



kasneb

CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

BUSINESS LAW

MONDAY: 23 November 2020.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Generally, there is no implied condition as to fitness for any particular purpose of the goods supplied.
Outline four exceptions to the general rule above. (8 marks)
- (b) Enumerate four duties of the seller under the cost, insurance and freight contracts of sale. (4 marks)
- (c) In the context of sources of law:
- (i) Explain two forms that a persuasive precedent might take. (2 marks)
- (ii) Itemise six components of a judicial precedent (judgment). (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) (i) Highlight six similarities between law and morality. (6 marks)
- (ii) Identify four ways in which law might be classified. (4 marks)
- (b) Lady Nadia went for child delivery at Bado Hospital, upon arrival and examination, the doctor recommended that she would undergo an emergency caesarian section. The doctor successfully carried out the operation. Two days later she had persistent pain and after undergoing an x-ray examination in Sasa Hospital, it was discovered that the doctor forgot a small pair of scissors in her womb.

Lady Nadia is aggrieved and intends to sue the doctor. Advise Nadia by:

- (i) Identifying the specific wrong the doctor might have committed and the law applicable. (3 marks)
- (ii) Explaining the essential elements of the wrong identified in (i) above. (6 marks)
- (iii) Determining the most suitable remedy available to Lady Nadia. (1 mark)
- (Total: 20 marks)**

QUESTION THREE

- (a) Distinguish between a "Limited Liability Partnership" (LLP) and a "General Partnership". (8 marks)
- (b) (i) Explain the difference between an "offer" and "invitation to treat". (2 marks)
- (ii) Samuel Leo made an offer to purchase David Kesho's car. However, David Kesho upon accepting the offer was informed by Samuel that the offer was terminated. David did not understand how that was possible.

Advise David on the various ways in which an offer could be terminated.

(10 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Describe the requirements that an administrative body must meet in making an administrative decision in order to avoid a review of its decision by the courts. (6 marks)
- (b) In the context of negotiable instruments:
- (i) Outline three parties to a bill of exchange. (3 marks)
- (ii) Identify five rules governing presentation of a bill of exchange for payment. (5 marks)
- (c) Highlight six powers of the arbitrator in a dispute referred to arbitration. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) (i) Identify six duties of a lessor under a lease agreement. (6 marks)
- (ii) State four defences to copyright infringement. (4 marks)
- (b) In relation to the law of insurance:
- (i) Define the term "subrogation". (2 marks)
- (ii) Discuss the concept of the law of large numbers as a principle of insurance. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) With specific reference to the law of agency:
- (i) Outline four circumstances under which an agent may be held personally liable to third parties. (4 marks)
- (ii) Explain four ways in which an agency relationship may terminate. *time lapse*
nils contract (8 marks)
- (b) (i) Distinguish between a "contract of indemnity" and a "contract of guarantee". (4 marks)
- (ii) Outline four remedies for breach of the contract of indemnity. (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Outline three principles governing acquisition of the domicile of origin. (6 marks)
- (b) Describe four rules governing the completion of a hire purchase agreement. (8 marks)
- (c) Identify six types of courts in your country. (6 marks)
- (Total: 20 marks)**
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CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

BUSINESS LAW

TUESDAY: 26 November 2019.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) (i) Outline four ways through which the Supremacy of the Constitution is manifested. (4 marks)
- (ii) Identify eight sources of law in your country. (8 marks)
- (b) With specific reference to administrative law:
- (i) Distinguish between “substantive ultra vires” and “procedural ultra vires”. (4 marks)
- (ii) Discuss four ways in which the independence of the Judiciary is promoted. (4 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Mutuku employed Mwanzia as a petrol tanker driver. While petrol was being off-loaded from the tanker at a petrol station, Mwanzia, who was standing nearby, lit a cigarette. Unfortunately, the petrol tanker caught fire and burnt the whole petrol station and injured several people.
- Mpole, the owner of the petrol station, is angry and seeks your advice on whom he can sue.
- Advise Mpole. (10 marks)
- (b) In relation to sale of goods:
- (i) Outline four circumstances when a buyer might reject the goods and repudiate the contract. (4 marks)
- (ii) Explain three circumstances under which the unpaid seller might exercise his right of lien. (6 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) In relation to the law of contract:
- (i) Explain three rules that govern the measure of damages for breach of contract. (6 marks)
- (ii) Alex agreed to paint Angela’s house at an agreed contract price. When Alex had finished the work, Angela discovered that although most of the painting was satisfactory, Alex had forgotten to apply a coat of gloss paint on one of the doors. Alex fell sick and could not complete the work.
- Angela has refused to pay Alex the contract price claiming that he has not completed the work.
- Advise Alex on the legal position. (8 marks)
- (b) Explain three characteristics of the contract of guarantee. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) In the context of classification of law, state:
- (i) Four modes of sentencing that a court might impose on an offender. (4 marks)
 - (ii) Four modes of judgement that a plaintiff might be awarded. (4 marks)
- (b) With reference to the law of insurance:
- (i) Summarise four circumstances under which the duty of disclosure is justified. (8 marks)
 - (ii) Outline four conditions that must be met for the principle of "contribution" to apply. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Describe four circumstances that should exist in order for a mediation to be termed as "International Mediation". (8 marks)
- (b) With reference to the court system in your country:
- (i) Identify three superior courts. (3 marks)
 - (ii) Summarise five grounds upon which a judge of a superior court might be removed from office. (5 marks)
- (c) Highlight four forms that a qualified acceptance might take. (4 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Explain four differences between an "incorporated association" and an "unincorporated association". (8 marks)
- (b) Highlight four circumstances in which the principle of "delegate non potest delegare" does not apply in the law of agency. (4 marks)
- (c) Describe two conditions and two warranties that are implied in a hire purchase contract. (8 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With reference to the law of property:
- (i) Outline three conditions for the remedy of statutory power of sale. (3 marks)
 - (ii) List three ways in which co-ownership might be terminated. (3 marks)
 - (iii) Explain the two types of chattels personal. (4 marks)
- (b) With reference to partnerships:
- (i) Identify five ways in which a person shall cease to be a partner. (5 marks)
 - (ii) Highlight five clauses which might be found in a partnership agreement. (5 marks)
- (Total: 20 marks)**
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CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

BUSINESS LAW

MONDAY: 20 May 2019.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Brutus Okeka purchased a radio from Dancing Spoon Ltd. on hire purchase terms. The purchase price was Sh.45,000. He paid a down payment of Sh.5,000 and the balance was to be paid in monthly instalments of Sh.5,000. Brutus Okeka defaulted after consistently paying the required instalments for a period of six months. Dancing Spoon Ltd. promptly repossessed the radio. Brutus Okeka feels aggrieved and seeks your advice.

Analyse the legal principles applicable in the above case and advise Brutus Okeka. (10 marks)

- (b) Explain four features necessary for agency of necessity to exist. (4 marks)

- (c) Describe three types of authority that an agent has. (6 marks)

(Total: 20 marks)

QUESTION TWO

- (a) David Boka is the proprietor of Daily Mail Newspaper which published an article two weeks ago to the effect that Rose Nylon, the Chief Executive Officer of a child welfare organisation had embezzled shillings five million from the organisation to purchase a private residential house. Investigations revealed that Rose Nylon bought the house out of a loan advanced to her by Fast Bank and secured on the house. Rose Nylon is aggrieved and seeks your legal advice.

Advise Rose Nylon. (10 marks)

- (b) Distinguish between “substantive” and “procedural” law. (4 marks)

- (c) Explain three reasons why Parliament delegates law making powers. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) With reference to the law of tort:

- (i) Explain the legal principle in the rule of Rylands V. Fletcher. (4 marks)

- (ii) Describe three defences available to a person sued in an action brought under the rule in (a) (i) above. (6 marks)

- (b) In relation to the law of contract, explain four elements of an enforceable contract. (4 marks)

- (c) Examine the principles relating to contractual capacity of minors. (6 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) (i) Highlight six types of inventions which might not be patented. (6 marks)
- (ii) List four property rights that might be created by a contract over a piece of land. (4 marks)
- (b) (i) Explain two differences between a “private company” and a “public company”. (6 marks)
- (ii) An incorporated association is an association of persons recognised as a legal entity which has its own rights and is subject to obligations.

With reference to the above statement, explain two ways in which an incorporated association might be brought into existence. (4 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) In the context of sale of goods contract:
- (i) Outline five remedies of the unpaid seller. (5 marks)
- (ii) Explain three ways in which a buyer is deemed to have accepted goods. (3 marks)
- (iii) Define the term “auction sale”. (2 marks)
- (b) State four powers of the Court of Appeal. (4 marks)
- (c) Discuss three advantages and three disadvantages of tribunals. (6 marks)

(Total: 20 marks)

QUESTION SIX

- (a) In relation to the law governing negotiable instruments, explain three types of endorsements that might be made on a bill of exchange. (6 marks)
- (b) Highlight four similarities between “arbitration” and “mediation” as means of resolving commercial disputes. (8 marks)
- (c) Summarise three rights that the guarantor has against the principal debtor. (6 marks)

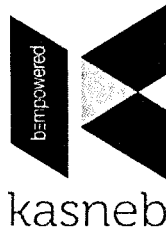
(Total: 20 marks)

QUESTION SEVEN

- (a) Explain the concept of causa proxima (proximate cause) as a principle of insurance. (4 marks)
- (b) Describe four consequences of dissolution of a partnership firm. (8 marks)
- (c) Summarise four actions that cannot be undertaken by a limited partner in a limited partnership. (4 marks)
- (d) List four examples of law which fall under criminal law. (4 marks)

(Total: 20 marks)

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CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

BUSINESS LAW

MONDAY: 26 November 2018.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Outline six properties of law. (6 marks)
 - (b) In relation to the sources of law:
 - (i) Distinguish between an “amendment” and a “repeal” of a law. (4 marks)
 - (ii) Identify four examples of persuasive precedents. (4 marks)
 - (c) List six instances when a court might review an administrative action. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Explain the meaning of the term “written law”. (4 marks)
 - (b) The legislative power of parliament is exercisable through bills passed by the National Assembly.
With reference to the above statement, explain three types of bills that might be presented to parliament in your country. (6 marks)
 - (c) Outline six common servitudes under the law of property. (6 marks)
 - (d) State four advantages of unincorporated associations. (4 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) In the context of hire purchase contracts:
 - (i) Explain the meaning of a “conditional sale agreement”. (4 marks)
 - (ii) Describe six features of a conditional sale agreement. (6 marks)
 - (b) Outline six liabilities of a minor who has been admitted in the benefits of a partnership. (6 marks)
 - (c) Identify four grounds upon which a valid treaty might be invalidated under international law. (4 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) In relation to negotiable instruments, discuss three acts that might be held to amount to negligence on the part of the collecting banker. (6 marks)

- (b) Explain five circumstances under which an agent's action which was initially unauthorised might be subsequently ratified by his principal so as to become binding. (10 marks)
- (c) Outline four ways in which a surety might be discharged from a contract of guarantee. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

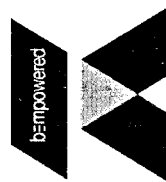
- (a) Ukulima Limited created the position of managing director but no one was appointed to the position. Brian Bundi, a director, with the knowledge of the other directors, purported to act as the Managing Director and hired Mjengo Limited to do some work for the company. Mjengo Limited has now demanded for payment for the work done but Ukulima Limited has refused to pay stating that Brian Bundi had no authority to act on the company's behalf.
- Advise Mjengo Limited on the legal position. (8 marks)
- (b) List six advantages of using mediation in reaching a settlement in commercial disputes. (6 marks)
- (c) Outline six special powers of the High Court in addition to the jurisdictional ones identified in the Constitution of your country. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) In relation to the law of contract, explain four ways in which a contract might be discharged. (8 marks)
- (b) Tom Obonyo wrote to Jerry Katana offering to sell his car to him at Sh.500,000. Jerry Katana accepted Tom Obonyo's offer subject to the price being reduced to Sh.450,000. It has become apparent that Tom Obonyo is not willing to sell the car at Sh.450,000. Jerry Katana now writes to Tom Obonyo agreeing to buy the car at Sh.500,000 but Tom Obonyo responds that he has already sold it to a third party. Jerry Katana is upset and comes to you for advice.
- Advise Jerry Katana on the legal position. (8 marks)
- (c) Explain the meaning of the following terms as used in international contracts of sale:
- (i) Free Alongside Ship (FAS). (2 marks)
- (ii) Free On Board (FOB). (2 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With reference to the law of tort:
- (i) State the meaning of the term "defamation". (2 marks)
- (ii) Explain the two forms which defamation could take. (4 marks)
- (iii) Discuss three essential aspects of the defence of fair comment in an action for defamation. (6 marks)
- (b) Explain four ways in which an insurance contract could be classified. (8 marks)
- (Total: 20 marks)**
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CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

MONDAY: 21 May 2018.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

(a) With specific reference to sources of law:

- (i) Explain three advantages of an unwritten constitution over a written one. (6 marks)
- (ii) Distinguish between “obiter dicta” and “ratio decidendi”. (4 marks)

(b) Highlight six differences between a “co-operative society” and a “partnership”. (6 marks)

(c) Highlight four consequences of incorporation of companies. (4 marks)

(Total: 20 marks)

QUESTION TWO

(a) Highlight six functions of the judiciary in your country. (6 marks)

(b) With regard to the doctrine of separation of powers, state four functions of the executive. (4 marks)

(c) One of the important legal maxims in the application of the law of agency is expressed as: “A delegate cannot further delegate”.

In relation to the above statement, discuss five circumstances under which an agent might appoint a sub-agent.

(10 marks)

(Total: 20 marks)

QUESTION THREE

(a) In relation to the contract of sale of goods:

- (i) Explain three categories of unascertained goods. (6 marks)
- (ii) Explain the meaning of the term “resale”. (2 marks)
- (iii) State four circumstances when the unpaid seller might exercise the right of resale. (4 marks)

(b) Discuss four areas of jurisdiction of the Environment and Land Court in your country. (8 marks)

(Total: 20 marks)

QUESTION FOUR

(a) Enumerate four rights of an indemnity holder in a contract of indemnity. (4 marks)

(b) State six circumstances under which a contract of guarantee might be declared void. (6 marks)

(c) Ken Jembe advertised the sale of his farm. He was approached by Peter Potea who wanted to buy the farm. In the course of negotiating the price, Peter Potea asked Ken Jembe how many sheep could be reared on the farm. Ken Jembe replied, “I have not used the farm for sheep rearing but I think it could support 2,000 sheep”. Peter Potea bought the farm and immediately purchased 2,000 sheep to rear on it. However, the farm was unable to accommodate the sheep and Peter Potea is aggrieved. He intends to sue Ken Jembe for misrepresentation.

Advise Peter Potea.

(10 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) (i) In relation to the law of property, distinguish between “joint tenancy” and “tenancy in common”. (4 marks)
- (ii) Enumerate six lawful ways through which a person might acquire property other than by purchase. (6 marks)
- (b) With specific reference to the tort of trespass:
- (i) Identify two types of trespass to goods. (2 marks)
- (ii) Discuss four defences available under the tort of trespass to goods. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Summarise four conditions that must be met before a partner in a firm could bind other partners in transactions with third parties. (4 marks)
- (b) Explain three obligations of a partner to his/her fellow partners. (6 marks)
- (c) Under the Hire Purchase Act, certain provisions are deemed void if contained in the hire purchase agreement. With reference to the above statement, explain three such provisions. (6 marks)
- (d) Identify four branches of civil law. (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) (i) Highlight five duties of an insurer in a contract of insurance. (5 marks)
- (ii) State five ways through which an insurance contract might be terminated. (5 marks)
- (b) Explain two circumstances under which a party might challenge an arbitral award in the High Court. (4 marks)
- (c) Summarise three ways of terminating a banker-customer relationship. (6 marks)
- (Total: 20 marks)**
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CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

MONDAY: 27 November 2017.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) With reference to the Sale of Goods Act, or the equivalent law on the sale of goods in your country:
- (i) Explain the meaning of the rule “nemo dat quod non habet”. (4 marks)
 - (ii) Discuss four exceptions to the rule in (a)(i) above. (8 marks)
- (b) Allan Bora, the proprietor of Pesa House, placed a warning sign outside the entrance to the building that the floors of the premises were slippery. Brian Mbiyo, who was in a hurry to attend classes in the building, did not see the notice. As Brian Mbiyo was rushing to class, he slipped, fell and fractured his hand. Brian Mbiyo is now seeking compensation from Allan Bora.
- Advise Allan Bora on his legal position. (8 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) With reference to the law of agency:
- (i) Distinguish between a “special agent” and a “general agent”. (2 marks)
 - (ii) Highlight five conditions which must be fulfilled for a principal to effectively ratify the acts of an agent. (5 marks)
 - (iii) Outline three obligations of an agent to the principal. (3 marks)
- (b) (i) Summarise three basic principles of insurance. (6 marks)
- (ii) Explain the meaning of the principle of double insurance. (4 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) (i) Explain two differences between “hire-purchase sale” and “credit sale”. (4 marks)
- (ii) Explain three duties of the hirer in a hire purchase agreement. (6 marks)
- (b) Many clauses in a contract purport to exclude liability for injury, loss or damage.
- Explain five rules which determine the effectiveness of such clauses. (10 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) With reference to the law of intellectual property, discuss four advantages of registering an industrial design. (8 marks)
- (b) With regard to administrative law:
- (i) Explain the term “separation of powers”. (2 marks)
- (ii) Summarise three grounds upon which courts might interfere with the decisions of an administrative body. (6 marks)
- (c) Describe the procedure of registering a primary society. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) (i) List three functions of international treaties. (3 marks)
- (ii) Outline five sources of international law. (5 marks)
- (b) (i) Distinguish between “mediation” and “arbitration”. (4 marks)
- (ii) Analyse four disadvantages of mediation over civil litigation. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Milka Pendo and Joseph Karani are partners carrying on business in the name and style of Moja Enterprises. Joseph Karani has nevertheless set up a similar competing business while retaining his partnership in Moja Enterprises. Milka Pendo feels aggrieved and intends to expel Joseph Karani from Moja Enterprises.

Analyse the legal principles applicable in the above case and advise Milka Pendo. (10 marks)

- (b) Hannah Asahani has received a document in her office which she is unable to identify. The document is dated 1 October 2017, written in Nairobi and addressed to Hannah Asahani by Peris Tunda in the following words: “Ten days after sight, pay to my order Sh.20,000 for value received”.

Required:

- (i) State the name of the above document. (1 mark)
- (ii) Identify the three parties, in legal terms, to the above document. (3 marks)
- (iii) Highlight six essentials of the above document. (6 marks)

(Total: 20 marks)

QUESTION SEVEN

- (a) Describe the jurisdiction of the Employment and Labour Relations Court (formerly the Industrial Court) in your country. (6 marks)
- (b) With reference to the law of persons, distinguish a “corporation” from an “unincorporated association”. (8 marks)
- (c) Highlight six reasons why the law is important in commercial transactions. (6 marks)
- (Total: 20 marks)**
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KASNEB

CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

MONDAY: 22 May 2017.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Alex Kombo entered into a five year written lease agreement for office premises with Mercy Omagwa. After the end of the lease period, the parties agreed that Mercy Omagwa would continue occupying the office premises for another five years. On that basis, Mercy Omagwa made extensive renovations to the office premises. She installed new carpets, painted the premises and put in a new heating system.

Alex Kombo later changed his mind and told Mercy Omagwa to vacate the office premises claiming that the lease agreement has expired.

With specific reference to promissory estoppel in the law of contract, advise Mercy Omagwa on her legal rights.

(10 marks)

- (b) Describe five grounds upon which a patent registration might be revoked.

(10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) With reference to the law on the sale of goods:

- (i) Highlight two purposes of incoterms.

(2 marks)

- (ii) Outline three duties of the seller under delivered at place (DAP) contracts of sale.

(3 marks)

- (iii) Describe five salient features of "price" in a sale of goods contract.

(5 marks)

- (b) (i) Explain three conditions that should be fulfilled for agency by necessity to arise.

(6 marks)

- (ii) Identify two circumstances when an agency relationship might come to an end by an act of the parties.

(4 marks)

(Total: 20 marks)

QUESTION THREE

- (a) With reference to negotiable instruments:

- (i) Highlight four types of endorsements that could be used on a bill of exchange.

(4 marks)

- (ii) Summarise three ways through which a bill of exchange might be discharged.

(6 marks)

- (b) Describe four purposes of law.

(4 marks)

- (c) One of the remedies available on breach of contract is action for specific performance. However, there are cases when the remedy might or might not be granted.

With reference to the above statement, identify three cases when specific performance might be granted and three cases when it might not be granted.

(6 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) (i) Outline four types of partnerships. (4 marks)
- (ii) Explain three types of disclosures that the partners in a partnership must make. (6 marks)
- (b) Discuss five circumstances under which the High Court might set aside an arbitral award. (10 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) State four ways through which the independence of the judiciary might be actualised. (4 marks)
- (b) Explain three advantages of the doctrine of separation of powers. (6 marks)
- (c) Highlight three disadvantages of case law as a source of law. (6 marks)
- (d) During legislation, a bill might either undergo assent or referral. Summarise the process of Presidential assent. (4 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Agnes Pure purchased a sewing machine from High Hopes Limited under a hire purchase agreement. High Hopes Limited did not disclose to Agnes Pure that the sewing machine was being let on second hand basis as it had been repossessed from another hirer. Agnes Pure took possession of the sewing machine but on reaching home, she realised that it was not in a working condition. When Agnes Pure read the terms of the hire purchase again, she discovered that High Hopes Limited had exempted themselves from any liability whatsoever.
- Analyse the legal principles applicable in the above case and advise Agnes Pure who intends to sue High Hopes Limited. (10 marks)
- (b) Explain three conditions that must exist in order for a plaintiff to maintain an action for negligence. (6 marks)
- (c) Describe two defences available to a person who is being sued for nuisance. (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With specific reference to the contract of insurance:
- (i) Highlight six essentials of an insurance contract. (6 marks)
- (ii) State four types of marine insurance policies. (4 marks)
- (b) Explain two instances when the guarantor will not be held liable on the principal debt. (4 marks)
- (c) Describe the composition and jurisdiction of the Environment and Land Court. (6 marks)
- (Total: 20 marks)**
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KASNEB

CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

MONDAY: 21 November 2016.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Explain three rules courts apply in the interpretation of statutes. (6 marks)
 - (b) Describe three rules governing the liability of a retiring partner in the law of partnerships. (6 marks)
 - (c) With reference to natural justice, highlight eight rights of an accused person in criminal proceedings. (8 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Sarah Ambuso and Haggah Mbone are business ladies whose offices are adjacent to each other. Recently, Sarah Ambuso accused Haggah Mbone of using magic in order to divert her customers to Haggah Mbone's office. Immediately thereafter, Sarah Ambuso wrote and distributed several leaflets to the occupants of neighbouring offices in which she accused Haggah Mbone of being a devil worshipper. Haggah Mbone feels aggrieved and intends to sue Sarah Ambuso.

Analyse the legal principles applicable in the above case and advise Haggah Mbone. (10 marks)
 - (b) Identify ten fiduciary duties imposed on an agent when acting primarily on behalf of a principal. (10 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Summarise four ways in which a contract might be discharged by operation of the law. (8 marks)
 - (b) Explain three advantages of statutes as a source of law. (6 marks)
 - (c) Distinguish between "civil law" and "criminal law" on the basis of the following aspects:
 - (i) The parties. (4 marks)
 - (ii) The burden of proof. (2 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Discuss five circumstances under which a non-owner of goods might pass a valid title to the buyer in a sale of goods contract. (10 marks)
 - (b) In relation to the law of property:
 - (i) Highlight four elements of a patentable invention. (4 marks)
 - (ii) Explain three types of property in land. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Summarise four ways through which a person might lose citizenship in your country. (8 marks)
 - (b) With reference to the court structure in your country, outline the hierarchy of the magistrate's courts. (4 marks)
 - (c) Describe four roles of the Attorney General in your country. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Explain three duties of a bailee in a bailment. (6 marks)
- (b) Identify four legal consequences of non-registration of a hire purchase agreement. (4 marks)
- (c) With reference to the law of insurance:
- (i) Describe three grounds upon which the duty of disclosure is justified. (6 marks)
- (ii) Identify two principles of insurance that support the main principle of subrogation. (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Discuss the advantages and disadvantages of negotiation as a form of alternative dispute resolution. (10 marks)
- (b) Explain five circumstances when the authority of a banker to pay a cheque drawn on his bank is terminated. (10 marks)
- (Total: 20 marks)**
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KASNEB

CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

MONDAY: 23 May 2016.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

(a) In relation to the sources of law:

- (i) Explain the meaning of the term "common law". (4 marks)
- (ii) State four characteristics that a custom under African customary law should satisfy to be enforceable. (4 marks)
- (iii) Describe two types of judicial precedents. (4 marks)

(b) Discuss four grounds of an application for judicial review. (8 marks)

(Total: 20 marks)

QUESTION TWO

(a) Damages are a common law remedy awarded in tort and are intended as compensation for a plaintiff's loss.

In relation to the above statement, describe five categories of damages available to a plaintiff. (10 marks)

(b) In relation to the court system in your country:

- (i) State five superior courts. (5 marks)
- (ii) Explain the composition and jurisdiction of the Kadhi's court. (5 marks)

(Total: 20 marks)

QUESTION THREE

(a) Moses Mugo and Joshua Wafula are interested in venturing into business.

Required:

Advise them on three advantages of an artificial person over an unincorporated person. (6 marks)

(b) Explain four essential elements of an enforceable contract. (8 marks)

(c) Identify three types of rights that a surety could enforce against a creditor in a contract of guarantee. (6 marks)

(Total: 20 marks)

QUESTION FOUR

(a) With reference to settlement of disputes through commercial arbitration, summarise the form and content of an arbitral award. (8 marks)

(b) With reference to negotiable instruments, highlight the conditions that a person must satisfy in order to qualify as a holder in due course. (6 marks)

(c) Explain three duties of a bank to its customers. (6 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Discuss four remedies available to a buyer in case a seller breaches a contract of sale of goods. (8 marks)
- (b) Distinguish in three ways between a “hire purchase agreement” and a “conditional sale agreement”. (6 marks)
- (c) Describe three conditions necessary for a valid ratification in the law of agency. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Explain five rules that govern distribution of losses and assets upon dissolution of a partnership. (10 marks)
- (b) With reference to the law of insurance:
- (i) Distinguish between “perils” and “hazards”. (2 marks)
- (ii) Discuss four elements that an insurable risk ought to possess. (8 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With reference to the law of property, explain two characteristics of a plant breeder’s patent. (4 marks)
- (b) Explain the differences between “criminal law” and “civil law”. (6 marks)
- (c) Describe five remedies of a principal for an agent’s breach of duty. (10 marks)
- (Total: 20 marks)**
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KASNEB

CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

FRIDAY: 20 November 2015.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Explain five main branches of civil law. (10 marks)
 - (b) Justify the need for delegated legislation. (10 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Explain five rights of an agent. (10 marks)
 - (b) Outline ten contents of a partnership deed. (10 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Discuss five remedies available whenever there is a breach of contract. (10 marks)
 - (b) Explain two ways in which independence of the judiciary is attained. (4 marks)
 - (c) Describe the role of the three arms of government as envisaged in the doctrine of separation of powers. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) With specific reference to sale of goods contract:
 - (i) Explain two implied warranties. (4 marks)
 - (ii) Identify four essential characteristics of a sale of goods contract. (4 marks)
 - (b) Summarise six ways in which a lease agreement might be terminated. (12 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Identify three consequences of not registering a hire purchase agreement. (6 marks)
 - (b) Distinguish between "Hire purchase" and "Credit sale". (6 marks)
 - (c) Discuss four circumstances under which a guarantor would be discharged. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) With reference to the law of insurance, explain four grounds upon which the duty of disclosure is justified. (8 marks)
 - (b) Describe four ways through which a bill of exchange could be discharged. (8 marks)
 - (c) State two differences between a "Cheque" and a "Bill of exchange". (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) State seven principles that guide co-operative societies. (7 marks)
- (b) Outline five rights of a member of a co-operative society. (5 marks)
- (c) Explain four ways through which an occupier could guard against liability for independent contractors. (8 marks)
- (Total: 20 marks)**
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KASNEB

CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

PILOT PAPER

September 2015.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Explain three branches of public law. (6 marks)
 - (b) Describe the procedure to be followed when the President declines to assent to a bill passed by parliament. (8 marks)
 - (c) Explain the doctrine of independence of the judiciary. (6 marks)
- (Total: 20 marks)

QUESTION TWO

- (a) Highlight four principles that guide the courts in exercising judicial authority. (8 marks)
 - (b) Explain three categories of cooperative societies. (6 marks)
 - (c) State three rights available to a person who agrees to be answerable for the, default or miscarriage of another party. (6 marks)
- (Total: 20 marks)

QUESTION THREE

- (a) List four grounds that might lead to rejection of an application to register a trademark. (4 marks)
 - (b) Where a mortgagor defaults in repayment of the mortgage, the mortgagee has a right to appoint a receiver to realise the assets of the mortgagor.
Highlight the order of priority of payments by the receiver. (8 marks)
 - (c) (i) State the Rule in Rylands v Fletcher. (2 marks)
(ii) Explain three defences to the rule in c (i) above. (6 marks)
- (Total: 20 marks)

QUESTION FOUR

- (a) The parties to a contract must precisely perform their obligations on the contract otherwise the contract shall not be discharged.
Highlight four exceptions to the general rule of precise performance. (8 marks)
 - (b) Explain four implied provisions in arbitration agreements. (4 marks)
 - (c) In relation to partnership law, explain the liability of the following partners:
 - (i) Incoming partner. (2 marks)
 - (ii) Infant partner. (2 marks)
 - (iii) Outgoing partner. (4 marks)
- (Total: 20 marks)

QUESTION FIVE

- (a) (i) Distinguish between “actual authority” and “ostensible authority” of an agent. (2 marks)
- (ii) An agent must not delegate powers that have been delegated to him.
Explain four exceptions to this rule. (4 marks)
- (b) (i) Highlight two differences between “law of tort” and “law of contract”. (4 marks)
- (ii) Explain three provisions of the limitation of actions Act in relation to contracts. (6 marks)
- (c) State four remedies that might be granted by the High Court in the enforcement of the fundamental rights and freedoms of an individual. (4 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) In relation to sale of goods, explain four rules relating to auction sales. (8 marks)
- (b) Describe three obligations of a hirer who terminates a hire purchase agreement before payment of the full hire purchase price. (6 marks)
- (c) Mpole drew a bill of exchange for Sh.50,000 payable to Hussein for goods supplied. Hussein endorsed the bill to Stella for money owed to Stella. Stella endorsed the bill to her friend Asha as a gift. Asha presented the bill for payment but it was dishonoured.
Advise Asha as to the person she might sue on the bill. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) (i) Distinguish between “assurance” and “insurance”. (2 marks)
- (ii) In every contract of insurance, the insured has a duty to disclose all material information to the insurer at the time of taking out the policy of insurance.
Explain the information that need not be disclosed. (4 marks)
- (b) Highlight three differences between possession and ownership of land. (6 marks)
- (c) In relation to the law of agency, explain the following:
- (i) Del credere agent. (2 marks)
- (ii) Factor agent. (2 marks)
- (iii) Two circumstances when the principal is not allowed to unilaterally terminate an agency contract. (4 marks)
- (Total: 20 marks)**
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