

4. J.M. Holden: Jones & Holdens Practical Banking (latest edition)
 5. J. Milnes Holden: The Law and Practice of Banking, Vol. 1: Banker and Customer, Pitman, London, 5th ed., 1991
 6. L.C.C. Goyle: Law of Banking and Bankers, Eastern Law House, New Delhi, 1995
 7. P.E. Perry: Law and Practice Relating to Banking, Harmondsworth, Middlesex, Penguin Books Ltd., 1972
- B. Legislation
1. The Bank of Tanzania Act, 2006, No. 4 of 2006
 2. The Banking and Financial Institutions Act, 2006, No. 5 of 2006
 3. The Foreign Exchange Act, 1992 .
 4. The Tanzania Investment Act, 1997.
- C. Cases
- D. Journals

CHAPTER I

INTRODUCTION

Legal history of banking and banking law and practice

Readings

1. Sir W. Holdsworth: A History of English law Vol. I.
2. E. Mandel: Marxist Economic Theory
3. K. Marx: Capital Vol. I
4. V.I. Lenin Imperialism the Highest Stage of Capitalism

5. Jucker T. Fleetwood: Money and Finance in Africa
6. Newlyn: Money in an African Context

CHAPTER II

CENTRAL BANKING LAW AND PRACTICE

A brief history - the currency board system - principles of central banking – central banks and multilateral financial institutions – the Bank of Tanzania Act, 2006, No. 4 of 2006 – the Banking and Financial Institutions Act, 2006, No. 5 of 2006.

Readings:

1. International Encyclopaedia of the Social Sciences, Vol. 2 (1968 Edn) section on BANKING CENTRAL
2. The Bank of Tanzania Act 2006
3. The Brettonwoods Agreements Act, Cap. 46 as amended from time to time.
4. The Banking and Financial Institutions Act, 2006.
5. The Foreign Exchange Act, 1992.

CHAPTER III

COMMERCIAL BANKING LAW AND PRACTICE

A brief history – functions of commercial banks:

Management over finance capital – acceptance of deposits and maintenance of deposit accounts - discounting of bills and collection of bill proceeds – cheque truncation - provision of foreign exchange – lending and advancing of money against security.

Readings

1. The Banking and Financial Institutions Act, 2006.

2. The Tanzania Investment Act 1997
3. The Foreign Exchange Act, 1992
4. W.T. Newlyn: Money in an African Context.
5. The Companies Act, Cap. 212
6. Pagets Law of Banking
7. Sheldon's Practice & Law Banking
8. Lord Chorley: Law of Banking
9. J.M. Holden: Jones & Holden's Studies in Practical Banking
10. Chattels Transfer Ordinance, Cap. 210(T)
11. Law of Contract Act, Cap. 433(T)
12. Important cases
 - (a) On collecting Banker
 - (i) N.B.C. v. Perma Shoe Co. [1988] TLR 224
 - (ii) N.B.C. v. Said Ally Yakut [1989] TLR 119
 - (b) On securities

Banker's lien - scope of

 - (i) Brandao v. Barnett (1846) 12 CLT Fin. 787.
 - (ii) Melita Meyasi V. The National Bank of Commerce [1977] LRT No. 42 – there is no practical difference between an open and a crossed cheque in the context of the exercise of banker's lien.

Pledges

 - (iii) Sewell v. Burdick (1884) 10 App. Cas. 74.
 - (iv) Brandt v. Liverpool Brazil & River Plate Steam Navigation Co. Ltd. [1924] 1 K. B. 575. A pledgee of

a bill of lading does not take the general property in it unless and until he presents the bill to enforce his security.

- (v) London Joint Stock Bank v. Simmons [1892] A.C. 201. The pledgee of a negotiable instrument becomes the holder for value to the extent of the sum advanced.
- (vi) Re David Allester Ltd. [1922] 2 Ch. 211.
- (vii) Re Hamilton, Young & Co., Ex. Parte Carter [1905] 2 K.B. 772. The pledgee does not necessarily cease to be pledgee because he ceases to hold the goods or the documents of title.

Letters of hypothecation.

- (viii) Dodhia v. The National and Grindlays Bank Ltd. (1970) E.A. 195.

Guarantees

- (ix) Hamilton v. Watson (1845) 12 CL & Fin. 109

A contract of guarantee is not one of uberrimae fidei.

- (x) Mackenzie v. Royal Bank of Canada [1934] A.C. 468. Misrepresentation, whether innocent or otherwise, may avoid the guarantee.

See also:- Stone v. Compton (1838) 5 Bing N.C. 142.

- Carlisle & Cumberland Banking Co v. Braig [1911] 1 K.B. 489 overruled in Saunders V. Anglia Building Society [1970] 3 All E.R. 961 when the H.L., redefined the scope and principle of non est factum.

- (xi) Bank of Montreal V. Stuart and Another [1911] A.C. 120 the effect of undue influence upon a guarantee.
- (xii) Re Sherry, London & County Banking Co. v. Terry (1884) 25 Ch. 692 the death of the guarantor.

- (xiii) Bradford Old bank Ltd. v Sutchiffe [1918] 2 K.B. 833
Lunacy of guarantor determines guarantee. Demand under guaranteed.
- (xiv) Garrard v. James [1925] 1 Ch. 616. How far irregular borrowings can be effectively guaranteed.
- (xv) Offord v. Davis & An. 12 C.B. (N. S.) 478. In the absence of an express stipulation to the contrary in the contract, a guarantor can terminate his liability by notice.
- (xvi) Perry v. National Provincial Bank of England Ltd. [1910] 1 Ch. 464. The release of the principal debtor will discharge the guarantor, unless the contract of guarantee provides otherwise.
- (xvii) Reid v. The National Bank of Commerce [1971] H.C.D. 340 Variation of the terms of a guarantee without consent of the guarantor and to his prejudice discharges him from liability under the guarantee.
- (xviii) Harilal & Co. v. The standard Bank Ltd. [1967] E.A. 512.
- (xix) Credit Finance Corp. v. Lanani [1964] E.A. 317.

Mortgages

- (xx) Barclays Bank Ltd v. Beck [1952] 2 Q.B. 47
- The nature of a bank's mortgage.
- (xxi) Lloyds Bank Ltd. v. Mongolis & Others [1954] 1 W.L.R. 644 Demand under a Mortgage.
- (xxii) Harrold v. Plenty [1901] 2 Ch. 314. The deposit of documents of title, even without a memorandum, may create a good equitable mortgage.
- (xxiii) Northern Countries of England Fire Insurance Co. v. Whipp (1884) Ch. D. 482. A legal mortgage has preference over an equitable one.
- (xxiv) National Provincial Bank of England v. Jackson (1886) 33 Ch. D. 1. Exceptionally the equitable mortgagee may

be postponed to an earlier equitable interest other than a mortgage. See also Barclays Bank Ltd. v. Taylor [1974] Ch. 137.

- (xxv) Hopkinson v. Rolt (1801) G.H.L. Cas. 514. The position of a Mortgagee making further advances after notice of a second Mortgage.
- (xxvi) Cuckmere Brick Co. Ltd. v. Mutual Finance Ltd. [1919] Ch. 949 that a mortgagee in exercising his power of sale does owe a duty to take reasonable precaution to obtain the true market value of the mortgaged property at the date on which he decides to sell it.
- (xxvii) Western Bank Ltd. v. Schindler [1976] 2 All E.R. 393
A legal mortgagee's right to possession is a common law right which is an incident or his estate in the land. It should not be lightly treated as abrogated or restricted. It is a preliminary step before exercising the right of sale. But it has further value – the mortgagee can protect his property, e.g., from vandalism, carry out repairs, prevent waste.
- (xxviii) William Brandt's Sons * Co. v. Dunlop Rubber Co. Ltd. [1905] A.C. 454 equitable assignment of choses in action.
- (xxix) Manyara Estates et al. V. The National Development Credit Agency [1970] E.A. 177 Rights of mortgagees of rights o occupancy before Act No. 28 of 1970.
- (xxx) N.B.C. v. Dar es Salaam Education and Office Stationery [1995] TLR 272 – Power of sale – under what circumstances court may interfere.

Registration

- (xxxix) Esberger & Son Ltd. v. Capital & Countries Bank [1913] 2 Ch. 366: Registration of charges under the Companies Acts: Effect date of charges.
- (xxxii) Re Kent & Sussex Sawmills Ltd. [1947] Ch. 177.
Registration of charges under the Companies Acts: the distinction between sale and assignment of book debts.

On debentures

(xxiii) Shinyanga Regional Trading Co. Ltd. and an v. N.B.C.
[1987] TLR 78

13. The Land Act, 1999 as amended.
14. The Village Land Act, 1999 as amended.

CHAPTER IV

BANKER AND CUSTOMER RELATIONSHIP

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Definitions etc.

- Definitions of banker and customer
- How to enter into a banker - customer relationship
- Capacity

Readings:

1. Pagets' Law of Banking,, Chs. 1 and 2
2. Lord Chorley, Law of Banking Chs 1 – III; IX .
3. Sheldon's Practice Land Law of Banking,
Chpt. IX, X and XI
4. Important relevant cases.

The Great Western Railway Co. v. The London & Country
Banking Co. Ltd. [1901] A.C.

- A customer of a bank is one who has an account with that bank; but the relationship is not one of which duration is of the essence.
- Commissioners of Taxation v. English Scottish & Australian Bank [1920] A.C. 683.

- Ladbroke v. Todd [1914] 19 Com. Cas. 256.
- Woods v. Martins Bank Ltd. [1959] 1 Q. B. 55. One may be a customer of the bank without opening an account.
- (ii) United Dominions Trust v. Kirkwood [1966] 2 QB. 431. The definition of a banker is not static, but depends on current practice.
- (iii) Edmond V. Tongeren v. Tanganyika Tegry Plastics Ltd. [1968] H.C.D. Case No. 441.
- (iv) Salada Tofiki v. Hamisi Waaziri Mwenda [1968] HCD Case No. 172
- (v) Zubaira Mussa v. Saidi Selemani [1968] HCD No. 171.
- (vi) Ladbroke & Co. v. Todd [1914] All E.R. 1134, supra.
- (vii) The Alliance bank Ltd., v. Kearsley [1871] L.R. 6C. P. 433.
- (viii) Nottingham P.B. Society v. Thurstan [1903] A.C. 6.
- R. Leslie, Ltd. v. Sheill.
- (x) Coutts & Co. v. Browne - Lecky & Other [1944] K.B. 104.
- (xi) Zakayo Pwere v. Republic [1981] TLR 182 - Care in opening of accounts.

OBLIGATIONS UNDER THE CONTRACT

(1) Nature of the relationship of Banker and Customer

(Its legal conception - in Historical socio-economic context).

- Is it that of Trustee and Beneficiary?
- Is it that of Agent and Principal?
- Is it that of Bailee and Bailor?
- Is it that of Debtor and Creditor?

Readings:

1. Lord Chorley, Law of Banking, Ch. III, p. 19-23; or
2. Sheldon's Practice & Law of Banking. P. 186-187; or
3. Paget's Law of Banking Ch. 3, p. 69-70; 84-86
4. Cases:
 - (i) Folley v. Hill (1848) 2 H.L. Cas. 28.
 - (ii) Joachimson v. Swiss Bank Corp. [1921] 3 K.B. 110.
The relationship between banker and customer is that of debtor and creditor; (F. v. H.) but one of the terms of the implied contract is that money lent to the banker is not payable except on demand (J. v. S.).
 - (iii) Shah & Shah v. The Exchange Bank of India & Africa Ltd. (1951) 18 EACA 25 (K).
 - (iv) Woods v. Martin's Bank Ltd. & another [1958] 3 All E.R. 166.
 - (v) Selemani Tilwilizayo v. Republic [1983] TLR 402
- (2) General obligations:
 - On the Banker
 - On the customer
 - Appropriation and the Rule in Clayton's Case.
 - Right of Set-Off.

Readings:

1. Sheldon's Practice & Law of Banking. pp. 188-194, 201-202;
2. Paget's Law of Banking: Ch. 3 p. 70; 73; 75-76; 79-82; 135-141; Ch. 7, p. 166-207; Ch. 15 p. 458-491; or
3. Lord Chorley, The Law of Banking, Ch. III, p. 15-19.
4. Cases:
 - (i) Folley v. Hill. Supra.

- (ii) Clayton's Case (Rule in), Lord Chorley, Law of Banking, p. 146 – 147.
 - (iii) Peterson Waiguru Kariuki v. National Bank of Kenya Ltd. (Civil Case No. 1579 of 1969, High Court of Kenya).
 - (iv) Melita Meyasi v. The National Bank of Commerce (T) Ltd. [1977] LRT 42.
 - (v) London Joint Stock Bank, Ltd v. Macmillian & Another [1918] A.C. 77.
 - (vi) Greenwood v. Martin's Bank Ltd [1932] .E.R. Rep. 318.
 - (vii) Tournier v. National Provincial & Union Bank of England [1924] I.K.B. 461.
 - (viii) Arab Bank Ltd v. Barclays Bank (D.C.O.) [1964] A.C. 495.
 - (ix) Woods v. Martin's Bank.
 - (x) Hedley Byne & Co. v. Heller & Partners [1964] K.B 465.
 - (xi) Banbary v. Bank of Montreal [1918] A.C. 626.
 - (xii) Francis Ngaire v. NIC (T) Ltd. [1972] HCD 134.
- Barclays Bank plc v. Taylor [1989] 3 All E.R. 563 (C.A.)
Duty of non-divulgence.
- Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd. and Others [1985] 2 All E.R. 947 (PC) – forgery – Extent of customer's duty to guard against..
- Banker's Trust Co. v. Shapira and others [1980] WLR 1274 -
Though banks have a confidential relationship with their customers, it does not apply to conceal the fraud and iniquity of wrongdoers – Lord Denning.

5. L.C.O. SS. 59-61 – Appropriation of payments

6. Banking and Financial Institutions Act, 2006.
7. Obligations Under various types of account:
 - (a) Trust accounts:

Readings

1. Paget's Law of Banking Ch. 4, pp. 88-92; or
2. Sheldon's Practice & Law of Banking. Ch. XI, pp. 260-65; or
3. Lord Chorley, Law of Banking, Ch. VIII,
4. Cases:
 - (i) Rule in Clayton's case; Devaynes v. Noble (1816) 1 Mer. 529.
 - (ii) In re Mohamedhussein Sharif Jiwa [1967] HCD 238.
 - (ii) Foxton v. Manchester & Liverpool District Banking Co. (1818) 44 L.T. 406.
 - (iii) John Shaw (Reyners Lane) Ltd. v. Lloyds Bank (1945) – in Legal Decisions Affecting Bankers Vol. J. p. 396.
 - (v) Soar v. Ashwell [1893] 2 Q.B. 390.
 - (vi) Imperial Bank of Canada v. Beglay [(1936) 20 E.R. 267.
 - (vii) Sinclair v. Broughan [1914] A.C. 398.
 - (viii) Re Cross, Ex Parte Kingston (1871) 6 Ch. 632.
When the banker knows that an account is composed of trust moneys, he must not deal with it in a manner which he knows to be inconsistent with the trust; and a benefit to the banker may be evidence of his privity to a breach of trust. See also Bodonham v. Hoskings (1852) 21 L.J. Ch. 864.
 - (ix) Gray v. Johnston (1868) L.R. 3 H.L. 1 ... in the absence of (a) a breach of trust, and (b) the banker's knowledge of it, neither the known existence of a trust nor

an incidental benefit to the banker is enough to justify his dishonour of his customer's cheque.

Thomson v. Clydesdale Bank Ltd. [1893] A.C. 282. There is no presumption of a trust merely from the profession of the customer.

(b) Joint Accounts: In Credit and in Debit

- Of husband and wife.
- Of trading partners (Partnership accounts).
- Of any other two or more persons.

Readings:

1. Sheldon Ch. XI, pp. 223-247; or
2. Paget Ch. 3 pp. 76-79; Ch. 6 pp. 161-64; or
2. Lord Chorley, Ch. IX, pp. 156-163.
3. Terms and Conditions for Operating with CRDB Bank Limited (See esp. Clause 7).
4. Cases:
 - (i) Jackson v. White and Midland Bank Ltd. [1967] 2 Lloyds Rep. 68 the holders of a joint account have a joint and several right of action against the bank.
 - (ii) Mc Evoy v. Belfast Banking Co. Ltd. [1935] A.C. 24.
 - (iii) Young & Another v. Sealey [1949] Ch. 278. Survivorship as applied to joint accounts is a Presumption only; and may be rebutted.

See also:

Marchal v. Crutwell (1875) D.R. 20 Eg. 328

Jones v. Maynard (1951) Ch. 572.

Rimmer v. Rimmer (1953) Ch. 1 Q>B. 63 (approving Jones Case).

Re Bishop deceased (1965) Ch. 450
(distinguishing Jones v. Rimmer).

- (iv) Adan v. Bank of NSW (1956) AER 1210.
- (v) Jackson v. Midland Bank [1967] 2 Lloyds 68.
- (vi) Backer v. Barclays [1955] 2 All E.R. 571.
- (vii) Henry J.B. Kendall & Others v. Peter Hamilton
- (viii) The Alliance Bank, Ltd. v. Kearsley [1871] L.R. 6 C.P. 433. A partner has no implied authority entitling him to open an account in his own name so as to bind the partnership.
- (ix) Re Bourne, Bourne v. Bourne [1966] 2 Ch. 427. Effect of a partner's death on the firm's bank account - duty of the surviving partners to realise the partnership assets, whether personality or reality.

See also: Royal Bank of England Scotland v. Christie [1841] 8 Cl. & Fin. 214.

- (x) Melita Meyasi v. The NBC (1977) LRT No. 42
Liability of partners over an overdrawn joint account.

(c) Accounts of Minors

- Minor can open and operate an account with the bank; but being a minor the bank must guard against allowing him to overdraw.

Readings:

1. Any of the leading text books.

2. The LCO s.s. 10 & 11.

3. Cases:

- (i) R. Leslie Ltd. v. Sheill [1914] 3 K. B. 607. Money lent to a minor is not recoverable even where he has obtained the loan through fraudulently representing himself to be of full age.

- (ii) Coutts & Co. v. Brownie - Lecky and Others [1947] K.B. 104 The guarantor of a minor's overdraft cannot be made liable.

Consider: Wauthier v. Wilson [1911] 27 TLR 582 Indemnity.

(d) Advocates Accounts

- opening of account
- accounts an advocate needs to open and operate
- operation of account

Readings:

1. Any of the leading text-books
2. Advocates Act & Rules & Ethics relating to Advocates.

3. Cases:

- (i) Plunket v. Barclays Bank D.C.O. [1936] 2 K. B. 107.

Loescher v. Dean [1950] 2 All E.R.. 164.

- (iii) Re A Solicitor [1952] 1 Ch. D. 328.

- (iv) Bank v. Barclays D.C.O. [1954] 2 E.R. 226.

(e) Accounts for trading companies

- Opening of account.
- Operation of account.
- In case of insolvency, winding up or scheme of arrangement or composition.

Readings:

1. Lord Chorley, Ch. IX, pp. 164-167; or
2. Paget, Ch. 2, pp. 45-68; or

3. Sheldon, pp. 271-296.

4. Cases:

- (i) The Royal British Bank v. Turguand (1856) 6 E. & B. 327 - The Rule in Turguands case. Jervis, C.J., said, "We may now take for granted that the dealings with these companies are not like dealings with other partnerships, and that the parties dealing with them are bound to read the Statutes and the deed of settlement. But they are not bound to do more. And the party here, on reading the deed of settlement, would find, not a prohibition from borrowing, but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which on the face of the document appeared to be legitimately done. (at p. 332).
- (ii) Freeman and Lockver v. Buckhurst Park Properties (Mangal) Ltd.[1964] 2 Q.B. 480 A person dealing with a registered company should satisfy himself that the proposed transaction is not inconsistent with the memorandum and articles of association, and that the person acting for the company is not one to whom power to deal is unlikely to have been delegated; but he need not inquire whether all the necessary steps have been taken by the company to make the matter complete and regular.
- (iii) Introductions Ltd, v. National Provincial Bnkn Ltd [1970] Ch. 199 A Company's borrowing must not be for a purpose inconsistent with the company's objects set out in the memorandum of association.

See also: Ashbury Carriage Co. v. Riche (1875) LR. 7 H.L. 653 establishing the ultra vires rule.

- Charterbridge Corp. Ltd. v. Lloyds Bank Ltd. [1970] Ch. 62 Challenging the *ultra vires* rule

- Houghton & Co. v. Nothard. Lawe & Wills [1927] 1 K.B. 246.

- Mahony v. Liquidator of East Holyford Mining Co. (1875) LR. 7 H.L. 869.

- London v. Barclays (1925) 31 Com. Cas. 67.

- Underwood v. Bank of Liverpool [1924] 1 K.B. 775.
- Lloyds Bank v. Bank of India [1929] 1 K.B. 40
- Liget (Liverpool) v. Barclays (1927) 137 L.T.R. 443.

(e) Accounts of non-trading companies

- opening account
- operation of accounts

Readings:

1. Lord Chorley Ch. 1x, p. 167; or
2. Paget, Ch. 2, p. 27-28
3. Cases:

(i) Serrel v. byshire Rly Co. (1866) L.. R. 1 op. 499.

(ii) Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd. [1964] 2 Q.B. 400, [1964] 1 All E.R. 630. {See above}.

(iii) Hely-Jitcimsem v. Brayhead Ltd. [1968] 1 Q.B. 549, [1967] 3 All E.R. 98

(g) Accounts of Executors.

- opening
- operation

Readings:

Any leading textbook

2. Cases:

Farhall v. Farhall (1875) 7 Ch. App. 123 Borrowing by an executor is always his personal responsibility, and if it is unauthorized, the estate of the deceased cannot be made liable for it.

3. General obligations and Liabilities arising out of operation of a Customer's account:

- (a) Current account (in cases of over-crediting and/or under-debiting and/or under-crediting and/or over debiting);
- (b) Deposit accounts
- (c) Accounts of aliens

Readings:

1. Sheldon's Law of Banking Ch. X pp. 188-189; 202-207.
2. Paget, Ch. 4, pp. 114-131; Ch. 6.
3. Lord Chorley, Ch. VIII, pp. 139.155.
4. Cases:

- (i) Chatterton v. London & County Banking Co. Ltd. The Miller, February 2. See Paget, Law of Banking, 7th Ed. Pp. 119 et 2 eg.

A customer owes his banker no duty to examine his passbook or statement; nor when he does in fact check it, does that checking estop him from later claiming that entries in it are wrong. Contrast Clause 12 of CRDB Bank Terms and Conditions for Operating with that bank. Which prevails over the other? See Tai Hing case.

- (ii) Holding v. Manchester & Liverpool District Banking Co. (1909) 25 T.L.R. 386. Where the Customer acts, in good faith, upon a wrong entry made in the statement or passbook, so altering his position, the banker is estopped from claiming to have the error rectified.

See also:

Skyring v. Greenwood & Co. (1825) 4 B. & C. 281. Commercial Bank of Scotland v. Rhind (1860) 3 Macq. 643 (H.L.)
Lloyds Bank Ltd. v. Brooks (1950) 72 J.I.B. 114.
United Overseas Bnk v. Jiwani (resident of Uganda) [1976] 1 W.L.R. 964.

- British & North European Bank Ltd. v. Zalstein [1927] 2 K.B. 92. Where the customer knows that the statement or passbook is wrong, the banker is estopped from adjusting the error.

- (iv) Deyaynes v. Noble, Clayton's Case (1816) Mer. 529. In the case of a current account, payments Are, in the absence of any express indication to the contrary by the customer, presumed to have been appropriated to the debit items in order of date.

See also:

Deeley v. Lloyds Bank Ltd. (1912) A.C. 756
Westminster Bank Ltd. v. Cond (1940) 46 Com. Cas. 60. (cf. S.s. 59-61, L.C.O. Cap. 433 (T).

DURATION AND DETERMINATION OF THE ACCOUNT

- How to terminate the relationship
 - by the customer
 - by banker
- Obligations when terminating accounts of various types of customer: Defamation.
- Insolvency and Bankruptcy and winding up: Suspending, stopping and closing accounts (recapitulation).

Readings:

1. Lord Chorley, Law of Banking, Ch. II, p. 257-271; or
2. Paget's Law of Banking, Ch. 3, p. 73-76; Ch. 4, p. 92-111; Ch. 5, p. 144-156; Ch. 6, p. 164.
3. Sheldon's Practice & Law of Banking, Ch. X, p. 195-201; Ch. XXVI, p. 503-523.
4. Cases:
 - (i) Ponsford. Banker & Co. v. Union of London & Smith's Bank, Ltd. (1906) 2 Ch. 444.
 - (ii) In re Seymour. Ex parts The Trustee (1937) Ch. 663.
 - (iii) In re Nigzell Ex parts Hart (1921) 2 K.B. 835.

- (iv) Frachimson v. Sonss Bank Coop.

CHAPTER V.

ELECTRONIC BANKING AND THE LAW

1. Electronic Funds Transfer (EFT)

- Definition
- Types of EFT systems
- Non – consumer – activated EFT systems
 - (a) the nature of credit and debit transfers
 - (b) electronic credit and debit transfers
 - .. BACS
 - .. CHAPS
 - (c) International electronic funds transfer
 - .. Onshore and offshore international transfers
 - .. SWIFT
 - (d) Cheque truncation
 - Consumer activated EFT systems
 - (a) Cash dispensers (CDS) and Automated teller machines(ATMS).
 - (b) Electronic funds transfer at point of sale (EFTPOS).
 - (c) Tele-shopping
 - (d) Digital cash

2. The Legal Implications of EFT

- Sources of law
 - . Contract law

- . Agency
 - Tort
 - Property law
 - Equity
 - Criminal law
 - the legal nature of a funds transfer instruction
 - Agency relationship
 - the paying bank
 - relationship with payer
 - relationship with payee
 - Countermand
 - Recovery of incorrect payments
- 3. Specific aspects of consumer activated EFT**
- Terms and conditions of the banker – customer contract
 - Variation of the Banker – customer contract
 - Liability for unauthorized transaction
 - Liability for technical malfunction
 - Countermand

4. Confidentiality and data protection

Readings

1. Paget, pp. 265 – 324
2. Zim Israel Navigation Co. v. Effy Shipping Corpn, The Effy [1972] 1 Lloyd’s Rep. 18.
3. Libyan Arab Foreign Bank v. Bankers Truct Co. [(1988) 1 Lloyd’s Rep. 259.
4. “A Fast method to Facilitate Financial Transactions” (1983) 17 Journall of World Trade Law 458.
5. Barclays Bank plc v. Bank of England (1985) 1 All E.R. 385.
6. R. V. Preddy [1996] 3 WLR 255.

7. Folley v. Hill (1848) 2 HL Cas. 28
8. Royal Products Ltd v. Midland Bank Ltd [1981] 2 Lloyds Reg. 194.
- 9 Barclays Bank plc v. Quincecare Ltd [1992] 4 All ER. 363.
10. St. Alban's City and District Council v. International Computers Ltd (1996) Times, 14 August, C.A.
11. White v. Jones [1995] 2 AC 207
12. Caparo Industries plc v. Dickman [1990] 2 AC 605
13. A. Arora, Electronic Banking and the Law
14. Murphy v. Brentwood District Council [1991] 1 AC 398
15. R.M. Goode, Commercial Law (1995).
16. Lipis Allen, H: Electronic Banking

**PART TWO: THE LAW AND PRACTICE RELATING TO
NEGOTIABLE INSTRUMENTS**

Course Content

A. Statutes

1. The Bills of Exchange Act, Cap. 215
2. The Cheques Act 1968, No. 41 of 1968 (K)
3. Similar legislation for Uganda and Kenya

B. Books

1. *Byles on Bills of Exchange* by M. Megrah & F. Ryder, Sweet & Maxwell (latest ed.)
2. *Chalmers on Bills of Exchange* by David A.L. Smout, Stevens & Sons, London, (latest ed.)
3. Holden, J.M. *History of Negotiable Instruments in English Law*
4. Richardson, D., *Guide to Negotiable Instruments and the Bills of Exchange Acts*, Butterworths, (latest ed.).
5. McLoughlin, *Bills of Exchange, the Bill, the Parties and their Liabilities*

C. Manuals

1. S. Picciotto, *Negotiable Instruments in East Africa, Text and Materials*
UDSM

Chapter 1: General introductory materials

- 1.1. Development of negotiable instruments as part of the Law Merchant
- 1.2. Equity and the development of negotiable instruments

Readings:

- (a) J.L. Kanywanyi: “Negotiable Instruments: Some Basic Definitions, Principles and Rules.”

- (b) N.N.N. Nditi: “Negotiable Instruments: Some Background Information.”
- (c) Picciotto, S.: “Negotiable Instruments in East Africa: Text and Materials,” Chpt. 1.

Chapter 2: The Form of the Instrument

Definitions

- “Bill of exchange” – s.3 Bills of Exchange Act, Cap.215 (B.E.A)
- “Cheque” – s.73, B.E.A.
- “Promissory note” – s.89, B.E.A

Analysis of the definitions

A. Unconditional Order or promise to pay – ss.3 & 89 BEA

Cases:

- Lombard Banking v. Vithaldas Gorhandas [1960] E.A. 345 (Ug.H.Court)
- Ismail v Jivraj [1965] E.A.550
- Bickos v. Gallanos (1942) I.T.L.R. ® 599
- Roberts & Co. v. Marsh [1915] I.K.B. 42 (C.A)
- Pindi Das Ghai v. V.P. Mandal (1947) 23(1) K.L.R.

B. Amount payable – sum certain in money – s.9 BEA – payment must be made in legal tender.

Cases:

- Plateau Hotel Ltd. v. Mitchell (1924) 10 K.L.R. 76
- Syndic in Bankruptcy of Salim Nasrullah Khoury v. Khayat [1943] A.C. 507 (P.C) (Appeal from the Supreme Court of Palestine)

C. When payable – certainty as to time of payment – ss.3, 73, 84(1) 10(1) and 11.

Cases:

Williamson v Rider [1963] I.Q.B. 89

[1962] 2 All E.R. 268

D. To whom payable – certainty as to payee – ss.3, 84(1), 7

Cases:

North & South Insurance v. National Provincial Bank [1936]

I.K.B. 328.

Khan Stores v. Delawer [1959] E.A. 714

Bird & Co. v. Thos Cook & Sons (Bankers) Ltd. [1937] 2 All E.R.

227.

Tuungane Workshop v. Audax Kamala [1978] LRT n.21.

Vinden v. Hughes [1905] I.K.B. 795.

Clutton v. Attenborough [1897]A.C. 90

Bank of England v. Vagliano Brothers [1891] A.C. 107.

E. Aunthenticity – ss.3, 84(1), 23, 26 B.E.A.

Cases:

- New Georgia National Bank v. Lippmann [1928] 60 A.L.R. 1344
(New York Court of Appeals).
- Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd., etc. [1968] 2 All E.R. 987.
- Hamisi Mlezi v. Umoja Printers [1968] HCD n.350.
- Nadhan Singh v. Pritam Singh [1953] 21 EACA 82
- Suleman Virji & Sons v. Mangaldas [1914] 5 EALR 154.

F. Liability under forged or unauthorized signatures – Ss.3, 84, 23,

24,53,54,55

Cases:

- Greenwood v. Martins Bank Ltd [1933] A.C. 51
- Tai Hing Cotton Mills Ltd v.Liu Chong Hing Bank Ltd and others
[1985] 2 All E.R. 947 (P.C.)

G. Incomplete instruments – Ss.3(4); 10(1); 12, 20, 45(d) 55(2);

B.E.A.

Cases:

Griffths v. Dalton [1940] 2K.B. 264

Baxendale v. Bennet [1878] 3 Q.B.D.525

NBC v. Allidina [1969] E.A. 89; [1968] H.C.D. n.485.

Herdsman v. Wheeler [1902] I K.B. 361.

H. Alteration – s.64 B.E.A.

Cases:

- Hong Kong & Shanghai Banking Corp. v. Lo Lee Shi [1928] A.C.181.
- N.B.C v. Allidina [1968] HCD n.485, (1969) E.A. 89
- Overman v. Rahemtulla [1930] 12 K.L.R.131
- Forster v. Driscoll [1929] IKB 470
- Koch v. Dicks [1933] I K.B. 307
- Barclays Bank International Ltd. v. Acif Ltd. [1974] E.A. 37.

Part 3: Use of the instrument as payment

3.1. Effect on a debt of payment by instrument

- (a) Monetary obligations to be settled in legal tender – ss.26 & 28 Bank of Tanzania Act, 2006.
- (b) Acceptability of negotiable instruments as payment
- (c) Advantages of use of instrument as payment
 - Kanywanyi's paper pp.3-4
 - Nditi's paper pp. 1-2
 - Lord Chorley, *Law of Banking* p. 47.
- (d) Effect on a debt
 - Sheldon p.14
 - *Chitty on Contracts* 20th Ed. P.291-2

Cases:

- Kitale Auto Garage v. M.K. Samnani [1955] 28 KLR 29
- Manji Kholabahi v. Sohan Singh [1957] E.A. 291

- Kamrudin Mohamed v. Jinja Co-op Society Ltd [1957] E.A. 443.
- Shah Mohamlal Karamshi v. Rahemtulla Punja [1949] 23(2) K.L.R. 50.
- Karsan v. Bhogal [1952] 20EACA 74
- Irene Grogan v. Naphoo Jiwa [1931] 4 U.L.R.19

3.2. Rights on the instrument as between immediate parties – ss.2, 21, 27, 30 and 38 B.E.A.

Cases:

- Tuungane Workshop v. Audax Kamala [1978] LRT n.21
- Nanalal Vrajdas v. Chunilala Dhanji Mehta [1946] 13 EACA 54
- Kilonzo wa Kanyanya v. Odharji Purshotan & Bros. [1934] 16(1) K.L.R.44.
- Patel Bros. Hasmani [1952] 19 EACA 170.
- Lombard Banking Ltd. v. J.L. Gandmi [1965] E.A. 12

3.3. Negotiation – Ss.8, 31, 32, 34, 35, 36 B.E.A.

Cases:

- Hibernia Banking Ltd. v. Gysin & Hanson [1939] 1 All E.R. 166
- Crouch v. Credit Foncier of England [1873] 8 QB 374.
- Arab Bank Ltd. v. Ross [1952] 2 Q,B,216
- Daniel Meyer v. Makali Cycle Mart [1954] 25 EACA 26
- Smith v. Clarke [1794] 170 E.R. 320
- Nika Singh v. Dewa Singh [1938] 18(1) K.L.R. 3

3.4. Holder in due course and Lesser Holders – Ss.2, 27, 29, 30, 38.

Cases:

- Gill v. Cubitt [1824] 107 E.R. 806
- Hussein Ali Nathoo v. Yusufali Hashim Alibhai [1929] 4 Z.L.R. 100.
- Sirley v. Tanganyika Tegry Plastics [1968] E.A. 529.
- Jones v. Gordon [1877] 2 App.Cas.616
- Patel v. Mawji Govind [1939] 18(1) K.L.R. 95
- N.S. Rawal v. Rattan Singh Thakkar Singh [1956] 29 K.L.R. 98.
- R.E. Jones Ltd. v. Waring & Gillon [1928] A.C. 670.

Part 4: Liability on the instrument

4.1 Acceptance – Ss.53, 17, 18, 19, 39, 40, 41, 42, 43.

Cases:

- Guggenheim v. Rajguru [1953] 7 U.L.R. 55

4.2. Payment in due course

(a) Presentment – ss.45, 46, 52, 74, 87, 88

Cases:

- Walji Hirji v. Cassam Noormohamed [1926] 10 K.L.R. 103.
- Patel v. Manji Govind [1939] 18(2) K.L.R. 95.
- Kanjee Naranjee v. Khan & Bhalla [1952] 26 K.L.R. 9

(b) Liability of Acceptor and Maker– Ss.54, 89.

Cases:

- Price v. Neal [1762] 97 ER 871

(c) Duties and rights of drawee – ss.59(1) 60, 75

Cases:

- Auchteroni & Co. v. Midland Bank Ltd [1928] 2 K.B. 294
- Charles v. Blackwell [1877] 2 C.P.O. 151.

