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ATD LEVEL I

DCM LEVEL I

PRINCIPLES OF BUSINESS LAW

MONDAY: 26 November 2018.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) On 1 July 2018, Jacinta Wanjira advanced her sister Agnes Muthoni Sh.60,000. Agnes was to repay the money on 30 September 2018. However, on 30 August 2018, due to unavoidable circumstances Jacinta requested Agnes for an immediate repayment of the money. Agnes informed Jacinta that she could only afford to pay her Sh.50,000 because of the short notice. Jacinta accepted this amount to be full settlement of the debt owed by Agnes. Consequently, Agnes persuaded her brother Joseph Kamau to draw a cheque of Sh.50,000 in favour of Jacinta. Before the cheque was cashed, Joseph countermanded the payment.

Jacinta feels aggrieved and intends to sue both Agnes and Joseph.

Required:

Analyse the legal principles applicable in the above case and advise Jacinta. (10 marks)

- (b) Summarise five purposes of the doctrine of separation of powers in your country. (5 marks)
- (c) Explain five advantages of tribunals. (5 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Discuss eight features of co-operative societies without making reference to their body corporate status. (8 marks)
- (b) In relation to the law of tort, explain six circumstances in which the defendant might not be held liable under the strict liability rule in *Rylands V. Fletcher*. (6 marks)
- (c) (i) Explain the meaning of the term encumbrance within the context of the law of property. (2 marks)
- (ii) State four types of encumbrances that might be created on property. (4 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Summarise six duties of an auctioneer. (6 marks)
- (b) Explain eight essential elements of a valid contract of indemnity. (8 marks)
- (c) With reference to hire purchase transactions, highlight three characteristics of credit sales. (6 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Describe four key principles of civil law. (8 marks)
 - (b) Explain three main rules of statutory interpretation. (6 marks)
 - (c) Citing three reasons, examine the importance of international communication terms (INCOTERMS) in relation to international contracts of sale. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Explain three types of partners in a partnership business. (6 marks)
 - (b)
 - (i) Highlight three advantages of consumer credit to a consumer. (3 marks)
 - (ii) Identify four contents of the statement of price in a hire purchase agreement. (4 marks)
 - (c) With reference to alternative dispute resolutions (ADR), distinguish between “mediation” and “arbitration”. (4 marks)
 - (d) In relation to the law of insurance, explain:
 - (i) Insurable interest. (1 mark)
 - (ii) Risk. (1 mark)
 - (iii) Uberrimae fidei. (1 mark)
- (Total: 20 marks)**

QUESTION SIX

- (a) In relation to the law governing negotiable instruments, analyse four ways in which a bill of exchange might be discharged. (8 marks)
 - (b) During the past year, Rose Mwinzi, a personal secretary to Joseph Nzao has been forging Joseph’s signature on a number of cheques on his account with ZED Bank and pocketing the proceeds.

Recently, Rose resigned her job and flew to the United Kingdom and the forgeries were then discovered. Joseph intends to sue the bank.

Advise ZED Bank. (8 marks)
 - (c) Highlight four sources of law in your country. (4 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) In relation to the law of torts, explain four circumstances under which the principal and the independent contractor might be held jointly liable for torts that might be committed by the independent contractor. (8 marks)
 - (b) A contract might contain express terms under which one or both of the parties excludes or limits liability for breach of contract.

Describe six general rules which determine the effectiveness of such terms or clauses. (12 marks)
- (Total: 20 marks)**
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