

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

**LAW RELATING TO BANKING II
CIN 2203**

FINAL EXAMINATION

AUGUST 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) Discuss the legal challenges posed by Internet banking in the developing world. **[15 marks]**
- b) "Failure to comply with provisions of the Banking Act [Chapter 24:20] by banks caused the 2004-2008 banking crisis in Zimbabwe" Discuss. **[10 marks]**
- TOTAL [25 MARKS]**

QUESTION 2

- a) State and explain 8 major factors the bank manager would consider when assessing a loan application from the owner of a small business. **[12 marks]**
- b) Discuss how the Land Reform Programme in Zimbabwe (2000 to 2009) affected security arrangements for bank advances. **[13 marks]**
- TOTAL [25 MARKS]**

QUESTION 3

- a) In each of the following situations, the bank has made demand for repayment from the surety, who denies liability. Each of the suretyships is on the bank's standard form and none of the sureties were customers of the bank at the time of signing the guarantee document. Discuss the bank's position, giving reasons for your answer.
- i. Mr Gomo says that when he signed the suretyship, he was not aware that the principal debtor's husband, who was infact an undischarged bankrupt, had power to sign on the principal debtor's account. He therefore claims the suretyship is invalid. **[6] marks**
- ii. Mrs. Nyoni says that although the bank demanded repayment from him on 10 June 2009, in the sum of \$1000, the principal debtor's account was allowed to continue unbroken. Since the date of demand, sufficient credits have gone through the account to pay off the debt, as it existed on that date. She therefore claims that she is no longer liable, and that she cannot be responsible for any indebtedness created by cheques paid since 10 June 2009. **[6 marks]**
- iii. John says that when he signed the suretyship, he was illiterate, and thus had no idea of the written terms of the form. He goes on to say that, before signing the guarantee, he had asked about its terms and had been told that it covered one specific advance. Had he known its terms made him liable for all borrowings of the principal debtor, he would not have signed the form. **[6 marks]**
- b) Discuss any 7 circumstances that lead to termination of a suretyship. **[7 marks]**
- TOTAL [25 MARKS]**

QUESTION 4

a) In each of the following direct debit transactions, discuss the customer's (payer's) legal position:

- i. The paying bank inadvertently pays after cancellation of the direct debit mandate. **[3 marks]**
- ii. The paying bank honours a forged direct debit claim from an authorized user. **[3 marks]**
- iii. An authorized user of a direct debit fraudulently alters the amount claimed from \$55 to \$550 and the paying bank honours the claim. **[3 marks]**

b) State and explain 4 circumstances under which a beneficiary acquires defective title in a credit transfer? In each case, discuss the remedies available to the paying bank and the payer. **[16 marks]**

TOTAL

[25 MARKS]

QUESTION 5

a) Muntaryadzi bought goods worth US\$300 from Greenbelt Supermarket on 15 May 2009. He used a debit card to pay for the goods. On 20 May 2009, when Muntaryadzi had almost forgotten about that transaction, he received a letter from Greenbelt Supermarket demanding payment amounting to US\$300. On further enquiry, the retailer told him it was payment for the goods bought on 15 May 2009. The retailer further tells him that his bank had become insolvent therefore they could only recover their money from him. Advise Muntaryadzi and Greenbelt Supermarket on the legal consequences of the transaction that took place on 15 May 2009.

[11 marks]

b) Discuss, quoting relevant decided cases, the major duties of the paying bank and the customer in the use of Automated Teller Machine (ATM) cards. **[7 marks]**

c) What are the effects of fraud, system failure and error on the bank's liability in Electronic Funds Transfer at Point of Sale (EFTPOS) transactions? **[7 marks]**

TOTAL

[25 MARKS]

QUESTION 6

a) Explain the major differences between the following terms as used in securities for advances:

- i. Cession and assignment **[3 marks]**
- ii. Banker's lien and pledge **[3 marks]**
- iii. Symbolic delivery and attornment **[3 marks]**

b) Dumizulu (Pvt) Ltd has been operating two accounts with your bank for the past five years. In January 2009, the bank manager discovered that Number 1 A/c was heavily in

debt while Number 2 A/c was in credit. The bank manager called the directors of the company about the issue. The bank and the customer agreed to open another account to keep the company going, and to freeze Number 1 A/c for four months. On 15 February 2009, Dumizulu (Pvt) Ltd went on voluntary liquidation. The bank manager is now at a loss as to how the bank can recover the debt. Advise the bank manager, quoting relevant decided cases. Your advice should include the bank's rights in whatever action it will take.

TOTAL

[16 marks]
[25 MARKS]