KENYATTA UNIVERSITY
UNIVERSITY EXAMINATIONS 2011/2012

SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LCC 401: BANKING LAW

DATE: WEDNESDAY, 18TH APRIL 2012 **TIME: 3.00 P.M. – 5.00 P.M.**

INSTRUCTIONS:

1. Please answer **QUESTION ONE** and **ANY OTHER TWO** questions.
2. Please note that penalties accrue for failure to answer question One.
3. Support your answer with illustrations from relevant case law, statutory provisions, and any other relevant references.
4. Write neatly and legibly.
5. Your answer script must bear student registration number and serial numbers of the question you attempted to answer.

QUESTION ONE (July 2008)

Citizens' Bank of Kenya Ltd. (the "Bank") is an institution duly licensed to carry on banking business in Kenya. The Bank has not been performing well due to intense competition in the banking industry. The Bank's Board of Directors has therefore hired a young banking professional as the Chief Executive Officer (CEO) with strict mandate "to increase The Bank's profitability by 200 % within a period of six months, failing which his contract with the Bank will be terminated". Eager to meet this profitability target, the CEO proposes to introduce a number of "cost cutting" and "efficiency maximizing" measures in the banking operations. The proposed measures are as follows:

1. Previously, the Bank's policy was to shred all papers which were not to be filed away. So as to ensure efficient use of paper, it has now been decided that old papers shall be recycled and those which cannot be recycled will be sold to third parties so as to generate additional income for the Bank.

2. So as to reduce the cost of correspondence and phone calls , it has been decided that :

    a) No staff member shall make "unnecessary phone calls" to customers when in doubt as to the authenticity of a cheque or when forgery is suspected;

b) All unpaid cheques will be returned with a letter to the payee explaining in great detail, the reason for non- payment.

3. Although the Bank's advertised closing time is 15. 00 hours, the cashiers shall stop accepting withdrawal instructions and cheque deposits at 14.00 hours so that they can "assist under-staffed departments".

4. So as to substantially reduce the cost of default in loan repayment before advancing any money to customers the Bank's Branch Managers should satisfy themselves that the purpose for which the money is lent, is viable. Where the proposed business is not viable, the Bank's Managers should suggest other alternatives and also give appropriate advice.

You are the Bank's Legal Adviser and the Bank's CEO has sought your opinion. Advice the CEO of the Bank on the legal implications of the proposed measures.

(30 MARKS)

QUESTION TWO

Outline and discuss in detail major regulatory and supervisory functions of the Central Bank of Kenya as an oversight authority of Kenya's banking sector.

(20 MARKS)

QUESTION THREE

"The bank's duty of confidentiality is not absolute but is subject to a number of exceptions..."
Tournier v. National Provincial and Union Bank of England (1924).

"There is a distinction that should always be there between the standard to be applied in case of cheque drawn on a personal account where the loss to the owner of the cheque is confined to the same individual and cheque drawn on behalf of a government where there is need to protect the interest of the public to avoid losses due to possible conspiracy between the signatories of the cheque and the customers..."

Court of Appeal in *Standard Chartered Bank (K) Ltd. v. Intercom Services Ltd and Nderitu* (2003)
With reference to the above quotations and relevant case law critically analyze the banks' duty of confidentiality generally and also comparing it with the exception of public interest.

(20 MARKS)

QUESTION FOUR

a) With reference to relevant case law, explain the meaning of the terms "*banker*" and "*customer*".

(10 MARKS)

b) Explain from a legal standpoint, why is it important to determine whether or not a "*banker/ customer relationship*" exists and whether or not a person is a customer of a given bank.

(10 MARKS)

QUESTION FIVE

Write explanatory notes on any 4 of the following:

a) The banker's right to lien - **(5 MARKS)**

b) The banker's right of consolidation and set-off as security for advances **(5 MARKS)**

c) Guarantees **(5 MARKS)**

d) Legal nature of banker and customer relationship **(5 MARKS)**

e) Banker's liability to its customer in tort of defamation **(5 MARKS)**

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