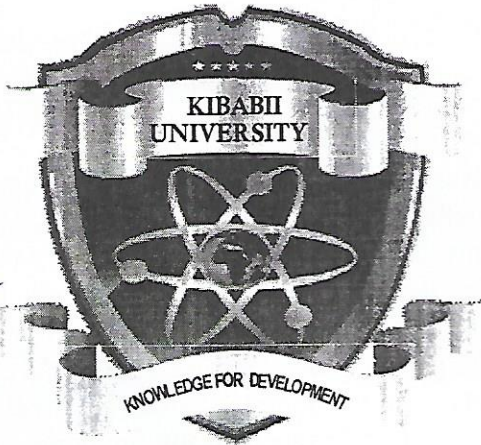


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UNIVERSITY EXAMINATIONS MAINEXAM

2018/2019 ACADEMIC YEAR
THIRD YEAR FIRST SEMESTER

FOR THE DEGREE OF BACHELOR OF COMMERCE/BUSINESS
MANAGEMENT

COURSE CODE: BBF 312/BCF 335

COURSE TITLE: FINANCIAL LAW

DATE: 29/01/2019 TIME: 2.00 PM – 4.00 PM

INSTRUCTIONS TO CANDIDATES

Answer Question ONE (compulsory) and ANY OTHER TWO questions

SECTION A
QUESTION ONE

Read the following case and answer the questions that follow:

Following boardroom wrangles between rival directors of CMC Holdings Limited (CMCH) which spilled into the public domain, the Capital Markets Authority (CMA) took the decision to suspend the trading in CMCH's shares on the Nairobi Stock Exchange (NSE) pending investigations. Prior to intervention by the CMA, CMCH had instructed PricewaterhouseCoopers (PwC) to carry out a forensic investigation covering some specific areas of its business and table a report to it. The CMA separately commissioned Webber Wentzel, a South African firm, to conduct a forensic investigation into defined aspects of the financial operations of CMCH and its trading subsidiaries. Webber Wentzel was also asked to review the PwC Report and comment on the methodology applied and the conclusions drawn by PwC. The CMA sent the Petitioner a copy of the Webber Report *via* a letter and notified him through the same that the Board of the Authority had resolved to appoint an ad hoc Committee under section 14 of the Capital Markets Act. The Committee would consist of five persons with a majority of independent members. The Petitioner was requested to appear before the Committee. However through his advocate the Petitioner wrote a letter to the Committee stating that he would not appear before it as participating in its proceedings would occasion grave prejudice to him and to Court proceedings on the same subject matter, which were either pending or were likely to be instituted. The Committee conducted its investigations and upon conclusion submitted its recommendations to the CMA Board. The CMA subsequently issued a press release announcing that it had taken an enforcement action against executive and non-executive directors allegedly found to have flouted the capital markets' legal and regulatory requirements in relation to the affairs of CMCH. Further that the Petitioner had been disqualified from any appointment as director of any listed company or licensed or approved person, including a securities exchange in the capital markets in Kenya. (*Jeremiah Gitau Kiereini v Capital Markets Authority & another Petition No 371 of 2012*)

Required: Discuss

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- i). Whether the High Court had jurisdiction to determine disputes arising from decisions by the Capital Markets Authority (CMA) in light of section 35A that established the Capital Markets Tribunal. (10 Marks)
 - ii). Whether the investigative and enforcement action taken by the CMA against the Petitioner without granting him the right to be heard or without proper notice of allegations against him was an infringement of his right to fair administrative action and right to fair hearing as provided under article 47 and 50 of the Constitution. (10 Marks)
 - iii). Whether the investigation and decision by the CMA were sub judice in so far as there were civil proceedings pending in the High Court on the same subject matter. (6 Marks)
 - iv). The legal preconditions for efficient financial laws in the financial markets (4 marks)

SECTION B

QUESTION TWO

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- a) Mr. Odhiambo 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 (5 Marks)
 - iii). The process of depositing shares in the CDS account (5 Marks)
- b) Discuss the reasons that may necessitate the revocation of the license for a person dealing in the security industry (5 Marks)

QUESTION THREE

- a) With the aid of statutory and judicial authority explain the following terms
- i) Bank (2 Marks)
 - ii) Bank Business (3 Marks)
 - iii) Bank Customer (3 Marks)
- b) You are a member of a leading international bank Zurich Bank Plc with its headquarters in Switzerland. In the last Annual General Meeting, the members resolved that they should establish a foreign representative office in Kenya. Due to your knowledge in Financial Law you were appointed the chairperson of the committee to steer this process. In relation to the Kenya's Banking Act 2014, advice your committee on the following:-
- i). The steps a foreign banking institution is required to follow in applying for authority to open a representative office in Kenya (8 Marks)
 - ii). The various prohibitions and restrictions in respect of banking and financial business in Kenya (4 Marks)

QUESTION FOUR

- a) In relation to the Law of Bank Lending and Advances, discuss the principles considered in lending policies of commercial banks (6 Marks)
- b) Commercial banks are business entities which are established for the purpose of carrying out banking operations with the aim of earning reasonable returns for the shareholders. This implies that such organizations cannot be operated effectively and efficiently without internal laws, regulations, policies and procedures for transacting banking business. Hence the need for operating policies by commercial banks cannot be overemphasized.

Required:

- i) Explain the critical areas relating to lending for which banks normally set policies (8 Marks)
- ii) Describe the lending procedure for loans and advances to the customers of banks (6 Marks)

QUESTION FIVE

- a) In relation to the Law governing negotiable instrument:-
- i) Describe the various forms of qualified acceptance of a bill of exchange (6 Marks)
 - ii) Discuss four types of endorsements that may be made on a bill of exchange (8 Marks)
- b) Discuss the major arguments in favour and against insider trading (6 Marks)

- four signs of
- Indorsement
- Side note
- Crossed note
- other the word
- agree mark

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2/10