

# KASNEB

## CCP PART III SECTION 6

### DEBT RECOVERY

THURSDAY: 26 November 2015.

Time Allowed: 3 hours.

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

#### QUESTION ONE

- (a) Explain the rationale of limitation period for actions in law. (8 marks)
- (b) Discuss four exceptions to the rule of limitation of actions. (8 marks)
- (c) Highlight the limitation period for four different actions for breach of contract as stated in the Limitation of Actions Act. (4 marks)

(Total: 20 marks)

#### QUESTION TWO

- (a) Highlight four circumstances under which the court would allow attachment of a defendant's property before judgment is entered against him. (4 marks)
- (b) The parties to a contract of sale of a motor vehicle are both in breach of the agreement. Unable to resolve the matter on their own, the seller has repossessed the motor vehicle and moved to court for recovery of the balance due.
- (i) Explain five orders which the court might make. (5 marks)
- (ii) Highlight five factors which the plaintiff in (b) (i) above needs to prove in order to sustain his claim in court. (5 marks)
- (c) The court shall, after the case is heard, pronounce judgment and on such judgment a decree shall follow.

Explain the circumstances under which it shall not be necessary to hear the case before pronouncing judgment.

(6 marks)

(Total: 20 marks)

#### QUESTION THREE

- (a) Outline four grounds upon which a person detained in prison in execution of a decree might be released from such detention before the expiry of the six months. (4 marks)
- (b) Anne Mkapa and Ben Mkapa obtained a loan from Jijenge Building Society to purchase a family house. The loan is secured on a title deed of the house. Ben Mkapa's business has failed and they have since defaulted in servicing the loan. The branch manager of the society has indicated that he will petition for Ben Mkapa's bankruptcy if he does not pay the arrears immediately.
- (i) Assume you are appointed as a trustee of Ben Mkapa's property, explain four powers that have been bequeathed upon you. (4 marks)
- (ii) Upon appointment of a trustee, Anne Mkapa visits your office to discuss her concerns. She is alarmed to discover that her husband is experiencing financial difficulties as he rarely discusses with her the financial status of the business. Anne Mkapa seeks your advice particularly as to whether the family might be dispossessed of the house.
- Advise Anne on whether the family might be dispossessed of the house. (4 marks)
- (iii) You discover that Ben Mkapa has insufficient assets to pay off his creditors, but is a partner in a flower firm that is financially sound.
- Discuss the rights of Ben Mkapa's creditors vis-à-vis the firm's property. (8 marks)

(Total: 20 marks)

**QUESTION FOUR**

- (a) Discuss five provisions implied in every arbitration agreement unless expressly excluded by the parties. (10 marks)
- (b) Designing an effective and efficient insolvency law involves the consideration of a common set of issues relating to the substantive and procedural legal framework and the institutional framework required for its implementation.

In light of the above statement, analyse five general features of an insolvency law. (10 marks)  
**(Total: 20 marks)**

**QUESTION FIVE**

- (a) Apart from the borrower who is perfectly able to pay his debt but chooses not to, most arrears occur through no intentional fault of the borrower.

In relation to the above statement, discuss six solutions to arrears citing the suitability of each solution. (12 marks)

- (b) With regard to the principle of res judicata, outline four circumstances under which a foreign judgment might not conclusively deal with a matter involving the same parties and same subject matter. (8 marks)

**(Total: 20 marks)**

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