



CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 24 May 2018.

Time Allowed: 3 hours.

Answer ALL questions. Marks allocated to each question are shown at the end of the question.

QUESTION ONE

(a) One of the preliminary considerations before initiating debt recovery is acknowledgement of debt.

Required:

(i) Explain the meaning of the term “acknowledgement of debt”. (4 marks)

(ii) Describe two legal implications of an acknowledgement of debt. (4 marks)

(iii) Prepare a template of a debt acknowledgement letter by identifying its contents. (4 marks)

(b) With reference to insolvency proceedings, assess four duties of the official receiver under each of the following headings:

(i) With regard to the debtor’s conduct. (4 marks)

(ii) With regard to the debtor’s estate. (4 marks)

(Total: 20 marks)

QUESTION TWO

(a) You are the certified credit advisor of Pendo Consultancy Services Ltd. Your client, Tom Pepe has realised that his debts have gone out of hand and are becoming unmanageable faster than he thought. Tom Pepe is really scared and approaches you for advice regarding the management of his debts.

Required:

Advise Tom Pepe on three disadvantages of debt management. (6 marks)

(b) Discuss the procedure to be followed by a debtor who requires to obtain a court order for suspension of payments. (8 marks)

(c) Describe three types of bank accounts that might not be attached by way of a garnishee order. (6 marks)

(Total: 20 marks)

QUESTION THREE

(a) Enosh Ajab owes Daniel Ndovu Sh.5 million being the purchase price for goods supplied by Daniel Ndovu, a sole proprietor. Daniel Ndovu has discovered that Enosh Ajab is indebted to various creditors to the tune of Sh.30 million. Daniel Ndovu has been sending reminder letters and threatening legal action for the last two years but no payment has so far been received from Enosh Ajab. Daniel Ndovu has finally resolved to file bankruptcy proceedings against Enosh Ajab and seeks your guidance.

Required:

(i) Summarise four rights that the creditor of Enosh Ajab might be entitled to during the bankruptcy proceedings. (8 marks)

(ii) Analyse four consequences the bankruptcy proceedings might have on Enosh Ajab as a debtor. (4 marks)

(b) Morgan Kudai has been following up one of his debtors for an outstanding payment of Sh.20 million relating to supply of goods to the debtor in the ordinary course of business. Morgan Kudai has approached you for guidance.

Advise Morgan Kudai regarding the particulars to be included in the official court document for use in advancing his claim. (8 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) In all arbitration agreements regarding the resolution of commercial disputes and particularly in recovering of debts, certain provisions are implied unless they are expressly excluded by the parties to the agreement.

With reference to the above statement, discuss five implied terms in an arbitration agreement. (10 marks)

- (b) Summarise five formal requirements of pleadings. (5 marks)

- (c) Peter Okeke would like to make an application for the execution of a decree. The only requirement Peter Okeke is certain about is that the application should be in writing and signed by the applicant or his advocate or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. Peter Okeke has approached you for guidance on the particulars to be included in the decree.

Advise Peter Okeke on five of the particulars to be included in the decree. (5 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) (i) John Weza joined XY Associates which was a partnership business with an expiry period of 5 years. John Weza paid Sh.1 million as joining premium. Unfortunately, after 3 years, the firm was wound up before the expiry of its period. John Weza feels aggrieved as the firm was wound up before he had recouped his investment and therefore is desirous of recovering the joining premium.

Identify the legal principles applicable and advise John Weza on the possibility of recovering the joining premium. (6 marks)

- (ii) The court has powers, on application of any partner to make orders removing a partner or breaking up a partnership.

Assess four considerations made by the court in making such orders. (4 marks)

- (b) Describe four signs of insolvency that might be prevalent in business organisations tending towards insolvency. (4 marks)

- (c) You are an insolvency practitioner in Camdavo Ltd. One of the creditors of Camdavo Ltd., Ms Rodgers, has come to you for advice on the appointment of committees of inspection.

Required:

Advise Ms Rodgers on three circumstances under which committees of inspection might be appointed. (6 marks)

(Total: 20 marks)

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