

**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**LL.B FINAL EXAMINATIONS**

**L4305 – INSURANCE & BANKING LAW I**

**JANUARY 2024**

**MARKS 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS**

1. There are **SIX (6)** questions. Answer any **FOUR (4)** questions.
  2. All answers must be numbered and must begin on a new page.
  3. Write legibly.
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## **QUESTION ONE**

Mr Mosala is a customer of Barclays Bank Lesotho (Pty) Ltd. He suffers from rheumatoid arthritis, which has rendered him paraplegic and wheelchair bound. In order to accommodate this disability, an arrangement was made between Mr Mosala and the bank in terms of which he would be allowed to make deposits from the comfort of his car in the parking lot. An officer of the bank would go to Mr Mosala's car to count the money that he wished to deposit, and issue out a corresponding deposit slip.

Sometime in August 2023, Mr Mosala met with an officer of the bank in the parking lot to deposit a sum of M15 000. The bank officer duly counted the money and issued out a dated, signed and stamped deposit slip. Unfortunately, however, the envelope containing the money was snatched by a thief from the hands of the bank officer immediately upon stepping out of Mr Mosala's car. The thief managed to outrun the bank officer and the parking lot security personnel.

Discuss whether the bank is obliged to credit Mr Mosala's account with the stolen amount.

**[25 MARKS]**

## **QUESTION TWO**

Critically analyse the view of Sir Grant in *Devaynes v Noble* (1816) 1 Mer 529 that "[t]here is a fallacy in likening the dealings of a banker to the case of a deposit, to which, in legal effect, there is no resemblance."

**[25 MARKS]**

## **QUESTION THREE**

Mr Notsi was once employed as a teller at Basotho Commercial Bank (Pty) Ltd. He is currently facing criminal charges wherein he is accused of stealing a sum of M5 000 from a customer of the bank. The charge sheet reads that; on the 3<sup>rd</sup> August 2023, at the Mafeteng Branch of the bank, Mr Notsi used his access to the computers of the bank to transfer the aforesaid amount from the current account of his wife, Mrs Notsi, into his own current account held with the same bank. This was done without the consent, authority or approval of Mrs Notsi.

The charge sheet is accompanied by a witness statement of Mrs Notsi, in which she testifies that; on the morning of the concerned day, she had a fight with Mr Notsi because she had refused to give him petrol money to go to work. Later on that day, she received an SMS from the bank stating that her account had been debited with a sum of M5 000, whereupon she lodged a complaint with the bank. The bank manager promised to investigate the matter, and duly telephoned her the following day to inform her that, from the transaction trail, the money was credited into the bank account of her husband. When she confronted him about the matter, Mr Notsi boldly conceded that he is the one who debited her account.

Knowing that you are currently studying Banking Law at the National University of Lesotho, Mr Notsi approaches you for legal advice on whether he should plead guilty, or not guilty, to the charge. He informs you that he intends to plead not guilty on the basis that, because he and Mrs Notsi are married in community of property, he was entitled to the money as it formed part of their conjugal property (shared property of spouses).

Advice Mr Notsi.

**[25 MARKS]**

#### **QUESTION FOUR**

Write short notes on the following concepts:

- |                                |         |
|--------------------------------|---------|
| (a) Banking business           | 5 Marks |
| (b) <i>Depositum</i>           | 5 Marks |
| (c) <i>Depositum irregulae</i> | 5 Marks |
| (d) <i>Mutuum</i>              | 5 Marks |
| (e) <i>Services de caisse</i>  | 5 Marks |

**[25 MARKS]**

#### **QUESTION FIVE**

Mrs Thebe is an investigative journalist working for Lehlokoana-la-Tsela Newspaper. For the past two years, she has been working on a story involving the financial dealings of one Mr Mojela, who is the leader of the main opposition party in the Parliament of Lesotho. During her investigations, Mrs Thebe discovered that Mr Mojela has been stealing huge sums of money from different government ministries, and transferring that money to his off-shore account held

with the Geneva Swiss Bank. The transfer of this money to Switzerland is done with the conscious aiding and abetting of Barclays Bank Lesotho (Pty) Ltd, where Mr Mojela is a customer.

In the first week of December 2023, Mrs Thebe announced in her column that she intends to publish a damning story about how Barclays Bank Lesotho has been helping the leader of opposition to hide his proceeds of crime in Switzerland. Immediately following this announcement, Barclays Bank Lesotho instituted an urgent application against Mrs Thebe and the Newspaper, seeking an interdict against the publication of that story. The interdict is based on the ground that the publication of the dealings between Barclays Bank Lesotho and Mr Mojela would undermine the secrecy underlying the bank-customer relationship.

Advise Mrs Thebe and the Newspaper on the correctness of the ground on which the interdict is sought. **[25 MARKS]**

## **QUESTION SIX**

In the case of *Tournier v National Provincial and Union Bank of England* [1924] 1 KB 461, the court identified at least four exceptions to the banker's duty of secrecy, namely — (a) where disclosure is under compulsion by law, (b) where there is a duty to the public to disclose, (c) where the interests of the bank require disclosure, and (d) where the disclosure is made by the express or implied consent of the customer.

Write an essay critically discussing any one of these exceptions. **[25 MARKS]**