

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 108: COMMERCIAL TRANSACTIONS

MONDAY 23RD NOVEMBER, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates **MUST** answer **FOUR** questions, at least one question from each of the three sections (A,B,C)
- (b) All questions carry 15 marks each.
- (c) Marks shall be lost for illegibility

PLEASE TURN OVER

SECTION A

1. Nyakora Enterprises is a thriving general retail business formed by three close friends and former school mates some eight years ago. The three, Nyamele, Kola and Rarinde have seen the business grow into a multi-million shilling organization in a short period. Nyambele and Kola reckon that they can now undertake, in addition to the current business, hardware and electronics business. Rarinde does not agree with them and is ready to withdraw from the business and leave his friends to continue.

All three partners have approached you to advise them on the best way forward legally. Advise on:

- (a) The effect of Rarinde's departure from Nyakora Enterprises.
- (b) The most suitable business vehicle that the two remaining friends may form, having indicated that they no longer wish to use the partnership. Spell out the steps involved in forming the new association.

(15 marks)

2. Madhubuti Bank Limited is a multinational bank which has operated in Kenya for a long time. Recently the bank instructed you to act for it in the proposed acquisition of Suta Bank Limited, a smaller bank struggling to stay afloat in the face of stiff competition in the banking industry. Both banks have insurance and investments subsidiaries. The bank wishes you to prepare a detailed legal opinion to be used as a Board paper, with focus on the following areas:

- (a) The governing legal framework and key legal issues. (9 marks)
- (b) The chief issues to be covered in carrying out legal due diligence. (6 marks)

3. Alice Teja is a depositor in Malinjozi Bank and has just learned that the bank has been placed under statutory management by the Central Bank of Kenya. The bank is said to be insolvent. A while back it was reported in the press that the bank's directors, members of one family, had bought Malinjozi Plaza which also housed the bank's headquarters.

Ms Teja did not think much of these developments, simply consoling herself that her deposit, like thousands of such deposits by very important persons she knew could not really be in danger.

With reality dawning on her she has rushed to your office for help to recover her savings.

Advise Ms Teja.

(15 marks)

SECTION B

4. Magunga and Ronda are partners in Roma Tailors, a tailoring business based at Kandito. A year ago Magunga approached Chiel Wiyoke, a wealthy businessman in the county, and borrowed Kshs.50,000/- as a short-term loan, payable within two months. He claimed that the money was needed to purchase bulk clothing material for making school uniforms for students of a local and well-known secondary school.

Magunga misappropriated money for use on his own affairs, without the knowledge of Ronda, only pleading "overwhelming obligations" when confronted by the latter.