

**INSTITUTE OF BANKERS IN MALAWI**

**ADVANCED DIPLOMA IN BANKING EXAMINATION**

**SUBJECT: ADVANCED BANKING LAW (IOBM-AD 318)**

**Date: Monday, 13th May 2019**

**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 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**

1. Give the common law definition of a bank. *(5 marks)*
2. Lending is central to a bank’s business. Discuss the significance of “purpose and illegality” clauses in a loan agreement. (*10 marks)*

**(Total 15 marks)**

**QUESTION 2**

1. How does the Bill of Exchange Act protect a bank that pays under a forged instrument? *(5 marks)*
2. With relevant illustrations, discuss **five** grounds on which a bill of exchange is discharged. (*10 marks)*

**(Total 15 marks)**

**QUESTION 3**

1. Mtopwa Bank has advanced some money to Mrs Phiri. Mrs Phiri has presented a valid purpose for the borrowing i.e. importation of construction materials from South Africa. However, in the course of the transaction, the Bank learns that the purposes for which the funds are being borrowed is to supply Indian hemp, which is illegal.

**Required:**

Advise the bank on the recoverability of the loan. (*10 marks)*

1. Explain the effect of a penalty clause in a loan agreement. (*5 marks)*

**(Total 15 marks)**

**QUESTION 4**

1. What powers does a liquidator have under the Banking Act 2009?*(5 marks)*
2. Compare and contrast the rules applicable to the insolvency of a bank and of an ordinary limited liability company. *(10 marks)*

**(Total 15 minutes)**

**SECTION B (40 MARKS)**

Answer **ANY TWO** questions from this section

**QUESTION 5**

1. With the aid of relevant case authorities explain how an exclusion clause may be incorporated into a banking contract at common law. (*10 marks)*
2. Explain how the letter of credit is used in practice and briefly distinguish it from a bill of exchange. (*10 marks)*

**(Total 20 marks)**

**QUESTION 6**

1. One of the local banks has recently extended its footprint into several neighboring countries and requires your advice.

**Required**

Elaborate to the Bank the importance of a “governing law and jurisdiction” clause in a cross-border lending contract and also state what would be the position at law in the event that parties to a cross-border lending contract omitted to insert a governing law and jurisdiction” clause. (*10 marks)*

1. The Basel Committee on Banking Supervision is an important institution in banking, world over. Discuss the origins of the Committee and its role in banking. (*10 marks)*

**(Total 20 marks)**

**QUESTION 7**

1. Section 24 of the Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act 2006 promotes the idea of ‘know your customer,’ as a prerequisite to effective money-laundering controls by banks and other financial institutions.

Discuss any **five** activities involved in the ‘know your customer’ exercise. (*10 marks)*

1. *Licensing is central to the prudential regulation of banking. The notion prevents undesirable activity by obliging those who provide banking services to meet a range of standards and threatening to withdraw approval in the event of any breach of standards. While licensing can be a very powerful tool of control, its success depends on the thoroughness of the vetting, its effectiveness in practice, the extent to which the behaviour of those licensed is monitored and the capacity of the regulatory authority to take disciplinary action against those who infringe standards.*

Discuss. (*10**marks)*

**(Total 20 marks)**

**QUESTION 8**

1. Comment on any **five** functions of the Financial Intelligence Unit. (*10 marks)*
2. Explain the rights and duties of trustee of debt securities. (*10 marks)*

**(Total 20 marks)**

**END OF EXAMINATION PAPER**