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CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 20 May 2021.

Time Allowed: 3 hours.

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

QUESTION ONE

- (a) In the context of debt and borrowing:
- (i) Explain the meaning of a certificate of deposit. (2 marks)
  - (ii) Discuss four advantages of a certificate of deposit. (8 marks)
- (b) Evaluate five benefits of debt protection insurance coverage to the borrower. (10 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Summarise the procedure followed in presentation of evidence during the hearing of a civil suit involving the recovery of a simple debt. (6 marks)
- (b) Sweet Water Consultancy is a limited liability partnership and has among others, Kevin and Kate as partners of the firm.

Kevin and Kate have fallen out and Kevin intends to quit as a partner by giving the required ninety (90) days notice and thereafter petitioning the court to wind up the partnership.

Advise Kevin on the following:

- (i) Six persons who can lodge an application for winding up by court. (6 marks)
  - (ii) Four circumstances in which a limited liability partnership can be wound up by court. (8 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) In relation to alternative dispute resolution mechanisms:
- (i) Outline three circumstances when the court may refer cases to mediation. (3 marks)
  - (ii) Highlight five functions of the Mediation Accreditation Committee as provided for in the Civil Procedure Act. (5 marks)

- (b) Joy Rangi is a judgement debtor who died before her decree had been fully satisfied.

Advise Patrick Mandi, who is the decree holder on how he can still enforce the decree. (4 marks)

- (c) Though the United Nations Commission on International Trade Law (UNCITRAL) model law is not a substantive law, it recommends protection to creditors and other interested persons.

Analyse four rights of unsecured creditors as envisaged in the UNCITRAL model law during winding up. (8 marks)

**(Total: 20 marks)**

**QUESTION FOUR**

- (a) With reference to debt management, describe the manner in which the member of a listed company might surrender his shares. (6 marks)
- (b) An organisation should send out a final letter of demand to its debtors before initiating debt recovery mechanisms. Examine three features of a final letter of demand. (6 marks)

- (c) Peter Pamba was declared bankrupt on 30 December 2020. However, on 1 June 2019, he had transferred part of his properties to his brother Paul Wema. On adjudication of bankruptcy, Jane Katuma was appointed as Peter's trustee in bankruptcy.

Jane has learnt that she does not have sufficient funds to distribute to the creditors. She has also found out about Peter's transfer of property to his brother Paul.

**Required:**

In relation to bankruptcy proceedings, advise Jane on the procedure to be followed in cancelling the transfer of property by Peter to Paul, availing it for distribution to creditors. (8 marks)

**(Total: 20 marks)**

**QUESTION FIVE**

- (a) Highlight eight circumstances under which a party might have the locus standi to institute a debt recovery suit before the small claims court in Kenya. (8 marks)
- (b) Mary Mani invested in Bure Ltd. The company is facing insolvency problems. She has learnt that during insolvency, claims are ranked according to preference. She does not understand the meaning of this and has come to you for assistance.

**Required:**

Advise Mary Mani on how claims are ranked during insolvency proceedings.

(12 marks)

**(Total: 20 marks)**

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