

a f r i c a n a z a r e n e

u n i v e r s i t y

**SCHOOL OF LAW**

**CENTRE: DISTANCE LEARNING**

**UNIT TITLE: COMMERCIAL LAW 1**

**UNIT CODE: LAW 301**

**LECTURER: J. NJIRIRI**

**TRIMESTER: 1ST TRIMESTER 2020/2021**

**DATE: WEDNESDAY 16TH DECEMBER, 2020**

**TIME: 4P.M TO 7 PM**

**Instructions:**

1. Answer **ALL QUESTIONS**.
2. Spend the first 15 minutes reading all questions carefully, selecting and planning your answers.
3. **DO NOT** write on any documents other than the submitted answer sheet.
4. Cut-and-paste from the internet or copying word-for word from textbooks may lose marks. Answers should not exceed 10 pages (5,000 words), unless essential.
5. Time allowed: Four hours
6. Open book exam.
7. Marks will be awarded for well-reasoned, responsive, authoritative and coherent answers; but lost for poor grammar, numerous typographical errors or plagiarism.
8. Use Times New Roman, font size 12, 1.5-line spacing.

**Question One**

‘It is best if insolvent companies are liquidated as soon as possible and creditors paid out. Doing anything else with such companies is just not efficient’.

**Discuss the above statement.**   **(25 Marks)**

**Question Two**

In December of 2015, the Debtor and the Landlord entered into a Lease Agreement under which the Debtor leased retail space from the Landlord for a period of five years. The Lease was set to expire in March of 2020. Rent was due and payable on the first day of each calendar month. On August 9, 2020, the Debtor and the Landlord executed a Lease Termination Agreement pursuant to which the Debtor agreed to pay the Landlord the sum of Ksh 80,000,000 in exchange for the Landlord's releasing the Debtor from any further obligations or liabilities under the Lease. The Debtor made the payment on the day the Agreement was signed and vacated the property on the 30th August, 2020. On the 30th of September 2020, the Debtor filed a Voluntary Petition in Bankruptcy.

You have just started working at the Firm of Thomson and Reuters for a Senior Partner who has been selected to serve as counsel to the Trustee in Bankruptcy. He has asked you to write a brief memo indicating whether or not you think the Trustee has a plausible claim or cause of action that he could pursue in order to recover the **Ksh 80,000,000 paid by the Debtor to the Landlord. (25 Marks)**

**Question Three**

You have recently been appointed the Insolvency Practitioner for a small packaging company ‘Global Ltd’ which has suffered some bad debts with customers in liquidation owing payment on several months’ invoices. Your first task is to bring some structure and procedure to current processes, with a view to minimizing bad debts. The customer base is made up of individual market traders, shop keepers and limited companies. Payment terms are flexible and orders are shipped on request. If things continue as they are, it is likely that Global Ltd will become insolvent themselves.

1. Referring your answer to the scenario above, explain how you could limit the exposure to potential bad debts from customers**. (10 Marks)**
2. If nothing is done and Global Ltd becomes insolvent, what could they do if they want to continue to trade? Include in your answer your suggested route for Global Ltd and your reason for it. **(15 Marks)**

**Question Four**

More than 80 Companies have closed their doors from operation here in Kenya and hundreds Globally. This corporate carnage is, of course, thanks to the COVID-19 pandemic and its death grip on business, shopping, spending and earning. While clothing and home goods have been hit hard, companies have been hitting rock bottom across industries. Restaurants and grocery, air travel, gyms, newspapers, education, energy, oil, gas, technology, and, ironically, even the medical field have all lost players to the pandemic since its onset in early March.

Outline how the Insolvency Act of Kenya 2015 ensures protection of debtors from their creditors to either restructure the business and continue to exist on new financial terms, or supervise an orderly wind-down of the business and sell off assets to pay back anyone it owes money to. (**25 Marks)**