



Uganda Martyrs University

Faculty of Law

Business Associations Law I

Final Exam

Bachelor of Laws (LLB3)

10th March 2022

Start Time: 10.00 am (EAT)

Instructions:

**** Read these instructions carefully. Perhaps, more than once. ****

- 1. This is an OPEN BOOK examination. The use of course and other research materials to comprehensively answer the examination questions is permitted.**
 - 2. The answers you submit must be written entirely by you with no resemblance in logic or prose to any other submitted or existing work. Specifically, you are not to copy a colleague's work, write responses under dictation, plagiarise any other works, or contract out the undertaking of this examination. The inimitability of your submissions will be scrutinised.**
 - 3. Failure, neglect or refusal to comply with instruction no. 2, shall lead to your disqualification from this assessment and further disciplinary action in accordance with university rules.**
 - 4. You are to answer ALL questions**
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QUESTIONS:

1. Upon returning from a foreign engagement on behalf of your law firm, *Peregrine Advocates*, you find your fellow partners up in arms. They allege that you obtained credit on behalf of the firm two days ago and the money is not reflected on any of the firm's bank accounts. They show you an approved loan application on the firm letterhead and a signed loan agreement for US\$ 250,000 with your name and signature on it. They also bring a money transfer advice from the Bank indicating that the money was transferred to an offshore account in Seychelles. You are named principal signatory of that account. The bank insists that all its due diligence procedures were followed before the loan was disbursed to the firm. The wiring instructions the bank received from its counterparty in Seychelles included your signature and photo. The bank has impressed upon the firm that failure to pay the loan according to the amortisation schedule will force it to report the matter to the Uganda Law Council and, thereafter, initiate expedited legal action to recover the entire loan, interest, and applicable damages. You recall that just before you left for Seychelles, you met with a potential client in your office. Your secretary was out for lunch, so you walked over the office printer to retrieve the firm's capacity statement and retainer policy for the short, stout dark-skinned fellow who you seem to recall said he worked for an energy company in Angola. His name was Alphonse Delgado. The meeting took less than fifteen minutes, five of which you spent at the office printer. In fact, after exchanging parting pleasantries with the man, you thought nothing more of it until the night of your return. That evening, while watching the news with your worried spouse, you see a mugshot of the very man who was in your office three weeks ago. The news caption read: "*Notorious conman apprehended, dies in police custody.*" You dash to the bank first thing the next morning and request for CCTV footage of the loan application date. The bank's chief of security obliges and, as you both review the recordings, you notice the same man walking into the loan manager's office with a manila envelope. He leaves the bank twenty-five minutes later. This appears to be more than a coincidence but, the bank's loan department states that it has no records of any dealings with an Angolan national of the name and description you provided. They tell you that the man in the CCTV footage is a regular customer and that they cannot disclose any other information about him pursuant to the sanctity of banker-customer privilege.

Write a legal memo to the firm advising on the matter and next course of action. [30 marks]

2. Having recently graduated from UMU Law School, you decide to create a company limited by shares. You believe that you have the requisite knowledge to accomplish that and so, you persuade some of your former classmates to join in the formation of the company. Three of them including yourself agree to function as promoters and five commit to subscribe for shares upon presentment of the constitutive documents. All of this is reduced to writing in the form of a memorandum of understanding in which the roles of each group are clearly stipulated, the promoters will act on behalf of the subscribers and do all things necessary to ensure that the company's timely incorporation including raising initial capital for the purchase of the first consignment of goods that the company will sell. An option is given to the promoters in the same document to become members of the company upon incorporation. One subscriber provides a reservation clause in which he will indemnify the business association only up to 6% of the nominal capital of the proposed company in the event of promotional failure thereby limiting his exposure to financial ruin. The eight of you sign the document in earnest.

However, unknown to the rest of you, one subscriber proceeds to register the memorandum as a deed of partnership and reserves a business name, *Corona Engineering Supplies*. Since you will be dealing in copper plumbing products for residential houses and medium-sized commercial buildings, she advises that you secure a loan in the names of *Corona Engineering Supplies* such that the products can be purchased at the current depressed prices and sold at a higher price to the government's *Corona Vaccine Development Taskforce (CVDT)* that is building laboratories in Namanve Industrial Park. Merchant Bank EA lends the promoters UGX. 500,000,000 at 15% interest p.a. in the names of *Corona Engineering Supplies* for the benefit of *Corona Engineering Supplies Ltd*, which shall (it is expressly stated) adopt the credit upon incorporation at a reduced interest rate of 12% p.a. The 3% spread on interest is to cover the marginal risk of default by the promoters prior to the adoption. Notably, the incorporation formalities were to commence upon loan signature such that amortisation would begin as the company is being incorporated and property in the goods is transferred to the CVDT. For collateral, two of the promoters put up a fifty-acre vegetable farm in Buddu that they recently inherited from an auntie who succumbed to tuberculosis. You and the five subscribers agree to reward them with 30% of the shares of the proposed company and a debenture worth UGX. 350,000,000 at 5% interest p.a. against company liquidity. However, upon approaching the companies' registry for reservation of name, the proposed name is rejected because another business association – a partnership – already exists that with the same name. This sets the process of incorporation back six months by which time, the promoters are broke and cannot make the monthly loan payments. They desperately need to incorporate the company, such that it can step into their shoes and pay the loan. It is clear that the bank will foreclose on the vegetable farm, the promoters will not be able to exercise the option of becoming members of any newly incorporated company, and all of you are facing legal action from Merchant Bank EA in your joint and several capacities. You are all now facing bankruptcy and your nascent legal career may not survive the disrepute.

Prepare a well-reasoned legal brief for an emergency meeting to advise your colleagues on the way out of this conundrum. [30 marks]

3. Agency has always been regarded as the glue of commercial law. Yet, the jurisprudential and functional modalities of agency take extensive liberties of the tenets of the very domain of law and practice that it seeks to facilitate and for which much of its utility is self-evident.

Critically discuss. [20 marks]

4. "Some would say the doctrine of *ultra vires* is vestigial in so far as it was hinged on the capacity of corporations to contract. That view could be persuasive in the parochial sense."
– Chairman, Iberian Chamber of Commerce.

Authoritatively examine the above statement. [20 marks]

THE END
