



CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 23 May 2019.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) (i) Deborah and her colleagues are embroiled in a labour dispute with their employer at the Employment and Labour Relations Court relating to harassment and discrimination at their workplace. The trial judge has referred the matter to a conciliator for an out of court settlement. Deborah seeks your legal advice on the role of the conciliator.

**Required:**

Prepare for Deborah a list detailing three do's and three don'ts of the conciliator during the conciliation process. (6 marks)

- (ii) Mutira has been in leather tanning business locally for more than ten years and usually solves commercial disputes relating to his business operations through arbitration. He is desirous of expanding to foreign markets and is quite confused on whether his preferred dispute resolution tool will be effective.

In line with this scenario, explain to Mutira what constitutes an international arbitration. (4 marks)

- (b) A, B and C are business partners trading as ABC Traders. The partners are proud owners of a partnership property that fetches a considerable monthly income. Steve Wambua has obtained a judgement and decree against A for the recovery of a debt of Sh.500,000. Steve's lawyers have applied to court for execution of the decree against A as a partner of ABC Traders. Steve has no knowledge about the orders that the court might grant upon hearing the application.

**Required:**

Advise Steve on five remedies that the court might grant upon hearing the application for the above execution above. (5 marks)

- (c) The business relationship of the partners of Billy Club Security firm is so acrimonious that they avoid eye and hand contact every time they meet. The partners are contemplating winding up their partnership and have approached you for legal advice.

**Required:**

Demonstrate five rules that might be observed in settling of accounts between the partners of Billy Club Security Firm upon winding up their partnership business. (5 marks)

**(Total: 20 marks)**

QUESTION TWO

- (a) In the context of debt recovery via civil cases:

(i) Evaluate five purposes of summary judgement. (5 marks)

(ii) Explain three orders the court might make upon hearing an application for summary judgement. (3 marks)

- (b) Explain four modes of service of summons on foreign companies that are registered in your country. (4 marks)

- (c) With reference to judgment and decree, examine four modes of execution for various subject matters. (8 marks)

**(Total: 20 marks)**

### QUESTION THREE

- (a) Knisha Limited is undergoing liquidation and in one of the creditor's meetings, it was proposed that the liquidator should also act as the administrator but a faction of the creditors became uncomfortable and counter-proposed that an independent administrator in the liquidation be appointed. This confused Katila, one of the semi-literate creditors because he only knew about the powers of the liquidator but could not fathom what the powers of an administrator in liquidation were.

**Required:**

Assess ten powers of an administrator during companies' liquidation so as to assist Katila make a difference between the powers of a liquidator and those of an administrator. (10 marks)

- (b) Paul owes Peter Sh.50,000. Paul has become so elusive and Peter's efforts to chase him for payment have failed. Peter has learnt that Paul intends to file a bankruptcy petition so that he can be freed from his debts. Paul has informed Peter that he will recover nothing from him. Peter is aggrieved and approaches you for legal advice.

**Required:**

(i) Suggest to Peter four options that he might use to recover his debt from Paul. (4 marks)

(ii) Discuss six rights of a debtor. (6 marks)

**(Total: 20 marks)**

### QUESTION FOUR

- (a) Diana Maina intends to take a mortgage but is afraid that she might be unable to pay the loan promptly as expected. Diana is ignorant on how debt protection works and seeks your advice.

**Required:**

Advise Diana on four alternatives to debt protection. (4 marks)

- (b) Explain three responsibilities of the receiver in debt management. (3 marks)

- (c) Mr. John Fukara filed for a bankruptcy petition after failing to pay his creditors for a considerable period of time. He has been cooperative in the whole process and proceedings. However, after the adjudication order, Mr. Fukara is full of fear that merely everything he owns will be deprived of him and he will remain bankrupt for the remaining part of his life. He has approached you for your professional guidance.

Advise Mr. Fukara on the following matters:

(i) Bankrupt's entitlement to retain certain assets. (6 marks)

(ii) Automatic discharge of the bankruptcy. (4 marks)

(iii) Public examination of the bankrupt before court concerning discharge. (3 marks)

**(Total: 20 marks)**

### QUESTION FIVE

- (a) Amka Twende ordered goods worth Sh.250,000 from Purab Industries Ltd. The goods were to be paid for in two instalments upon paying a deposit of Sh.50,000. Four months down the line, no payment has been made.

The owner of Purab Industries Ltd. Mr. Purab Mehra feels aggrieved and has sent your services for a demand letter in respect of the money owed.

**Required:**

(i) Define the term "demand letter". (2 marks)

(ii) Draft a demand letter in respect of the debt capturing five key pieces of information. (10 marks)

Note: Ignore salutations and draft the form and content.

- (b) Debt collection practices across emerging markets vary with legal frameworks, regulatory processes, risk appetite and credit culture. Nevertheless, they face a reasonably common set of challenges. (Responsible Debt Collection in Emerging Markets, IFC page 6)

With reference to the above statement, propose eight challenges encountered by emerging markets. (8 marks)

**(Total: 20 marks)**