

**INSTITUTE OF BANKERS IN MALAWI**

**ADVANCED DIPLOMA IN BANKING EXAMINATION**

**SUBJECT: ADVANCED BANKING LAW (IOBM – AD318)**

**Date: Monday, 9th November 2015**

**Time Allocated: 3 hours (13:30 – 16:30 Hours)**

**INSTRUCTIONS TO CANDIDATES**

1 This paper consists of **TWO** Sections, A and B.

2 Section A consists of 4 questions, each question carries 15 marks.

Answer **ALL** questions.

3 Section B consists of 4 questions, each question carries 20 marks. Answer **ANY TWO** questions.

4 You will be allowed **10 minutes** to go through the paper before the start of the examination, you may write on this paper but not in the answer book.

5 Begin each answer on a new page.

6 **Please write your examination number and not your student number on each answer book used. Answer books without examination numbers will not be marked.**

7 All persons writing examinations without payment will risk expulsion from the Institute.

8 If you are caught cheating, you will be automatically disqualified in all subjects seated this semester.

9 DO NOT open this question paper until instructed to do so.

**SECTION A (60 MARKS)**

Answer **ALL** questions from this section.

**QUESTION 1**

When Mrs K moved house she wrote to her bank giving details of her new address. The following month, the bank sent her account statement to her new next-door neighbour because it had misread the handwriting on her letter. After opening the envelope by mistake, the neighbor called round to Mrs K’s house right away to apologise and give her the statement. Mrs K then complained to her bank, saying that she had been ‘*acutely embarrassed*’ in front of her new neighbour – particularly since the statement had shown that she was overdrawn by MK5 million. Mrs K demanded an apology from the bank’s chairman, together with ‘*a written assurance*’ that such a mistake would never happen again, and compensation of MK1 million, which she said was to help her get over the ‘*trauma*’ of having to face her new neighbour every day now that the neighbour knew her ‘*financial secrets*’.

**Required**

With reference to any applicable case law and legislation, is the Bank liable?

**(Total 15 marks)**

**QUESTION 2**

1. Rooney who stays in Blantyre advises his Bank, H Bank to transfer money in pounds to Gerrard In London. On 25 June 2014 H Bank instructs its correspondent Bank in London, Blue Bank, which has the account of Gerrard to transfer the money to the account of Gerrard. On June 26 Rooney’s account is debited by H Bank and Gerrard’s account is credited with the amount. Upon the crediting of Gerrard’s account Blue Bank prepares appropriate entries for the computer to process overnight. Later on the same day, H Bank becomes insolvent and ceases trading. On the following morning, (27 June 2014) Blue Bank who had not informed Gerrard of the entries in the account, cancels the entries and reverses them so that it should not claim from H Bank.

**Required**

Advise Gerrard on whether the payment was complete and if he can claim from Blue Bank.*(8 marks)*

1. Explain the **three** main principles which govern the revocation of an instruction to pay. (*7 marks)*

**(Total 15 Marks)**

**QUESTION 3**

Give examples of **five** situations when a banking license may be revoked and what are the requirements that the Reserve Bank of Malawi will consider before it revokes a banking License ***(*Total 15 marks)**

**QUESTION 4**

Blue Bank has been awarded a contract to distribute securities on behalf of an international food chain which intends to list on the Malawi Stock Exchange. Blue Bank will act as broker and underwriter.

**Required**

Before it signs the contract, Blue Bank wants to find out in which instances will it be liable to investors who suffer loss as a result of the IPO. Please advise. ***(*Total 15 marks)**

**SECTION B** **(40 MARKS)**

Answer **ANY TWO** questions from this section

**QUESTION 5**

Outline and explain any **five** key elements of a Bank’s Money Laundering Compliance Programme? **(Total 20 marks)**

**QUESTION 6**

X took a loan in 2012 for the construction of a home in Nyambadwe. The value of the loan was MK20 million and the interest rate payable was 17%. At the time of the loan, the proposed instalments were MK200,000.00 per month. Due to high inflation in Malawi all the banks increased their interest rates on 30 June 2013 to almost double what they were in 2012. X received a letter on 1 July 2013 that his instalment was now MK400,000.00. X tried to pay but by December 2013 he had defaulted on the loan and now owed the bank MK1.8 million. On 2 January 2014 his bank wrote him and informed him that since he was in default, he would be charged penalty interest as stipulated in the loan offer letter. According to the offer letter clause 8 states:

*In the event that the customer defaults on his loan, the bank shall impose a penalty interest of 10% above the base lending rate which shall replace the normal interest rate applicable to this loan facility.*

As a result his instalment would now be MK450,000.00. X feels the bank has acted unfairly by imposing the penalty interest despite that he signed the loan. He now seeks your legal advice on whether the penalty interest is unfair and whether he can object to it. Advise X?

**(Total 20 marks)**

**QUESTION 7**

1. What is a negative pledge? *(5 marks)*
2. What are the options available to a bank against a third party who accepts security in breach of a negative pledge? *(15 marks)*

**(Total 20 marks)**

**QUESTION 8**

Draft notes on the following concepts:

1. Deposit Insurance (*5 marks*)
2. Systemic Risk (*10 marks*)
3. Representations and Warranties (*5 marks*)

**(Total 20 marks)**

**END OF THE EXAMINATION PAPER**