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CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 29 November 2018.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) Explain four duties of a committee of inspection (COI) in liquidation. (4 marks)
- (b) On 12th June 2018, David parked his car along Right Road. Subsequently, the car's handbrake failed and the car rolled across the street and destroyed Benjamin's trees. Benjamin sued David and obtained judgement for Sh.500,000 being the reasonable value of the trees. Benjamin intends to collect the said amount from David and he has approached you for legal advice.

Required:

Advise Benjamin on eight legal means through which he might collect the judgement money from David. (8 marks)

- (c) Alex Tumbo has been struggling to repay his debts to various creditors for the past two years. In a bid to understand the priority he can accord to each of his creditors, Alex Tumbo has approached you for advice on the various categories of debts.

Required:

Advise Alex Tumbo on eight categories of debt. (8 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Janice Kiilu is a debtor who was involved in bankruptcy proceedings five months ago. Last week, she was informed that the court has ordered for her arrest in relation to the bankruptcy proceedings. Janice Kiilu has approached you for advice as to what might have prompted the court to order for her arrest.

Required:

Explain to Janice Kiilu four circumstances that might have led to the issue of her warrant of arrest. (8 marks)

- (b) Alice and Agnes were running a successful business partnership. The partnership has recently been experiencing serious challenges. Alice has approached you for advice on how she can dissolve her partnership with Agnes in a professional manner in order to save the partnership from a public relations nightmare.

Required:

Advise Alice and Agnes on five amicable ways through which they might dissolve their partnership. (10 marks)

- (c) With reference to company liquidation, enumerate two individuals who might engineer the removal of a liquidator. (2 marks)

(Total: 20 marks)

QUESTION THREE

- (a) In relation to recovery of debts through the court, highlight the Civil and Pecuniary Jurisdiction of the Small Claims Court. (6 marks)

- (b) James successfully sued Jenga Limited and obtained a money decree, in which Jenga Limited was ordered to pay James Sh.5 million plus interest. Jenga Limited preferred an appeal against the judgement and made an application for stay of execution of judgement.

Required:

Evaluate four requirements that Jenga Limited must satisfy the court to grant a stay of execution. (8 marks)

- (c) Describe three types of credit insurance policies. (6 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Explain the following types of debt instruments:
 - (i) Credit linked coupon bond. (2 marks)
 - (ii) Commercial paper (CP). (2 marks)
 - (iii) Certificate of deposit. (2 marks)
- (b) Discuss four advantages of alternative dispute resolution mechanisms as used in credit management. (8 marks)
- (c) If one is struggling with debt, filing for bankruptcy might be a good option. Before filing for bankruptcy, one should explore other alternatives.

Required:

Propose three alternatives to filing for bankruptcy. (6 marks)
(Total: 20 marks)

QUESTION FIVE

- (a) (i) Explain the meaning of the term “debt rescheduling”. (4 marks)
- (ii) Analyse three advantages of debt rescheduling to owners of business. (6 marks)
- (b) Andrew Mali, a debtor suspects that his debt with ABC Ltd. might be structure-barred or extinguished. He is seeking your legal opinion on this matter.

Required:

Advise Andrew Mali on three actions he might take if his debt is structure-barred or extinguished. (6 marks)

- (c) Summarise two ingredients of the legal concept of locus standi within the context of debt recovery. (4 marks)
(Total: 20 marks)
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