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

LAW RELATING TO BANKING II – CIN 2203

FINAL EXAMINATION   **JUNE 2010**

<u>**TIME: 3 HOURS**</u>

<u>**INSTRUCTIONS TO CANDIDATES**</u>

- 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

<u>**INFORMATION FOR CANDIDATES**</u>

The paper contains SIX (6) questions.

All questions carry equal marks [25 marks].

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

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[Turn over]

QUESTION ONE

a) In taking a legal charge over registered shares in a public company, what risks does a bank run? [13 Marks]

b) Would the risks in (a) above be increased if the charge were equitable? [9 Marks]

c) Would the risks in (a) above be affected in any way if the shares were bearer shares? [3 Marks]

TOTAL **[25 MARKS]**

QUESTION TWO

a) It has been believed that security will only be taken as a last line of defense. However, bank managers require acceptable security in all applications for advance made to the bank. Discuss the theory of security for advances, showing its essence and why it is a last line of defense. [10 Marks]

b) With reference to relevant cases, briefly define and differentiate between an overdraft and loan. [5 Marks]

c) In lending money to their clients, banks intend to make profit. For them to remain viable and reduce risk of default, they assess certain factors before advancing a facility to a customer. State and explain those factors. [10 Marks]

TOTAL **[25 MARKS]**

QUESTION THREE

a) With reference to relevant cases, explain the term "In duplum rule" as used in Banking Law. [5 Marks]

b) Define the following and discuss their effectiveness as forms of security for advance:
 i) pledge [5 Marks]
 ii) cession [5 Marks]
iii) insurance policy [5 Marks]
iv) letter of participation [5 Marks]

TOTAL **[25 MARKS]**

QUESTION FOUR

a) In bank lending , when is a guarantor liable to pay?   [1 Mark]

b) Felix is a student at a certain local college. He obtains a loan from Ziyakhupa Bank to pursue his studies for 3 years at the institution. His elderly father, who is self-employed, signs a surety for him. After completing his course, Felix goes away to Asia and does not come back. The loan is still outstanding. The bank claims the money from his father. Is the father who signed as a surety obliged to pay? Give reasons for your advice.   15 Marks]

c) State and explain how a suretyship (guarantee) contract can be determined.
[9 Marks]

TOTAL   **[25 MARKS]**

QUESTION FIVE

a) When and how is the payment made and accepted under the following cases?

  i)   Electronic Funds Transfer at Point of Sale (EFTPOS)
[4Marks]

  ii) Credit Transfer   [8 Marks]

b) Discuss the rights and duties of the customer and paying bank under EFTPOS or Automated Teller machines (ATMS).   [13Marks)

TOTAL   **[25 MARKS]**

QUESTION SIX

a) Mudluli, a builder, banks with Tigashire Bank. He needed an overdraft of $7000 to finance the construction of a large tank, because he would not be paid until the tank was completed. His bank agreed to give him the overdraft facility against the deposit of the title deeds of his farm. Mudluli signs a memorandum of deposit in favor of the bank to secure his current account. Mudluli's business has failed and his bank has made formal demand.

   i)   Discuss the remedies available to the bank in order to recover its money.
                                        [15 Marks]

   ii) Two months later, Tigashire Bank received a notice of subsequent charge. Assuming that you were the Bank Manager how would you deal with the notice and why? Discuss the defenses available to the bank.
                                        [6 Marks]

b) Briefly explain those restrictive covenants which have a serious consequence to the banker when taking a leasehold land as security for an advance.
                                        [4 Marks]

TOTAL   **[25 MARKS]**