

COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATIONS

SEPTEMBER, 2010

COMMERCIAL LAW

Instructions

- (a) Candidates **MUST** answer Question **One** and **any other 3 questions**
 - (b) All questions carry **25 marks** each
 - (c) Time allowed is **3 hours**
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1. The incorporation of a limited liability company under the Companies Act (Cap.468) allows individuals to separate their personal affairs from the company and to carry on business effectively and efficiently with others.

Discuss the advantages of carrying on business under a limited liability company incorporated under the Companies Act as compared to other modes of carrying on business.

(25 marks)

2. As was enunciated in the case of Salomon v. Salomon (1897), a company incorporated under the Companies Act (Cap 486) is separate and distinct from its members. The members are only liable to the company to the extent to which they undertook to contribute to the company's capital in the event of its being wound up. However, in certain instances the shareholders of a limited liability company may be called upon to answer for the liabilities of the company.

Discuss instances when the individual member may be called upon to answer for the liabilities of a company in which he/she is a member.

(25 marks)

3. (a) Distinguish between a hire purchase transaction and the following:

- (i) A credit sale transaction
- (ii) A money lending transaction
- (iii) A simple contract of hire

(15 marks)

- (b) Discuss the rights and duties of an agent.

(10 marks)

4. (a) In many ways, a cheque is as good as money in Kenya. Discuss (15 marks)
- (b) In general, a holder for value of a negotiable instrument can sue any person who signed it before it came into his possession. Under what circumstances can a signatory to a negotiable instrument avoid liability? (10 marks)
5. (a) Briefly outline the various acts of bankruptcy which would entitle a creditor to commence bankruptcy proceedings against a debtor. (15 marks)
- (b) Under what circumstances can a buyer of goods reject the goods supplied under a contract of sale? (10 marks)
6. (a) Usually, lenders will require some form of security from a borrower beyond a borrower's personal pledge to repay.
Discuss the different kinds of securities that can be given over movable property in Kenya and their efficacy. (15 marks)
- (b) Discuss the rights and duties of a borrower and a lender in a normal money lending transaction. (10 marks)