

KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES

**ATP 108: COMMERCIAL TRANSACTIONS**

THURSDAY 28<sup>TH</sup> NOVEMBER, 2013

DURATION: 3 HOURS

**Instructions to Candidates**

- (a) Candidates should attempt **FOUR** questions
- (b) Answer **one question from each section** and a **fourth one from any of the three sections**
- (c) All questions carry **15 marks** each
- (d) Marks shall be lost for illegibility

PLEASE TURN OVER

## SECTION ONE

### QUESTION ONE

- a) Aminata agreed to sell to Baraba, at a price, a supply of mangoes, product of neighbouring country. Delivery was agreed to be weekly over two months effective from two weeks after the date of execution of the contract. On five occasions, Baraba took the consignments: but later, when Aminata sought to deliver the subsequent consignments as contracted, Baraba declined to accept the mangoes saying that since the market prices of mangoes had fallen drastically he could not, indeed it would be unfair to expect him to, accept the mangoes at the contract price. He sought to renegotiate the price, a proposal Aminata flatly refused to consider.

Advise both parties as to their rights and remedies, if any.

**(8 marks)**

- b) An auctioneer was instructed by Jeweli Limited to sell certain jewellery at a price of not less than Kshs.250,000/=. On the day of the auction no one seemed to be interested in the jewellery. At about closing time, he received the highest *bona fide* bid of Kshs.190,000/=: an amount which Jeweli has refused to accept.

Advise on:

- i) The validity of the auction; and  
ii) Whether the auctioneer is liable to Jeweli Limited.

**(7 marks)**

### QUESTION TWO

- a) Briefly explain the nature of the relationship of the parties to a hire purchase agreement, with emphasis on the role of the dealer once said to be "in many respects and for many purposes the agent of the finance company," per Lord Denning in *Financing Ltd v. Stimson* (1962) 3 All E.R 386, at p.388
- b) Hosea is persuaded to take a pick-up on hire purchase by Daki of Wakky Motors Limited, who told him that the motor vehicle was "as tough as they come." Consequently Daki, with Hosea's knowledge, facilitated the transfer of ownership of the motor vehicle to Mikopo Gari Finance Limited, which then let the pick-up to Hoses allowing him to pay by monthly equal installments.

Hosea discovered shortly thereafter that the pick-up engine rattled uncontrollably, it lacked power and could not carry the weight indicated. He seeks to sue Daki and Wakky Motors Limited.

Advise Hosea.

**(7 marks)**

## SECTION TWO

### QUESTION THREE

- a) Critically discuss five (5) of the presumptions of law as to every negotiable instrument. **(7 marks)**
- b) Mato drew a cheque of Kshs.50,000/= in favour of Jivinjari on the latter's seventeenth birthday to buy "anything you fancy with this little token of my friendship." Jivinjari who had been yearning for a hi-fi three-in-one player costing Kshs.45,000/= immediately endorsed the cheque to Marengo Sounds Limited owned by his father's friend down town. Out of the cheque, Kshs.5,000/= in cash was given back to him.

The company used the cheque to order for supplies of other electronic items from Bambam Limited. On presentation to the bank, the cheque was dishonoured.

Bambam Limited has consulted you with instructions to sue.

Advise. **(8 marks)**

### QUESTION FOUR

Write brief notes on the following:

- a) The Cheque <sup>Transaction</sup> Transaction System; **(4 marks)**
- b) The National Payment System; **(4 marks)**
- c) The principal types of money transfer systems or methods in Kenya besides cash or cheque transfers. **(7 marks)**

## SECTION THREE

### QUESTION FIVE

- a) In the light of the changing global and regional business environment, corporate governance is increasingly becoming visible and notable contributor to "the bottom line."

Discuss at least four (4) principles of corporate governance stating why these principles are advocated for. **(7 marks)**

- b) Sitopamba Limited, a cotton textile company, entered into a contract with Nanasi Limited, an adjacent pineapple juice producer recently established, to supply to the latter electricity from their power generation plant. After supplies had been made for three months it is discovered that this activity is beyond the scope of the objects clause of the memorandum of association of Sitopamba Limited. Nevertheless, shareholders of Sitopamba Limited, during an extra ordinary general meeting, and by a majority, subsequently ratified the contract.

Nanasi Limited has since learned of the events and now refuses to make payment on the ground that the contract is wholly null and void. Advise, giving reasons, whether or not it (Nanasi Limited) can be legally compelled to make payment. **(8 marks)**

### **QUESTION SIX**

- a) Briefly discuss the meaning and effect of an adjudication order and evaluate when it may issue in bankruptcy proceedings. **(6 marks)**
- b) Oyie Yanya, your client and friend, wishes to expand his wholesale business at Olare Trading Centre where he has rented several shops and a warehouse. He owns many properties in and around the County. For example, he has shares in at least five blue chip companies in the County and debentures in several other corporations, all with a market value of not less than Kenya Shillings Fifteen Million (Kshs.15m.) between Ngegu and Kajimo ports. Oyie Yanya also doubles in cotton farming and keeps over ten tractors, three trucks and barns.

He tells you that he has approached an agricultural finance corporation which insists on adequate collateral for a loan of Kenya Shillings Thirty Five Million (Kshs.35m).

Advise Oyie Yanya on at least four types of documents he may use to borrow the loan and, by way of explanation, outline to him which of his properties, if any, he may use as collateral.

**(9 marks)**

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