

KASNEB

ATD LEVEL I

DCM LEVEL I

COMMERCIAL LAW

MONDAY: 23 May 2016.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) Distinguish between "public law" and "private law". (6 marks)
- (b) In relation to negotiable instruments, highlight four essentials of a bill of exchange. (4 marks)
- (c) Describe three rules governing sales by auction. (6 marks)
- (d) Outline two duties of the seller under ex-ship contracts. (4 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) Highlight six general defences in the law of tort. (6 marks)
- (b) Explain two conditions necessary for agency by necessity to arise. (4 marks)
- (c) In relation to the law of property:
- (i) Define the term "easement". (2 marks)
- (ii) Explain four conditions that a valid easement must satisfy. (8 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) Distinguish between the following:
- (i) Express contract and implied contract. (2 marks)
- (ii) Executed contract and executory contract. (2 marks)
- (iii) Void contract and voidable contract. (2 marks)
- (iv) Conditions and warranties. (2 marks)
- (b) Describe the three parties to a contract of guarantee. (6 marks)
- (c) With regard to the law of persons, explain three types of corporations. (6 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) (i) Explain the rights of the owner of goods in a hire purchase contract. (6 marks)
- (ii) Summarise four implied terms in every hire purchase agreement. (4 marks)
- (b) Describe the two components of natural justice. (4 marks)
- (c) In relation to the doctrine of separation of powers, outline three functions of the judiciary in your country. (6 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) Describe the following alternative dispute resolution mechanisms as used in resolving commercial disputes:
 - (i) Arbitration. (2 marks)
 - (ii) Mediation. (2 marks)
 - (iii) Negotiation. (2 marks)
 - (b) Discuss four advantages of arbitration as a means of resolving commercial disputes, as opposed to courts of law. (8 marks)
 - (c) Outline six contents of an insurance policy document. (6 marks)
- (Total: 20 marks)**

QUESTION SIX

- (a) Outline eight maxims of equity. (8 marks)
 - (b) Juma Mrisho has found a duly signed and dated document in his pocket addressed to Mercy Miano by Consolata Wangechi in the following form: "I undertake to pay you on demand or order the sum of Sh.50,000 for value received". Juma Mrisho has approached you to assist him understand the nature of the document.

In light of the above facts:
 - (i) Identify the name of the document. (2 marks)
 - (ii) Describe five characteristics of the document in (b) (i) above. (10 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) (i) Outline six contents of a partnership deed. (6 marks)
 - (ii) Discuss four circumstances under which a partnership might be dissolved without an order of the court. (8 marks)
 - (b) Describe three exceptions to the rule in consideration that states that "past consideration is no consideration". (6 marks)
- (Total: 20 marks)**
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