

CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

FRIDAY: 27 November 2020.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Describe five characteristics of mortgages. (10 marks)
 - (b) Highlight four contents of a mortgage instrument. (4 marks)
 - (c) Describe three covenants that are implied in Chattel mortgages. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

(a) The directors of Guava Juice Limited are in the process of executing an agreement with the directors of Mango Juice Limited regarding the protection of some confidential information touching on the secret recipes of the two companies. However, the directors know very little about the legal nature of their transaction and have approached you for legal advice.

Required:

- (i) Identify the type of intellectual property meant to be protected under the above contractual relationship. (2 marks)
 - (ii) Summarise four advantages of relying on the legal protection offered under the contract in (a) (i) above as opposed to patent protection. (10 marks)
 - (b) (i) Outline four similarities between “shares” and “debentures”. (4 marks)
 - (ii) Explain the meaning of “cash consideration” in relation to sale of treasury shares by a company. (4 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) With reference to securities:
 - (i) Enumerate four ways through which security interests might be created. (4 marks)
 - (ii) Describe four circumstances under which a chargee might sue the chargor for recovery of the money secured by a charge. (8 marks)
 - (b) Summarise two factors that might affect the price of treasury bills and their returns. (2 marks)
 - (c) Highlight six circumstances under which the Cabinet Secretary for Finance might guarantee the loan of a County Government on behalf of the National Government. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Outline five features that are unique to a contract of indemnity other than the essentials of a valid contract. (5 marks)
 - (b) Prepare a checklist of seven items to consider when drafting indemnity clauses. (7 marks)
 - (c) Describe four types of information that an applicant who requires licensing for a lending institution should provide. (8 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Describe the procedure to be followed when discharging a charge. (10 marks)
- (b) (i) State five remedies available to the bailee for breach of a contract of bailment. (5 marks)
- (ii) Enumerate five rights of the pawnee upon default by the pawnor. (5 marks)

(Total: 20 marks)

QUESTION SIX

- (a) Explain six advantages a customer derives while using a credit card. (6 marks)
- (b) Corporate accountability refers to the obligation and responsibility to give an explanation or reason for the company's actions and conduct.

With reference to the above statement:

- (i) Discuss four responsibilities of the board in enhancing corporate accountability. (8 marks)
- (ii) Summarise six ways in which the common shareholders are protected through corporate governance principles. (6 marks)

(Total: 20 marks)

QUESTION SEVEN

- (a) With specific reference to consumer protection in credit agreements:
 - (i) Explain the meaning of the term "consumer". (2 marks)
 - (ii) Define the term "credit agreement". (2 marks)
- (b) Discuss six objectives of consumer protection mechanisms. (12 marks)
- (c) Explain four conditions to be satisfied for an individual to be granted a loan by a SACCO. (4 marks)

(Total: 20 marks)

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CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

WEDNESDAY: 27 November 2019.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) One of the areas that corporate governance is concerned with is conflict of interest.

Discuss five types of activities that could pose a conflict of interest to an organisation. (10 marks)

- (b) A collateralised transaction is one in which an institution's credit exposure or potential credit exposure is reduced in whole or in part by a collateral.

With reference to the above statement, propose five ways that could be used to ensure that the collateral mitigates risk exposure. (10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Describe how intellectual property could be used to secure a debenture. (6 marks)

- (b) With specific reference to creation of charges, explain provisions relating to the following:

(i) Mode of registration. (2 marks)

(ii) Limitation of time for registration (8 marks)

- (c) A proper functioning board should have a formal written conflicts of interest policy.

With reference to the above statement, identify two matters that should be captured in that policy. (4 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Describe three documents that must be availed in each of the cases below of a land transaction prior to the execution of a sale agreement:

(i) In the case of a purchaser to the vendor. (6 marks)

(ii) In the case of a vendor to the purchaser. (6 marks)

- (b) Explain four steps that must be taken for a transfer of land to be completed. (8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) (i) Define the term "pledge". (4 marks)

(ii) Summarise four offences that might be committed in pawning. (8 marks)

- (b) Highlight four contents of a contract of guarantee. (4 marks)

- (c) Outline four rights of an indemnity holder. (4 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) (i) Outline four matters that must be entered in the register of charges securing a debenture. (4 marks)
 - (ii) Describe four circumstances upon which an earlier charge securing a debenture will take priority over a later fixed charge. (8 marks)

 - (b) With specific reference to sovereign bonds:
 - (i) Define the term "sovereign bond". (2 marks)
 - (ii) Discuss three advantages and three disadvantages of a sovereign bond. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Highlight three advantages and three disadvantages of using collateral. (6 marks)
 - (b) Identify eight pieces of information that lending institutions disclose to customers on interest rates prior to signing of the Contract. (8 marks)
 - (c) Explain three types of default charges that a lender is entitled to impose on a borrower. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

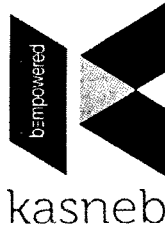
- (a) Summarise four features of treasury bills. (8 marks)
- (b) To increase efficiency and allow deeper focus in specific areas, a board may establish certain specialised board committees. The committees should be created and mandated by the full board.

You work for AZY Bank Ltd. and have been tasked to formulate the structure of the Audit committee and Risk committee.

Propose three considerations in coming up with the structure of each of the above mentioned committees. (12 marks)

(Total: 20 marks)

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CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

THURSDAY: 23 May 2019.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Simon pledged a pawn in form of a gold watch worth Sh.1,000,000 to secure a loan of Sh.500,000 from Moses Chapaa. Unfortunately, Simon was unable to pay the loan and so Moses Chapaa sold the watch and realised Sh.800,000 out of which he utilised Sh.530,000 to pay the loan and the recovery costs and he was left with a surplus of Sh.270,000.

As fate would have it, Simon was immediately after the sale, declared bankrupt and a trustee in bankruptcy appointed.

Moses Chapaa is at a loss on how he should deal with the surplus of Sh.270,000 in his possession.

Identify the legal principles applicable and advise Moses Chapaa. (10 marks)

- (b) Explain two circumstances which will render a pledge contract terminated for re-delivery of the pawn. (4 marks)
- (c) With reference to chattels securities, describe the nature of a security agreement. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Oliver Mtunzi has been a leading rhumba musician in Mbingo Island for the last 20 years and has acquired a name as Oliver Rhumba, which he has registered as a trademark. His songs are popular in the whole of East and Central Africa.

In 2017, Oliver Mtunzi suffered a decline in his business and required capital to market his music to the world, he has approached Pesa Bank for a loan. Pesa Bank insists that he must have a good security for him to secure a loan.

Oliver Mtunzi does not have land and so he is confused.

- (i) Identify four ways through which Oliver Mtunzi can use intellectual property as collateral and advise him. (8 marks)
- (ii) Enumerate two features of a trademark. (4 marks)
- (b) Highlight two circumstances upon which a guarantor will be liable to pay the principal creditor without a demand to pay. (4 marks)
- (c) Summarise four ways through which a contract of indemnity might be terminated. (4 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) (i) Explain three safeguards that have been introduced in the Land Laws to safeguard a chargor in a charge contract. (6 marks)
- (ii) Highlight five types of content that might be included in a Charge Instrument. (5 marks)

- (b) Explain two circumstances upon which an earlier floating charge securing a debenture will take priority over a later fixed charge. (4 marks)
 - (c) With reference to government (treasury) and corporate bonds, highlight five factors which might determine the re-sale value of a bond. (5 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Arrow Root Bank Limited entered into a security agreement with Aaron in which Aaron has severally defaulted on his monthly payments and the Bank intends to issue him with a notification of its intention to dispose of the collateral. The credit officer of Arrow Root Bank Limited seeks your legal advice regarding the format of the notification.

Required:

Outline eight ingredients of the notification of intention to dispose the collateral for official use by Arrow Root Bank Limited. (8 marks)

- (b) Summarise three obligations and three categories of assets that might be secured or encumbered by a security right under a security agreement. (6 marks)
 - (c) Explain the meaning of securities within the context of the law governing credit practice. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

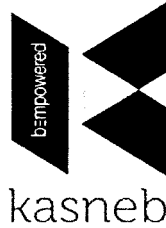
- (a) Discuss five credit card consumer rights provided for under credit card agreements. (10 marks)
 - (b) Summarise the procedure followed by the chargee in the application of the proceeds of sale of charged land. (7 marks)
 - (c) Identify three persons who might apply to court for relief in case the chargee purports to deprive the chargor of his right to redeem the charged property. (3 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Explain seven powers of the Board of the Sacco Societies Regulatory Authority. (7 marks)
 - (b) In the context of corporate governance, discuss four categories of conflict of interest that might be experienced by the Board of Directors. (8 marks)
 - (c) With reference to the management of co-operative societies, summarise five agenda that might be dealt with in the general meetings of co-operative societies. (5 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Summarise five requirements that a small e-money issuer must meet to be registered by a bank. (10 marks)
 - (b) Highlight four corrective actions that a Central Bank might take where an institution or persons participating in the general management of the institution is engaged in any practice likely to occasion a contravention of any legal provisions on banking. (4 marks)
 - (c) Explain three ways through which liens placed on properties by creditors might be removed. (6 marks)
- (Total: 20 marks)**
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CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

THURSDAY: 29 November 2018.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Distinguish between “indemnity” and “guarantee” as used in the law of contract. (4 marks)
- (b) Dan Mapesa agreed to give a guarantee to Liquid Bank Ltd. for an advance of Sh.200,000 to Teresa Mooh. Liquid Bank Ltd. made the advance, but it has reliably been informed that Dan Mapesa has become insane. The credit controller of Liquid Bank Ltd. has approached you for legal advice regarding Dan Mapesa’s liability.

Required:

Analyse the legal principles applicable in the above case and advise the credit controller of Liquid Bank Ltd. (6 marks)

- (c) Describe five qualities of good collateral that a lender should consider before accepting advancing a loan. (10 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) In relation to the release of security:
- (i) Explain the meaning of a “release of mortgage document”. (2 marks)
- (ii) Suggest six contents of the release of mortgage document. (6 marks)
- (b) Examine four duties of chargees in respect of the sale price of charged land. (4 marks)
- (c) The credit manager of your organisation has requested you to prepare a mortgage instrument for execution by a potential house mortgage customer.

Propose eight types of mortgage clauses that you would incorporate in the mortgage document. (8 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Propose four ways of terminating a pledge. (4 marks)
- (b) (i) Outline two remedies that are available to the bailor. (2 marks)
- (ii) Analyse eight important features of bailment. (8 marks)
- (c) Evaluate three circumstances under which the unpaid seller’s right of lien might be terminated. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) (i) Citing four examples, argue the case for securing a loan by way of a chattel mortgage. (4 marks)
- (ii) Analyse four rights of the secured party under a chattel mortgage. (4 marks)
- (b) (i) Assess four types of evidence of registration of a cooperative society that a potential member might rely on while confirming whether the cooperative society is fully registered. (4 marks)

- (ii) Examine four lending terms and legal obligations between parties, that a Sacco society is required to disclose. (4 marks)
- (c) Justify four reasons why it is important to regulate and supervise microfinance institutions in your country. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

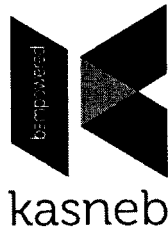
- (a) In the context of corporate securities, explain the following:
- (i) Ownership securities. (2 marks)
- (ii) Creditorship securities. (2 marks)
- (b) Explain six advantages of using debentures as corporate securities. (6 marks)
- (c) Analyse five risks that are associated with corporate bonds. (10 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) In the context of corporate governance:
- (i) Summarise six shareholders' obligations. (6 marks)
- (ii) Propose six benefits that might accrue to a company from embracing good governance practices. (6 marks)
- (b) With reference to prudential guidelines on corporate governance by the Central Bank of your country for lending institutions, describe four restrictions on financial institutions in relation to insider loans. (8 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Consumer protection in credit agreements provides for confidentiality, where customer information should not be disclosed to any person except on certain situations as provided under the law.
- With reference to the above provision, indicate four circumstances under which customer information could be disclosed. (4 marks)
- (b) Explain four provisions in relation to prepayment under consumer credit agreements. (8 marks)
- (c) Discuss four clauses that are contained in the contract between a customer and a microfinance institution for the provision of automated teller machine (ATM) services. (8 marks)
- (Total: 20 marks)**
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CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

THURSDAY: 24 May 2018.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

(a) Jabali Shanzu intends to borrow Sh.900,000 from Saidia Bank Ltd. using his piece of land as a collateral.

Required:

(i) Advise Jabali Shanzu on the procedure he should follow to qualify for the loan (charging the land). (8 marks)

(ii) Assume that after 5 years Jabali Shanzu repays the loan. Describe the steps he should take to release the security created in (a) (i) above. (6 marks)

(b) Highlight three rights of the mortgagor. (6 marks)

(Total: 20 marks)

QUESTION TWO

(a) Summarise four advantages of debentures from the borrower's point of view. (8 marks)

(b) Explain the priority of charges. (4 marks)

(c) Describe four benefits of investing in corporate bonds. (4 marks)

(d) Highlight two legal consequences of the crystallisation of a floating charge. (4 marks)

(Total: 20 marks)

QUESTION THREE

(a) Explain the meaning of the term "release of lien". (4 marks)

(b) Summarise six essentials of a pledge. (6 marks)

(c) Describe the procedure to be followed by an investor who intends to invest in treasury bonds. (10 marks)

(Total: 20 marks)

QUESTION FOUR

(a) Aloys Jengo agreed with Eagle Bank Ltd. that in consideration of the bank advancing Sh.100,000 to Eunice Karita on the strength of Eunice' car as security, Aloys Jengo would repay the amount together with interest should Eunice Karita default. Eagle Bank Ltd. advanced the money to Eunice who has since defaulted. Aloys Jengo is almost insolvent. It has also emerged that Eagle Bank Ltd. had unilaterally altered the terms of the agreement.

Required:

(i) Identify the legal transaction created in the above scenario and the names of the parties to the transaction. (2 marks)

(ii) Justify to Eagle Bank Ltd. four reasons why Aloys Jengo is a favoured debtor as compared to Eunice Karita. (8 marks)

(b) Describe two rights of an indemnity holder. (4 marks)

(c) (i) Define the term "security interest". (2 marks)

(ii) Outline four characteristics of a security interest. (4 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) You are the legal manager of Kredit Bank Ltd. Grace, a customer of the bank who had used her tractor to secure a loan of Sh.2 million has repaid the amount in full and she intends to have the loan entry removed from the records held at the relevant Registration of Documents Registry. Grace has been referred to you by the credit manager.

Required:

- (i) Identify the name of the document that had been registered. (1 mark)
- (ii) State the document you will prepare to have the loan entry removed. (1 mark)
- (iii) Outline eight contents of the document in (a) (i) above. (8 marks)
- (b) In the context of consumer protection in credit card agreements:
- (i) Define the term “deferred payment”. (2 marks)
- (ii) Summarise four types of default charges that the lender might impose on the borrower. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

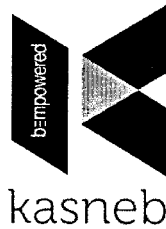
- (a) Jabu Microfinance Ltd. has made an application for a licence to carry out deposit-taking business. The regulator has advised Jabu Microfinance Ltd. company to prepare a feasibility study report to accompany the application. The directors of Jabu Microfinance Ltd. have requested you to assist them prepare the report.

Required:

- Outline ten areas the report of the feasibility study undertaken by Jabu Microfinance Ltd. should include. (10 marks)
- (b) (i) A lender is not entitled to impose on a borrower under a credit agreement default charges other than three specified categories of charges.
- With reference to the above statement, explain three types of authorised default charges a lender is entitled to impose on a borrower. (6 marks)
- (ii) Suggest four precautionary measures the cardholder might take to manage unauthorised credit card charges. (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With reference to corporate governance:
- (i) Discuss five objectives of investor education programmes. (10 marks)
- (ii) The objective of a board credit committee within a lending institution is to assist the board of directors in reviewing and overseeing the overall lending of the institution.
- Outline four roles and responsibilities of the board credit committee. (4 marks)
- (b) A Sacco Society shall have a written credit policy consistent with the relevant laws and regulations. The credit policy should contain certain information.
- Identify six types of information that should be contained in the credit policy. (6 marks)
- (Total: 20 marks)**
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CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

THURSDAY: 30 November 2017.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Petro Shida applied for a loan of Sh.1 million from Tuko Bank Ltd. The bank required a security for the loan and Petro Shida provided his title to land with the agreement that the title shall only act as a security and not a transfer.

Tuko Bank Ltd. accepted the title but advised that no loan amount will be disbursed until the security contract is created and perfected.

Required:

In relation to security contracts, advise Petro Shida on the security to be created and the procedure for perfecting it.

(10 marks)

- (b) You have approached the legal expert within the credit department of the bank you work for. Your sole purpose is to be advised on covenants, conditions and powers implied in charges. You need this information to assist Samson Nieleze who has charged his property for purposes of obtaining a loan from your bank.

Required:

With reference to the above scenario, explain to Samson Nieleze the implied covenants by the chargor.

(10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) With specific reference to corporate securities:

(i) Describe four types of corporate bonds. (8 marks)

(ii) Highlight the order of priority of charges. (6 marks)

- (b) Chattels mean any movable property that can be completely transferred by delivery and includes machinery, stock and the natural increase of stock.

With reference to the above statement, identify three categories of property that are not chattels. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Helen Sema got compensation of Sh.500,000 from her employer for injuries she sustained while at work. Helen Sema is interested in investing in a secure investment like treasury bonds.

Required:

Advise Helen Sema on risks associated with investing in treasury bonds.

(8 marks)

- (b) With specific reference to bailment, pledge and lien:

(i) Explain four characteristics of liens. (4 marks)

(ii) Identify six forms of pledges. (6 marks)

(iii) Outline two factors which a bailor needs to prove in order to successfully sue a bailee for breach of the bailment contract. (2 marks)

(Total: 20 marks)

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QUESTION FOUR

- (a) Describe eight standard clauses commonly found in guarantees. (8 marks)
- (b) Tom Tafuta is an employee of Jipange Sacco. He would like to obtain a loan from his sacco. Tom Tafuta is aware that a sacco society might give loans to its employees and board members, however, he has no information on the conditions to be met before he can be granted a loan.
- Advise Tom Tafuta on the conditions to be met before he can be granted a loan by his employer. (8 marks)
- (c) Outline four remedies available to a chargee in case a chargor is in default within two months. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) (i) Explain eight best corporate governance practices that every board of directors should embrace for the benefit of their companies. (8 marks)
- (ii) Highlight four principles of corporate governance. (4 marks)
- (b) Describe the procedure applicable to a director who has an interest when disclosing an issue of conflict of interest. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) (i) Explain two ways through which a borrower might purchase the insurance required under a credit agreement. (4 marks)
- (ii) Highlight eight types of errors which might be corrected by the lender under a credit agreement for open credit. (8 marks)
- (b) Alex Fundi, a tailor, has declined to release Brenda Suti's designer suit and intends to sell the same to recover his unpaid repair charges. Brenda Suti is adamant and maintains that Alex Fundi has no legal right to sell the suit. Alex Fundi feels aggrieved and has approached you for advice.
- Analyse the legal principles applicable in the above case and advise Alex Fundi on his legal rights, if any. (8 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) James Kopa borrowed a loan of Sh.1 million from Mkopo Bank Ltd. He used his title deed as security for the loan. Unfortunately James Kopa was retrenched from employment after servicing the loan for one year.
- After two months of default, the bank procured the services of auctioneers and the land was sold at Sh.300,000.
- James Kopa feels aggrieved and approaches you for advice.
- Identify the legal principles applicable and advise James Kopa on his rights. (8 marks)
- (b) Suggest three measures that lending institutions could put in place for prospective foreign customers who intend to open accounts without face-to-face contact. (6 marks)
- (c) With reference to provision of information to a consumer of an institution's products or services, explain three types of information a consumer is entitled to from the institution. (6 marks)
- (Total: 20 marks)**
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KASNEB

CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

THURSDAY: 25 May 2017.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Describe three covenant clauses used in corporate bonds. (6 marks)
- (b) With reference to consumer agreements, explain the term "deferred payment" in relation to the following parties:
- (i) The borrower. (2 marks)
 - (ii) The buyer. (2 marks)
 - (iii) The seller. (2 marks)
- (c) William borrowed Sh.300,000 from Grace and Grace kept William's motor vehicle as security for payment of the debt.
- Required:**
- (i) Identify the legal relationship created between William and Grace. (2 marks)
 - (ii) Discuss three characteristics of the relationship in (c)(i) above. (6 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Summarise five duties of the secured creditor who is in possession and control of a collateral. (5 marks)
- (b) (i) With reference to land as a collateral, explain the term "second mortgage". (2 marks)
- (ii) Discuss four advantages of second mortgages. (8 marks)
- (iii) With reference to the discharge of chattel mortgages, outline five particulars that are contained in the discharge memorandum. (5 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) With reference to consumer protection, explain three remedies that are available to the cardholder for incurring unauthorised charges on a credit card. (3 marks)
- (b) Propose five ways through which the government could promote good corporate governance. (10 marks)
- (c) Explain seven purposes of the anti-money laundering prudential guidelines for licensed financial institutions. (7 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Identify six securities which might be subjected to a banker's lien. (6 marks)
- (b) The Sacco Societies Regulatory Authority (SASRA) is an unincorporated body that discharges all its duties and exercises all its rights as a body corporate.
- Highlight seven reasons to justify the above statement. (7 marks)
- (c) In light of consumer protection under credit agreements, enumerate seven disclosures which might be included in a credit agreement. (7 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) In relation to indemnities:
- (i) Discuss three circumstances under which the indemnifier might be held liable. (6 marks)
 - (ii) Highlight three types of indemnity clauses. (6 marks)
- (b) Explain the procedure for the discharge of a charge. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Explain four circumstances under which crystallisation of a floating charge could take place. (8 marks)
- (b) Propose six consequences of an adjudication order with respect to a debtor. (12 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With regard to land as a collateral, discuss four covenants between the chargor and the chargee which are binding on the chargor as implied in every charge document. (8 marks)
- (b) Explain two duties of the bailee. (4 marks)
- (c) A merchant who intends to borrow money for his business could be required by a lender to provide security for the loan.
- With reference to the above statement, analyse eight formal types of securities that the merchant could use to secure the loan. (8 marks)
- (Total: 20 marks)**
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KASNEB

CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

THURSDAY: 24 November 2016.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Explain the meaning of the term "micro finance institution." (2 marks)
- (b) With reference to the regulation and supervision of Sacco Societies, itemise four functions of the Sacco Societies Regulatory Authority (SASRA). (8 marks)
- (c) Chetu Limited issued a debenture to Sunlight Bank Limited two years ago. The debenture was routinely described as a fixed and floating charge. Inadvertently, the charge was neither dated nor registered within the required statutory period. Chetu Limited is now in liquidation and the loan is in arrears. Sunlight Bank Limited has sought your advice regarding the legality of the charge.

Analyse the legal principles applicable in the above case and advise Sunlight Bank Limited. (10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Explain five types of bailment. (10 marks)
- (b) With reference to corporate governance, describe five duties of an effective board of directors. (10 marks)

(Total: 20 marks)

QUESTION THREE

- (a) In relation to land as security, explain the following terms:
- (i) Estate. (2 marks)
- (ii) Absolute title. (2 marks)
- (iii) Qualified title. (2 marks)
- (b) Outline two characteristics of a banker's lien. (4 marks)
- (c) William Mwatela, while on his way to his place of work came across Jones Pole, an accident victim who required urgent medical attention. William Mwatela rushed Jones Pole to Mercy Hospital for medication. Mercy Hospital declined to receive Jones Pole since he had no money but was promising to pay the following day. Mercy Hospital attendants admitted Jones Pole when William Mwatela promised the hospital authorities as follows: "Please let him have the necessary medication, I will ensure you are paid". Jones Pole is unwilling to pay for the hospital bill and Mercy Hospital intends to sue William Mwatela who has come to you for legal advice.

Analyse the legal principles applicable in the above case and advise William Mwatela. (10 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Evaluate six clauses that are contained in a bank guarantee form. (12 marks)
- (b) Describe four conditions under which a person who obtains confidential information in credit agreements could disclose such information. (8 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) With reference to government borrowing:
 - (i) Highlight four types of information that the Minister responsible for Finance in your country should maintain on any loan or guarantee rendered to the government. (4 marks)
 - (ii) Define the term “public debt”. (2 marks)
- (b) Explain the meaning of the term “instrument” as used in chattel mortgages. (6 marks)
- (c) Principles of good corporate governance demand that there should be disclosure and transparency.

With reference to the above statement, identify eight areas that the Organisation for Economic Co-operation and Development (OECD) guidelines prescribe disclosure of material information should relate to. (8 marks)

(Total: 20 marks)

QUESTION SIX

With reference to the regulatory framework for savings and credit cooperative societies (Saccos), explain the provisions governing:

- (a) Security for loans. (6 marks)
- (b) Inter-Sacco borrowings. (8 marks)
- (c) Limits on loans and credit facilities. (6 marks)

(Total: 20 marks)

QUESTION SEVEN

- (a) Explain three characteristics of a floating charge. (6 marks)
- (b) Highlight two circumstances under which a floating charge crystallises. (4 marks)
- (c) Describe two types of debentures under each of the following classifications:
 - (i) From the security point of view. (2 marks)
 - (ii) On the basis of redemption. (2 marks)
 - (iii) On the basis of records. (2 marks)
 - (iv) On the basis of convertibility. (2 marks)
 - (v) On the basis of priority. (2 marks)

(Total: 20 marks)

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KASNEB

CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

THURSDAY: 26 May 2016.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Any variation by a creditor of his specific agreement with the principal debtor or co-guarantors without the guarantor's consent releases the guarantor from liability.

In light of the above statement, describe five types of variations which a creditor could make to a contract of guarantee without the consent of the guarantor.

(10 marks)

- (b) Describe five standard clauses contained in a bank mortgage instrument with regard to land as security. (10 marks)
(Total: 20 marks)

QUESTION TWO

- (a) Benson Maji took a motor bike which he had purchased on hire purchase terms to Shylock garage for repair. The owner of Shylock garage knew that the motor bike was acquired on hire purchase terms and that the hire purchase agreement had been terminated due to Benson's default before the order for repairs was given. The hire purchase company has learnt that the motor bike is at Shylock garage and has proceeded to have the motor bike repossessed. The owners of Shylock garage have refused to release the motor bike claiming that their repair charges have not been paid.

The hire purchase company feels aggrieved and intends to sue the owners of Shylock garage.

Analyse the legal principles applicable in the above case and advise the hire purchase company. (10 marks)

- (b) In the context of deferral of payments under credit agreements, indicate two matters which a lender is required to disclose to the borrower regarding payment of interest. (4 marks)
- (c) Outline six grounds upon which the Central Bank might revoke the licence of a deposit-taking micro finance institution. (6 marks)
(Total: 20 marks)

QUESTION THREE

- (a) Identify three advantages of investing in treasury bills. (6 marks)
- (b) In relation to land as security, outline two advantages of a legal mortgage over an equitable mortgage. (4 marks)
- (c) Explain in three ways the meaning of the term "consumer" with reference to consumer protection in credit agreements. (6 marks)
- (d) Outline four factors which might cause the failure of a corporate entity. (4 marks)
(Total: 20 marks)

QUESTION FOUR

- (a) Describe four best practice principles which are included in the prudential guidelines for lending institutions. (8 marks)
- (b) Identify six types of securities which might be subjected to a banker's lien. (6 marks)
- (c) Summarise six effects of the appointment of an administrative receiver in relation to company securities. (6 marks)
(Total: 20 marks)

QUESTION FIVE

- (a) In the context of corporate governance, highlight five best practices required of directors to promote and protect the rights of shareholders. (10 marks)
 - (b) Discuss five conditions that must be met before a co-operative society borrows money from persons who are not members. (10 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) With specific reference to Chattel mortgages, define the following terms:
 - (i) Chattel mortgage. (2 marks)
 - (ii) Grantee. (2 marks)
 - (iii) Grantor. (2 marks)
 - (b) Discuss four purposes of consumer protection laws in your country. (8 marks)
 - (c) Explain three provisions governing the initial disclosure statement to the borrower in a credit agreement. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) With reference to prudential guidelines by the Central Bank of your country for lending institutions, summarise the information that institutions shall provide for interest bearing deposits and loans. (8 marks)
 - (b)
 - (i) Highlight the contents of a report of a feasibility study undertaken by a company applying for a license to carry out deposit taking business. (6 marks)
 - (ii) Describe the documents that accompany an application for a licence to carry out deposit taking business. (6 marks)
- (Total: 20 marks)**
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KASNEB

CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

THURSDAY: 26 November 2015.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Martin Sumo delivered his television set to Jessica Milo for safe custody. Jessica Milo agreed to redeliver the television set to Martin Sumo upon his return, but unfortunately she stored the television in an unsecure room where it was stolen before she could redeliver it.

Martin Sumo has now returned and learnt about what transpired with regard to his television. He has approached you for legal advice, as he intends to sue Jessica Milo who had volunteered to store the television set for him.

Analyse the legal principles applicable in the above case and advise Martin Sumo. (12 marks)

- (b) Immanuel Kioi has approached Racheal Softie to be his guarantor in a loan transaction. He has further requested Racheal Softie to execute some guarantee forms.

Explain to Racheal Softie the essential elements of a valid contract of guarantee. (8 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Explain four meanings of the term "chattel" as used in a chattel transfer. (4 marks)

- (b) Describe four covenants, provisions and powers on the part of a grantor in a chattel transfer. (8 marks)

- (c) Where the registration of a co-operative society is cancelled, the commissioner may appoint a liquidator of that society and all properties of the society rest in the liquidator from the date of the order of cancellation.

Highlight the powers of the liquidator appointed by the commissioner. (8 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Outline four types of company securities which might be traded at a securities exchange. (4 marks)

- (b) Explain the practical importance of corporate governance within an organisation. (8 marks)

- (c) Thomas Obwoye intends to purchase a piece of land from Chris Mbolea.

Advise Thomas Obwoye on the information he needs to know about the land before committing himself to buy it.

(8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) A lending institution shall classify its loan portfolio based on performance vis-à-vis the terms provided in the loan contract.

Describe five categories into which all loans are classified. (5 marks)

- (b) Discuss eight practical benefits of buying corporate bonds. (8 marks)

- (c) Pawnbrokers are persons licenced to carry on a money lending business by accepting valuable articles as security for the repayment of a loan.

Explain seven general restrictions imposed on pawnbrokers by the law. (7marks)

(Total: 20 marks)

QUESTION FIVE

- (a) In the context of consumer protection in credit agreements, explain five disadvantages of using life insurance policies as security in a mortgage. (10 marks)
 - (b) Describe five precautionary measures taken by a mortgagor to ensure that the title of the land intended to be used as security is perfect. (10 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Explain five particulars that the Registrar of Companies shall record in the register in case of a charge that is not part of a series of debentures. (5 marks)
 - (b) Identify seven types of charges that could be created by a company. (7 marks)
 - (c) With specific reference to consumer protection in credit agreements, summarise the provisions governing the following:
 - (i) Default charges that a lender is entitled to impose on a borrower. (3 marks)
 - (ii) Supplier credit agreements that the Consumer Protection Act No.46 of 2012 does not apply to. (5 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Highlight six forms of business activities that a Savings and Credit Co-operative (SACCO) society is prohibited by law from engaging in. (6 marks)
- (b) Harris Obi is a member of Fanikisha Sacco. He is employed with Bahada Company Ltd. and ensures that his Sacco contributions are deducted and remitted on time. Two years ago, Harris Obi saw an advertisement in a Saturday newspaper for sale of a piece of land in a prime area at a price of Sh.500,000. Harris Obi did not have any savings and so he quickly applied for a development loan from the SACCO.

Fanikisha Sacco granted Harris Obi the loan and he purchased the land. One month later, Harris Obi tried in vain to obtain his title deed and it has become apparent to him that he was duped. Harris Obi therefore only paid his loan for one year and on the second year started defaulting.

Fanikisha Sacco has decided to appoint a debt collector after exhausting the normal SACCO loan collection procedure.

Required:

- (i) Explain eight forms of conduct that the debt collector is prohibited by law from engaging in with regard to the collection of the debt. (8 marks)
 - (ii) Highlight six circumstances under which Fanikisha Sacco Society shall deem Harris Obi's loan as a loan written-off. (6 marks)
- (Total: 20 marks)**
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KASNEB

CCP PART II SECTION 4

LAW GOVERNING CREDIT PRACTICE

PILOT PAPER

September 2015.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) (i) Explain three types of securities. (6 marks)
- (ii) Outline two basic rights which accrue to a secured creditor. (2 marks)
- (b) Define the term "land" as used in law. (2 marks)
- (c) Mamba Bank Limited advanced credit to ABC Limited, which executed a charge over its land in Mamba Bank's favour. After three months, ABC Limited pledged its motor vehicles to Jackline. A year later, Esther advanced some money to ABC Limited and a security contract over its stock was executed to her favour. Later on, another security contract in favour of John charging its book debts was executed by ABC Limited. This security was created 6 months prior to the winding up of the company.
- Advise on the priority of the above security contracts. (10 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Highlight four duties of a chargor. (4 marks)
- (b) Identify the contracts created in the following situations:
- (i) Juma delivers the possession of his watch to Ali, so that it can act as a security for money advanced.
- (ii) Simon retains the possession of some goods belonging to Alice for non-payment of the price.
- (iii) Sure Insurance Company promises to compensate Otieno in case of an accident.
- (iv) Mercy undertakes to pay Onyango's liabilities in case Onyango defaults. (4 marks)
- (c) Explain three circumstances when the statutory power of sale will accrue in a charge contract. (6 marks)
- (d) John delivered his gold to Zinco Bank Limited for safe keeping. After a month, there was a heist at the bank and the gold was lost. Advise John on the duties of Zinco Bank in relation to their contract with John. (6 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) (i) Define the expression "chattel transfer instrument". (2 marks)
- (ii) Explain four requirements of creating a valid chattel transfer instrument. (8 marks)
- (b) Explain five requirements for registration of a microfinance institution. (10 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) In relation to lending institutions, explain four functions of each of the following committees:
- (i) The credit committee. (4 marks)
- (ii) The audit committee. (4 marks)

- (b) State four principles of good corporate governance. (4 marks)
- (c) In relation to the Consumer Protection Act, explain the following terms:
- (i) Credit agreement. (2 marks)
 - (ii) Unconscionable representation. (2 marks)
 - (iii) Credit repair. (2 marks)
 - (iv) Consumer. (2 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) State ten requirements of a grant of a licence to operate Front Office Service Activities (FOSA) business by the Sacco Societies Regulatory Authority. (10 marks)
- (b) Explain two common clauses in a guarantee contract. (4 marks)
- (c) Explain three types of freehold interest in land. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) State four types of debentures. (4 marks)
- (b) (i) Highlight four covenants of a grantor in a chattel transfer instrument. (4 marks)
- (ii) In relation to pledge contracts, explain the effects of re-delivery of a pawn. (2 marks)
- (c) BNA Limited recently acquired a lucrative contract and approached MBA Bank for a loan. The bank agreed to advance a loan to the company provided that a charge was created in the bank's favour.
- BNA Limited created a charge over its assets and the charge was registered after two months. It was however discovered that the charge instrument was unsealed and unwitnessed but the registrar, nevertheless registered it and issued a certificate of registration.
- Discuss three legal issues arising from the above scenario. (6 marks)
- (d) State four requirements which must be satisfied before a county government can be allowed to borrow. (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) (i) State four ways of terminating a pledge contract. (4 marks)
- (ii) Distinguish between a "lien" and a "pledge". (4 marks)
- (b) State four common clauses in a corporate bond. (4 marks)
- (c) Explain four duties of a director of a company. (8 marks)
- (Total: 20 marks)**
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