

**NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY
FACULTY OF COMMERCE
DEPARTMENT OF BANKING
BACHELOR OF COMMERCE HONOURS DEGREE IN BANKING**

LAW RELATING TO BANKING I – CIN 2103

FINAL EXAMINATION

APRIL 2009

TIME: 3 HOURS

INSTRUCTIONS TO CANDIDATES

- The paper contains **SIX (6)** questions.
- Answer any **FOUR (4)** questions.
- All questions carry equal marks [**25 marks**].
- Start the answer to each question on a fresh page of the answer sheet.
- Indicate on your answer booklet whether you are in the conventional or parallel programme

INFORMATION FOR CANDIDATES

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) Mr. Thomas has a current account at XYZ Bank (Pvt) Ltd. Due to his integrity and financial discipline, his account always carry healthy credit balances. Between August and November 2008, Mr. Thomas' wife forged his signature on ten cheques. He learnt of the forgeries but was persuaded to keep silent. On 15 January 2009, although there had been no further forgeries, Mr. Thomas, because of a matrimonial disagreement, threatened to inform the bank of the forgeries, whereupon the wife committed suicide. Mr. Thomas is now suing the bank in order to recover his money on the forged cheques. Advise Mr. Thomas and XYZ Bank on their positions, quoting relevant cases. [13 marks]
- b) With the aid of relevant case law and statutory provisions, briefly discuss the legal effect of the following marks on a cheque:
- i. Two parallel transverse lines with the words "& Co". [3 marks]
 - ii. The words "Not Negotiable" [3 marks]
 - iii. Two parallel transverse lines with the words "A/c Payee Only" [3 marks]
 - iv. The endorsement of the words "Not Transferable" [3 marks]

TOTAL

[25 MARKS]

QUESTION 2

- a) Thoko and her sister Sithatshisiwe operate a hair and beauty saloon as a partnership. Thoko is based in Bulawayo while Sithatshisiwe manages the Hwange branch where she is based. In 2007, Thoko opened an account with the Bulawayo branch of Mafikizolo Bank. At that time, she explained that the account was a partnership account, but as she was the only partner resident in Bulawayo, the account would better be in her name. The account was indeed opened in Thoko's name. In December 2008, the account had a debit balance of \$2000. The bank now seeks to recover the whole amount from Sithatshisiwe.

Discuss, giving reasons, Mafikizolo Bank's chances of winning the legal suit. [12 marks]

- b) Godini (Pvt) Ltd is duly registered in terms of Zimbabwean Laws. The company has an account at Kaiser Bank. On 15 February 2009, the Government Gazette carried a notice to the effect that the creditors of Godini (Pvt) Ltd have presented a petition for compulsory winding up of the company. On 10 March 2009, Mr. Zed, a director in the company, made a transfer of \$5000 from the company's account to his personal account. It now turns out that the transfer was not authorized and the company is seeking legal recourse in order to recover the \$5000 from the bank. Advise the two parties. [13 marks]

TOTAL

[25 MARKS]

QUESTION 3

- a) Osiphatheleni is a secondary school pupil aged 15. Following the death of her parents in a fatal car crash in 2007, she now stays with her 40-year brother, Edwin, who is responsible for her upkeep and payment of school fees. In January 2008, Edwin helped Osiphatheleni open a bank account at Samaita Bank and made a healthy deposit of \$10 000. Between January and August 2008, Osiphatheleni developed the habit of making withdrawals from the account without the consent nor the authority of Edwin. On 3 November 2008, Osiphatheleni asked for a \$2000 overdraft from the bank, which was given. As security for the overdraft, the bank took a guarantee from Mr. Churu, a friend to Osiphatheleni's late father. The overdraft is now overdue and there is no indication that Osiphatheleni will repay it. Samaita Bank is considering suing Osiphatheleni, Edwin and Mr. Churu for the recovery of the money. Advise Samaita Bank on the merits and demerits of its case. [9 marks]
- b) Under what circumstances can an unassisted minor enter into a valid and binding contract? [16 marks]

TOTAL

[25 MARKS]

QUESTION 4

- a) Gomasko is a male adult who has an account at BW Bank. The bank manager is a friend to Gomasko's father. In a telephone conversation one day, the bank manager told Gomasko's father that his son's account was overdrawn and he had difficulty repaying the overdraft. Since the bank manager always meets Gomasko outside Nkulumane Tote, he alleged, in the conversation, that Gomasko was a gambler. After a serious misunderstanding between Gomasko and his father one day, the father remarked that he had no time to waste with bad debtors and gamblers. He openly told Gomasko that he got the information from BW Bank. This embarrassed Gomasko but he did not know what to do. Discuss, quoting legal authority, the legal avenues that can be explored by Gomasko in this case. [12 marks]
- b) The banker-customer relationship creates rights and obligations between the two parties. Explain the obligations of the customer to his banker. [13 marks]

TOTAL

[25 MARKS]

QUESTION 5

- a) A trust fund has been set up whose purpose is to keep funds on behalf of AIDS orphans in rural Matabeleland. Reverend Bhonzo is the Chairman of the Board of Trustees. The trust account is held at Sunset Bank. As Reverend Bhonzo's church in Bulawayo is facing serious financial problems, he approaches Sunset Bank and explains the situation to Mr. Dube, the bank manager. The manager is sympathetic and allows him to withdraw money from the trust account on condition that he replaces it within four months. Zinini Bhebhe, the chief representative of the AIDS orphans hears of this. He is now threatening to take legal action against the bank on behalf of the AIDS orphans. Advise Sunset Bank, citing relevant legal authority. [15 marks]
- b) Outline and discuss, quoting decided cases, exceptions to the banker's duty of confidentiality. [10 marks]

TOTAL

[25 MARKS]

QUESTION 6

- a) South-West Bank (Ltd) is a duly registered bank in Zimbabwe. Makhosi, a prominent businesswoman residing in Bulawayo is a well-known woman at the Bulawayo branch of the bank. Over the years, she has developed the habit of cashing several cheques across the counter per week. On 15 February 2009, she fraudulently obtains a cheque from Star Bank (Ltd). She cashes this cheque at South-West Bank. A week later, Star Bank discovered the fraud and is suing South-West Bank for the recovery of the money. Star Bank is arguing that South-West Bank should not have cashed its (South-West Bank) customer's cheque. Advise South-West Bank (Ltd) citing relevant decided cases. [9marks]
- b) Discuss the significant implications of the landmark case of Folley V^s Hill (1848) in as far as the banker-customer relationship is concerned. [16 marks]

TOTAL

[25 MARKS]