

THE KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION TO
THE ROLL OF ADVOCATES

COMMERCIAL TRANSACTIONS – ATP 108

5TH DECEMBER, 2014

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer **ONE** Question from **EACH** section and **ONE** from any Section.
- (b) All questions carry fifteen (15) marks each.
- (c) Marks may be lost for illegibility.

PLEASE TURN OVER

SECTION ONE

1. The Governor of Moto County has recently reshuffled his County Executive Committee (Cashnet) after realizing that his County is not making good progress in attracting new investments. This follows the receipt of a report whose finding, among others, concluded that the people of Moto desire to take greater control of the market opportunities rather than have their Country Government try its hands in business.

The report also identified the need for a better policy and regulatory environment for business and commercial transactions. In response, the Governor and his cabinet have decided to establish a business registration centre.

As the one LLM holder from the County in matters of finance law and tender of Commercial Law in Hong Kong University, you have been approached to offer your advice.

Proceed to advise the Governor on at least five forms of business organization that can be registered to undertake business to the County.

For each of those you mention give their advantages and disadvantages and the kind of documents they would use to seek registration.

(15 Marks)

2. Your cousin Rachael has heard that there are good deals on the OLX Website. She wants to upgrade her phone to a sleeker smartphone model. She has visited the site constantly in the past week and has identified three potential phones posted on the site. She has contacted their owners over the phone. She now seeks your advice before she concludes the deal.
 - a) Advise on at least four legal issues that arise out of the transactions concluded from the OLX site. Attend to legal liabilities and rights of the parties.

(9Marks)

- b) Racheal bought an LG smartphone from a man who described himself as Martin. They met at Galleria Mall to conclude the deal. Racheal inspected the phone, tested it with her SIM Card and was satisfied. She paid through her MPESA account Kshs. Kshs. 15,000 to a number that Martin had given her.

Four hours later, the phones died and when she tried to charge it, it could not charge or be revived. She tried to reach Martin but his phone was switched off. Advise her on any cause of action and remedies available to her.

(6 Marks)

SECTION TWO

3

The Government of Kenya has recently appointed a Taskforce to advise on how to create an enabling environment for businesses in Kenya. You have been appointed as one of the joint secretaries for the Taskforce because of your long experience at the Kenya School of Law as a Corporate law expert.

The Chairman of the Taskforce has requested you to prepare a background paper on corporate re-organization and how Kenya can learn from other jurisdictions on this subject.

Prepare an opinion with a focus on the following issues.

- (i) Types of mergers, acquisitions and takeovers. (5 Marks)
- (ii) Reconstruction and forms of recapitalization and their legal implications. (5 Marks)
- (iii) The governing legal framework for corporate reorganization. (5 Marks)

4. The Government of Kenya in 2013 launched the Uwezo Fund to support youth and women enterprises through concessionary loans and grants. The CEO of Uwezo fund had requested your legal advice on the range of securities the fund can take from its target groups as most of them have no fixed assets.

- a) Provide a brief opinion to the CEO on what constitutes a valid security under the Chattels Transfer Act. (9 Marks)
- b) The fund has decided to lend Tegemeo Youth Group based in Karatina Kshs. 2 Million to expand their *boda boda* business by buying new motorcycles, opening and fitting an operations office and training of its members. The group being made up of youthful members below 25 years have no land. How can the fund secure this lending to the youth group? (6 Marks)

SECTION THREE

5. a) Wambui, appoints Wepukhulu as her agent to buy furniture and to sell it to her trade customers. She informs her suppliers and customers of Wepukhulu's appointment. Wambui instructs Wepukhulu not to buy any red sofa sets in the belief that they would not sell. Unknown to Wambui, Wepukhulu recently served a term of imprisonment for dishonesty. Wepukhulu visits Gikomba Sofas Ltd, one of the suppliers and agrees to purchase 20 (20) red sofa sets for kshs.1,400,000. The following day Wepukhulu enters into an agreement to sell the sofa sets to Chepchieng for Kshs.2,000,000 without telling Chepchieng that he is Wambui's agent. Shortly afterwards, Gikoma Sofa Set Ltd find out what Wepukhulu was upto and tells Wambui that they will not honour the agreement to sell the red sofas. Fearing a loss of business, Wambui purports to ratify the purchase with Gikomba Sofas Ltd as well as the sale to Chepchieng.

Advise the parties.

(9 Marks)

- b) Brian a car dealer has been in business for the past five years. John is desirous of purchasing a car from Brian. The purchase price for the car is Kshs. 3 million. However, John wishes to pay Kshs.1,000,000 cash and the rest in four equal instalments. Both parties are in agreement subject to signing a binding document.

Both parties have approached you to reduce their intentions in writing. What draft would you prepare? Proceed to prepare it.

(6 Marks)

6. Three weeks ago the Customer Services Manager of Minodugu bank Limited approved the opening of a personal current bank account for Mr. Nit Ndekle, who he had met for the first time. Mr. Ndekle then deposited a cheque for Kshs. 350,000 into the new account. After the cheque was cleared, he withdrew an amount of Kshs. 348,500 out of the account. Subsequently, one Mr. Nick Ndeko, the true owner of the cheque has come to claim its value from the bank. Mr. Nit Ndekle cannot be traced.

The Manager explains that he met the customer in the company of another person who introduced himself as, and very much looked like, Hon. Chepit, the local Member of Parliament. He had not personally met the local MP before but he accepted the favourable reference his look-alike gave in respect of Mr. Ndekel.

As one of the advocates on the panel of Minodugu Bank Ltd, your firm has been instructed to provide a legal opinion. Proceed to give your opinion highlighting legal protections if any, that the bank may rely on.

(15 Marks)

7. You are a new Associate at a Nairobi law firm working in the Commercial Department. You have received the following e-mail from your boss.

To: **New Associate**
From: **Partner**
Dated: **20 November 2014 6.55 AM**
Subject: **Sale of Business Assets (Topline Ltd and Goodreeds Co. Ltd)**

As Discussed, urgently prepare a draft Agreement for my review by C.O.B today. The particulars are as per the forwarded message.

Partner

Forwarded message

To: **Partner Law Firm**
From: **MD Topline Ltd**
Date: **19 November 2014 11.05 PM**
Subject: **Sale of Business assets (Topline Ltd and Goodreeds Co. Ltd)**

Chris,

It was a pleasure catching up at the club yesterday afternoon. As discussed, my Board has now given the go ahead to sell the Publishing Assets of our business as we now want to focus exclusively on digital publishing. We would therefore be selling all printing presses, copiers, computers, furniture and fittings at our Enterprise road factory together with the Lease for the building to Goodreeds Co. Ltd. We have agreed on a Purchase price based on current market valuation subject to a minimum of KES 280 million. Ascent Business Valuers will carry out the valuation. We hope to conclude this transaction within thirty (30) days of today. As my Board is meeting in 3 days time, please let me have a draft Agreement for review and tabling by C.O.B tomorrow.

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K.R. Manesh

a) Advise on at least four (4) key issues that should be considered before commencing the drafting of the Agreement.

(6 Marks)

b) Prepare a skeleton draft of not more than four (4) pages of the Agreement highlighting key issues.

(9 Marks)