

BBM 412: BANKING LAW

MAIN EXAMINATION

Instructions: Answer question *ONE* and any other *THREE* Questions.

QUESTION ONE

- a. In the wake of 2019-2020 (Covid, 19) recession was triggered by a shock in the banking system. In fact, many economic downturns in the past 50 years, such as stock-market crashes and debt defaults, had financial-system origins. The current recession is different: it was triggered by a global pandemic. Discuss how the government should cushion the capital challenges, and how can the banking sector be streamlined dynamic environment.
(10 Marks)
- b. The role played by financial institutions is fundamental to economic growth. Discuss why banks collapse despite the effort taken by the central bank of Kenya to regulate and supervise the operations of financial institutions in Kenya.
(10 Marks)
- c. A customer has right to approach with his complaint. If the court is satisfied that the allegations contained in the complaint about are true, it may ask the banker to do one or more action. Discuss the various actions that might be undertaken by the complainant.
(5 Marks)

Total (25 Marks)

QUESTION TWO

- a. Define the term "Garnishee order". Highlight and discuss the types garnishee order and elements that must be present and the remedies for each giving examples. (7 Marks)
- b. Lien is a right of a person to retain goods belonging to another; until the demands of the person in possession are satisfied. Section 171 of the Indian Contract Act confers the right of general lien on the bankers. General lien entitles the banker in possession to retain goods and securities till all its claims against the customer are satisfied except in the various conditions. Discuss.
(8 Marks)

Total (15 Marks)

QUESTION THREE

- a. The relationship of a banker-customer can also be terminated by the process of law. Highlight and explain what can lead to the termination of such relationship. (7 Marks)

- b. The Endorsement means writing a person name on the back of instrument for the purpose of negotiation. Highlight and explain the legal provisions regarding endorsements. (8 Marks)

Total (15 Marks)

QUESTION FOUR

- a. What are the various characteristics and the types of negotiable instruments used in the market and its applicability? (7 Marks)
- b. In today's dynamic markets precaution in banking remains vital to the sector. The banker should highlight and discuss the precautions that must be observed while dealing with executors or administrators. (8 Marks)

Total (15 Marks)

QUESTION FIVE

- a. i) The County Government which comprises the County Executives and County Assemblies maintain various accounts at the Central Bank. These accounts are used to facilitate receipt and payment of funds in accordance with the Public Finance Management Act. With reference to the above statement, identify four types of accounts a county government would maintain with the Central Bank. (4 Marks)
- ii) Highlight five services that the Central Bank provides to the commercial Banks. (6 Marks)
- b. Hypothecation creates an equitable charge on movable property without possession. The mortgage of movable property for securing a loan is called Hypothecation. Outline the features and the precaution for guidelines in hypothecation. (5 Marks)

Total (15 Marks)

QUESTION SIX

- a. What is an assignment in banking law, how does it work in an economy. (6 Marks)
- b. The role of the central bank is to regulate all the financial institutions and are in charge of monetary policy in Kenya. In the last few years, the central bank employed the collection of 1000 notes which were in circulation; however, it did not succeed in collecting them to a tune of 7 billion. Discuss what could have led to this failure. (9 Marks)

Total (15 Marks)

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EXAMINATION

Instructions: Answer question *ONE* and any other *THREE* Questions.

QUESTION ONE

- a. The recession of 2008 was triggered by a shock in the banking system. In fact, many economic downturns in the past 50 years, such as stock-market crashes and debt defaults, had financial-system origins. The current recession is different: it was triggered by a global pandemic. Discuss how the government and society cushioned the capital challenges, and the resulting shocks to supply and demand in banking sector.
(10 Marks)
- b. The role played by financial institutions is crucial to economic growth. Discuss why banks collapse despite the effort taken by the central bank of Kenya to regulate their operations of financial institutions?
(10 Marks)
- c. What does the term "paying banker mean? Discuss the duties and responsibilities of paying banker.
(5 Marks)
- (Total: 25 Marks)

QUESTION TWO

- a. Define the term "tort". Highlight and discuss the tort action elements that must be present and the remedies of a tort giving example.
(7 Marks)
- b. Describe five powers of the central bank where an auditor's report reveals that a bank conducts its business in a manner contrary to the provisions of the Banking Act.
(8 Marks)
- (Total: 15 Marks)

QUESTION THREE

- a. "The Banking Act Cap 488 Laws of Kenya does not have an express definition of a customer and consequently, one must fall back to common law for a definition if any". The proper view as expressed in *Commissioner of Taxation V English, Scottish & Australian Bank Ltd. (1920) AC 683* is that it is not really a legal question but one to be resolved by what an intelligent business man would understand by a 'bank customer'. There are however several important legal issues to note when considering whether one is a customer or not. Discuss these legal issues.
(10 Marks)
- b. What are the characteristics and the types of negotiable instruments?
(5 Marks)
- (Total: 15 Marks)

QUESTION FOUR

- a. In the case of *Foley vs. Hill* the court held that the relationship between the bank and the customer is that of debtor and creditor. The bank is under general duty to pay cheques drawn by the customer as long as the account has sufficient credit balance. Discuss the various special relationships and how it can be terminated. **(10 Marks)**
- b. In today's dynamic markets precaution in banking remains key to the sector. Discuss the statutory protection to collecting banker. **(5 Marks)**

(Total: 15 Marks)

QUESTION FIVE

- a. i) The County Government which comprise the County Executives and County Assemblies maintain various accounts at the Central Bank. These accounts are used to facilitate receipt and payment of funds in accordance with the Public Finance Management Act. With reference to the above statement, identify four types of accounts a county government would maintain with the Central Bank. **(4 Marks)**
- ii) Highlight five services that the Central Bank provides to the commercial Banks. **(6 Marks)**
- b. Outline the various requirements for opening and operating a bank account. **(5 Marks)**

(Total: 15 Marks)

QUESTION SIX

- a. Discuss the instances when a Banker-Customer relationship can be terminated. **(6 Marks)**
- b. The role of central bank is to regulate all the financial institution and is in charge monetary policy in Kenya. In the last few months' central bank employed the collection of 1000 note which was in circulation however it did not succeed to collect to a tune of 7 billion. Discuss what could have led to this failure. **(9 Marks)**

(Total: 15 Marks)

BBM 412: BANKING LAW

EXAMINATION FOR FIRST SEMESTER 2022/2023 ACADEMIC YEAR

Instructions: Answer Question *ONE* and any other *THREE* Questions.

QUESTION ONE

- a. The role played by financial institutions is crucial to economic growth. Discuss why banks collapse despite the effort taken by the central bank of Kenya to regulate their operations of financial institutions? (10 Marks)
- b. Hypothecation creates an equitable charge on movable property without possession. The mortgage of movable property for securing a loan is called Hypothecation. In other words, in case of hypothecation, a charge over movable properties like goods, raw materials, goods in progress is created. Hypothecation is a charge against property for an amount of debt where neither ownership nor possession is passed to the creditor. Highlight and discuss the features and precautions to be undertaken in the hypothecation process.
 - Goods - Immovable - Documentation -
 - Location disclosed
 - Quantity (10 Marks)
- c. The banker's obligation to honour cheques extinguishes on receipt of a garnishee order from the court. A garnishee order is issued in two parts.
 Required: Summarize the two parts that a garnishee order consists of, and their applicability. (5 Marks)
 order nisi
 order absolute

(Total 25 Marks)

QUESTION TWO

- a. The relationship between the banker and customer is of a nature. The bank must not disclose to any outsider the details concerning the customer's account; as such disclosures may adversely affect the credit and business of the customer. Highlight and explain circumstance which the law permits such disclosure under the obligation to maintain secrecy. (7 Marks)
- b. The right to set off is a statutory right which enables a banker to combine two accounts in the name of one customer and to adjust the debit balance of one account with the credit balance of the other account. With reference to the banker's right to set off:
- Highlight four conditions necessary to exercise the right of set off. (4 Marks)
 - Describe four circumstances that will cause automatic set off. (4 Marks)

(Total 15 Marks)

QUESTION THREE

- a. The consumer protection act has been enacted for providing better protection to consumers and settling of appropriate authorities for settlement of consumer's disputes and other incidental matters. The term consumer includes a person who avails of any service for consideration. The term service includes banking or financing service also. A customer has right to approach with his complaint. The complaint may relate to any of the following matters. Discuss the rights of a customer. (10 Marks)
- b. Anthony, Benson and Charles operate a partnership under the trade name Tujijenge Traders. They have been in operation for six months, but not yet opened a bank account. Required: advice the partners on five requirements they meet in order to open a partnership account in a bank. (5 Marks)

(Total 15 Marks)

QUESTION FOUR

- a. i) Highlight the characteristics of promissory note. (4 Marks)
- ii) Endorsement means the writing of a person name on the back of instrument for the purpose of negotiation. Discuss the legal provisions regarding endorsements. (6 Marks)
- b. In today's dynamic markets precaution in banking remains key to the sector. Discuss the statutory protection to collecting banker. (5 Marks)

(Total 15 Marks)

QUESTION FIVE

- a. The recession of 2008 was triggered by a shock in the banking system. In fact, many economic downturns in the past 50 years, such as stock-market crashes and debt defaults, had financial-system origins. The current recession is different: it was triggered by a global pandemic. Discuss how governmental and societal cushioned the capital challenges, and the resulting shocks to supply and demand in banking sector. (10 Marks)
- b. All contracts made by lunatics are void except those made during lucid intervals. A customer may become a lunatic after opening his account with the bank. Explain the steps a banker should take on receiving notice of customer's insanity? (5 Marks)

(Total 15 Marks)

QUESTION SIX

- a. If some valuables are deposited with a bank for safe custody, then it is bailment and the bank cannot exercise the right of general lien. Elucidate? (6 Marks)

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- b. If someone sues one person claiming that the other person has violated the rights of his and has committed a tort, then certain defenses could be taken. The extent to which they apply against different torts, may, however, differ. Discuss some of the defenses which can be used in a tort.

(9 Marks)

(Total 15 Marks)

BBM 412: BANKING LAW
MAIN EXAMINATION

Instructions: Answer Question ONE and Any other THREE Questions

QUESTION ONE

An advocate has five separate accounts in your bank. (i) Personal account, (ii) Office 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 sh750,000 in his personal 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.600,000 in his personal account.

Upon review of his facilities the bank found that; There was a credit balance of Ksh.160,000 in the clients accounts, a credit balance of Ksh. 25,000 in the office 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 ^{key as in locker} though not known to the bank had a golden ring worth ksh.2million. He also had a fixed deposit of Sh. 260,000 maturing after 3months. He had also left some shares with the bank, of the approximate value of sh.135,000 with instructions to sell them at 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 and its legal rights of lien. (25 marks)

QUESTION TWO

a) In relation to the bank-customer relationship;

- i. Explain the duties of the bank towards the customer. (5 marks)
- ii. Termination of the banker-customer relationship. (3 marks)

b) What is the effect of the following on a bank's mandate to pay a cheque? ^{fr. d}

- i. Death of a husband in a joint account with his wife. ^{cheque will be paid} (2 marks)
- ii. Bankruptcy of an agent who has already signed a cheque on behalf of the principal. ^{would be paid} (3 marks)
- iii. A Garnishee order affecting the customers accounts. (3 marks)

QUESTION THREE

a) Mr. A has an account with Equity Bank Ltd. On 9th Jan 2017, 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 10th Jan 2017, Equity Bank dishonoured

it since the credit balance in MR A'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 Mr. A refused him any further credit. Mr. A is aggrieved and has sued Equity Bank for damages. Explain the legal position. (5 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 in fact 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.

Explain the legal position.

(5 marks)

c) Explain the various circumstances under which a bank can ignore its duty of secrecy.

(5 marks)

QUESTION FOUR

a. What is an equitable mortgage? And what are the procedures of creating such a mortgage? (5 marks)

b. What precautions would you take before accepting equitable mortgage as a security? (5 marks)

c. Describe the various types of charging securities and methods of charging them to cover bank advances. (5 marks)

QUESTION FIVE

Explain the following with short notes:

a. Rights of appropriation by the bank (3 marks)

b. Hypothecation (3 marks)

c. The terms "holder in due course" and "holder for value" of a bill of exchange, and outline their legal rights. (5 marks)

d. A banker's right of lien. (3 marks)

QUESTION SIX

Section 3 (3) of Cap 491 provides that the Central Bank of Kenya "shall exercise any type of banking functions unless specifically excluded under the act, and shall enjoy all the prerogatives of the Central Bank".

a. Briefly discuss the functions of CBK. (9 marks)

b. Section 11(1) of the CBK act provides that central bank of Kenya shall be managed by a board of directors.

i. Outline the composition of the CBK board members. (3 marks)

ii. Which individuals cannot qualify for appointment to this board of management. (3 marks)

END

Guinness

Dep. Secy

Pro Secretary

Director

non executive directors

Board 2 years
Under 100 million