tribunal_____.
- a. is a juristic person and has jurisdiction throughout South Africa
 - b. functions the same way as a court of law
 - c. conducts its proceedings in public, and such proceedings are informal
 - d. all of the above
 - e. none of the above.
15. One of the following persons is **NOT** a consumer in terms of the National Credit Act 34 of 2005:
- a. a lessor in terms a lease agreement
 - b. a guarantor in terms of a credit guarantee
 - c. a mortgagor in terms of mortgage agreement
 - d. a borrower in terms of a secured loan
 - e. a party who receives money under any credit agreement.

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SECTION B

QUESTION 1

INDICATE WHETHER EACH OF THE FOLLOWING STATEMENTS IS TRUE OR FALSE. IF YOUR ANSWER IS "FALSE", PLEASE MOTIVATE. NO MARK WILL BE ALLOCATED SHOULD THE MOTIVATION BE WRONG.

- 1.1 The court in *National Credit Regulator v Nedbank, 2009* (6) SA 695 (GNP) said, among other things, that the magistrate to whom a debt counsellor refers his recommendations, after assessing a consumer's application for debt review, performs an administrative function, not a judicial one.
- 1.2 The National Credit Act 34 of 2005 repealed the Credit Agreements Act 75 of 1980.
- 1.3 A consumer has, by law, the right to be granted credit by any registered credit provider.
- 1.4 The Hire-Purchase Act 36 of 1942 was repealed by the Credit Agreements Act 75 of 1980.
- 1.5 A supplementary agreement is an unlawful agreement in terms of section 91(a) of the National Credit Act 34 of 2005.
- 1.6 In terms of section 101 and 102 of the National Credit Act the concepts "deferred amount" and "principal debt" have the same meaning.
- 1.7 A consumer may, after satisfying all his obligations, apply to the relevant debt counsellor for a clearance certificate.
- 1.8 The credit provider may not institute legal proceedings against a consumer, for breach of a credit agreement without referring him or her to a debt counsellor, consumer court, ombud with jurisdiction or an alternative dispute resolution agent in terms of section 129(1) of the National Credit Act 34 of 2005.
- 1.9 A credit transaction is as much a small credit agreement as it is a large credit agreement in terms of the Credit Agreements Act 34 of 2005.
- 1.10 In terms of the National Credit Act 34 of 2005, a pawn transaction is always a small credit agreement.

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QUESTION 2

In *National Credit Regulator v Nedbank Ltd* 2009 (6) SA 295 (GNP) the High Court made a number of important pronouncements with regard to the role and functions of the debt counsellors and the Magistrate Court with regard to the debt review process. Discuss. [13]

QUESTION 3

C, a commuter, is approached by R, a representative of Home Comforts (Pty) Ltd, selling pots, cutlery and crockery at a crowded taxi rank, and singing praises to his wares. C decides to buy a stoneware tea-set on credit, and is made to complete and sign a set of forms. When she gets home, C realises that the goods are of poor quality.

- a) What remedy does she have in terms of the National Credit Act 34 of 2005? Advise her. (9)
- b) If the remedy were a right of surrender, would your answer be different? Explain. (8)

[17]

QUESTION 4

On 30 April 2016, John Smith received an e-mail from Windfall Finance (Pty) Ltd. In part, the e-mail stated: "Dear Smith. Kindly take notice that our company is offering you a pre-approved loan of R100 000. Should you not accept our offer within three days hereof, you will be deemed to have accepted it, and the stated amount will be deposited into your bank account Saving Bank Ltd." John, however, dismissed the e-mail as a prank. Windfall Finance then deposited the sum R1000 000 00 into John's account; and simultaneously, informed him that he will, henceforth, be liable for equal instalments of R4000 a month, plus interest and all the other applicable charges and fees, until the last and final instalment is paid.

- a) Is the contract between the parties valid? Explain. (6)
- b) Would your answer be different if the parties entered into a supplementary agreement subsequent thereto? Discuss. (3)

- c) If John were to approach a court of law, how would it deal with this matter? Explain with particular reference to recent developments. (7)

[16]

QUESTION 5

On 18 September 2016, Kgomotso entered into two credit agreements with Rainbow National Bank Ltd. The first one was a loan of R300 000 00 which she needed in order to buy a house. It was agreed that a mortgage bond would be registered on that house, as security. In addition, it was agreed that the loan would be repaid in monthly instalments of R3500, for a period of 240 months hence. At the time when the said agreement was concluded, the South African Reserve Bank Repurchase Rate (RR) was set at 8%. The second credit agreement was a loan of R7000 to Kgomotso, which was payable within five (5) months from the date on which it was concluded. Please, read the facts provided and answer the following questions:

- (a) Indicate and narrate how the maximum initiation fee should be calculated in relation to the first agreement. (5)
- (b) Indicate and narrate how the maximum interest rate should be calculated in respect of the first agreement. (5)
- (c) Indicate and narrate how the maximum interest rate will be calculated in respect of the second agreement. (5)
- (d) Between December 2015 and March 2016 bond, Kgomotso defaulted on her monthly instalments and was, therefore, in breach of both agreements. On 30 March 2015, Rainbow Finance issued and delivered a section 129 (1) default notice at the address provided by Kgomotso to Rainbow Finance. Kgomotso did not respond to the notice, and then, Rainbow Finance issued summons to which Kgomotso did not respond. Thereafter, Rainbow Finance approached the court in order to enforce the agreements by way of default judgment. In court, Kgomotso raised a preliminary objection to the proceedings, saying that the notice was, perhaps, lost in the post, and never reached her. Explain in detail whether such a defence has any merit. (10)

[25]

TOTAL [100]
