

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES

**ATP 108: COMMERCIAL TRANSACTIONS**

MONDAY 3<sup>RD</sup> AUGUST, 2015

DURATION: 3 HOURS

**Instructions to Candidates**

- (a) Candidates should answer FOUR questions, at least one question from each of the four sections(A,B,C,D)
- (b) All questions carry 15 marks each.
- (c) Marks shall be lost for illegibility

PLEASE TURN OVER

## SECTION A

1. The remedy of winding up companies is considered a drastic measure for which courts are sometimes reluctant to order.

Discuss with reference to the Companies Act (Cap.486, Laws of Kenya) and case law in Kenya. Give at least five reasons why a court may refuse to order the winding up of a company.

(15 marks)

- ✓ 2. Finance is the lifeblood that keeps corporations going. Mwananchi Industries is a large indigenous manufacturer of alcoholic beverages and spirits. In 2011 the company unveiled its Strategic Plan under which the company intends to have at least 40% market share in Kenya. This will require that the company invests at least Kshs.5 billion over the next five years in its manufacturing plants, bottling plants and distribution facilities. The company has over 200 acres in Naivasha and an *etna* operational manufacturing plant.

Discuss the various options that Mwananchi Industries may pursue as it seeks to expand its operations.

(15 marks)

## SECTION B

- ✓ 3. (a) With reference to a contract for the sale of goods, and in the absence of any special agreement, when does the property in the goods pass to the buyer? (4 marks)

(b) In need of a new fleet of trucks to replace his aging one, Sam went to Newstar Motors who have been his truck suppliers for the last 15 years. He was shown an Atros Truck by Benjamin who explained to him the new superior features in the Truck for which Sam was very impressed. He ordered eight new trucks telling Benjamin 'I want eight of these'. Four weeks later, eight trucks were delivered to Sam's place. Although they were all Atros Trucks, three were of the older model. Sam has rejected the trucks.

Advise the parties on their rights and obligations. (11 marks)

4. Wamaitha is a vegetable and fruits merchant carrying on business on Ngong Road, Nairobi. For years she has been getting her supplies from Maina who is based in Kinangop. In December 2014, Maina purchased for her four bales of cabbage, six sacks of tomatoes and one sack of Avocado fruit to be dispatched to Nairobi. Due to heavy rains and fog in the Limuru Area, the vehicle could not make it to Nairobi and had to sleep-over at Uplands. Furthermore, as Maina had lost his phone and did not have Wamaitha's number, he could not communicate with her. The following morning afraid that any further delay will lead to the entire batch being lost, he sold the entire batch at a profit of Kshs.21,000.00. Wamaitha now claims refund of her money and the profits.

Advise the parties. (15 marks)

## **SECTION C**

5. Total Technics Ltd is a company formed in 2007 by John Doe to provide Home Security Solutions. The issued shares of the company are owned 60% by John, 39% by his first born son Peter and 1% by the Managing Director Albert.

John celebrated his 70<sup>th</sup> birthday with a lavish ceremony at his residence in March 2011 and announced to all that he had retired from the Company. Recently John visited Israel on a pilgrimage and met an Israeli farmer who convinced him of the benefit of new farming method for grapes. Right there and then in Tel Aviv, John signed an agreement with the Israeli giving him 30% shareholding in Total Technics and committing the company to start a large scale grapes plantation in Naivasha. On hearing of the developments, Albert has stated that he will not implement any of those agreements. John has now sent an sms to Albert telling him that he has been sacked from the company.

Advise on the situation. (15 marks)

6. (a) Mutiso had sold his car to Karanja for Kshs.1,400,000 and the car was to be delivered within four days. After two days Smith offers Mutiso Shs.1,600,000 for the car, as Smith was not aware of the previous sale to Karanja.

Advise Karanja of his legal rights against (i) Mutiso and (ii) Smith. (6 marks)

(b) Joyce recently supplied Maria of Dimples Beauty Parlour with assorted beauty products worth Kshs.500,000.00. She was paid Kshs.280,000.00 with a promise that she will be paid the balance within ten days. After thirteen days Maria called her and requested for additional products worth Kshs.300,000.00, which she agreed to supply. Maria sent her Kshs.150,000 by MPESA with an sms stating for the supplies and (on the other one). Balance will come within the week.

Joyce has heard that Maria is in financial difficulties and does not wish to supply the second batch.

Advise her. (9 marks)

## **SECTION D**

7. The Ministry of Finance has set up a National Task Force to advise on the national Payment Systems and how best to reform the law to address emerging challenges. You have been appointed as an advisor to the task force and have been tasked to prepare an opinion on:

- (a) The legal and regulatory framework for the national payment system.;
- (b) The forms of money transfer services in Kenya; and
- (c) At least two legal challenges arising from mobile and electronic payments.

Write the opinion. The Task Force appreciates brevity and conciseness. (15 marks)

8. Zen World Ltd is a high end spa based in Nairobi's Westlands area. Zui is its Manager and has been appointed an agent by the owners to make payments and cash cheques drawn by the director at its NIC Accounts in Westlands Branch. His Mandate is only up to Kshs.50,000.

In July 2015 Zui presented four forged cheques each of Kshs.48,000 to the bank and was paid over the counter. On realizing the fraud, he was immediately sacked. The directors though did not immediately inform the bank. The following day, Zui presented another three forged cheques one of which he altered the figure to Kshs.480,000 while the remaining two remained at Kshs.48,000. All the cheques were paid.

On realizing further forgery, the Directors have sought compensation from the bank and a reversal of all transactions done by Zui. They have instructed you to pursue legal redress.

Advise them on their options.

**(15 marks)**