



kasneb

CCP PART III SECTION 6

DEBT RECOVERY

WEDNESDAY: 27 November 2019.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) A judgement debtor, upon conviction, might be detained in prison in the process of execution of a decree.
- Outline four reasons that might lead to the release of such a debtor before the lapse of the conventional six months. (4 marks)
- (b) With reference to the doctrine of “res-judicata”, a judgement shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title.
- Examine three exceptions to the above principle. (6 marks)
- (c) In commercial debt recovery litigation, it is beneficial for the creditor to have an acknowledgement of debt by a debtor.
- Discuss the benefits of this acknowledgement of debt (AOD) to the creditor. (10 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) In relation to dissolution of a partnership:
- (i) Explain “dissolution of a partnership which has broken up”. (4 marks)
- (ii) Evaluate four ways in which partnership properties will be applied upon the dissolution of a partnership. (8 marks)
- (b) Analyse four consequences of declaration of bankruptcy to a debtor. (8 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) (i) Dennis Dua was adjudged bankrupt. He has found out that he can apply for discharge from bankruptcy. He has approached you for advice on how to prepare and lodge a bankruptcy trustee report with the court.
- Advise Dennis on the contents of this report. (5 marks)
- (ii) On making an order for discharge or at any earlier time, the court might prohibit the bankrupt from doing all or certain activities, after discharge from bankruptcy, without the Court’s approval.
- Required:**
- Describe five activities that a bankrupt is prohibited from engaging in. (5 marks)
- (b) With reference to United Nations Commission on International Trade Law (UNCITRAL) model law on cross border insolvency:
- (i) Summarise two objectives of the model law. (4 marks)
- (ii) Evaluate three instances where the model law is applicable. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) Explain the following debt management terms:
- (i) Capitalisation of debts. (2 marks)
 - (ii) Receivership under a charge. (2 marks)
 - (iii) Foreclosure under a security agreement. (2 marks)
- (b) Distinguish between “mediation” and “negotiation” as mechanisms of alternative dispute resolution in commercial dealings. (4 marks)
- (c) Douglas Didi borrowed a loan of Sh.2 million from Chapaa Bank. He secured the loan through a charge over his house which was valued at Sh.5 million. During the election period, Douglas’ business deteriorated and the loan went into arrears. Upon his failure to clear the arrears, Chapaa Bank advertised the house for sale and eventually sold the house for Sh.1.5 million.

Douglas feels aggrieved and seeks your advice.

Required:

- (i) Advise Douglas on the legal procedures that the bank could have followed before selling the house. (8 marks)
- (ii) Propose two safeguards that Douglas has in relation to the sale of his house. (2 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Right Ltd. obtained a judgement against Mine Ltd. for the payment of Sh.3 million. On execution, Right Ltd. discovered that Mine Ltd. did not own any attachable property. However, it was discovered that Mine Ltd. was using machines belonging to New Ltd. and a motor vehicle belonging to the directors of Mine Ltd. Upon this discovery, Right Ltd. instructed auctioneers to attach the machines and the motor vehicle.

The management of New Ltd. and the Directors of Mine Ltd. feel aggrieved.

Required:

Advise the management of New Ltd. and the Directors of Mine Ltd. on the procedure they might follow to prevent the execution by Right Ltd. (8 marks)

- (b) In relation to court proceedings, explain three conferences to be conducted before a trial. (6 marks)
- (c) Enumerate six persons who can represent a creditor in a creditors’ meeting. (6 marks)

(Total: 20 marks)

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