

CHUKA



UNIVERSITY

## UNIVERSITY EXAMINATIONS

### EXAMINATION FOR THE AWARD OF DEGREE OF BACHELOR OF COMMERCE

**BCOM 336: BANKING LAW**

**STREAMS: BCOM Y3S2**

**TIME: 2 HOURS**

**DAY/DATE: TUESDAY 14/04/2020**

**2.30 PM – 4.30 PM**

#### **INSTRUCTIONS:**

**Answer Question One and any other Two Questions**

#### **QUESTION ONE**

- (a) Ben an advocate has five separate accounts in your bank. (i) Trust account, (ii) Company account (iii) Clients account, (iv) joint account and (v) partnership account. In expectation of good balance in clients account, your bank had allowed him a clean advance of sh. 700,000 in his trust account. For some reasons, the bank grew unhappy with this arrangement and therefore, recalled the advance, when the advocate failed to respond to the banks notice to repay, it decided to take recourse against the other accounts for recovery of the outstanding amount of ksh. 550,000 in his trust account. Upon review of his facilities the bank found that; there was a credit balance of 110,000 in the clients account, a credit balance of kshs 20,000 in the trust account, a safe deposit locker in the joint names of himself and his wife with operations by “either of survivor”. The contents in the locker though not known to the bank had a goldn ring worth ksh. 3 million. He also had a fixed deposit of sh. 210,000 maturing after 4 months. He had also left some shares with the bank, of the approximate value of sh. 130,000 with instructions to sell them at a or above a fixed price. The shares were still lying unsold. He also had a partnership account with his wife, who is a partner in the firm, which had ksh 70,000. There also was a cheque of ksh. 120,000 awaiting collection.

Required:

Discuss how the bank will deal with each of the above amounts, in relation to banker/customer relationship legal rights of set off. [16 marks]

- (b) A lecturer walked into the banking hall and opened an account with the intention of depositing money. She filled the forms and handed to the personal banker. Bank robbers walked and robbed the bank and all the customers. She wants to sue the bank, will she succeed? Advice. [4 marks]
- (c) Garnishee order attaches only that balance which is lying in the customers account at the time when the order is served on the banker. Explain when it does not apply. [10 marks]

## QUESTION TWO

- (a) Discuss how the adoption of cheque truncation will improve the whole cheque clearing system. [10 marks]
- (b) Forged cheques were presented to John's bank in respect to his account. The cheques were honoured by John's Bank. The bank routinely sent statements to all their customers including John, who looked through the statements, ticking out the suspect entries before returning to the bank. He however did not further indicate to the bank that infact there were forgeries against his account. Several months later, he decided to inquire from the bank about the irregularity to his account. The bank did nothing about john's complaint. Advice. [4 marks]
- (c) Explain the securities offered for advances. [6 marks]

## QUESTION THREE

- (a) A banker may receive instructions from the drawer of a cheque to stop payment of cheques. What steps should a banker take when such instructions are received? [10 marks]
- (b) Explain the structure of banks and there functions. [10 marks]

## QUESTION FOUR

- (a) Mike has an account with Shika Bank Ltd. On 9<sup>th</sup> Jan 2020, he requested for his balance and was advised that his account had a credit balance of kshs 70,000. Relying on this balance, he issued a cheque on the same day to Jua Kali Fabricators for kshs 67,000 in payment of their debt. When the cheque was presented for payment on 10<sup>th</sup> Jan 2020, Shika Bank dishonored it since the credit balance in Mike's account was only kshs 60,000. This was due to a credit of kshs. 10,000 which had been entered twice in error. Jua Kali Fabricators Ltd which had previously extended credit to Mike refused him any further credit. Mike is aggrieved and has sued Shika bank for damages. Explain the legal position. [5 marks]
- (b) What are the functions of the governor of Central Bank of Kenya? [5 marks]

- (c) Explain the principle stated in the case of United Dominion Trust Ltd vs Kirkwood (1966). [5 marks]
- (d) A bank whose previous policy was to shred all unpicked financial statements which were not to be picked, has now decided, as cost saving measure that all old unpicked statement shall be recycled and those which cannot be recycled will be sold to third parties so as to generate additional income for the bank. Last month, one of the customers actually found computer printouts of his statements of account being used to wrap Sukuma wiki. Advise him accordingly as a banking law student. [5 marks]
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