

CCP PART III SECTION 6

DEBT RECOVERY

FRIDAY: 27 November 2020.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Assess any four debt instruments that an organisation could use to raise capital. (4 marks)
- (b) Examine four attitudes that could be avoided by credit control staff in order to enhance debt collection. (4 marks)
- (c) Rachel Mali is embroiled in a dispute with her friend over unpaid debts. She is considering two options; meditation or litigation, to sort out the dispute.

Advise her on the following:

- (i) The difference between “conflict” and “dispute”. (2 marks)
- (ii) Five reasons why meditation is not an appropriate method of dispute resolution. (5 marks)
- (iii) Five advantages of litigation over negotiation. (5 marks)

(Total: 20 marks)

QUESTION TWO

- (a) In the context of debt recovery through legal process:
 - (i) Outline five particulars that a statement of claim should contain when being lodged in a small claims court. (5 marks)
 - (ii) Evaluate five grounds upon which a person can lodge a claim before the small claims court. (5 marks)
- (b) Explain five factors that an organisation should consider before writing-off a business debt. (5 marks)
- (c) Nate and Kim are professional accountants carrying on a limited liability partnership business under the name Nate and Kim Associates. The partnership is in a dire financial situation and some of its creditors have applied to the court for an administration order. Nate and Kim have opposed the application, but are clueless about the power of the court to appoint an administrator under these circumstances and they have approached you for legal advice.

Required:

In the context of the above facts, summarise five orders that the court might make, upon hearing the application.

(5 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Distinguish between “debt protection insurance” and “credit insurance”. (4 marks)
- (b) If a claim is contested, the burden lies on the plaintiff to prove it.
Describe three types of proof required to sustain a claim. (3 marks)

- (c) Analyse three circumstances under which the court may issue a garnishee order. (6 marks)
- (d) Hellen is an undischarged bankrupt who owes Miriam a sum of Sh.800,000. Hellen intends to make an application to the official receiver for a summary instalment order allowing her to pay Miriam's debt by way of instalments.

Required:

Describe the information that Hellen might be required to state in her application in order for her to convince the official receiver to rule in her favour. (7 marks)

(Total: 20 marks)

QUESTION FOUR

Ben Juma has been adjudged bankrupt by the High Court. He owed his creditors and employees amounts in excess of Sh.10,000,000. The bankruptcy trustee intends to pay debts in the order prescribed in the law.

Required:

Discuss the payment of the said debts under the following headings:

- (a) First priority claims. (8 marks)
- (b) Second priority claims. (8 marks)
- (c) Four alternatives to bankruptcy. (4 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Debt management and recovery follows a well thought process that enhances collection.

Appraise the four point procedure that is used by firms in debt recovery. (4 marks)

- (b) Discuss eight disadvantages of receivership within the context of insolvency law. (8 marks)

- (c) Evaluate four functions of the liquidator in a creditors' voluntary winding up of a company. (8 marks)

(Total: 20 marks)

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CCP PART III SECTION 6

DEBT RECOVERY

WEDNESDAY: 27 November 2019.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) A judgement debtor, upon conviction, might be detained in prison in the process of execution of a decree.
- Outline four reasons that might lead to the release of such a debtor before the lapse of the conventional six months. (4 marks)
- (b) With reference to the doctrine of “res-judicata”, a judgement shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title.
- Examine three exceptions to the above principle. (6 marks)
- (c) In commercial debt recovery litigation, it is beneficial for the creditor to have an acknowledgement of debt by a debtor.
- Discuss the benefits of this acknowledgement of debt (AOD) to the creditor. (10 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) In relation to dissolution of a partnership:
- (i) Explain “dissolution of a partnership which has broken up”. (4 marks)
- (ii) Evaluate four ways in which partnership properties will be applied upon the dissolution of a partnership. (8 marks)
- (b) Analyse four consequences of declaration of bankruptcy to a debtor. (8 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) (i) Dennis Dua was adjudged bankrupt. He has found out that he can apply for discharge from bankruptcy. He has approached you for advice on how to prepare and lodge a bankruptcy trustee report with the court.
- Advise Dennis on the contents of this report. (5 marks)
- (ii) On making an order for discharge or at any earlier time, the court might prohibit the bankrupt from doing all or certain activities, after discharge from bankruptcy, without the Court’s approval.
- Required:**
- Describe five activities that a bankrupt is prohibited from engaging in. (5 marks)
- (b) With reference to United Nations Commission on International Trade Law (UNCITRAL) model law on cross border insolvency:
- (i) Summarise two objectives of the model law. (4 marks)
- (ii) Evaluate three instances where the model law is applicable. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

(a) Explain the following debt management terms:

- (i) Capitalisation of debts. (2 marks)
- (ii) Receivership under a charge. (2 marks)
- (iii) Foreclosure under a security agreement. (2 marks)

(b) Distinguish between “mediation” and “negotiation” as mechanisms of alternative dispute resolution in commercial dealings. (4 marks)

(c) Douglas Didi borrowed a loan of Sh.2 million from Chapaa Bank. He secured the loan through a charge over his house which was valued at Sh.5 million. During the election period, Douglas’ business deteriorated and the loan went into arrears. Upon his failure to clear the arrears, Chapaa Bank advertised the house for sale and eventually sold the house for Sh.1.5 million.

Douglas feels aggrieved and seeks your advice.

Required:

- (i) Advise Douglas on the legal procedures that the bank could have followed before selling the house. (8 marks)
- (ii) Propose two safeguards that Douglas has in relation to the sale of his house. (2 marks)

(Total: 20 marks)

QUESTION FIVE

(a) Right Ltd. obtained a judgement against Mine Ltd. for the payment of Sh.3 million. On execution, Right Ltd. discovered that Mine Ltd. did not own any attachable property. However, it was discovered that Mine Ltd. was using machines belonging to New Ltd. and a motor vehicle belonging to the directors of Mine Ltd. Upon this discovery, Right Ltd. instructed auctioneers to attach the machines and the motor vehicle.

The management of New Ltd. and the Directors of Mine Ltd. feel aggrieved.

Required:

Advise the management of New Ltd. and the Directors of Mine Ltd. on the procedure they might follow to prevent the execution by Right Ltd. (8 marks)

- (b) In relation to court proceedings, explain three conferences to be conducted before a trial. (6 marks)
- (c) Enumerate six persons who can represent a creditor in a creditors’ meeting. (6 marks)

(Total: 20 marks)

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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 new 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 sort 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)



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CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 29 November 2018.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Explain four duties of a committee of inspection (COI) in liquidation. (4 marks)
- (b) On 12th June 2018, David parked his car along Right Road. Subsequently, the car's handbrake failed and the car rolled across the street and destroyed Benjamin's trees. Benjamin sued David and obtained judgement for Sh.500,000 being the reasonable value of the trees. Benjamin intends to collect the said amount from David and he has approached you for legal advice.

Required:

Advise Benjamin on eight legal means through which he might collect the judgement money from David. (8 marks)

- (c) Alex Tumbo has been struggling to repay his debts to various creditors for the past two years. In a bid to understand the priority he can accord to each of his creditors, Alex Tumbo has approached you for advice on the various categories of debts.

Required:

Advise Alex Tumbo on eight categories of debt.

(8 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Janice Kiilu is a debtor who was involved in bankruptcy proceedings five months ago. Last week, she was informed that the court has ordered for her arrest in relation to the bankruptcy proceedings. Janice Kiilu has approached you for advice as to what might have prompted the court to order for her arrest.

Required:

Explain to Janice Kiilu four circumstances that might have led to the issue of her warrant of arrest. (8 marks)

- (b) Alice and Agnes were running a successful business partnership. The partnership has recently been experiencing serious challenges. Alice has approached you for advice on how she can dissolve her partnership with Agnes in a professional manner in order to save the partnership from a public relations nightmare.

Required:

Advise Alice and Agnes on five amicable ways through which they might dissolve their partnership. (10 marks)

- (c) With reference to company liquidation, enumerate two individuals who might engineer the removal of a liquidator.

(2 marks)

(Total: 20 marks)

QUESTION THREE

- (a) In relation to recovery of debts through the court, highlight the Civil and Pecuniary Jurisdiction of the Small Claims Court. (6 marks)

- (b) James successfully sued Jenga Limited and obtained a money decree, in which Jenga Limited was ordered to pay James Sh.5 million plus interest. Jenga Limited preferred an appeal against the judgement and made an application for stay of execution of judgement.

Required:

Evaluate four requirements that Jenga Limited must satisfy the court to grant a stay of execution.

(8 marks)

- (c) Describe three types of credit insurance policies.

(6 marks)

(Total: 20 marks)

QUESTION FOUR

(a) Explain the following types of debt instruments:

(i) Credit linked coupon bond.

(2 marks)

(ii) Commercial paper (CP).

(2 marks)

(iii) Certificate of deposit.

(2 marks)

(b) Discuss four advantages of alternative dispute resolution mechanisms as used in credit management.

(8 marks)

(c) If one is struggling with debt, filing for bankruptcy might be a good option. Before filing for bankruptcy, one should explore other alternatives.

Required:

Propose three alternatives to filing for bankruptcy.

(6 marks)

(Total: 20 marks)

QUESTION FIVE

(a) (i) Explain the meaning of the term "debt rescheduling".

(4 marks)

(ii) Analyse three advantages of debt rescheduling to owners of business.

(6 marks)

(b) Andrew Mali, a debtor suspects that his debt with ABC Ltd. might be structure-barred or extinguished. He is seeking your legal opinion on this matter.

Required:

Advise Andrew Mali on three actions he might take if his debt is structure-barred or extinguished.

(6 marks)

(c) Summarise two ingredients of the legal concept of locus standi within the context of debt recovery.

(4 marks)

(Total: 20 marks)

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CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 24 May 2018.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) One of the preliminary considerations before initiating debt recovery is acknowledgement of debt.

Required:

- (i) Explain the meaning of the term “acknowledgement of debt”. (4 marks)
 - (ii) Describe two legal implications of an acknowledgement of debt. (4 marks)
 - (iii) Prepare a template of a debt acknowledgement letter by identifying its contents. (4 marks)
- (b) With reference to insolvency proceedings, assess four duties of the official receiver under each of the following headings:
- (i) With regard to the debtor’s conduct. (4 marks)
 - (ii) With regard to the debtor’s estate. (4 marks)

(Total: 20 marks)

QUESTION TWO

- (a) You are the certified credit advisor of Pendo Consultancy Services Ltd. Your client, Tom Pepe has realised that his debts have gone out of hand and are becoming unmanageable faster than he thought. Tom Pepe is really scared and approaches you for advice regarding the management of his debts.

Required:

- Advise Tom Pepe on three disadvantages of debt management. (6 marks)
- (b) Discuss the procedure to be followed by a debtor who requires to obtain a court order for suspension of payments. (8 marks)
- (c) Describe three types of bank accounts that might not be attached by way of a garnishee order. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Enosh Ajab owes Daniel Ndovu Sh.5 million being the purchase price for goods supplied by Daniel Ndovu, a sole proprietor. Daniel Ndovu has discovered that Enosh Ajab is indebted to various creditors to the tune of Sh.30 million. Daniel Ndovu has been sending reminder letters and threatening legal action for the last two years but no payment has so far been received from Enosh Ajab. Daniel Ndovu has finally resolved to file bankruptcy proceedings against Enosh Ajab and seeks your guidance.

Required:

- (i) Summarise four rights that the creditor of Enosh Ajab might be entitled to during the bankruptcy proceedings. (8 marks)
 - (ii) Analyse four consequences the bankruptcy proceedings might have on Enosh Ajab as a debtor. (4 marks)
- (b) Morgan Kudai has been following up one of his debtors for an outstanding payment of Sh.20 million relating to supply of goods to the debtor in the ordinary course of business. Morgan Kudai has approached you for guidance.

Advise Morgan Kudai regarding the particulars to be included in the official court document for use in advancing his claim. (8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) In all arbitration agreements regarding the resolution of commercial disputes and particularly in recovering of debts, certain provisions are implied unless they are expressly excluded by the parties to the agreement.

With reference to the above statement, discuss five implied terms in an arbitration agreement. (10 marks)

- (b) Summarise five formal requirements of pleadings. (5 marks)

- (c) Peter Okeke would like to make an application for the execution of a decree. The only requirement Peter Okeke is certain about is that the application should be in writing and signed by the applicant or his advocate or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. Peter Okeke has approached you for guidance on the particulars to be included in the decree.

Advise Peter Okeke on five of the particulars to be included in the decree. (5 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) (i) John Weza joined XY Associates which was a partnership business with an expiry period of 5 years. John Weza paid Sh.1 million as joining premium. Unfortunately, after 3 years, the firm was wound up before the expiry of its period. John Weza feels aggrieved as the firm was wound up before he had recouped his investment and therefore is desirous of recovering the joining premium.

Identify the legal principles applicable and advise John Weza on the possibility of recovering the joining premium. (6 marks)

- (ii) The court has powers, on application of any partner to make orders removing a partner or breaking up a partnership.

Assess four considerations made by the court in making such orders. (4 marks)

- (b) Describe four signs of insolvency that might be prevalent in business organisations tending towards insolvency. (4 marks)

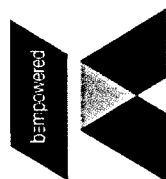
- (c) You are an insolvency practitioner in Camdavo Ltd. One of the creditors of Camdavo Ltd., Ms Rodgers, has come to you for advice on the appointment of committees of inspection.

Required:

Advise Ms Rodgers on three circumstances under which committees of inspection might be appointed. (6 marks)

(Total: 20 marks)

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CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 30 November 2017.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) By a written agreement dated Friday, 3 March 2017, Chris Msaidizi advanced Triza Kopa, a colleague and a good friend a sum of Sh.12,000 payable within one month. Triza Kopa never repaid the sum within the agreed duration. On Wednesday, 4 October 2017, Chris Msaidizi wrote a demand letter to Triza Kopa demanding payment to which Triza Kopa replied: "Too bad, you will never get your money back even if you sue me as threatened". Chris Msaidizi feels aggrieved and seeks your legal advice.

Required:

Analyse the legal principles applicable in the above case and advise Chris Msaidizi on the viability of recovering the debt. (8 marks)

- (b) Define the following terms as used in debt recovery:

(i) Time limitation. (1 mark)

(ii) Laches. (1 mark)

- (c) Discuss five issues that might be considered by a company when the company is contemplating to convert debt into equity. (10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Tom Tata owed his uncle Jerry Bwire Sh.3 million as at 30 October 2016. He also owed three other persons some unspecified sums of money. On 11 November 2016, Tom Tata paid Sh.500,000 and transferred a residential house worth Sh.2.5 million to Jerry Bwire in full satisfaction of Jerry Bwire's claim. On 1 December 2016, Tom Tata filed a bankruptcy petition in his own name seeking to be declared bankrupt. The bankruptcy trustee has since learnt about these facts and has approached you for legal advice.

Required:

Analyse the legal principles applicable in the above case and advise the bankruptcy trustee. (8 marks)

- (b) In the context of alternative dispute resolution mechanisms:

(i) Outline six roles of the mediator in facilitative mediation. (6 marks)

(ii) Explain six advantages of institutional arbitration. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) John Kabaka, a resident of Kampala, Uganda entered into a contract with Daudi Robi, whose company is resident in Nairobi, Kenya.

After John Kabaka performed his part of the contract, Daudi Robi became reluctant to pay and after sometime he disappeared to Kenya. On learning this, John Kabaka obtained legal advice and filed a suit in the High Court of Uganda. The court directed that the summons of the case be served upon Daudi Robi in Nairobi.

Required:

Advise John Kabaka on the procedure to be followed in the service of summons of the High Court of Uganda upon Daudi Robi in Kenya. (10 marks)

- (b) Hezron Shikwekwe has been appointed as the liquidator of Pamry Partnership. Hezron Shikwekwe has never participated in a winding up process and he has therefore approached you for guidance.

Required:

Advise Hezron Shikwekwe on the following two areas to enable him effectively discharge his role as the liquidator of Pamry Partnership:

- (i) General duties of a liquidator. (4 marks)
- (ii) Powers that a liquidator might exercise without sanction of the court. (6 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Juma Chacha was declared bankrupt three years ago. The court later on made an order for the bankrupt's discharge. While making the order of discharge, the court prohibited Juma Chacha from engaging in certain matters without its approval.

Required:

With reference to the above statement, analyse the matters that Juma Chacha might not engage in without the court's approval. (10 marks)

- (b) (i) State two contents of a judgement. (2 marks)
- (ii) Zahara Rai entered into a commercial contract with Moses Mshamba who is a farmer. Unfortunately, Moses Mshamba breached the contract and so Zahara Rai successfully sued him and got a favourable judgement.

Zahara Rai applied for execution of the judgement and got attachment orders against Moses Mshamba's farm produce.

Required:

In relation to execution of judgement, analyse the legal provisions on attachment of agricultural produce. (8 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Evaluate five circumstances in which a creditor might apply to the court for attachment of a debtor's property before judgement. (10 marks)
- (b) Drecor Public Limited Company was incorporated on Monday, 4 April 2016. The company has never been issued with a trading certificate since it was registered. The members of the company are getting concerned as they feel that their investment might never bear fruits. The members have approached you for advice.

Required:

With reference to the insolvency law applicable in your country, advise the members of Drecor Public Limited Company on the following:

- (i) Whether Drecor Public Limited Company might be liquidated. (2 marks)
- (ii) Four circumstances under which a company might be liquidated by the court. (4 marks)
- (iii) Four persons entitled to make application to the court for liquidation of a company. (4 marks)

(Total: 20 marks)

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CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 25 May 2017.

Time Allowed: 3 hours.

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

QUESTION ONE

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

Required:

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

QUESTION TWO

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

QUESTION THREE

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

QUESTION FOUR

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

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

The creditors' claims are as follows:

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

Required:

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

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

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

(Total: 20 marks)

QUESTION FIVE

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

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

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

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

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

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

(iii) Debt restructuring. (2 marks)

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

(Total: 20 marks)

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CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 24 November 2016.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) A court order of discharge from bankruptcy may be both conditional and suspensive.

In light of the above statement, identify five orders which the court might grant in favour of the bankrupt who has applied for discharge. (10 marks)

- (b) Explain five grounds which the court might consider while granting an order for dissolution of a partnership. (10 marks)
(Total: 20 marks)

QUESTION TWO

- (a) (i) In relation to court judgement and decree, indicate four options available to a bank upon receipt of a garnishee order. (10 marks)

(ii) Highlight two circumstances when a garnishee order might not be obeyed. (4 marks)

- (b) With reference to attachment of debts, outline three types of bank accounts which could be attached. (6 marks)
(Total: 20 marks)

QUESTION THREE

- (a) Differentiate between the following mechanisms of solving commercial disputes outside the courts:

(i) "Conciliation" and "Negotiation". (4 marks)

(ii) "Mediation" and "Arbitration". (4 marks)

- (b) Depending with the circumstances surrounding each particular case, a court might pronounce a summary judgement.

In reference to the above statement, explain the following:

(i) Summary judgement. (2 marks)

(ii) Circumstances under which summary judgement might be pronounced. (10 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Stella Tambo took her car to March Motor repairs for a complete engine overhaul. The mechanic at the garage assured her that the car would be very efficient in terms of speed and the engine would last another 5,000 km when the repairs were complete. The following day Stella Tambo collected her car and paid for the agreed repair charges of Sh.10,000.

After driving for only two kilometres, the car developed mechanical problems prompting her to drive back to the garage. At the garage no one appeared interested in listening to her.

Stella Tambo is aggrieved and seeks your legal advice.

Analyse the legal principles applicable in the above case and advise Stella Tambo the preliminary considerations she should make before initiating action for remedy by March Motor Repairs. (10 marks)

- (b) Describe five persons who might deliver summons once they have been issued by a court. (5 marks)

- (c) Explain the meaning of the term "locus standi" citing its applicability in civil cases. (5 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) When a company is being liquidated, every present and former member is liable to contribute to its assets up to any amount sufficient for payment of its debts and liabilities.

With reference to the above statement, discuss the liability of present and former members as contributories. (8 marks)

- (b) Explain two circumstances in which a company might be liquidated voluntarily. (4 marks)

- (c) Discuss four advantages of appointing a receiver under receivership. (8 marks)

(Total: 20 marks)

KASNEB

CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 26 May 2016.

Time Allowed: 3 hours.

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

QUESTION ONE

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

QUESTION TWO

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

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

Required:

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

QUESTION THREE

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

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

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

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

Explain the circumstances under which an arbitration agreement could be said to be in writing.

(4 marks)

(Total: 20 marks)

QUESTION FOUR

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

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

(10 marks)

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

Explain three factors that might indicate that a debtor has no reasonable prospect of being able to pay a debt that is not immediately payable.

(6 marks)

(Total: 20 marks)

QUESTION FIVE

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

Describe three purposes of the model law.

(6 marks)

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

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

(Total: 20 marks)

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CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 26 November 2015.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Explain the rationale of limitation period for actions in law. (8 marks)
- (b) Discuss four exceptions to the rule of limitation of actions. (8 marks)
- (c) Highlight the limitation period for four different actions for breach of contract as stated in the Limitation of Actions Act. (4 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Highlight four circumstances under which the court would allow attachment of a defendant's property before judgment is entered against him. (4 marks)
- (b) The parties to a contract of sale of a motor vehicle are both in breach of the agreement. Unable to resolve the matter on their own, the seller has repossessed the motor vehicle and moved to court for recovery of the balance due.
- (i) Explain five orders which the court might make. (5 marks)
- (ii) Highlight five factors which the plaintiff in (b) (i) above needs to prove in order to sustain his claim in court. (5 marks)
- (c) The court shall, after the case is heard, pronounce judgment and on such judgment a decree shall follow.
- Explain the circumstances under which it shall not be necessary to hear the case before pronouncing judgment. (6 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Outline four grounds upon which a person detained in prison in execution of a decree might be released from such detention before the expiry of the six months. (4 marks)
- (b) Anne Mkapa and Ben Mkapa obtained a loan from Jijenge Building Society to purchase a family house. The loan is secured on a title deed of the house. Ben Mkapa's business has failed and they have since defaulted in servicing the loan. The branch manager of the society has indicated that he will petition for Ben Mkapa's bankruptcy if he does not pay the arrears immediately.
- (i) Assume you are appointed as a trustee of Ben Mkapa's property, explain four powers that have been bequeathed upon you. (4 marks)
- (ii) Upon appointment of a trustee, Anne Mkapa visits your office to discuss her concerns. She is alarmed to discover that her husband is experiencing financial difficulties as he rarely discusses with her the financial status of the business. Anne Mkapa seeks your advice particularly as to whether the family might be dispossessed of the house.
- Advise Anne on whether the family might be dispossessed of the house. (4 marks)
- (iii) You discover that Ben Mkapa has insufficient assets to pay off his creditors, but is a partner in a flower firm that is financially sound.
- Discuss the rights of Ben Mkapa's creditors vis-à-vis the firm's property. (8 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Discuss five provisions implied in every arbitration agreement unless expressly excluded by the parties. (10 marks)
- (b) Designing an effective and efficient insolvency law involves the consideration of a common set of issues relating to the substantive and procedural legal framework and the institutional framework required for its implementation.

In light of the above statement, analyse five general features of an insolvency law.

(10 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Apart from the borrower who is perfectly able to pay his debt but chooses not to, most arrears occur through no intentional fault of the borrower.

In relation to the above statement, discuss six solutions to arrears citing the suitability of each solution. (12 marks)

- (b) With regard to the principle of res judicata, outline four circumstances under which a foreign judgment might not conclusively deal with a matter involving the same parties and same subject matter. (8 marks)

(Total: 20 marks)

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CCP PART III SECTION 6

DEBT RECOVERY

PILOT PAPER

September 2015.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) (i) Explain three factors to consider before instituting a suit. (6 marks)
 - (ii) In relation to civil suits, explain two types of jurisdiction of a court. (4 marks)
 - (b) Highlight four circumstances when a resjudicata plea might not succeed. (4 marks)
 - (c) Explain the following terms as used in debt management:
 - (i) Rescheduling. (2 marks)
 - (ii) Amortisation. (2 marks)
 - (iii) Interest only mortgage. (2 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) (i) Define the term "pleading" as used in civil suits. (2 marks)
 - (ii) State four documents that must be attached to a plaint at the time of filing a suit. (4 marks)
 - (b) Describe three circumstances when a court can grant an order of attachment before judgement. (6 marks)
 - (c) John and Mercy entered into a contract for the supply of goods. Mercy breached the contract and John successfully sued her for damages. However, Mercy did not have property that could be attached. John later discovered that Simon owed Mercy an amount of money equivalent to that owed by Mercy to John.

Advise John. (8 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Explain the following terms as used in alternative dispute resolution mechanisms:
 - (i) Negotiation. (2 marks)
 - (ii) Arbitration. (2 marks)
 - (b) (i) Explain three consequences of a debtor being declared bankrupt. (6 marks)
 - (ii) Explain four offences that can be committed by a bankrupt. (8 marks)
 - (c) Highlight two functions of the mediation accreditation committee. (2 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Outline the order of priority in distribution of assets during the dissolution of a partnership. (4 marks)
- (b) (i) Outline the content of a judgement of a court. (6 marks)
- (ii) With reference to Section 44 of the Civil Procedure Act, outline the property which is not available for attachment on execution of a decree. (6 marks)
- (c) Explain four circumstances under which a court might send a decree to another court for execution. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Explain three provisions of the law relating to capital contribution by a partner. (6 marks)
- (b) In relation to corporate insolvency, state four functions of a committee of inspection. (4 marks)
- (c) Explain three circumstances under which summary judgement might be granted. (6 marks)
- (d) In a members voluntary winding up, directors have a duty to file a declaration of solvency.
- Explain two matters which must be included in a declaration of solvency. (4 marks)
- (Total: 20 marks)**
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