

**INSTITUTE OF BANKERS IN MALAWI**

**DIPLOMA IN BANKING EXAMINATION**

**SUBJECT: ADVANCED BANKING LAW**

**Date: Monday, 5th May 2014**

**Time Allocated: 3 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 DO NOT open this question paper until instructed to do so.

**SECTION A (60 MARKS)**

Answer **ALL** questions from this section.

**QUESTION 1**

Critically analyse any **three** defences available to a mistaken payment.

**(Total** **15 marks)**

**QUESTION 2**

John Phiri is an International Consultant for the World Bank residing in Malawi and earns K3 million a month. He has a bank account with Fidelity Bank. One day he realizes that his bearer cheque that he issued for the sum of K80, 000.00 has disappeared and 1 month later, he notices on his bank statement that the cheque was cashed for K180,000.00. When he made an inquiry with the Bank he finds that the fraud was conducted by his nephew who because of the way John Phiri drafted the cheque, was able to change the words from K80,000.00 to K180,000.00. He tells the teller that this is not the first time his nephew has done this. Last time his nephew forged his cheque and withdrew K10, 000.00 and K12,000.00 respectively but he did not tell the bank because the amounts were too small. He however wants to sue Fidelity Bank for the K180, 000.00. You are the bank’s lawyer. Advise the bank on whether it has any defences to the claim. (**Total 15 marks)**

**QUESTION 3**

(a) Briefly outline any **five** functions of a liquidator for a bank. ***(5 marks)***

(b Explain the priority of the payments in the liquidation of a bank. Arrange the order of payments starting with the first to the last. (***10 marks)***

**(Total 15 marks)**

**QUESTION 4**

William Chilenje has found out that his bank submitted his account statement to the Financial Intelligence Unit. He has sued the Bank for damages for submitting the information which he believes is supposed to be private and confidential. With reference to cases, is the Bank liable to pay Mr. Chilenje damages? ***(*Total 15 marks)**

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

Answer **ANY TWO** questions from this section

**QUESTION 5**

X applied and was given a loan at Fidelity Bank. As security, X created a charge over his Namiwawa house and registered the charge in terms of the Registered Land Act. One year later X breached the contract by failing to pay his installments. The Bank wrote him various letters reminding him to pay. On 1 January 2013 he received a letter that stated:

Reference is made to our various letters to you asking you to pay the outstanding arrears on your loan to the tune of K35 million. We hereby give you 30 days notice from the date of receiving this letter that we will sell your house in Namiwawa under the powers of sale as stipulated in the charge which you signed in our favour.

On 7 March 2013 the bank advertised X’s property in the Daily Times and when he saw the property X went and applied for an injunction claiming that the sale is not justified because the Bank did not follow procedure. You are the judge hearing the case. What is your judgment? Does X deserve an injunction?  **(Total 20 marks)**

**QUESTION 6**

(a)Explain the mandate of a Lead Bank in forming a syndicated loan.

*(10 marks)*

(b) Distinguish a penalty clause from a liquidated damages clause***.*** *(10 marks)*

(**Total 20 marks)**

**QUESTION 7**

1. Indicate **three** ways in which an exclusion clause can be incorporated in the banking contract. *(12 marks)*
2. What are the rules that govern the interpretation of an exclusion clause?

*(8 marks)*

**(Total 20 marks)**

**QUESTION 8**

(a)Briefly discuss the following in relation to banks:

(i) Statutory management. *(5 marks)*

(ii) Money supervision. *(5 marks)*

(b) Explain the distinction between preventive and protective techniques in prudential regulation of banks. *(10 marks)*

**(Total 20 marks)**

**END OF THE EXAMINATION PAPER**