

KASNEB

ATD LEVEL I

DCM LEVEL I

COMMERCIAL LAW

PILOT PAPER

September 2015.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Explain three limitations of Islamic law as a source of law in Kenya. (6 marks)
- (b) Highlight four types of delegated legislation. (4 marks)
- (c) Explain three differences between arbitration and mediation as alternative dispute resolution mechanisms. (6 marks)
- (d) State four characteristics of law. (4 marks)

(Total: 20 marks)

QUESTION TWO

- (a) In relation to court systems, state any four disputes that fall under the jurisdiction of the Environment and Land Court. (4 marks)
- (b) Explain the following general defences in tort:
- (i) Volenti non fit injuria. (2 marks)
- (ii) Statutory authority. (2 marks)
- (iii) Private defence. (2 marks)
- (c) (i) State the doctrine of privity of contract. (2 marks)
- (ii) Explain four exceptions to the doctrine in c (i) above. (8 marks)

(Total: 20 marks)

QUESTION THREE

- (a) In relation to the law of persons, explain four differences between a company and cooperative society. (8 marks)
- (b) In relation to servitudes on land, explain three differences between easements and licences. (6 marks)
- (c) In a hire purchase agreement, where a hirer has paid up to two thirds of the hire purchase, the owner must not take any action to recover possession of the property without recourse to the court.

Summarise three orders the court might give after hearing the suit. (6 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) In relation to sale of goods contracts, distinguish between a sale and an agreement to sell. (6 marks)
- (b) Explain three circumstances when an agent might become personally liable to third parties. (6 marks)
- (c) Distinguish between a contract of guarantee and a contract of indemnity. (4 marks)

- (d) Explain the following terms as used in case law:
- (i) Ratio decidendi. (2 marks)
 - (ii) Obiter dicta. (2 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Describe the concept of supremacy of the constitution. (6 marks)
- (b) Explain the remedies available under the tort of defamation. (6 marks)
- (c) Sarah went to do shopping at Bei Yetu Supermarket Ltd. However, due to the slippery floor at the supermarket, she slipped and fell injuring her limbs. Sarah is aggrieved and seeks compensation from Bei Yetu Supermarket Ltd., but the supermarket denies liability.
- Identify the applicable legal principles and advise Sarah. (8 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Explain the doctrine of separation of powers. (8 marks)
- (b) In relation to the law of insurance, explain the following terms:
- (i) Subrogation. (2 marks)
 - (ii) Contribution. (2 marks)
 - (iii) Double insurance. (2 marks)
- (c) In relation to negotiable instruments, explain three types of crossings on cheques. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) In relation to classification of law, state four differences between civil law and criminal law. (8 marks)
- (b) Explain the procedure to be followed in order to remove a judge from office. (6 marks)
- (c) State the grounds that might lead to the dissolution of a partnership by the court. (6 marks)
- (Total: 20 marks)**
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