



NATIONAL OPEN UNIVERSITY OF NIGERIA
Plot 91, Cadastral Zone, Nnamdi Azikiwe Express Way, Jabi – Abuja
FACULTY OF LAW
DEPARTMENT OF COMMERCIAL LAW

APRIL 2019_1 EXAMINATION

COURSE CODE: CLL 431

COURSE TITLE Law of Banking and Insurance – I

CREDIT UNITS: 4

INSTRUCTIONS:

- (a) Indicate your Matriculation Number clearly
- (b) Attempt Question one (1) and any other three (3) questions
- (c) Question one (1) is compulsory and carries 25 marks; while the other questions carry 15 marks each.
- (d) Using appropriate statutory and judicial authorities, present all your points in a straightforward, coherent and orderly manner.

TIME ALLOWED: 3 Hours

Question 1

- (a) Mr. Bond was the branch manager of Merchant International Bank plc. By the sleight of hand he fraudulently funneled cheques to the credit of the customers of the bank. Actually the customers acted in concert with him. The charge of criminal breach of trust was preferred against him and others. The first count of the charge is as follows: *"Tim Bond between the 1st October, 2017 and the 15th September, 2018 at Makurdi being entrusted with dominion over property to wit cash in your capacity as a banker (namely as the Manager of the Merchant Intercontinental Bank plc, Makurdi committed criminal breach of trust of a sum of N10 million and thereby committed an offence punishable under section 315 of the Penal Code."* The section 315 punishes criminal breach of trust by a banker with fourteen years imprisonment. Carefully bring out the legal case here. (7 marks)
- (b) Mallam Suraju is an upcoming businessman and loyal customer of Zenstar Bank plc. He maintained two distinct and separate current accounts with the banker. The first current account was registered in his business name known as and called "African Style Superstores". This account, used solely for his business, was in credit to the value of N250,000.00. The second current account was kept and maintained under the name of Suraj Global Ventures. It is used specifically for international business transactions. However, this account was in debit to the value of N385,000.00. He drew a cheque for N200,00.00 on the first account which was in credit. The bank declined payment and dishonoured in consequence of this. Is the bank right in its action? (8 marks)
- (c) Chief Dandola is a successful businessman. He approached his banker for a term loan of N25 billion to enable his company to finance the expansion of the production factory of the newly

acquired cement factory in the Burundi. Already, virtually all the entities in which he has beneficial interests owed other banks various sums, by reason of which the entities had created in favour of the financial institutions various security interests. To comply with the requirement of the Central Bank of Nigeria pursuant to section 20(1)(b) Banks and Other Financial Institutions Act Cap B3 LFN 2004 he approached his friend, Alhaji Nugorji, who agreed to guarantee the payment of the loan if granted by the bank. In pursuance of this understanding, his friend executed personal guarantee and additionally deposited the document of title to his palatial mansion at Victoria Island, Lagos. This is to enable the bankers to prepare a deed of legal mortgage. The account officer left the employment of the bank. The succeeding account officer failed to procure the preparation of the deed just as a memorandum of deposit was not executed. Nevertheless the bank granted the financial accommodation that enabled Chief Dandola to commence and complete the expansion project of the cement factory.

- (i) In your opinion, is the term loan granted secured or unsecured? Either way, justify your answer **(4 marks)**
- (ii) Assuming the loan was secured by a deed of legal mortgage over the property of Alhaji Nugorji, what are the remedies available to the bank in the event of failure to pay the debt according to its terms as to the principal and accrued interest? **(3 marks)**
- (iii) Identify and state, without elucidation, the indicia of floating charge as enunciated by Romer LJ in *Re Yorkshire Woolcombers Association* (1903) 2 Ch 284 **(3 marks)**

Question 2

- (a) Bearing in mind the self-evident truth that everything with a beginning has an end, critically discuss the various ways and means by which the banker-customer relationship can be effectively and lawfully determined. **(12 marks)**
- (b) Explain the banking term “domiciliation of payment” **(3 marks)**

Question 3

- (a) One will not be wrong to argue or hold the view that Law of Banking is a multilayered area of law, involving law of contract, agency, land law, to mention a few. In other words, one must be well tutored in all areas of law to make a successful practice of this area of law.
 - (i) Explain the three ways by which an equitable mortgage can be created **(3 marks)**
 - (ii) Summarise the facts of *Savannah Bank of Nigeria Ltd v Ajilo* (1989) and state what law and the section(s) thereof was used to decide the case. **(3 marks)**
 - (iii) Explain the rule governing interests on overdraft? **(3 marks)**
 - (iv) Explain the agency situation created in a banking relationship. **(2 marks)**
- (b) Discover and explain the canons of lending. **(4 marks)**

Question 4

In clear, unambiguous and cohesive style, outline and discuss the chronicle and evolutionary perspectives that order, dovetail and indeed inform the Nigerian banking industry. **(15 marks)**

Question 5

- (a) Discuss the principle of law brought out in the Nigerian case of *British and French Bank Ltd v Opalaye* (1962) 1 All NLR 26. **(7 marks)**
- (b) List the strands by which negotiable instruments are recognized. **(5 marks)**
- (c) Define a cheque according to the Bills of Exchange Act. Briefly explain it. **(3 marks)**

Question 6

Write short notes on the following:

- (a) Banks and Other Financial Institutions Act as one of the pieces of legislations regulating banking business in Nigeria. (**5 marks**)
- (b) Holder of a bill of exchange (**5 marks**)
- (c) Difference between legal and equitable assignment of life policies (**5 marks**)