



CPA PART I SECTION 1
 CS PART I SECTION 1
 CCP PART I SECTION 1
 COMMERCIAL LAW

MONDAY: 27 November 2017.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

QUESTION ONE

- (a) With reference to the Sale of Goods Act, or the equivalent law on the sale of goods in your country:
- (i) Explain the meaning of the rule "nemo dat quod non habet". - *Can't sale what he/she don't have.* (4 marks)
 - (ii) Discuss four exceptions to the rule in (a)(i) above. - *Agent, Estoppel* (8 marks)
- (b) Allan Bora, the proprietor of Pesa House, placed a warning sign outside the entrance to the building that the floors of the premises were slippery. Brian Mbiyo, who was in a hurry to attend classes in the building, did not see the notice. As Brian Mbiyo was rushing to class, he slipped, fell and fractured his hand. Brian Mbiyo is now seeking compensation from Allan Bora.
- Advise Allan Bora on his legal position. (8 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) With reference to the law of agency:
- (i) Distinguish between a "special agent" and a "general agent". (2 marks)
 - (ii) Highlight five conditions which must be fulfilled for a principal to effectively ratify the acts of an agent. (5 marks)
 - (iii) Outline three obligations of an agent to the principal. - *Keep books of ac, honest = perform given task, utmost good faith, not to receive any, indemnity.* (3 marks)
- (b) (i) Summarise three basic principles of insurance. (6 marks)
- (ii) Explain the meaning of the principle of double insurance. (4 marks)
- (Total: 20 marks)**

QUESTION THREE

- (a) (i) Explain two differences between "hire-purchase sale" and "credit sale". (4 marks)
- (ii) Explain three duties of the hirer in a hire purchase agreement. (6 marks)
- (b) Many clauses in a contract purport to exclude liability for injury, loss or damage.
- Explain five rules which determine the effectiveness of such clauses. (10 marks)
- (Total: 20 marks)**

- * Damage
- * Injury suffered.
- * on line of duty.
- * Act of god.
- * Inevitable
- * Personal defence. *INSURERS*
- * Reasonable force.

QUESTION FOUR

- (a) With reference to the law of intellectual property, discuss four advantages of registering an industrial design. (8 marks)
*x protect owner from plagiarism.
x Enjoy all the profits alone.*
- (b) With regard to administrative law: *x protects owner creative work from*
- (i) Explain the term "separation of powers". (2 marks)
- (ii) Summarise three grounds upon which courts might interfere with the decisions of an administrative body. (6 marks)
- (c) Describe the procedure of registering a primary society. (4 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) (i) List three functions of international treaties. (3 marks)
- (ii) Outline five sources of international law. *legislation
= Doctrine of Common law
= Judicial precedence.* (5 marks)
- (b) (i) Distinguish between "mediation" and "arbitration". (4 marks)
- (ii) Analyse four disadvantages of mediation over civil litigation. (8 marks)
*- procedural - Bias
- privacy*
- (Total: 20 marks)**

QUESTION SIX

- (a) Milka Pendo and Joseph Karani are partners carrying on business in the name and style of Moja Enterprises. Joseph Karani has nevertheless set up a similar competing business while retaining his partnership in Moja Enterprises. Milka Pendo feels aggrieved and intends to expel Joseph Karani from Moja Enterprises.
- Analyse the legal principles applicable in the above case and advise Milka Pendo. (10 marks)
- (b) Hannah Asahani has received a document in her office which she is unable to identify. The document is dated 1 October 2017, written in Nairobi and addressed to Hannah Asahani by Peris Tunda in the following words: "Ten days after sight, pay to my order Sh.20,000 for value received".
- Required:**
- (i) State the name of the above document. (1 mark)
- (ii) Identify the three parties, in legal terms, to the above document. (3 marks)
- (iii) Highlight six essentials of the above document. (6 marks)
- (Total: 20 marks)**

QUESTION SEVEN

- (a) Describe the jurisdiction of the Employment and Labour Relations Court (formerly the Industrial Court) in your country. (6 marks)
- (b) With reference to the law of persons, distinguish a "corporation" from an "unincorporated association". (8 marks)
- (c) Highlight six reasons why the law is important in commercial transactions. (6 marks)
- (Total: 20 marks)**
-