GARISSA UNIVERSITY

SCHOOL OF BUSINESS AND ECONOMICS

DEPARTMENT OF BUSINESS MANAGEMENT

COURSE CODE: BBM 412

UNIT TITLE: BANKING LAW

MAIN EXAM PAPER, YEAR 4 SEM 1

ACADEMIC YEAR 2020/2021.

CASE STUDY

The bank-customer relationship is contractual in nature and it may therefore be said that a bank has a contractual duty to its customer to exercise reasonable care and skill. In *Karak Brothers Company Ltd v Burden (1972) All ER 1210* the Court had this to say about a bank’s contractual duty to its customer:-

“*…. a bank has a duty under its contract with its customer to exercise “reasonable care and skill” in carrying out its part with regard to operations within its contract with its customer. The standard of that reasonable care and skill is an objective standard applicable to bankers. Whether or not it has been attained in any particular case has to be decided in the light of all the relevant facts, which can vary almost infinitely.*”

A bank’s duty of care to its customers may also arise concurrently in tort. The case of *Hedley Byrne v Heller & Partners Ltd (1963) 2 All ER 575* introduced the idea of “assumption of responsibility” by recognising liability for pure economic loss not arising from a contractual relationship.

A bank’s duty of care to its customers is wide and ranges from protecting a customer from fraud by agents such as directors and partners in issuing cheques and other payment instructions, to ensuring that the financial advice it issues is sound and reliable, to explaining the meaning and effect of security documents. The list is not exhaustive and whether a bank owes a duty of care is determined on a case by case basis, the test being whether the customer has suffered injury due to action or inaction of the bank that the bank ought to have reasonably foreseen the action or inaction as likely to injure the customer. In light of the above case studies:

QUESTION ONE

1. Discuss the various obligations and rights on the banker as well as the customer. [ 6 marks]
2. Discuss the customer identification procedures that the bank should undertake when receiving customers. [3 marks]
3. Outline the circumstances under which the Bank may refuse payment of a cheque from a customer [ 5marks]
4. Outline and explain the basic characteristics of Banking, as a service provider to customers. [5 marks]
5. Banker-customer relationship is a contractual relationship between two parties and it may be terminated by either party on voluntary basis or involuntarily by the process of law. Discuss? [6 marks]
6. In case of minor, a banker would open a joint account with the natural guardian. However to encourage the habit of savings, banks open minor accounts in the name of a minor and allows single operations by the minor himself/ herself. Such accounts are opened subject to certain conditions. Outline the various conditions? [5 marks]

QUESTION TWO

1. Define Banking law [2 marks]
2. Outline the various sources of Banking law in Kenya [6 marks]
3. Discuss the principle object of establishing Central Bank of Kenya ( CBK) [ 6 marks]
4. What are some of the factors that banking law regulates? [6 marks]

QUESTION THREE

1. Outline the main functions of central Bank of Kenya [8 marks]
2. Discuss the following terms in relation to Central Bank of Kenya Act (CAP 491)
3. Authorized capital of the Bank [2 marks]
4. General reserve fund [ 2 marks]
5. Common seal and power of attorney [ 2 marks]
6. Discuss the regulation guiding foreign exchange dealings under the central Bank of Kenya Act (CAP491) [6 marks]

QUESTION FOUR

1. Outline the various functions of commercial banks in Kenya under the Banking act (CAP 488) [7 marks]
2. Outline the core responsibilities of board of directors of Central Bank of Kenya

[7 marks]

1. Give a brief description of the following in reference to Central Bank of Kenya act (CAP 491)
2. Monetary policy statement [2 marks]
3. Monetary policy committee [2 marks]
4. Reserves of external assets [2 marks]

QUESTION FIVE

1. Define negotiable instrument [2 marks]
2. Explain the various types of a negotiable instruments [6 marks]
3. Discuss the regulations guiding commercial Banks and other financial institutions with regard to reserves and dividends as stipulated in Banking Act (CAP 488)

[6 marks]

1. In Kenya, Banks are facing allot of risks like robbery, money laundering, terrorism and more others, as a banking law student give an advice to Bank Mangers on how to overcome such factors having in mind the developing technology and the risk involved. [6 marks]