

KASNEB

ATD LEVEL I

DCM LEVEL I

COMMERCIAL LAW

MONDAY: 23 May 2016.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Distinguish between "public law" and "private law". (6 marks)
- (b) In relation to negotiable instruments, highlight four essentials of a bill of exchange. (4 marks)
- (c) Describe three rules governing sales by auction. (6 marks)
- (d) Outline two duties of the seller under ex-ship contracts. (4 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Highlight six general defences in the law of tort. (6 marks)
- (b) Explain two conditions necessary for agency by necessity to arise. (4 marks)
- (c) In relation to the law of property:
- (i) Define the term "easement". (2 marks)
- (ii) Explain four conditions that a valid easement must satisfy. (8 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Distinguish between the following:
- (i) Express contract and implied contract. (2 marks)
- (ii) Executed contract and executory contract. (2 marks)
- (iii) Void contract and voidable contract. (2 marks)
- (iv) Conditions and warranties. (2 marks)
- (b) Describe the three parties to a contract of guarantee. (6 marks)
- (c) With regard to the law of persons, explain three types of corporations. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) (i) Explain the rights of the owner of goods in a hire purchase contract. (6 marks)
- (ii) Summarise four implied terms in every hire purchase agreement. (4 marks)
- (b) Describe the two components of natural justice. (4 marks)
- (c) In relation to the doctrine of separation of powers, outline three functions of the judiciary in your country. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Describe the following alternative dispute resolution mechanisms as used in resolving commercial disputes:
- (i) Arbitration. (2 marks)
 - (ii) Mediation. (2 marks)
 - (iii) Negotiation. (2 marks)
- (b) Discuss four advantages of arbitration as a means of resolving commercial disputes, as opposed to courts of law. (8 marks)
- (c) Outline six contents of an insurance policy document. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Outline eight maxims of equity. (8 marks)
- (b) Juma Mrisho has found a duly signed and dated document in his pocket addressed to Mercy Miano by Consolata Wangechi in the following form: "I undertake to pay you on demand or order the sum of Sh.50,000 for value received". Juma Mrisho has approached you to assist him understand the nature of the document.
- In light of the above facts:
- (i) Identify the name of the document. (2 marks)
 - (ii) Describe five characteristics of the document in (b) (i) above. (10 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) (i) Outline six contents of a partnership deed. (6 marks)
- (ii) Discuss four circumstances under which a partnership might be dissolved without an order of the court. (8 marks)
- (b) Describe three exceptions to the rule in consideration that states that "past consideration is no consideration". (6 marks)
- (Total: 20 marks)**
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