

# KASNEB

## DCM LEVEL II

### LAW GOVERNING CREDIT PRACTICE

TUESDAY: 23 May 2017.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

#### QUESTION ONE

- (a) Describe four duties of a company liquidator. (8 marks)
- (b) "Following up overdue accounts through the courts is a nightmare for small business owners".  
Citing four grounds, justify the above statement. (8 marks)
- (c) Explain two legal options available to a creditor who is unable to recover his debt from an insolvent debtor. (4 marks)
- (Total: 20 marks)

#### QUESTION TWO

- (a) In relation to bankruptcy proceedings, describe four statutory duties of a debtor against whom the court has made a receiving order. (8 marks)
- (b) Outline six features of a bailment contract. (6 marks)
- (c) Summarise three rights of the indemnified party under a contract of indemnity. (6 marks)
- (Total: 20 marks)

#### QUESTION THREE

- (a) With regard to securities available in lending transactions:
- (i) Explain the meaning of a secured transaction. (2 marks)
- (ii) Highlight two rights of a debtor under a securities contract. (4 marks)
- (iii) Outline six terms of a securities agreement. (6 marks)
- (b) Describe the priority in which a liquidator should distribute the asset realisations under corporate insolvency. (8 marks)
- (Total: 20 marks)

#### QUESTION FOUR

- (a) Distinguish between a "floating charge" and a "fixed charge". (4 marks)
- (b) Musa and Ali own a company trading as Mali Limited. They recently won a lucrative contract worth Sh.20 million but the company is financially constrained. The company has no immovable assets but imports valuable stock on periodic basis.
- Required:**
- (i) Advise Musa and Ali on the appropriate security to create, citing three advantages of the security. (6 marks)
- (ii) Summarise the legal provisions relating to the registration of the security identified under (b)(i) above. (2 marks)
- (c) Describe the salient differences between "receivership" and "liquidation". (8 marks)
- (Total: 20 marks)

#### QUESTION FIVE

- (a) Identify six contents of a charge instrument. (6 marks)
- (b) Describe three conditions that a mortgagee must satisfy before exercising the right of consolidation. (6 marks)
- (c) Explain four ways of creating a freehold estate. (8 marks)
- (Total: 20 marks)

**QUESTION SIX**

- (a) Distinguish between a “lease” and a “leasehold”. (4 marks)
- (b) Explain two creditors meetings that must be held during bankruptcy proceedings. (4 marks)
- (c) Juma advanced Sh.100,000 to Jane under a loan agreement. In the contract, James undertook to pay Jane’s liability if she defaulted.

Subsequently, Juma and Jane changed the terms of the contract by extending the repayment period by three months. Juma also accepted title deeds from Jane as securities.

All the above activities were undertaken without James’ knowledge.

After 6 months, Jane defaulted and could not be traced.

**Required:**

- (i) Identify the security created between James, Jane and Juma. (2 marks)
  - (ii) Advise on the possibilities of enforcing the security identified in (c)(i) above against James. (6 marks)
  - (d) Analyse the importance of perfecting a security. (4 marks)
- (Total: 20 marks)**

**QUESTION SEVEN**

- (a) Citing four grounds to support your answer, discuss the role of bankruptcy law in credit management. (8 marks)
  - (b) In relation to the rights of creditors, outline two circumstances under which an infant could be considered to be bankrupt. (4 marks)
  - (c) Explain four advantages of using court proceedings to recover debts. (8 marks)
- (Total: 20 marks)**
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