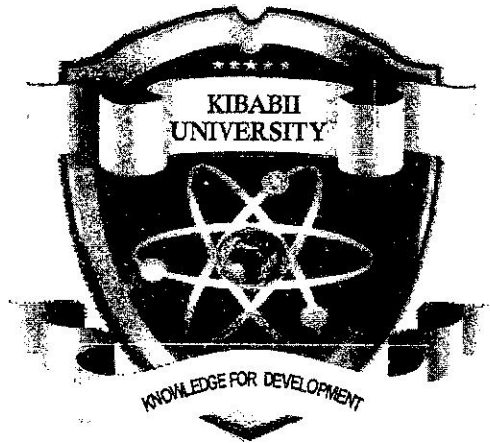


# **KIBABII UNIVERSITY**



## **UNIVERSITY EXAMINATIONS MAIN EXAM**

**2019/2020 ACADEMIC YEAR**

**THIRD YEAR FIRST SEMESTER**

**FOR THE DEGREE OF BACHELOR OF COMMERCE**

**COURSE CODE: BCF 335**

**COURSE TITLE: FINANCIAL LAW**

**DATE: 18/12/2019**

**TIME: 11.00 A.M**

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### **INSTRUCTIONS TO CANDIDATES**

**Answer Question ONE (compulsory) and ANY OTHER TWO questions**

## SECTION A (COMPULSORY)

### QUESTION ONE

Read the following case and answer the questions that follow:

The Capital Markets Authority (CMA) has warned the public against investing in a capital raising venture by a firm targeting women investors. The regulator said Monday that the activities of the Nairobi-based firm going by the names WIE Limited or Women Investing in Entrepreneurship (WIIE) are not authorized. CMA said an undisclosed amount of money has already been raised from 279 unnamed women.

"The Authority's preliminary investigations revealed that WIE Limited has been raising money from the public through a public offer of shares targeting women as their customers and also branding itself as a women's income and wealth incubator," said CMA chief executive Paul Muthaura in a statement. "WIE Limited business model furthermore seems to have been endorsed by various women celebrities in the country in a bid to lure more women investors."

He added that CMA in collaboration with other law enforcement agencies has frozen the company's bank account pending further inquiries, noting that the nature and features of the capital raising by WIE is taking the form of a regulated activity, which has, however not been approved by the regulator.

The CMA said WIE was offering 65,000 shares to investors clustered into 10 lots of 6,500 shares each — for Sh10,000 in the first month, Sh15,000 in the second month, Sh25,000 in the third month and Sh35,000 per 10 shares in the fourth month. "Based on this model and the attached prospectus from the firm, the share price was variable. The funds were intended to facilitate promotion of the Women Investing In Entrepreneurship (WIIE) concept. It is noted that the company has since deactivated its social media accounts," said the CMA. "Members of the public are therefore urged to exercise caution before participating in any public offer lacking regulatory sanction."

Efforts by the Business Daily to reach the firm were futile as its telephone contacts provided on its website did not go through. In its prospectus, the firm is dangling a 25 percent return in front of prospective investors, rising as a result of making referrals down the road in a scheme reminiscent of multilevel marketing or a pyramid scheme. *(CMA warns against firm wooing women investors only. <https://www.nation.co.ke/business/CMA-warns-against-firm-wooing-women-investors-only/996-5258298-pyx6omz/index.html>)*

#### Required:

- a) Based on the above case what was the extent of the powers of the Capital Markets Authority (5 Marks)
- b) Explain Whether CMA had acted ultra vires its powers in appointing committee to investigate the activities of WIE Limited (5 Marks)
- c) Discuss the reasons that may necessitate the revocation of the license for a person dealing in the security industry (5 Marks)
- d) Briefly explain the legal preconditions for efficient financial laws in the financial markets (7 Marks)
- e) Explain the qualifications needed by WIE Limited for admission as a trading participant or authorized securities dealer (8 Marks)

## SECTION B (CHOOSE ANY TWO QUESTIONS)

### QUESTION TWO

Wananchi Ltd Company is a public company in need of capital to finance mass production of its newly invented computer software whose market research indicates possibilities of high demand in the economy. Advise the company on the following

- i). The various forms of securities(collateral) required to secure funds (10 Marks)
- ii). The various sources of finance for a public company (10 Marks)

### QUESTION THREE

- a) "The primary relationship between a banker and its customer is that of a debtor and creditor". Discuss the extent to which you agree with this statement. Illustrate your answer with decided cases. (12 Marks)
- b) Mr. Wasike has a current account with XYZ bank. He gave a cheque of Ksh.150,000 to Mr. Wamalwa dated 15<sup>th</sup> November 2019. When the cheque was presented for payment by Mr. Wamalwa, the bank discovered that Mr. Wasike had Ksh.149, 999 in the account. The bank paid the entire amount to Mr. Wamalwa. Explain whether the bank was right in honouring the cheque by paying Ksh. 149,999 to Mr. Wamalwa (8 Marks)

### QUESTION FOUR

Without appropriate regulatory framework the capital market would not thrive in any economy. Explain this statement noting to capture the historical development of capital markets in Kenya, the role played by the relevant legal framework and institutions in this sector and your recommendations for further development (20 Marks)

### QUESTION FIVE

- a) Mr. Shem recently bought shares through Suntra stockbrokers. On going to collect his share certificate as he was used to when he last bought share, which was quite a long time ago, he was informed that the share certificates are no longer issued since the introduction of the Central Depository and Settlement Corporation (CDSC). He fears that it may be a lie. Having being told you are "guru" in financial law he approaches you for advice. Advise him on:-
  - i). Benefits of having a CDS account (5 Marks)
  - ii). Requirements of operating a CDS account by Simon (5Marks)
  - iii). The process of depositing shares in the CDS account (5Marks)
- b) Discuss the potential sanctions or liabilities for participating in corporate or business fraud in Kenya (5 Marks)