

THE INSTITUTE OF BANKERS OF ZIMBABWE

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INTERMEDIATE LEVEL	
SUBJECT	PRACTICE OF BANKING I
DATE	OCTOBER 2020
TIME	3 HOURS
MARKS	100
EXAM TYPE	CLOSED BOOK
READING TIME	FIFTEEN MINUTES READING TIME IS ALLOWED FOR THIS PAPER. DURING THIS TIME YOU ARE PERMITTED TO WRITE ON THE QUESTION PAPER BUT NOT IN YOUR ANSWER BOOK

INSTRUCTIONS TO CANDIDATES

1. Read the instructions CAREFULLY before answering the paper
2. Answer five (5) questions of which Question 1 is compulsory
3. Each question carries 20 marks
4. Candidates should be aware at all times in answering questions that the Bank's advance requirements do not come into the scope of this examination.
5. No marks will be given for any answers that involve lending requirements
6. Please be neat – illegible handwriting cannot be marked
7. Use black or blue ink
8. Ensure that all information on the cover of your answer book is completed in full.
9. Cheating is not allowed. If anyone is caught cheating, disciplinary measures will be taken by the Institute of Bankers.

GOOD LUCK !

OCTOBER 2020

TIME ALLOWED: 3HOURS

TOTAL MARKS: 100

INSTRUCTIONS TO CANDIDATES

- **Candidates should be aware at all times in answering questions that the Bank's advance requirements do not come into the scope of this examination.**
- **No marks will be given for any answers that involve lending requirements.**
- **ANSWER 5 QUESTIONS, OF WHICH QUESTION 1 IS COMPULSORY**
- **All questions carry equal marks**

NB: FIFTEEN (15) MINUTES READING TIME IS ALLOWED FOR THIS PAPER DURING WHICH TIME YOU ARE PERMITTED TO WRITE ON THE QUESTION PAPER BUT NOT IN YOUR ANSWER BOOK

- (vi) **When a bank, as second mortgagee, gives notice of its mortgage to the first mortgagee, why does the bank ask how much is owing on the first mortgage? In answering this question which of the following statements is correct?**
- a) The notice fixes the first mortgagee's priority
 - b) The notice insures that the first mortgagee does not make any further advances to the mortgagor.
 - c) The amount owing on the first mortgage allows the second mortgagee to make advances to the mortgagor up to an equal amount.
 - d) The notice fixes the first mortgagee's priority. However, if the first mortgagee is obliged to make further advances, those advances would also have priority. The second mortgagee will therefore want to value his security in relation to the first mortgagee's present and future commitments.
- (vii) **What was the name of the case where in one instance it was held that one month was insufficient notice to close a company account which was in credit?**
- a) Deeley v Lloyds Bank Ltd (1912)
 - b) Westminster Bank Ltd v Hilton (1962)
 - c) Prosperity Ltd v Lloyds Bank Ltd (1923)
 - d) Tournier v Swiss Bank Corporation (1921)
- (viii) **If a bank is lending to a newly formed company, which has taken over the assets of a sole trader or partnership, what steps can the bank take to ensure that fraudulent conveyance will not be claimed?**
- a) Ensure that the creditors have disagreed to the company becoming their debtor.
 - b) Ensure that the creditors of the previous business have been paid off.
 - c) Ensure that the previous owners remain liable for outstanding debts.
 - d) Disown previous debts.
- (ix) **In what circumstances should a bank try to establish itself as a holder for value of a cheque it has collected?**
- a) Where a cheque drawn on another bank is cashed.
 - b) Where a cheque is taken in specific reduction of overdraft.
 - c) Where a customer has been allowed to draw against uncleared cheques.
 - d) Where the bank has no lien on the cheque.
- (x) **Which of the following statements is true?**
- a) A bank must volunteer information to a prospective guarantor concerning the present and past conduct of its customer's account.
 - b) If an undisclosed bankrupt is allowed to sign on his wife's account, this must be divulged to a prospective guarantor by the bank before he executes the guarantee form, even without its customer's express authority.
 - c) A guarantor can avoid liability under the guarantee if material facts have been incorrectly or fraudulently misrepresented to him by the bank either in the course of direct negotiations or by silent acquiescence to something either said or written which clearly showed the guarantor was under a misunderstanding.

- d) If a bank has a cession over shares, it does not incur any liability when it sells the shares and it transpires that the signature on the stock transfer form is forged.

QUESTION 2

Tapera purchased goods from a mail order store but forgot to insert a date on his cheque. On 3 March 2020, a clerk at the store, when dealing with the cheque noticed the blank space and dated it with a rubber stamp '13 March 2020 because the date stamp had been wrongly set. The error was not spotted by anyone and Tapera's bank paid the cheque on 5 March. Two days later Tapera asked his bank to stop payment of the cheque.

Discuss separately the legal position of Tapera, the store and the Bank. [20 marks]

QUESTION 3

- (a) Charles Chando, a customer of Pfuma Bank, wishes to pay in for the credit of his account a cheque crossed 'A/c payee only' and drawn by a well-known insurance company for \$750 in favour of Mrs Sarah Gamba. He explains that the payee is an elderly relative, who does not have a bank account of her own. Are there any risks involved if the bank collects this cheque? [10 marks]
- (b) Your customer, William Nzara has been adjudicated bankrupt. His current account balance is \$20 000 debit at present. As security for the facility you hold an unlimited guarantee for William Nzara's liabilities from his brother, Robert Nzara.

State what action you would take and the considerations you would have in mind. [10 marks]

QUESTION 4

Kuda, Rovha and Tendai are partners in a firm which has an account with the Hurudza Bank. Kuda becomes of unsound mind.

Discuss the legal position and the action the bank should take if the firm's account is (1) in credit; (2) overdrawn. [20 marks]

QUESTION 5

Jongwe Holdings Limited has been your customer for five years, but you know that the company also has accounts with competitor banks.

You recently agreed to lend the company \$100 000 repayable over three years, to assist it in building an extension to its existing premises. When you insisted on security, the directors stated that they were anxious to retain a degree of flexibility in case they should need to borrow from their other bankers in future.

Consequently, they offered you either:

- (i) A first mortgage bond over the company's leasehold factory premises, valued at \$70 000 in the company's last balance; or

- (ii) The two directors' joint and several guarantee for \$100 000

REQUIRED

Set out the advantages of each of the securities offered, and indicate any further information you might need to enable you to reach a decision as to which security to take. [20 marks]

QUESTION 6

In January 2019, you agreed to grant your customer Peter Mweya a short-term loan of \$180,000,000 repayable in equal monthly instalments until 31 January 2020, to assist his company with working capital.

As security for the loan you agreed to a charge over the Mweya's family home, the deeds of which were in the joint names of Peter and Jane Mweya (Husband and wife)

Mr Mweya signed the mortgage form at the bank and you took the form to the Mweya's home in order to obtain Jane Mweya's signature.

Regrettably, Mr Mweya's business fortunes did not improve and as a result the repayment of the loan fell into arrears. Formal demand for repayment brought no response and consequently the bank applied to the courts for a possession order over the Mweya's family home.

Today, you receive a letter from Jane Mweya's lawyer claiming that the bank's mortgage is invalid because Mrs Mweya's signature was obtained by undue influence of the bank and she should have received independent legal advice.

REQUIRED:

- i. State what you understand about the terms "undue influence" and "independent legal advice"
- ii. On what grounds do you think that the lawyer is making his claim? What points would you consider in dealing with this letter? Do you believe that the claim is likely to succeed? Give reasons for your answer. [20 marks]

QUESTION 7

Your customer, Building Investment Ltd, is a small company of good repute. It owns a field of freehold land on which it wishes to build for sale 100 houses in batches of 10 at a time. The proposition is financially viable and a legal mortgage on the land is offered. Set out the procedure necessary to deal with this security so as to make it as watertight as possible. [20 marks]