

KASNEB

CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 25 May 2017.

Time Allowed: 3 hours.

Answer ALL questions. Marks allocated to each question are shown at the end of the question.

QUESTION ONE

- (a) In bankruptcy proceedings, the general position is that any person within the court's jurisdiction is liable in bankruptcy but some persons are given a preferential treatment.

Required:

- (i) In relation to the above statement, identify five persons who are likely to be given preferential treatment. (5 marks)
- (ii) Assess six circumstances under which a debtor is said to have committed an act of bankruptcy. (6 marks)
- (b) (i) Define the term "pleadings". (1 mark)
- (ii) Highlight three documents that must accompany pleadings in a debt recovery civil suit. (3 marks)
- (c) Analyse five instances under which a partnership that breaks up shall stand dissolved. (5 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Highlight three circumstances under which the limitation period for statute barred debts might be deemed to commence. (3 marks)
- (b) With reference to negotiation as an alternative dispute resolution mechanism, discuss four essentials of distributive negotiation. (8 marks)
- (c) Summarise six duties of the conciliator when resolving commercial disputes. (6 marks)
- (d) Evaluate three rights of secured creditors during bankruptcy proceedings. (3 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Evaluate four conditions under which a foreign arbitral award might be enforceable in your country. (4 marks)
- (b) Discuss the process of objection proceedings. (5 marks)
- (c) Tusaidiane Bank Limited advanced Sh.1 million to Susan Kambi to enable her boost her motor vehicle import business. Subsequently, Susan Kambi was unable to repay the loan because her business was experiencing an economic downturn. Tusaidiane Bank Limited has threatened to file bankruptcy proceedings against Susan Kambi.
- Advise Susan Kambi on four legal options that she might explore to avoid being sued by Tusaidiane Bank Limited. (8 marks)
- (d) With reference to emerging issues and trends in debt recovery, outline the priority in which the receiver might apply monies received towards the repayment of a car loan. (3 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Discuss four rules pertaining to hearing of cases on debtors default before a judge. (4 marks)
- (b) Examine five steps that are most likely to be taken by a bailiff against a judgement debtor after the issue of a warrant of execution. (5 marks)

(c) Gian Okoth has been appointed as a liquidator of X Limited. The total creditors' claims amount to Sh.400 million while the available amount for distribution is Sh.300 million.

The creditors' claims are as follows:

- Creditor A claims Sh.100 million.
- Creditor B claims Sh.200 million.
- Creditor C claims Sh.60 million.
- Creditor D claims Sh.40 million.

Required:

Advise Gian Okoth on how to distribute the available amount of Sh.300 million to the creditors. (4 marks)

(d) Explain three ways of examining a witness in a court of law. (3 marks)

(e) In relation to the United Nations Commission on International Trade Law (UNCITRAL) rules on insolvency, evaluate two weaknesses of the balance sheet test. (4 marks)

(Total: 20 marks)

QUESTION FIVE

(a) With reference to debt recovery through civil suits:

(i) Describe four contents of a judgement. (4 marks)

(ii) Summarise the procedure for extracting a decree. (6 marks)

(b) In relation to debt management, explain the meaning of the following terms:

(i) Interest-only loan. (2 marks)

(ii) Conversion of debt to equity. (2 marks)

(iii) Debt restructuring. (2 marks)

(c) Assess two grounds upon which the purchaser's title to property acquired after the break-up of a partnership might not be legally challenged. (4 marks)

(Total: 20 marks)

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