

**NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY
FACULTY OF COMMERCE
DEPARTMENT OF BANKING**

**LAW RELATING TO BANKING II
CIN 2203**

SUPPLEMENTARY EXAMINATION

OCTOBER 2009

TIME: 3 HOURS

INSTRUCTIONS TO CANDIDATES

Answer any FOUR (4) questions.

Indicate on your answer booklet whether you are in the conventional or parallel programme.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

Questions may be written in any order, but must be legibly numbered.

The businesses in this question paper are intended to be fictitious.

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[Turn over]

QUESTION 1

- (a) **Maqawe** (Pvt) Limited is a company carrying on tourism business in Zimbabwe. The directors of the company have powers to borrow on behalf of the company only with the sanction of a general meeting of shareholders. On 31 March 2008, the directors of Maqawe (Pvt) Limited applied for a loan from Millennium Bank to help with the refurbishment of its lodges at Victoria Falls. Without regard to whether the borrowing was sanctioned, the loan was approved and directors put the funds to personal use. Maqawe (Pvt) Limited is now refusing to repay the loan arguing that the bank lent ultra vires.

Advise the two parties on their legal positions, quoting relevant cases and legal authorities. (16 Marks)

- b) What considerations should a bank bear in mind before opening a company account? (9 Marks)

TOTAL

[25 MARKS]

QUESTION 2

- (a) XYZ Bank is a recently registered bank. The bank is cash-strapped due to poor business following the 2006 drought. A customer at the bank, Bismarck, operates an account, which is in debit owing to a long outstanding overdraft. Bismarck repeatedly says he cannot service the overdraft because his business has collapsed. The bank manager now regrets why he ever allowed the overdraft. Advise the bank manager on the canons he should have borne in mind before allowing the now irksome overdraft.

(25 Marks)

TOTAL

[25 MARKS]

QUESTION 3

- (a) When is a transaction under the following cases considered complete and irrevocable?

- i. Credit transfer (6 Marks)
ii. Electronic Funds Transfer at Point of Sale (EFTPOS) (6 Marks)

- (b) Under what circumstances does a beneficiary acquire a defective title in a credit transfer? In each case, discuss the remedies available to the paying bank and the debtor. (13 Marks)

TOTAL

[25 MARKS]

QUESTION 4

- (a) Skhosana, a university student, is granted an advance of \$10 billion by ZEX Bank to sponsor her university education. On the advance being granted, her father stands as surety and co-principal debtor. On completion of her education, Skhosana disappears into the diaspora without notifying her father and the bank. ZEX Bank now seeks to recover the whole amount of the advance from Skhosana's father. Discuss the legal position of Skhosana, her father and the bank. (13 Marks)
- (b) Discuss the defenses and remedies available to a surety under a contract of suretyship. (12 Marks)

TOTAL

[25 MARKS]

QUESTION 5

Citing legal cases, explain how your bank should handle the customer's affairs upon receipt of notice of bankruptcy or insolvency proceedings against the following parties:

- i. Individual customer (17 Marks)
- ii. Partnership (19 Marks)
- iii. Company (9 Marks)

TOTAL

[25 MARKS]

QUESTION 6

Gideon lends Nyasha a sum of \$500 billion, repayable in three months time. Nyasha tendered his cow to Gideon to hold onto until the debt was fully repaid. Within a month, the cow bears a calf, which Gideon refuses to release. Nyasha threatens to report the matter to the police. Angered by Nyasha's behaviour, Gideon uses the cow for ploughing purposes in order to fix him. Before the three month period lapses, Gideon sells both the cow and the calf to his dubious uncle Todd for a paltry \$10 000 000. Advise Gideon and Nyasha on their legal positions in this matter.

(125 Marks)

TOTAL

[25 MARKS]