



**BACHELOR OF FINANCIAL SERVICES**  
**END OF SEMESTER EXAMINATION**  
**BFS 1205: BUSINESS LAW AND INSTITUTIONAL GOVERNANCE**

**Date:** Thursday, 15<sup>th</sup> April 2021

**Time:** 2 Hours

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**Instructions**

1. This examination consists of FIVE questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions.

**Question One**

A contract comes into existence when an offer by one party is unequivocally accepted by another and both parties have the requisite capacity. Once an offer is accepted, an agreement arises between the parties as there is consensus between them. Offer and acceptance constitutes the foundation of a contractual relationship. They do not constitute a contract as a contract must be characterized by other elements. Some consideration must pass and the parties must have intended their dealings to give rise to a legally binding agreement. The purpose of the agreement must be legal and any necessary formalities must have been complied with. **Anon**

- a) Differentiate between an offer and an invitation to treat. **(4 Marks)**
- b) With the aid of decided cases give three examples of invitation to treat. **(6 Marks)**
- c) Discuss the two factors a Court will consider to determine whether parties had the intention to create legal relations. **(4 Marks)**
- d) State and briefly explain three vitiating factors of a contract. **(6 Marks)**

The Judicature Act chapter 8 laws of Kenya provides that the courts should exercise their jurisdiction according to the named sources of law. State and briefly explain five written sources of law in Kenya. **(10 marks)**

**TOTAL 30 MARKS**

**Question Two**

The International Monetary Fund held a law and financial stability seminar titled promoting financial stability through the rule of law on the 16-18 May 2016 at IMF Headquarters in Washington, D.C. The seminar drew high-level legal experts and policymakers from over 80 member countries to discuss the progress made in strengthening financial regulatory systems since the global financial crisis. The purpose of the seminar was to illustrate the important role that the law plays in contributing to financial stability, at the international, regional, and national levels. You received an invitation to attend the seminar as one of expert policy makers and were requested to comment on the following:

- a) The three conceptions of the rule of law according to constitutional jurist Albert Venn Dicey. **(6 marks)**
- b) Briefly explain the any five factors that undermine the rule of law. **(5 marks)**
- c) Expound on the three arms of the national government of Kenya and their constitutional roles. **(9 marks)**

**TOTAL 20 MARKS**

**Question Three**

DENT is a company registered in Kenya and carrying out carpentry business. DENT has instructed Mshamba Financial Agency (MFA) to inspect and audit their books of accounts and give them investment advice on expanding their business. It happens that MFA has hired incompetent and poorly trained financial analysts who have only pursued a certificate course in computer. They lack the necessary expertise to effectively inspect and audit books of accounts and give financial advice. DENT has made enormous losses due to their incompetence and has approached you for legal advise on:-

- a) The appropriate tort they should base their cause of action in court against MFA. (state and define the tort) **(3 marks)**
- b) Critically analyse the grounds or elements that DENT must adduce in court to succeed in their claim above. **(9 marks)**
- c) What are the defences available for the tort identified in (a) above and can MFA rely on any of these defences. **(8 marks)**

**TOTAL 20 MARKS**

**Question Four**

Agency has been defined by Prof. Fridman as ‘The relationship that exists between two persons when one called the agent is considered in law to represent the other called the principal in such a way as to be able to affect the principal’s position in respect to strangers to the relationship by the making of contract or the disposition of property’ Discuss any four modes of creation of an Agency relationship illustrating your arguments using decided case law. **(20 Marks)**

**TOTAL 20 MARKS**

**Question Five**

- a) The Judiciary in Kenya consist a systems of courts within a hierarchy. A court of law can seat either as a criminal court or a civil court. Give six main differences between the criminal procedure and the civil procedure in Kenya. **(12 Marks)**
- b) State and discuss the four fundamental features of incorporated business associations such as a private company. **(8 Marks)**

**TOTAL 20 MARKS**