

COUNCIL OF LEGAL EDUCATION



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.**

ATP 108: COMMERCIAL TRANSACTIONS

MONDAY 28TH JUNE 2021

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains Five (5) printed pages including the cover page, with a total of Six (6) questions.
- (b) Candidates MUST answer FIVE (5) questions.
- (c) Question ONE is compulsory and carries 20 marks.
- (d) All other questions carry 10 marks each.
- (e) Answers MUST be supported by relevant case law and statutory provisions where required.

PLEASE TURN OVER

QUESTION ONE

Mr. Bikko, Ms. Lukwago and Mr. Okida are the Directors and Shareholders of Majore Investments Limited, a Private Limited Company. The company deals in real estate and construction of residential apartments for sale. The Company operates mainly in Nairobi and parts of Nakuru and Klambu. The company was incorporated in 2010 and has successfully operated for the last eight (8) years since its incorporation. Recently, the company has experienced financial difficulties. Owing to a rise in demand in real estate in or about 2018, the Company borrowed heavily from a number of banks in order to meet the aforementioned demand. This decision was based on projections from its financial advisors that the demand for residential living space would persist in the long term. However, these projections have not been met. The expected revenue and profits from the sale of its apartments are not constant. There is no demand on the other hand and many of the Company's loans are now due. Furthermore, it can no longer pay its employees or suppliers. Mr. Bikko, Ms. Lukwago and Mr. Okida are hesitant to wind up the company. They do not wish to liquidate the company or dispose off its assets piece meal in order to repay their creditors. Additionally, the Directors and Shareholders wish to retain as many of their employees as possible because some of those employees are their relatives and family friends.

- a) The Directors of the Company have approached legal experts who have advised them that the best possible solution other than liquidating the company is administration proceedings. They wish to understand the nature, features and objectives of administration proceedings. Advise them. (4 marks)
- b) Mr. Bikko, Ms. Lukwago and Mr. Okida have since settled on the idea of commencing administration proceedings. They would like to know the procedure to follow. Advise them on the way forward. (6 marks)
- c) Mr. Bikko, Ms. Lukwago and Mr. Okida have since commenced administration proceedings. An administrator has been appointed. Mr. Bikko, Ms. Lukwago and Mr. Okida have been sidelined in the management of the company. They are not happy with the decisions and directives of the administrator with regard to operations over the company. They have approached you for a preliminary discussion. They wish to understand the duties and powers of the administrator. Advise them. (4 marks)
- d) Mr. Bikko, Ms. Lukwago and Mr. Okida have since been informed by third parties that the administrator is not qualified to act in the capacity of an administrator. They are naive on this subject. They wish to understand the qualifications required for one to act as an administrator before they can make the appropriate decision. Advise them on those qualifications. (6 marks)

QUESTION TWO

- a) The law firm of Mokere, Machira and Wambugu Advocates was incorporated on 1st March 2019. It consists of Mr. Mokere, Mr. Machira and Ms. Wambugu, as partners. On 11th November 2019, while at a luncheon at Serena Hotel, Ms. Wambugu met an old friend Mr. Mwangi, an Advocate who was looking for a firm to invest in and join as a partner. Ms. Wambugu, conscious of the firm's need for ready capital, introduced Mr. Mwangi to her partners (Mr. Mokere and Mr. Machira) who were also in attendance at the luncheon. Mr. Machira and Mr. Mokeré were non-committal to the idea of another partner but promised to get back to Mr. Mwangi on his proposal. In or about December 2019, Mr. Machira and Mr. Mokere took a business trip to South Africa. They left Ms. Wambugu in charge. Owing to the workload, Ms. Wambugu requested for assistance from her long-time friend, Mr. Mwangi. He accepted her request. He was given office space and has since been working at the firm. Additionally, Mr. Mwangi has since invested Kshs. 1,000,000 into the firm. On 22nd January 2020, Mr. Machira and Mr. Mokere returned from their business trip. They are dumbfounded. They have approached Ms. Wambugu and sought an explanation as to Mr. Mwangi's presence at the firm.

- a) She has reported that in their absence and in the interest of the firm, she took the executive decision to admit Mr. Mwangi as a new partner. Mr. Machira and Mr. Mokere have rushed to your offices. Advise Mr. Machira and Mr. Mokere on the legality of Mr. Mwangi's appointment. (3 marks)
- b) Since your discussion with Mr. Machira and Mr. Mokere, they have decided considering the sizeable investment from Mr. Mwangi to waive their concerns. On 22nd February 2020, Mr. Mwangi took instructions front Ushuru Sacco for the subdivision of L.R. No. 209/1134 into twenty-five (25) plots and subsequent transfer of the plots to nominated members. Mr. Mwangi requested for a deposit of Kshs. 5,000,000 to enable him engage a valuer and physical planner so as to commence the subdivision process. Furthermore, he requested that the aforementioned sums be deposited into his personal account at KCB for expedience. Ushuru Sacco has since complied. Mr. Mwangi is yet to notify any other partner of this development. On 20th March 2020, the firm received a letter from Ushuru Sacco requesting for a status update on their transaction. Mr. Machira received the letter and engaged Mr. Mokere and Ms. Wambugu on the same. They are unaware of this transaction. All attempts to contact Mr. Mwangi have been futile. He is currently abroad in the United Kingdom doing consultancy work. In the meantime, the CEO of Ushuru Sacco has made repeated calls regarding the alleged transaction. He is also requesting for an official receipt from the firm acknowledging receipt of Kshs. 5,000,000. The firm is in a panic; the partners have rushed to your office. They wish to know the liability and exposure they face. Advise them. (4 marks)
- c) Mr. Mwangi has since returned from his consultancy work in the United Kingdom. Following a heated discussion among the partners, it was decided that Mr. Mwangi would not remain a partner in the firm. He must go. To this end, Mr. Machira, Mr. Mokere and Ms. Wambugu would like to know the procedure to be followed to implement their resolution. Advise them on the way forward. (3 marks)

QUESTION THREE

Macdonald's, a renowned fast food outlet in Europe and the Americas anticipates expanding its business across the globe. In East Africa, it has identified Nairobi as a potential investment destination. The food chain's commercial lawyers are advising them that Nairobi is very competitive given the presence of other fast food giants such as KFC and Chicken Inn. Macdonald's CEO is considering two commercial contractual options to present to its Board of Directors,

- Hold talks with Chicken Inn for an acquisition deal; or
 - Enter into a franchise arrangement with interested investors.
- a) Macdonald's CEO has initiated discussions with Chicken Inn and both parties have signed a Non-Circumvention Non-Disclosure Agreement (NCNDA).
- b) Advise Macdonald's on four (4) key elements your due diligence would focus on. (4 marks)
- c) Distinguish between a merger and acquisition. (2 marks)
- d) The Directors eventually decide to go with the franchise arrangement option as opposed to the acquisition of Chicken Inn. Highlight the advantages of a franchise arrangement over an acquisition. (4 marks)

QUESTION FOUR

Petrogen Ltd, a company incorporated in the Isle of Man, specialises in drilling oil wells and installation of rigs. Solonika Ltd, a company incorporated in Kenya, recently discovered commercially viable quantities of oil in its Block B 37 in Turkwel. Solonika would like to enter a joint venture with Petrogen Ltd to further explore and exploit the oil resource because of Petrogen's unique 'coil' technology. However, Petrogen Ltd, must first be registered in Kenya to carry out business. They would like to be registered as a foreign company.

- a) (i) Advice Petrogen Ltd on the procedure, information and documents required to register as a foreign company in Kenya. (5 marks)
- (ii) What would the Companies Registry issue to Petrogen Ltd upon successful registration as proof of registration as a foreign company in Kenya? (1 marks)
- b) Petrogen Ltd and Salonika have agreed to enter a contractual Joint Venture (JV) to carry out drilling and exploitation services. What are the characteristics of a Contractual Joint Venture? (4 marks)

QUESTION FIVE

- a) Mr. Olero, Ms. Akinyi and Mr. Momanyi are the Directors and Shareholders of Ms-13 Wholesalers Limited, a Private Limited Company. They each hold one paid up share out of a shareholding of five shares of the Company. Ms. Akinyi and Mr. Olero are of the view that in order for the company to expand and obtain additional capital, the nature of the company needs to change. They have been advised by their legal team that a transition to a Public Limited Company would be the ideal step. They have now approached you. Advise them on:
- i. Three advantages of a Public Limited Company over a Private Limited Company. (3 marks)
- ii. The procedure they must follow to attain this change in status. (2 marks)
- b) At an ordinary meeting of the company held on 11th March 2020, an Ordinary Resolution was passed by the members present to convert the company from a private limited company to a public limited company. Mr. Momanyi was not present nor did he receive notice of the meeting. He is opposed to the idea of the company being converted into a public limited company. He wishes to avoid any complications that might follow the transition. Furthermore, he is anxious about ceding control of his company to strangers. He has attempted to engage Ms. Akinyi and Mr. Olero but no agreement has been reached. Mr. Momanyi has approached your office. He wishes to know if he can challenge the resolution passed by Ms. Akinyi and Mr. Olero to convert the Private Limited Company into a Public Limited Company. Advise him on whether he has any grounds to do so. (3 marks)
- c) Following your discussion with Mr. Momanyi, he would like to know the procedure to follow in his quest to challenge the resolution passed by Ms. Akinyi and Mr. Olero. Advise him. (2 marks)

QUESTION SIX

Mr. Emmanuel Josiah recently invested in a T-800 Model Posho Mill. His enterprise is located in a far-flung corner of the Country desperate for posho mill services. Mr. Josiah is now reaping good returns. He now wishes to expand his business and ABC Bank has agreed to loan him some money in exchange for pledging the posho mill as security.

- a) ABC Bank has approached you to draft the security agreement. Briefly explain to the bank the requirements for the creation of a security right and its right of enforcement in the event of a breach. (5 marks)
- b) Mr. Emmanuel Josiah, now the proud owner of a T-800 Posho Mill wishes to dispose of his old 'Rev 9' Posho Mill machine. Being the faithful churchgoer, Emmanuel gifts the old mill to his local church. As a dutiful taxpayer, Emmanuel would like to assess for, and pay the Capital Gains Tax (CGT) on the transfer of the machine. Advise Mr. Josiah on the applicability or otherwise of the Capital Gains Tax and whether the transaction constitutes a transfer under the relevant law. (5 marks)

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COUNCIL OF LEGAL EDUCATION
EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

UNIT CODE: A T P 108 SUBJECT/UNITCOMMERCIAL TRANSACTIONS....

REGISTRATION NUMBER:

DATE.....28th JUNE 2021.....

INSTRUCTIONS TO CANDIDATES

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	17					
6	09					
4	09					
3	09					
2	07					
TOTAL MARKS	51					

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Questions (a)

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Administration refers to the process by which a person known as an administrator is appointed to manage the company's affairs for the purpose of realizing the assets of the company to discharge its liabilities to its creditors.

Administration is an alternative to liquidation that has the following objectives:

- a) To maintain the company as a going concern. Unlike liquidation, administration aims to revive the company and the company continues its operations while administration is ongoing.
- b) To place the company in a better position than they would have been if the company were liquidated.

Unlike liquidation, administration aims at ensuring that the creditors will be repaid in full. Administration therefore aims to achieve a win-win solution for both the company and its creditors.

- c) To realize the company's assets for repayment of its secured creditors. Administration seeks to discharge the large, secured, liabilities of a company that in order to prevent the appointment of a receiver by the said creditors, which would make it difficult for the company to remain a going concern.

For the above reasons, administration is more preferable to liquidation as it will ensure the survival of the company after the administration.

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In addition, once administration commences, a moratorium of all liquidation orders and proceedings will take effect.

The moratorium will prevent the filing of any liquidation petition, or making of any liquidation order by the court while the administration is ongoing.

Furthermore, secured creditors will be unable to realize their security without the prior approval of the administrator or a court order.

The moratorium on liquidation proceedings and creditors' realization of security ensures the administration has a fair chance of success.

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Questions 1b)

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either margin

The Insolvency Act provides that the following persons are entitled to appoint an administrator:

- The Court;
- The holders of a qualifying floating charge; and
- The Directors of the Company.

The Mrs. Biko, Mr. Lukwage and Mr. Okida ('the Directors') are directors of the company and may therefore appoint an administrator.

The Directors may appoint an administrator if:

- a petition for liquidation of the company is pending before the court;
- no application to appoint an administrator is pending registration; and
- there is no administrator that has been appointed to over the affairs of the Company.

None of the above pre-conditions apply to the Directors. The Directors may therefore appoint an administrator by following the procedure below:

- They must give a notice of at least seven (7) days to a person that is eligible to appoint an administrator for example the holder of a floating charge.
- The Directors shall then file a notice of appointment of the administrator in the prescribed form with the Registrar.
- The notice of appointment shall be accompanied by a statutory declaration made by the Directors verifying that the company is unable to pay its debts,

There are no liquidation proceeding pending, and the company has ~~not~~ resolved to appoint an administrator.

- d) The Directors must also attach a statement by the administrator concerning the appointment and stating that the administrator believes the objectives of the administration will be met.

Once the Registrar is satisfied with the that the administrator has been duly appointed, the Registrar shall register the notice of appointment.

Administration shall take effect from the date of such registration.

Once administration begins, the administrator possesses the power to do any of the following under Part VI of the Insolvency Act:

- a) The power to do anything necessary to achieve the objectives of administration;
- b) The power to manage the company's affairs;
- c) The power to execute and authorize the surrender of any lease and discharge of any charge;
- d) The power to borrow money on the company's behalf.

The management of the company and control of its assets rests in the administrator from the date of his or her appointment. For this reason, the administrator has broad powers in relation to the administration of a company.

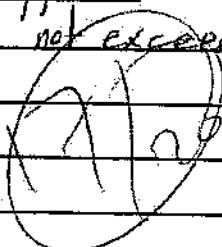
The only duty the administrator possesses under the Act is to account to the court and the Registrar for the actions undertaken during administration.

An administrator must be a qualified insolvency practitioner. Section 6 of the Insolvency Act 2015 sets out the following qualifications of an insolvency practitioner: They must have:

- a) A degree from a qualified university; and
- b) At least 5 years' experience as a member of a recognized professional body; and either;
- c) At least 2 years' experience as an insolvency practitioner before commencement of the Insolvency Act;
- d) At least 4 years' experience as an apprentice of an insolvency practitioner;
- e) An Advocate that has worked at the office of the Official Receiver for at least two 2 years qualifies automatically.

Provided that the administrator meets any of these requirements, they are qualified to act as administrators.

According to section 5 of the Insolvency Act, a person that holds themselves out as insolvency practitioner and is unqualified, commits an offence and shall be liable on conviction to pay a fine not exceeding Kenya Shilling 100,000.



The Movable Property Security Rights Act, at section 2 defines a security agreement as an agreement that creates between a secured creditor and a grantor for the creation of a security right.

Section 2 defines a security right as a property right in a movable asset created by an agreement for the payment or fulfilment of an obligation regardless of whether the parties have denominated it a security agreement.

Section 6 of the Movable Property Security Rights Act provides that a security right is created if the following conditions are met:

- a) The grantor has rights in the asset to be encumbered or the power to encumber it.
- b) The agreement is in writing and signed by the grantor.
- c) The agreement identifies the grantor and the secured creditor.
- d) The agreement describes the secured obligation and the collateral in a manner sufficient to identify it.

3) Section 6 further states that a security right created in accordance with that section is valid and enforceable.

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In any event, a security right is made enforceable against third parties by registration of a notice in relation to the right (section 15).

Section 24 states that a security agreement is sufficient authorization for the registration of a security notice in the collateral registry in respect of a security right in a movable asset.

Part VII of the Movable Property Security Rights Act states that on default, the secured creditor shall issue the grantor with a notice of default.

The notice of default shall describe the contains the following information:

- (a) the nature and extent of the breach;
- (b) if the breach can be remedied by payment of a sum of money, the amount that must be paid to remedy the breach;
- (c) if the breach can be remedied by observing the agreement, the act that the grantor must do or desist from doing to remedy the breach;
- (d) the deadlines within which the grantor must remedy the breach;
- (e) the consequences of non-compliance, that is, that the grantor shall exercise any of its remedies under Part VII of the Act; and
- (f) the creditor shall inform the grantor of the right to apply to court for relief in respect of some of the remedies for example the right of sale.

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Questions 6a

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The remedies available under Part VII include:

- a) the right to sue the grantor to recover sums secured by the security right.
- b) the right to appoint a receiver over the grantor's property.
- c) the right to lease the secured property.
- d) the right to take possession of the secured property.
- e) the right to sell the secured property.

If the secured creditor elects to dispose of the property, they shall issue a notice of intention to dispose of the property to the grantor, 5 days before the disposal, and to a secured creditor with a registered notice on the collateral 5 days before the notice to the grantor.

The notice of disposal will identify the grantor and secured creditor, the amount required to redeem the security at the time and place of the disposal.

The security may be redeemed by any person with an interest in it at any time before sale.

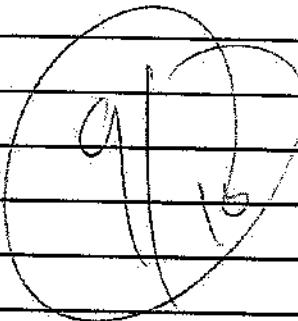
Following disposal, the secured creditor will apply the proceeds as follows:

- a) payment of the costs of disposal
- b) discharge of the secured obligation
- c) if a demand is made before distribution is complete, discharge of the secured obligation under a subordinate security right.

Capital Gains Tax was reintroduced by the Finance Act, 2015. It is a tax on the net gain from the transfer of an asset.

According to the Income Tax Act, the gift of the Pashan Mill to the church constitutes a transfer if title in it is passed on to the church.

However, this does not mean that capital gains tax is payable on the gift. Charitable donations are exempt from capital gains tax. Mr. Emmanuel will therefore not pay capital gains tax on the transfer.



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Questions 4 a) #)

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A foreign company is prohibited from conducting business in Kenya unless the company is:

- registered in Kenya; or
- has applied for registration and its application has not been dealt with within the prescribed period.

Part xxxiii of the Companies Act specifies the following requirements for registration of a foreign company:

An application in the prescribed form that includes the following:

- Certified or Notarized copy of the company's certificate of incorporation;
- Certified or Notarized copy of the company's constitution;
- A certified or notarized copy of a memorandum executed by any directors of the company that are resident in Kenya and members of a local board of directors.
- A list of the company's shareholders and directors.
- Their particulars of any changes over the company's assets that would be registrable in Kenya.
- Notice of the place of business of the company in its country of origin.
- Name and address of the person designated to receive notices in Kenya on behalf of the company. (Local representative)
- Proposed registered office or place of business of the company in Kenya.

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i) Statement of the company's new name if the company does not intend to use its existing name.

Upon payment of the prescribed fee, once the registrar is satisfied that the requirements for registration have been met, a ~~certifying~~ certificate of compliance shall be issued to the company.

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REGISTRATION NUMBER:

Questions 4.a) i)

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Once the registrar is satisfied that the requirements for registration have been met and the prescribed fee has been paid, the registrar shall issue the company with a Certificate of Compliance.

The Certificate of Compliance shall be conclusive proof that the company is registered under the Companies Act, 2015 and has complied with all the requirements for registration.

A joint venture is a transaction in which at least two persons agree to collaborate and share the expenses of conducting a business project or activity together.

A joint venture has the following characteristics:

a) Limited purpose. The scope of a joint venture is usually limited to a specific project or activity.

The joint venture agreement will usually provide for termination or expiry of the agreement once the project has come to an end or on completion.

b) Limited time. The term of a joint venture is restricted to the performance or completion of the project for which it was created. Once the project is complete, the joint venture will expire. This is usually articulated in the joint venture agreement.

c) No default rules. While the vehicle through which a joint venture is carried out, for example a partnership or a company may be subject to default statutory rules, no default rules apply to joint ventures. This means that the parties' relationship is primarily governed by their contract and no default statutory rules will be read into the contract where it is silent on an issue.

d) Sharing of expenses but not always profit. It is not mandatory for parties to a joint venture to share profits although the parties will share expenses in relation to the venture.

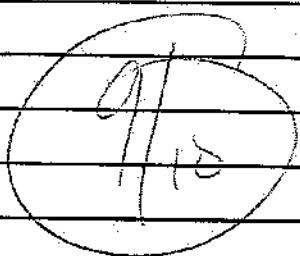
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Questions 4(b)

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- c) Not a merger. Parties to a joint venture retain their separate legal personality and do not become a single or amalgamated entity.



Due diligence is the process by which the a buyer or acquirer establishes the property held by the target company, the encumbrances thereon and identifies any risks that would influence the decision to acquire the target.

I would focus my due diligence on the following key areas:

a) Constitutive documents of the target. I would analyze these documents to establish:

- i) whether the owners of the company are as represented to the seller/buyer;
- ii) the type of company that the target is;
- iii) restrictions on share transfer or any other restrictions to the transaction.

b) Property of the target (tangible and intangible).

I would consider the following:

- i) title to the property;
- ii) if there are any charges or other encumbrances on the real property of the company;
- iii) Ownership of intellectual property such as trademarks and patents;
- iv) Licences and to whom they have been granted.

c) Contingent Material contracts. I would examine the material contracts to establish whether any of the contracts would be breached by a change of control.

- d) Debt instruments. I would examine the debt instruments of the company to establish:
- i) the creditors of the company;
 - ii) the secured obligations and collateral;
 - iii) whether any instruments authorized the appointment of a receiver; and
 - iv) whether any of the instruments allowed a creditor to convert debt to equity.
- e) Litigation records to establish the claims and potential liability the acquirer will be exposed to after the acquisition.

Section 41 of the Competition Act defines a merger as a transaction between at least two undertakings that results in a change of control in the target undertaking.

A merger, by the a according to the above definition includes an acquisition. The distinction between the two is that an acquisition is a type of merger implemented through the purchase (acquisition) of the shares or assets in one undertaking by another undertaking.

A merger on the other hand is effected through any of the following means, described in section § 41 of the Competition Act, by which a change of control occurs:

- a) Purchase of a part of a business of an undertaking that is capable of being operated independently;
- b) Acquiring an entity under receivership;
- c) Vertical integration;
- d) Share swap;
- e) Amalgamation of the acquiring entity and the target;
- f) Acquiring a foreign target that owns a controlling interest in a Kenyan subsidiary.

In conclusion, an acquisition is the purchase of a controlling interest in an entity through a share or asset purchase. A merger is any transaction by which one undertaking acquires control or a controlling interest in another undertaking, including an acquisition.

An acquisition involves in the purchase of the all or a majority (a controlling interest) of the shares or assets in one undertaking by another undertaking.

A franchise arrangement is an agreement between the owner of a brand and a party interested in acquiring the brand joining the brand for the creation of a franchise. A franchise is the entity or means by which the brand of the franchisor will be utilized by the franchisee according to the terms and conditions of the franchise agreement.

A franchise agreement has the following benefits over acquisition:

- a) Limited exposure to franchisor. Unlike an acquisition in which the franchisor would acquire the liabilities of chicken inn as well as its assets, in a franchise, the franchisor will only dictate the terms according to which its brand will be used.
- b) Less costly. A franchise arrangement is less costly than an acquisition. The franchisor is not responsible for nor does it bear the cost of management of the franchisee.

The franchisor merely provides certain services such as training and advertising to the franchisee at a fee and the franchisee pays for support from the franchisor and use of its brand.

- c) Does not require approval of the Competition Authority. A franchise is not a merger within the definition of section 41 of the Competition Act and therefore is free from the costly burden of obtaining approval.
- d) Less time consuming to conclude - A franchise arrangement requires less extensive due diligence and negotiation. As such, it is more expedient than an acquisition.
- e) Flexible. Unlike an acquisition which cannot be reversed once it is concluded, a franchise agreement can be terminated. McDonald's can therefore terminate the franchise agreement whenever they would like to leave the Kenyan market.

Q11(b)

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Questions 2 a

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The law firm of Mukene, Macharia and Wambogo (the firm) is a general partnership governed by the Partnerships Act, 2012.

Section 26 of the Partnerships Act states that all the members of a partnership must consent to the addition of a new partner.

Section 15 of the Partnerships Act further states that matters other than those relating to the ordinary business of the partnership shall be decided by a unanimous vote of the partners.

Mrs. Wambogo did not have the authority to unilaterally add another partner to the partnership. Mr. Muwangi may only be added to the partnership if all the partners agree to his addition by a unanimous vote. Mr. Muwangi's appointment is therefore void.

According to section 26, the agreement to add a partner may also be implied from their conduct.

Mr. Macharia and Mr. Mukene have neither expressly nor implicitly agreed to the addition of Mr. Muwangi as a partner. Mr. Muwangi's addition as a partner is void as a result.

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Section 7 of the Partnership Act states that each partner is an agent of the partnership.

Section 21 of the Partnership Act further states that the partnership will be liable for any act done by a partner in the course of the ordinary business of the partnership.

According to section 21, a partnership may only avoid liability if the partner acted without authority and with the knowledge of the other party or the other party did not know that or believe that the partner was a partner in the partnership.

Section 4 of the Partnership Act provides that the liability of the general partners is unlimited. This means that the partners are jointly and severally liable for liabilities of the partnership.

Section 26 of the Partnerships Act provides that consent to add a member may be express or implied by conduct. By waiving their concerns, the partners agreed to make Mr. Mwangi a partner in the firm.

Mr. Mwangi appropriated the funds of Ushuru Sacco in the course of the ordinary business of the law firm. Mr. Mwangi was acting as an agent of the partnership in the transaction with Ushuru Sacco and the partnership is liable for Mr. Mwangi's actions.

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Questions 2b

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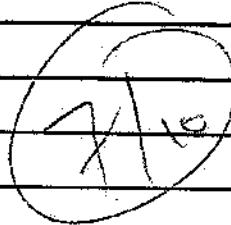
According to section 7, 7 and 21 of the Partnership Act, the partners are jointly and severally liable for the amount appropriated by Mr. Mwangi.

The partners may, however, institute proceedings against Mr. Mwangi for breach of the duty of good faith under section 10 of the Partnership Act and breach of the duty of disclosure under section 11 thereof.

Section 29 of the Partnership Act provides that a partner may be expelled from a partnership by the other partners where:

- a) an order for their removal has been made by the court under section 44; or
- b) the partner's interest in the partnership has been attached as a debt that is not a partnership debt.

In the circumstances, the partners cannot expel Mr. Murangi under section 29. The partners can, however, make an application to the court under section 44 for the removal of Mr. Murangi as a partner.



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COUNCIL OF LEGAL EDUCATION
EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

UNIT CODE: **A T P I O S** SUBJECT/UNIT **COMMERCIAL TRANSACTIONS**

REGISTRATION NUMBER: [REDACTED]

DATE: **28TH JUNE 2021**

INSTRUCTIONS TO CANDIDATES

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	03	04	D.O			
3	00					
4	00					
5	00					
6	00					
TOTAL MARKS	03	04	D.O			

Write on both sides of the paper
Topic will be exhibited on 31st Dec.

Questions 1 (a)

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either margin
or on back side.

The nature, Features and Objectives of administration Proceedings by writing T.P.

(a) Nature

- Conducted by Shareholders, Dir.
- Conducted by Directors
- Not directed by Court
- Resolution is not within the administration

(b) Features

- Resolved in a General meeting
- Attended by Shareholders and
Directors
- No Third Party Resolution

(c) Objectives

- To wind up the Company by
administration proceedings
- No to liquidate the Company or
dispose off its assets piece meal in order
to repay their creditors.

The Directors and Shareholders
have to call for a meeting in house to resolve
the issue; the meeting be conducted by Directors
and Shareholders in making sure that the
solution be met. Minutes and any other
relating taken.

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either margin

Questions 1.(b)

Write on both sides of the paper

Procedure for administration proceedings

- (i) Notification from the Company Management ~~to the court~~ and up.
- (ii) A certain time given for any Complaints or any other pending issue.
- (iii)
- (iv)
- (v) General Meeting Conducted by the Directors and Shareholders to Review the Complaints.
- (vi) Petrolation of the Company by the Administration Proceedings.

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Questions(C).....

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either margin

Duties of the Administrator.

The administrator is appointed by the
Members / Shareholders for him to:
→ make sure the Company's operation is
active.

- conduct meetings and discussions;
- To be incharge of solving minor
issues and alternative dispute resolution;
- To manage employees affairs;
- To Control daily management.

The duties of an administrator is based
on the Management of the Company and
Others.

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either margin

Questions 11(d)

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Dual function of an administrator

1. Must be a graduate from a recognized University.
2. Must not be a bankrupt.
3. Cleared and free from corruption and any other criminal offences.
- (4) Has never been convicted.
- (5) Has experience as an administrator and management.
- (6) Been voted by more than 50% of the shareholders.
- (7)

3
4

REGISTRATION NUMBER:

Write on both sides of the paper

Questions 36

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either margin

(a) Accountability.

(b) Eligibility.

(c) Flexibility.

(d) Fairness.

(e) Acceptance.

(f)

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either margin

Questions 3(b)

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The difference between a merger and
acquisition.

Merger

It is a way where two companies form
one company name. the name changes
acquisition.

It is a system where services and staff
management change from another company to a
another company or business entity but the name
of the company does not change.

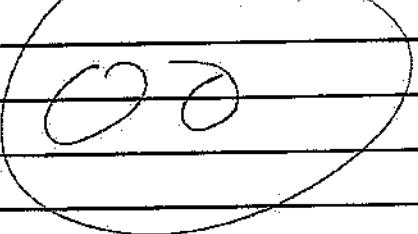
Write on both sides of the paper

Questions 3/10

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either margin

Advantages of a Franchise Arrangement

- (i) Involves an agreement
- (ii) It is a simple and faster
- (iii) Now no complicated procedure.
- (iv) It is not expensive.
- (v)



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either margin

Questions 4 (a)(i)(ii)

Write on both sides of the paper

(iv) Under the Foreign Companies Registration Act every foreign company must be a registered one accompanied by documents showing that the Company is a foreign company and its purpose of registration as a foreigner will register the Company with the details and application from another foreign country.

The documents that will be required for registration of a foreign company in Kenya are:

- (i) Passport
- (ii) application documents
- (iii) certificate of Passport Photo size.
- (iv) clearance certificate.

4 (c) (i)

Certificate of Foreign Company.

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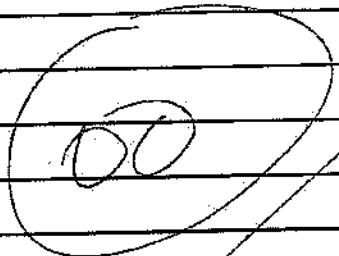
Questions 4/16

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either margin

Venture

Characteristics of a Contractual Joint

- (i) Consists of two registered companies
- (ii) Two different registered Companies from two different Countries.
- (iii) Both Companies operates in one unique activity.
- (iv) Both Companies have an agreement.
- (v) Share the profits equally.
- (vi) Has two different directors.



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Questions 5 (a) (i) (ii)

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(i) Advantages of a Public Limited Company
Over a Private Limited Company.

- (i) Limited by shares
- (ii) Limited by Shareholders
- (iii) Hold AGM
- (iv) can be resold
- (v) Limited by number

(ii) Procedure followed to Change a Public Limited
Company to Private Limited Company

- (i) application to change
- (ii) Change of Company Name
- (iii) Change of management

10

Write on both sides of the paper

Questions 5(b)

Do not write in
either margin

Grounds of Converting Private Limited Company to Public Limited Company

(i) Notice to convert the Company from Private Limited Company to Public Limited.

(ii) Votes from all shareholders on decision to convert.

(iii) Minutes and other signed documents for all Shareholders be presented during application.

D

Do not write in
either margin.

Questions 5C

Write on both sides of the paper

- (i) a letter of objection with a reason for objection to the registry of companies
(ii) attach his copies w/ a director
(iii) fill a form of objection

OO

Write on both sides of the paper

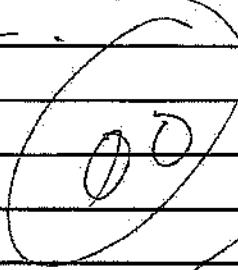
Questions 6(G.)

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either margin

Requirements for the creation of
Security rights and its rights of enforcement
in the event of a breach.

- (i) Borrower's identities, (e.g. D. passport)
- (ii) Address
- (iii) Type of a security
- (iv) Related relevant no., Logbook etc.
- (v) Photo size of a security
- (vi) The reason for the draw
- (vii) application form, filled and signed

After provision of all the requirements
the agreement between the Bank and the
borrower is signed by both to show
Consent of all parties and that Payment
of loan is a must.

A handwritten signature consisting of two overlapping circles, one slightly larger than the other, positioned in the center of a large circle.

Do not write in
either margin

Questions 6(b)

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The change of ownership or the transfer of property which is well documented like a transfer of a machine (Capital ~~to~~ Gains Tax). Stamp duty should be covered.

The relevant law allows the transfer if it is free from encumbrances and other liabilities.

