

KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2015/2016

THIRD YEAR EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

SUBJECT: LCC 308

LAW OF BUSINESS ASSOCIATIONS II- C.A.T. 2

TIME ALLOWED: ONE (1) HOUR  
2016

DATE: THURSDAY, 7<sup>TH</sup> APRIL

INSTRUCTIONS

- 1) Answer **ALL** questions
- 2) Support your answer with case law, statute or other relevant references as necessary
- 3) Write neatly and legibly
- 4) Your answer sheet must bear your student registration number written in **BOLD** script. **DO NOT** write your name on the answer sheet.
- 5) All relevant Kenyatta University examination rules and guidelines for students apply as if they were contained herein.

QUESTION ONE

OLE SIEKE is part of a group of 21 flower farmers based in LONGONOT who grow the crop for export. Each of the members has their own farm, and deals individually with agents in the marketing and sale of their crops. Since 2013 when drought ravaged the area resulting in the destruction of their crops, they have been informally meeting to raise funds in order to support each other financially in the event of emergencies like funeral and hospital expenses and even decided to build a school which they would manage as a group to ensure that all their children attend school regularly and uninterrupted regardless of the performance of their individual businesses. The members of the group all formally meet at least once a year to review the contributions they have made and determine how much more they must increase their giving for the following year towards their emergency fund.

Additionally they have *ad hoc* meetings in the event of emergencies when members meet to agree on how to be of support to affected members. Over time, they have developed their meetings to allow each member to have equal say on the decisions made at their meeting, though final decisions are determined by majority ballot. OLE SIEKE decided to prepare a general rule book on how members should conduct themselves at meetings,

how they will determine who chairs the meetings and how they can engage the other farmers in the region to participate in their group.

They are now considering purchasing a piece of land jointly that will be converted into a football playing field for the children, to prevent them from wandering into the farms and trampling the farmers' crops while in play.

Recently OLE MASUMBUKO, a member, is concerned about continued acquisition of property by the group while they are informally associated. He was of the view that they could transform their group into an association recognized by law that will offer those advantages and privileges available under the Laws of Kenya. OLE MASUMBUKO convenes a meeting and shares his views with the other members. A heated discussion ensued and the members disagreed on whether to register themselves as a Partnership or a Cooperative Society.

They have today approached you, as a law student from the renowned Kenyatta University School of Law (KUSOL) so that you can advise them on the discussions that remained unresolved from their last meeting.

Adopt a deductive reasoning style and cite relevant authorities to ADVISE the farmers on the best suited business association for their venture. (12 MARKS)

## QUESTION TWO

LUDEKI is now 17 years old. He has supplied milk in the TAWAWA Region since 2013 and has since January 2014, together with LUSENO and LIKOYE who are retired primary school teachers, made supplies through TAWAWA MILK DISTRIBUTION FIRM. Together they purchased various milk storage equipment and 4 bicycles to facilitate their milk supply to three major nearby towns. LIKOYE's 15 year old son, AINEA, assists with the distribution of milk but he is paid a weekly allowance by LIKOYE, the amount of which is unknown to both LUSENO and LUDEKI. LUSENO maintains their milk supply record books and also does the banking of their takings, ensuring to distribute (via MPESA) any profits they make equally amongst themselves each week. In March 2015, LUDEKI purchased overalls- branded with the logo TAWAWA MILK DISTRIBUTION FIRM- which he, LUSENO, LIKOYE and AINEA always wear when they are supplying the milk. In December 2015, they LUDEKI, LUSENO and LIKOYE took out a lease for 6 months on a kiosk in LUANDA TOWN, (whose payment is due in MAY 2016) where they coordinate their supply activities. Unbeknown to LUDEKI and LIKOYE, since January 2016, LUSENO's wife MILKA has been using the premises in the evenings for her very profitable *mitumba* business.

Since February 2016 due to terrible weather the milk supply business has been floundering. LUDEKI, LUSENO and LIKOYE have since found themselves very deep in debt. On Monday 4<sup>th</sup> April 2016, LUDEKI received an SMS from LUSENO that he ought to send, via MPESA, KSHS. 28,000 being his equal contribution to settling their debts as at that date. LUSENO has also informed him that the money will also be used to pay AINEA for his services which have not been paid for since January 2016. At his church group where he shared his predicament, his friend TUSHIBEKO also informed him of the use of the kiosk in LUANDA TOWN by MILKA.

LUDEKI denies that he has any obligation in settling any of the debts and has today sought your help in dealing with this matter.

Advice LUDEKI on the nature of his business arrangement and his obligations thereto under the relevant Kenya laws. (8 MARKS)