



**THIRD YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2022/2023
(SEPTEMBER-DECEMBER, 2022)**

LLBK 318: BANKING LAW AND PRACTICE

STREAM: LLBK Y3 S1

TIME: 2 HOURS

DAY: WEDNESDAY, 3:00 – 5:00 P.M.

DATE: 21/12/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

Tony, a 23-year-old university student recently lost his father and being the sole beneficiary in his father will, he received a substantial amount of money. Tony was afraid of banking his money in the fear that the bank might not have the money when he goes to withdraw the same, and he opted in hiding the money under his mattress in his university hostel. Tony remembered that when he was joining his first year in the university, he opened an account with XYZ bank in the hope that his Higher Education Loans Board (HELB) disbursements would be channeled through the account. Unfortunately, he did not qualify for the HELB loan and he had never transacted with the account. He has approached the bank, XYZ Bank, for investment advice as to what he should do with his inheritance money. Tony has explained to the investment manager assigned to him, Mr Francis, all the circumstances of the case, including the amount he inherited and where he has kept the money. Mr. Francis gave a list of investment options that were viable at that moment to Tony, and Tony promised to get back to the bank after he has made up his mind on the option to take. Mr. Francis then proceeded on leave, and in one of the evenings in a jovial mood, narrated to his friend how he received a very

ignorant client that had inherited a lot of money, but feared to deposit the money in a bank and hid them under a mattress in his hostel instead. Two weeks later, Tony approached the bank with half of the inheritance money, and invested in one of the companies that he had been advised by Mr. Francis to be viable. Unbeknown to Tony, the Company he decided to invest in had become liable in a defamation suit a week after Mr. Francis's advice and was going through financial challenges. Upon reaching his hostel that evening, he found the door to his hostel broken and the other half of his inheritance money missing from under his mattress. The next day, the company Tony invested in collapsed, and Tony lost all his investment. Tony is devastated. He has come to you for advice on whether the bank can be liable. The thief has never been found.

Advise him.

(30 Marks)

QUESTION TWO

- a) In the case of *Tournier v National Provincial and Union Bank of England (1924)1 KB 461*, it was held that the banker must not disclose the position of a customer's account except on reasonable and proper occasions.

Discuss the exceptions to this rule

(8 Marks)

- b) Discuss the challenges faced in the regulation of Crypto-currencies and Mobile-Banking

(8 marks)

- c) List FOUR roles of International Financial Institutions

(4 Marks)

QUESTION THREE

- a) Discuss FOUR types of regulation models that might be used in the regulation and supervision of the banking sector in Kenya

(8 marks)

- b) Differentiate between 'Basel II' and 'Basel III' accords

(4 Marks)

c) Explain the following terms in relation to the independence of the Central Bank

i) Institutional Independence

ii) Good Independence

iii) Financial Independence

iv) Functional and operational Independence

(8 Marks)

QUESTION FOUR

a) Explain FOUR functions of the Deposit Protection Fund in Kenya

(8 Marks)

b) Hustlers DTM Limited is a microfinance institution licensed by the Central Bank of Kenya to carry out deposit-taking business. You have been recently appointed as an officer in the legal and compliance department of DTM Limited. During one of the stakeholder engagements, you are tasked with the explanation of the SIX Circumstances under which the Central Bank might by notice, revoke the license of Hustlers DTM Limited.

Discuss them.

(12 Marks)

QUESTION 5

a) Explain FOUR requirements for negotiable instruments to be valid

(8 Marks)

b) Briefly explain the statutory and non-statutory protection available to the paying bank in negotiable instruments

(8 Marks)

c) Discuss TWO types of holders of a Bill

(4 Marks)