



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A

P.O. Box 62157

00200 Nairobi - KENYA

MAIN EXAMINATION

Telephone: 891601-6

MAY – AUGUST 2021

Ext 1022/23/25

FACULTY OF LAW

Fax: 254-20-891084

REGULAR PROGRAMME

CLS 305: BANKING LAW

Date: AUGUST 2021

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any other TWO Questions

QUESTION ONE

'The financial journey in Kenya dates back to the pre-colonial periods. At first, the pioneering banks concentrated on financing international trade along the Europe-South Africa–India route'

- a) Discuss the above statement regarding the establishment and the operations of the first banks in Kenya **(5 marks).**

'In April 1909, the East Africa Post Office Savings Bank Ordinance was passed and in April of the following year, the Ordinance for the Regulation of Banks Established or to be established in the East Africa Protectorate was passed. '

- b) What was the importance of the two pieces of legislation in the development of banking laws in Kenya and East Africa in general? **(5 marks).**
- c) The Kenyan banking system is broadly categorized in three: Explain the three categories of the banks and their roles in the Kenyan economy (10 marks)
- d) Explain the concepts of 'Vostro and 'Nostro' and their roles in banking law

(5 marks).

- e) Discuss the transformational stages of the Kenyan banking law and system

(5

marks).

QUESTION TWO

'The foundation of the banking law in Kenya is the Banking Act, Cap 488 of the Laws of Kenya. Cap 488 provides the legal framework of banking as well as the licensing and regulations of banks in Kenya.'

- a) Discuss the main mischiefs that brought about cap 488 (5 marks)
- b) Name the complementary laws to Cap 488 and explain why these complementary laws are important to the banking industry (5 marks).
- c) In reference to the relevant provisions of Cap 488, define a bank and discuss the persons who are permitted to carry out the banking business (10 marks)

QUESTION THREE

Hussein bin Juma is one of the persons commonly referred to as the 'loan sharks' due to his occupation of lending money at exorbitant interests. Recently Juma loaned Ksh 100,000 to Naomi Jamal at a rate of 20% compounded per month. Due to what Naomi called the 'abnormal' interest rate, Naomi has defaulted. Hussein bin Juma has come to you for advice on how to recover his money which he now claims to have risen to Ksh 180,000 in four months.

- a) Advise Hussein about the 'Naomi deal' and for future deals (10 marks)
- b) Both the stare decisis and ratio decidendi in United Dominions Trust versus Kirkwood [1966] 2 QB 431 (10 marks)

QUESTION FOUR

Pesa Pap Bank Limited operates all over Kenya. Pesa Pap Bank Limited also owns 30% shares in Pesa Pap Insurance Company Limited. Pesa Pap Bank has recently loan Ksh 50 million to Pesa Pap Insurance Company due to liquidity problems in that

company. In addition, Pesa Pap Bank Limited last year advanced unsecured loans of Ksh 20 million to its employees. These loans have been outstanding for the last eight months. Due to the outbreak of the pandemic, some Pesa Pap Bank Limited's agents and directors have also borrowed from it. Pesa Pap Bank Limited has also loaned 27% of its core capital to one Nora who is described as 'Pesa Pap Bank's best customer.'

The Central Bank of Kenya is due to audit Pesa Pap Bank Limited in a week. Pesa Pap Bank Limited urgently wants your counsel.

In reference to the relevant provisions of the Banking Act, advise Pesa Pap Bank Limited (20 marks)

QUESTION FIVE

- a) Explain the meaning of negotiation in bills and when negotiation may be prohibited (3 marks)
- b) Discuss the importance of a signature in a bill (2 marks)
- c) With examples, explain the meanings of *per procuracionem*, *allonge*, *inchoate*, *sans recours*, and *sans frais* (5 marks).
- d) What is a ratification of bills and when can it be done? (3 marks).
- e) Name the different types of bank accounts (2 marks).

END