

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 108: COMMERCIAL TRANSACTIONS

THURSDAY 8TH AUGUST, 2013

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer **one question from each of the three sections** and a fourth question from **any section**
- (b) All questions carry 15 marks each.
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

SECTION A

1. Dianah is a businesswoman carrying on the business of selling motor vehicles both in cash and in hire purchase. She is your long time client. On 6/6/2013 she came to you and told you that a customer by the name of Karina wanted to buy a motor vehicle from her. The details of the motor vehicle she wanted to buy are as follows:

- i) Registration number: KBVA 652G
- ii) Make: Kescolla, Mark X
- iii) Colour: Blue
- iv) Engine number: EA297DX
- v) Chassis number: PXD 24559

Your client tells you that the agreed price is Kshs.1,200,000/=

- a) The client has instructed you to prepare the requisite commercial instrument to capture the arrangement between her and her customer. The instrument is to be drawn and executed by the parties on the day of instructions. Proceed to do so. **(5 marks)**
- b) Dianah delivered the motor vehicle on the 7/6/2013. In return, Karina handed to your client her personal cheque for the agreed price drawn in favour of your client. On 8/6/2013 Karina effected transfer of the motor vehicle to herself at the registrar of motor vehicles. On receiving the cheque Dianah wrote on the back of the cheque the words "Pay Nduku" and signed. Nduku banked the cheque on 7/6/2013. On 16/6/2013, Dianah was informed by Nduku that the cheque had been dishonoured on account of lack of funds.

Advise your client on the remedies available to her and the extent of her liability, if any, to Nduku in the circumstances of the case. **(5 marks)**

- c) Supposing the motor vehicle in question had been sold under hire purchase agreement and Karina only paid 3 out of the 10 agreed monthly installments of Kshs.120,000, what remedies, if any would be available to your client? **(5 marks)**

2.

- a) Danu an employee driver of Vida Ltd was driving in the company of his visiting friend Bena when a policeman flagged them down. The policeman arrested Danu for being drunk but, without establishing whether Bena was a competent driver, allowed him to drive the car back to the office. On the way, Bena knocked down a pedestrian Kalu, who has since sued Vida Ltd, the owner of the car.

Advise Vida Ltd.

(8 marks)

- b) While helping out at Manu's car shop during vacation, Pela sold a car to Tunui, the mother of his standard seven classmate, for Kenya shillings 300,000/- less than the correct price. Tunui has refused to return the car to Manu's car shop. Manu seeks your advice to force Tunui and Pela to pay the difference or return the car. Advise. **(7marks)**

SECTION B

3. Mr. Odebayo is a Kenyan businessman of Nigeria origin. He has to leave Kenya urgently to be away for 2 years. He wants to leave his children who are of school going age in Kenya and also wants his businesses to remain operational. He wants to leave his 40 year old nephew in charge of his affairs and also pay school fees for his children while he is away. He is not very conversant with the law and has approached an eminent commercial lawyer to:
- a) Explain to him the relevant instrumentality through which he can achieve his intention and also the information you will require for that purpose. **(5 marks)**
 - b) Prepare such draft instrument for his perusal and approval. **(10 marks)**
4. a) Your client, Vuka, wishes to trade in the sale of motor vehicles and related spares which he imports from Dubai. He wants to legalize the business in which he and his wife are already engaged in a small scale business along commercial Street Nairobi by incorporating a limited liability company.
- Your client seeks to know the process and legal requirements for the registration of such a company whose current stock would be about Shs.2,500,000/=.
- Advise him on the requirements of incorporation pointing out to him the suitable type and size of the company in view of the circumstances. **(5 marks)**
- b) Highlight the main contents of a Memorandum of Association of a private company limited by shares. **(5 marks)**
 - c) What are the essential rights and duties of a partner in a partnership established under the Partnership Act (Cap.29 Laws of Kenya). **(5 marks)**

SECTION C

5. Bitok is a farmer in Narok with a large farm which is currently lying idle due to lack of financial resources. He witnessed a farmer friend of his lose his entire farmland to auctioneers on account of a loan taken from the bank and is therefore afraid of approaching any financial institution for a loan secured by his land, on which he and his whole family reside.
- He owns 69 relatively new tractors, wheat on $\frac{3}{4}$ of his 4000-acre land which is almost ready for harvesting, a few trucks, several barns and Merino sheep. He has 300 sahiwal cows.
- He reckons that his farm is worth 0.9billion. He needs a loan of Kshs.500 million repayable for 10 years for structural improvement of the farm including upgrading the roads and the harvesting machines as well as construction of cereal barns.

You the Manager-Legal at Kulima Credit Corporation where you lend loans to such a farmer and Bitok has come to you for advice.

- a) Advise him on the opportunities available and the practical steps to take in order to secure a loan. **(5 marks)**
- b) Draft an outline of loan document which he will execute with the credit manager. **(10 marks)**

6. Oluma a holder Lithion Bank Card attempted to withdraw from the bank's automatic teller machine at Umoja Branch. When he inserted the card and requested for Kshs.15,000/=, the machine notified "sorry, this machine is out of order." He left for another cash point but upon requesting for 15,000/=, the transaction was rejected "Sorry No. Cash." He saw the next customer obtain money from the same machine and when he tried on the next machine, a similar notice came up.

He decided to see the Branch Supervisor who informed him that he (Oluma) had just withdrawn 15,000/= and his previous balance was 18,000/=.

- a) Can Oluma recover the money from the bank? **(5 marks)**
- b) Prepare a concise brief highlighting the state of the law, the position of the bank, rights of Oluma and safeguards that ought to be in place to avoid liability. **(10 marks)**
