

KASNEB

CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 26 May 2016.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) With reference to debt management, outline four rules governing payment of interest on loans. (4 marks)
- (b) Explain how the following debt management methods could be used as opposed to civil litigation:
- (i) Foreclosure. (2 marks)
 - (ii) Surrender of securities. (2 marks)
 - (iii) Suspended payments. (2 marks)
- (c) Distinguish between the following terms as used in civil litigation for debt recovery:
- (i) "Judgement" and "decree". (2 marks)
 - (ii) "Decree holder" and "judgement debtor". (2 marks)
- (d) Highlight six modes of execution as provided for in the civil procedure and/or guidelines in your country. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Pryauka Shahiri and Terry Luseno are partners carrying on business as manufacturers of cosmetics but have failed to pay excise duty for their cosmetic products. Evidence also shows that they are unable to meet any other financial obligations as and when they fall due.

Pryauka Shahir is a minor while Terry Luseno has since become insane.

Required:

- (i) Analyse the legal principles applicable in the above case. (8 marks)
 - (ii) Advise the commissioner of customs and excise duty whether he could successfully sue the partners. (2 marks)
- (b) (i) "Service outside the country of summons or notice of summons might be allowed by the court under certain circumstances".
- In reference to above statement, assess five such circumstances. (5 marks)
- (ii) Describe the process of service of notice of summons in a foreign country as provided for in your country's civil laws and procedures. (5 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Roy Timoi is a disgruntled partner in Timoo Enterprises. He intends to apply to the court for the appointment of a receiver of the partnership property.

Summarise five grounds which Roy Timoi might rely on to convince the court to grant him his application. (10 marks)

- (b) In relation to arbitration, examine the reasons why an arbitration might be considered to be:
- (i) Domestic. (3 marks)
 - (ii) International. (3 marks)

- (c) An arbitration agreement might be in the form of an arbitration clause in a contract or in the form of a separate agreement.

Explain the circumstances under which an arbitration agreement could be said to be in writing. (4 marks)
(Total: 20 marks)

QUESTION FOUR

- (a) Jezebel Waudo sued Aaron Kyalo for breach of contract. On the hearing day, Jezebel Waudo got a pleasant surprise when she arrived in court and found that Aaron Kyalo was conspicuously missing. The Judge gave Jezebel an opportunity to proceed with her case, Aaron's absence notwithstanding.

Describe the procedure Jezebel might follow in presenting evidence to enable her obtain a judgement in default of appearance. (10 marks)

- (b) (i) Movable property could be used as a means of providing credit protection. With reference to property mobility, explain the place of suing as a preliminary consideration before instituting a debt recovery suit. (4 marks)
(ii) In determining the viability of a debt, inability to pay a debt comes into question.

Explain three factors that might indicate that a debtor has no reasonable prospect of being able to pay a debt that is not immediately payable. (6 marks)
(Total: 20 marks)

QUESTION FIVE

- (a) With reference to the United Nations Commission on International Trade Law (UNCITRAL) on cross-border insolvency.

Describe three purposes of the model law. (6 marks)

- (b) Suggest eight ways proposed by the World Bank Principle and Guidelines for effective insolvency and Creditor Rights Systems. (8 marks)

- (c) With reference to emerging trends in bankruptcy, describe three alternatives to bankruptcy. (6 marks)
(Total: 20 marks)

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