

# KASNEB

CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

MONDAY: 22 May 2017.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

## QUESTION ONE

- (a) Alex Kombo entered into a five year written lease agreement for office premises with Mercy Omagwa. After the end of the lease period, the parties agreed that Mercy Omagwa would continue occupying the office premises for another five years. On that basis, Mercy Omagwa made extensive renovations to the office premises. She installed new carpets, painted the premises and put in a new heating system.

Alex Kombo later changed his mind and told Mercy Omagwa to vacate the office premises claiming that the lease agreement has expired.

With specific reference to promissory estoppel in the law of contract, advise Mercy Omagwa on her legal rights.

(10 marks)

- (b) Describe five grounds upon which a patent registration might be revoked. (10 marks)

(Total: 20 marks)

## QUESTION TWO

- (a) With reference to the law on the sale of goods:

(i) Highlight two purposes of incoterms. (2 marks)

(ii) Outline three duties of the seller under delivered at place (DAP) contracts of sale. (3 marks)

(iii) Describe five salient features of "price" in a sale of goods contract. (5 marks)

- (b) (i) Explain three conditions that should be fulfilled for agency by necessity to arise. (6 marks)

(ii) Identify two circumstances when an agency relationship might come to an end by an act of the parties.

(4 marks)

(Total: 20 marks)

## QUESTION THREE

- (a) With reference to negotiable instruments:

(i) Highlight four types of endorsements that could be used on a bill of exchange. (4 marks)

(ii) Summarise three ways through which a bill of exchange might be discharged. (6 marks)

- (b) Describe four purposes of law. (4 marks)

- (c) One of the remedies available on breach of contract is action for specific performance. However, there are cases when the remedy might or might not be granted.

With reference to the above statement, identify three cases when specific performance might be granted and three cases when it might not be granted. (6 marks)

(Total: 20 marks)

**QUESTION FOUR**

- (a) (i) Outline four types of partnerships. (4 marks)
  - (ii) Explain three types of disclosures that the partners in a partnership must make. (6 marks)
  - (b) Discuss five circumstances under which the High Court might set aside an arbitral award. (10 marks)
- (Total: 20 marks)**

**QUESTION FIVE**

- (a) State four ways through which the independence of the judiciary might be actualised. (4 marks)
  - (b) Explain three advantages of the doctrine of separation of powers. (6 marks)
  - (c) Highlight three disadvantages of case law as a source of law. (6 marks)
  - (d) During legislation, a bill might either undergo assent or referral. Summarise the process of Presidential assent. (4 marks)
- (Total: 20 marks)**

**QUESTION SIX**

- (a) Agnes Pure purchased a sewing machine from High Hopes Limited under a hire purchase agreement. High Hopes Limited did not disclose to Agnes Pure that the sewing machine was being let on second hand basis as it had been repossessed from another hirer. Agnes Pure took possession of the sewing machine but on reaching home, she realised that it was not in a working condition. When Agnes Pure read the terms of the hire purchase again, she discovered that High Hopes Limited had exempted themselves from any liability whatsoever.  
  
Analyse the legal principles applicable in the above case and advise Agnes Pure who intends to sue High Hopes Limited. (10 marks)
  - (b) Explain three conditions that must exist in order for a plaintiff to maintain an action for negligence. (6 marks)
  - (c) Describe two defences available to a person who is being sued for nuisance. (4 marks)
- (Total: 20 marks)**

**QUESTION SEVEN**

- (a) With specific reference to the contract of insurance:
    - (i) Highlight six essentials of an insurance contract. (6 marks)
    - (ii) State four types of marine insurance policies. (4 marks)
  - (b) Explain two instances when the guarantor will not be held liable on the principal debt. (4 marks)
  - (c) Describe the composition and jurisdiction of the Environment and Land Court. (6 marks)
- (Total: 20 marks)**
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