

KABARAK



UNIVERSITY

UNIVERSITY EXAMINATIONS

2011/2012 ACADEMIC YEAR

FOR THE DEGREE OF BACHELOR OF EDUCATION ARTS

KLAW 317: BANKING LAW AND PRACTICE

DAY: WEDNESDAY

DATE: 28/03/2012

TIME: 2.00 – 4.00 P.M.

STREAM: Y3S2

INSTRUCTIONS

1. Answer Question 1 and **any two** other questions
 2. Question 1 carries 30 marks. All other questions carry **Equal(20)** marks
 3. No materials are to be brought into the examination room
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1. a) Mr. Kariuki has an old savings account with National Bank – Nakuru branch in his name. He used to cash his cheques personally or on many occasions through his wife Mrs. Kariuki, Mrs. Kariuki somehow got hold of Mr. Kariuki's cheque book and over a period of time she managed to withdraw cash of Kshs 240,000/= which amount she withdrew 50 times by forging Mr. Kariuki's signature on cheques. The Bank did not notice the forgery and Mr. Kariuki did not inform the bank about the unauthorized withdrawals, even though the bank statement in respect of the affected account were sent to him. After the death of Mrs. Kariuki, Mr. Kariuki brought to the notice of the bank the debits to his account which were not authorized by him. Upon investigations by the bank, it was revealed with the help of handwriting experts that the signatures on the cheques were forged. Mr. Kariuki demanded a refund of Kshs 240,000/= from the bank contending that the bank was negligent in making the payments, the subject of the complain. On inquiry the Bank found that Mrs. Kariuki had used the money for some personal purposes and that Mr. Kariuki was aware of this fact but that notwithstanding, he kept silent. Subsequently, however, when he refused her

(Mrs. Kariuki) more money and threatened to inform the police about the matter, she committed suicide.

Discuss the liability of the Bank, if any, to Mr. Kariuki. (10 Marks)

b) "The relationship between a bank and its customer is primarily Debtor – Creditor". Discuss the extent to which you agree with this statement. Illustrate your answer with decided cases. (20 Marks)

2. a) Discuss the justification for the need for a legal framework for regulation of the banking industry in Kenya. (10 Marks)

b) Briefly discuss how the Banking Act Cap 488 (Laws of Kenya) protects a customer's deposits. (10 Marks)

3. a) Who is a "Holder in Due Course" within the context of Banking Law and Practice? (10 Marks)

c) Explain the contractual terms (clauses) included in contract between a bank and a customer for the provision of ATM services (10 Marks)

4. a) Discuss the elements of Banking Fraud. (10 Marks)

b) Explain the principal functions of the Central Bank of Kenya as provided for in Central Bank of Kenya Act, Cap 491 and as modified by amendments to the Act in 1996 and 2003. (10 Marks)