

SECTION A

1. The bedrock of Commercial Transactions is contracts, agreements and agency.
 - a) Set out the forms of contracts as enumerated in Section 34 of the Companies Act (Chaptr 486, Laws of Kenya), noting to pay attention to the details as to who may enter into contracts on behalf of a company and the reasons for their validity. **(6 marks)**
 - b) In what circumstances can a company have power to have an official seal? **(3 marks)**
 - c) Briefly outline the nature of the Hire Purchase contract and distinguish it from a contract for Sale of Goods. **(6 marks)**

2. Mr. Bahati Mbaya has been in the business of supplying wholesale goods to retailers all over Kenya for over ten years since 2000. He supplies assorted goods, but mostly specializes in aluminium foil, wiring, metals and related products, used in industrial processes. At first, business was really good and he was able to make good profits. However, since 2006, the Kenyan economy has seen hard times, and he is just grateful that his business has not gone under. The biggest problem he is facing is that most of his clients depend on a system of credit which allows them to take the goods on the understanding that they are to pay within a certain period, usually within 30 days of delivery of the goods. Without allowing his clients to take on credit, the volume of business will be greatly reduced and he just cannot afford to have lower returns anymore. At the same time the credit arrangement carries with it the risk of non-payment and other risks associated with difficult market conditions, such as bankruptcy of his customers. He is sure that the only way he can stay in business is to continue allowing his customers to take goods on credit for re-sale. He does not have money to insure goods already sold to retailers. He understands that there may be ways to still try to protect his interest in goods in possession of the retail customers.

Mr. Bahati Mbaya has come to your office aware of your reputation as a good commercial lawyer. He wants you to advise him on how to retain some form of ownership over his goods, without impeding his or his customers business. He is very skeptical that it is possible to do anything legally. You, Mr. Wakili Akili, are quite confident that this is possible.

- a) Identify the applicable legal framework and specific sections of the law that would enable him protect his investment, including the content and effect of the relevant sections. **(4 marks)**
- b) With the aid of at least two decided cases, illustrate to him how courts have dealt with such matters, including the principles that have been developed from such case law. **(8 marks)**
- c) Suggest the type of clause(s) you would recommend he inserts into the existing contracts with the retail customers to further the protection of his interest in his goods. **(3 marks)**