

OCTOBER 2017

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

QUESTION 1
THIS IS A COMPULSORY QUESTION

Record in your Answer Book the Question numbers and the letter that indicates the correct Answer to these questions.

- I. **Can a credit balance in the sole name of Mr. Tana be set off against the debit balance on the joint account of Mr. & Mrs. Tana?**
- A. Yes as long as the payment is not negligently effected.
 - B. Yes in view of the account title being almost similar.
 - C. Payment must be made in good faith and in the ordinary course of business.
 - D. No, the bank will be exposed as this amounts to tort of conversion should Mrs. Tana decide to sue the bank.
- II. **Are uncleared cheques attached by a garnishee order?**
- A. Only if the bank has allowed the customer in the past to draw against uncleared items.
 - B. The fate of uncleared cheques is unknown hence they cannot be attached.
 - C. A garnishee order is a directive which should be complied with, therefore, the bank can pay and seek recourse from the customer.
 - D. No unless the cheques are cleared.
- III. **When a bank is holding a guarantee and the principal debtor dies, what action should the bank *not* take?**
- A. Allow the account to continue operating until a claim is made in the deceased's estate for the outstanding amount owing.
 - B. The guarantor should be advised of the situation and called upon for repayment if the bank feels that it will not be able to recover the debt from the debtor's estate.
 - C. The debtor's account should be stopped to avoid the rule in Clayton's Case.
 - D. A claim will be made immediately, in the deceased's estate for the amount owing.
- IV. **In respect of a limited company's power to give security, what is the difference between securing its own liabilities and securing the liabilities of a third party?**
- A. The limited company has express power to secure its own liabilities, but the power to secure liabilities of a third party must be expressly stated in the Memorandum of Association.
 - B. A company has power stated in the Memorandum of Association to secure its own liabilities, but the power to secure the liabilities of a third party must be expressly stated in the Articles of Association.
 - C. A trading company has implied power to secure its own liabilities, but the power to secure the liabilities of a third party must be expressly stated in the Memorandum of Association.
 - D. A limited company's power to secure any of its liabilities, either directly or indirectly, is vested in the Articles of Association.
- V. **Why does the bank take a reference when opening a current account?**
- A. To validate/examine the account opening details provided.
 - B. Failure to obtain a reference has been held to amount to negligence.
 - C. To safeguard itself from possible losses resulting from poor account conduct
 - D. This is a general requirement

VI. If a club or society defaults in repayment of its borrowing, can the bank sue to recover the indebtedness?

- A. This is a borrowing entity, therefore, the bank can easily pursue for the settlement of the exposure.
- B. Depending on the terms of borrowing, the bank can insist on repayment and seek court assistance.
- C. A club or society is not a separate legal entity and therefore cannot be sued in its own name.
- D. The bank is entitled by law to engineer foreclosure.

VII. Mr. Gonzo is a member of Gonzo, Kitsi and Mbeva partnership which has been declared bankrupt. What is the option *not* open to the bank in respect of the credit balance standing on Mr. Gonzo's personal account and in respect of security deposited by Mr. Gonzo to cover his own and the partnership liabilities.

- A. The bank can set off the credit balance against the partner personally or against the partnership.
- B. In practice, the security can only be deducted from the claim against the partnership.
- C. The bank will examine the statements of affairs and will ensure that the deductions are made from the estate which will yield the smallest dividend.
- D. The security can be deducted from either claim, thus, against the partner personally or against the partnership.

VIII. When does a person become a bank customer?

- A. When an account is opened for normal banking transactions.
- B. When he/she uses any of the bank's facilities like through the ZIMSWITCH
- C. When he/she walks into the bank's premises to make an enquiry.
- D. When he/she communicates with the bank telephonically or in writing or physically visits the bank.

IX. A bank cannot debit its customer's account if the customer's signature as a drawer of a cheque has been forged. Which two cases established that in certain situations the drawer may be stopped from denying the authenticity of the signature?

- A. Bevan v National Bank Ltd (1995) and Barclays Bank v Johnston (1868)
- B. Greenwood v Martins Bank (1933) and Brown v Westminster Bank Ltd (1964)
- C. National Provincial Bank of England v Brackenbury (1906) and Martins Bank Ltd v Cooper (1850)
- D. Westminster Bank Ltd v Hilton (1967) and Lloyds Bank v Tassele (1905)

X. On the written instructions of your customer, Paul Chipo, yesterday you transferred \$5 000 to the account of Ms Alexis Gumbo which is also maintained at your branch.

This morning you notice that Mr. Chipo's account is overdrawn \$4 300 as a result of the transfer to Ms Gumbo's account. Ms Gumbo has not been advised of the transfer. Your bank's regulations regarding unauthorised overdrafts is very strict and you are reluctant to allow the debit.

Which of the following courses of action would you take?

- A. Reverse the entries and advise Mr. Chipo to deposit sufficient funds to cover the transfer.
- B. Reverse the entries and advise Ms Gumbo that you will deal with the transfer when sufficient funds are available in Mr. Chipo's account.
- C. Reverse the debit entry to Mr. Chipo's account and debit a suspense account. The credit entry to Ms Gumbo's account should remain undisturbed.
- D. Contact Mr. Chipo and tell him that you will be contacting Ms Gumbo to advise her of the circumstances. If Ms Gumbo is agreeable, reverse the entries under advice to Mr. Chipo. The latter should then make arrangements to fund his account before the transfer is effected.

QUESTION 2

Simba promised to give his nephew, Dzungu, \$30 million if he passed his professional banker's examination. When Dzungu's name appeared on the list of successful candidates, Simba handed him a cheque drawn in his favour for \$30 million.

As Dzungu had just become engaged to Rudo, he endorsed the cheque and gave it to her as a present. Rudo used the cheque to pay for purchases she made at the elite shop belonging to Dishy Dresses Ltd. The cheque was subsequently returned unpaid to Dishy Dresses Ltd because, when Simba heard that it had been passed on to Rudo, whom he disliked, he stopped payment of it.

What liability, if any, has Simba to Dzungu, Rudo and Dishy Dresses Ltd? Please **tabulate** your answer separately. [20]

QUESTION 3

As the Branch Manager at Shasha Bank, you are preparing for a meeting with one of your valued customers, Tose (Private) Limited scheduled for later today. The company is engaged in the purchase and distribution of computer software and has been your customer since operations started three years ago.

Last week, the company's finance director wrote to you complaining that the bank wrongfully dishonoured a cheque for \$200 million dated 29 July 2006 in favour of one of their principal suppliers. Enclosed with the letter was a deposit slip for sufficient funds to have covered the cheque, made at one of your country branches on 28 July 2006. Due to a breakdown in your bank's computer network during that week ended 30 July, the deposit transfer from the country branch was only received at your branch by courier service on 31 July.

On checking the account statement, you note that the deposit entry was made on 31 July 2006 and that it was not value-dated correctly.

REQUIRED:

- a) **In tabulated form**, make a brief note of your planned response to the company's complaint and state what action you would take assuming agreement is reached to proceed on that basis. [16]
- b) If Tose (Pvt) Ltd had previously had numerous dishonours on record, would this alter your response to (a) above? Give reasons for your answer. [4]

QUESTION 4

You are the Operations Manager of Fortune Bank. A month ago, Gwara Chuma, a well known briefcase businessman opened a business account at your branch. After three weeks you realise a growing trend of large cheque deposits requesting special clearance as well as frequent huge cash withdrawals.

As you are uncomfortable with this type of account conduct and in the light of a recent circular from the Central Bank urging banks to safeguard against possible money laundering activities you decided to alert your Branch Manager. In response, the Branch Manager commented as follows:-

“In my view, a bank cannot be held to be liable for negligence merely because they have not subjected an account to a microscopic examination. It is not to be expected that the officials of banks should also be amateur detectives”.

Explain this question, **in tabulated form**, and comment in detail on the standard of care expected of the collecting bank. Illustrate your answer with reference to decided cases. [20]

QUESTION 5

Mr. Robert Tsoka has a current account at your branch. There is also a current account in the name of his wife, Mary. Mary Tsoka, whom you have never met, owns shares in a number of different companies, and the certificates are held by you in safe custody.

Recently Mr. Tsoka who runs a viable flea market stall, approached you for a loan of \$300 million to enable him to purchase some items at auction. You agreed to assist, subject to a guarantee from Mrs. Tsoka supported by a legal charge over her shares to a value of \$400 million.

Mr. Tsoka subsequently called at your Branch with a lady whom he introduced as his wife. She signed the security and stock transfer forms, and a respected Harare lawyer, who had been called in by Mr. Tsoka for the purpose, witnessed her signature. The lawyer also added to each charge form a certificate stating, ‘I certify that I have explained the nature and purpose of the within document to Mary Tsoka and that she has signed under her own free will.’

In due course, the completed stock exchange transfer forms were submitted to the appropriate company registrar and the shares transferred into the name of the bank’s nominee company.

Mr. Tsoka then withdrew the amount of the loan and disappeared. It has subsequently transpired that the lady in question was not Mrs. Tsoka and that the signature on the security and stock transfer forms bore no resemblance to that of the real Mrs. Tsoka.

Required

- a) Giving reasons for your answers, discuss the respective positions of:
- i. Mrs. Tsoka
 - ii. The Harare lawyer
 - iii. The company registrar
 - iv. The bank

[16]

- b) Indicate what steps, if any, the bank should now take. [4]

QUESTION 6

The following clauses appear on a bank guarantee form. **Tabulate** the significance of each clause.

- a) The bank may without consent of the guarantor and without affecting the guarantor's liability, renew, vary or determine any accommodation given to the debtor; modify or release any security held from the debtor; grant time or indulgence to the debtor.

[5]

- b) This guarantee shall be a continuing security. [5]

- c) This guarantee shall remain in force notwithstanding any disability or the death of the guarantor until determined by three months notice in writing from the guarantor or the personal representatives of the guarantor. [5]

- d) This guarantee is and will remain the property of the bank. [5]

[20]

QUESTION 7

In July this year you agreed to grant your customer, Flexiplan (Pvt) Ltd an overdraft facility of \$100 000 secured by the joint and several guarantee of the company's three directors. In late July, the facility was formalised and the guarantee was signed by two of the directors on the understanding that the third director would sign the guarantee on his return from a business trip to the Congo.

Last week, at the urgent request of the company to buy raw materials, the bank agreed to allow a drawing of \$80 000 against the sanctioned overdraft facility of \$100 000

Today, the directors call to see you to tell you that the third director was killed in a motorcar accident in Zambia on his way back from the Congo.

Required:

Discuss the bank's legal position as regards the guarantee.

Would it have made any difference if the third director had returned safely but then decided not to sign the guarantee?

If the third director returned and signed the guarantee but then a year later, when the company's account was still overdrawn, resigned his directorship and asked the bank to release him from his guarantee. What advice would you give to the bank.

[20 marks]