

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 108: COMMERCIAL TRANSACTIONS

TUESDAY 25TH OCTOBER, 2022

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains SIX (6) 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

a) Vezanda Salt Company Limited is a salt making company based in Eastern Kenya region where it controls a large portion of the market share. In its most recent Strategic Plan, the shareholders of the company approved the expansion of its business to cover for the first time, the Western Kenya Market in order to improve on its profits. The market share in the Western Kenya region is currently dominated by Mazobo Salt Company Limited. After many weeks of unsuccessfully trying to break into the Western Kenya market, Vezanda Salt Company Limited has been advised to enlist the support of local distributors.

Draft a standard distribution agreement that the company could use to approach the local distributors for purposes of penetrating the market. (5 Marks)

b) In addition to enlisting local distributors, the management of Vezanda has approved an aggressive marketing campaign of their product in the Western Kenya region. It has identified a local marketing company and proposed a joint venture collaboration with it in order to successfully expand into that market.

Write a legal brief detailing the documents that will be required by the Competition Authority of Kenya to actualize the collaboration. (5 Marks)

c) The Kenyan oil and gas sector has been growing steadily over the years following discoveries of huge oil deposits in several parts of the country. Vifusi Company Limited and Lombi Company Limited are local companies operating in the country and their annual turnovers are Kshs. 850 million and Kshs. 550 million shillings respectively. Vifusi Company Limited wishes to combine operations with Lombi Company Limited in order to be able to compete favorably in terms of government tenders with foreign companies currently dominating the Kenyan market.

Advise Vifusi Company Limited and Lombi Company Limited on the regulatory requirements for their new entity under the Competition Act, 2010 and whether or not they qualify for exemptions. (5 Marks)

d) Vifusi Company Limited has hired your law firm to guide it in the process in 1(c) above. It has instructed you to conduct legal due diligence prior to entering negotiations with Lombi Company limited.

Explain the importance of legal due diligence and prepare a checklist to assist you conduct the exercise.

(5 Marks)

QUESTION TWO

Frida is a wealthy Kenyan investor living and working in South Africa. During her vacation, she decided to visit her former High School located in Northern Kenya to remind herself of the hardship she underwent while going to school. It was during her visit that she encountered the reality of many school girls missing several days of school every month due to lack of sanitary pads. Frida also read several reports, which consistently showed that the problem of sanitary pads was persistent in the region and that it had adversely affected the performance of the girls. She is motivated by the fact that education is the greatest equalizer in life. She believes that, if she provides sanitary pads to the girls, they would not be forced to miss school and their performance would improve. Frida has booked an appointment with you to discuss the practicalities of her plans before implementation.

- a) Advise Frida on the type and characteristics of the vehicle she should incorporate for purposes of distributing sanitary towels in schools in her region. (4 Marks)
- b) Suppose Frida opted to register a trust under the Trustees (Perpetual succession) Act, Analyze the particulars that should be included in the application for its incorporation. (3 Marks)
- c) Frida would like to use the Real-Time Gross Settlement (RTGS) system for making payments to her suppliers for sanitary towels being supplied to schools on a monthly basis.
Advise her on the benefits of this payment mode. (3 Marks)

QUESTION THREE

Skrull Technologies Limited is a limited liability company incorporated in the Republic of Kenya. The company has recently fallen on hard times and is unable to service its debts as they come due. One of the company's shareholder, Danvers, has gotten wind that the company wishes to offer up several prime parcels of land which it owns as security to its various creditors. Danvers is not well versed in matters law and now seeks your advice. Advise him on the following: -

- a) Pursuant to Section 625 of the Insolvency Act, what is the alternative to administration and what does it involve. (3 Marks)
- b) Explain the primary objectives of administration of a company? (2 Marks)
- c) Danvers has been advised that the company is also considering voluntary liquidation. Instruct Danvers on the content of the statutory declaration to be sworn by the directors. (2 Marks)
- d) Danvers further advises you that he is not a fully paid up shareholder in the company. As such, he wishes to know whether he qualifies to make an Application to the court for compulsory liquidation and if there are any qualifications to the said Application. (3 Marks)

QUESTION FOUR

- a) Salome has received admission to an Ivy League University for her Masters studies and must register by January 2023 in order to secure her position. Unfortunately, her application for a fully paid scholarship was unsuccessful. Salome is keen on securing a loan from a financial institution which has requested her for some form of security. The only item that Salome's parents own that may be of worth is a farm house in their rural home.

Advise Salome on whether she may present the farm house to a financial institution as security and what details, documentation and its features are needed for this form of security. (6 marks)

- b) Companies require finances so as to remain afloat in their operations. Shupavu Industries is a large indigenous manufacturer of non-alcoholic beverages. The company has unveiled its Strategic Plan under which it intends to have at least 30% of the market share in Kenya. This will require at least a Kshs. 10 billion investments in the manufacturing plant, bottling plants and its distribution facilities. The company has also over 300 acres of land in Kisumu and an operational manufacturing plant.
- Discuss the various ways in which Shupavu Industries may pursue to raise additional capital as it seeks to expand its operations. (4 Marks)

QUESTION FIVE

- a) Malikuu is a robust and dynamic entrepreneur with a good knack for taking advantage of calamities to establish and profit from new businesses. In January of 2021, Malikuu learnt about the COVID 19 virus from his friend in China. He went online and learnt that the virus was quickly spreading to other countries and it was just a matter of time before the same reached Kenya. As a result of this information, Malikuu registered a business for importing face masks and sanitizers for the local market at a time when the virus had not spread to Kenya. Within a few months, the virus reached the country and soon thereafter the government mandated, among other things, the wearing of face masks and the use of sanitizers in order to control the spread of the virus. Malikuu made a lot of money selling his imports at the peak of the pandemic. In September 2021, he ordered another big supply of face masks and sanitizers after it emerged that the virus was mutating very fast and may be around for a while. Unfortunately, due to the discovery of a vaccine, many populations developed herd immunity and the virus was no longer severely potent. The government, motivated by economic reasons, promptly removed the mandate to wear masks and use of sanitizers. As a result, Malikuu made great losses and fell into a deep financial crisis to an extent that he was unable to pay his debts and his creditors were

concerned. Malikuu has been sued by creditors and has visited your office for a solution on how to satisfy his creditors without exposing himself to civil suits. Advise Malikuu on options available to him under these circumstances.

(4 Marks)

- b) Malikuu has requested you to prepare a bankruptcy petition. Briefly describe the documents which should be attached to the petition before filing it? (3 Marks)
- c) Which additional information will you require from Malikuu in order to prepare the bankruptcy notice. (3 Marks)

QUESTION SIX

Vincent and Mike are both graphic designers. Vincent has been contracted by a local bank to design for them a new logo as part of their re-branding initiative. Vincent approaches Mike and requests him to work with him in this project. They have both come to your law offices for Advice.

- a) What clauses shall you include when drafting their partnership deed. (3 Marks)
- b) Vincent and Mike choose Ugatuzi designs as the name of their organization. What particulars will be submitted to the registrar upon registration. (3 Marks)
- c) Mike and Vincent use their personal computers when working on the project, since partnering they have acquired a projector which they intend to use for their presentations. Mike takes the projector home and uses it to watch movies. Advice Vincent on Mike's actions. (1 Marks)
- d) After the commencement of the project, Vincent approaches his Aunt, Linda, a business woman, seeking Kshs 100,000/= to cover their costs. Linda is of the opinion that in exchange for the money, she would want to be part of the business Vincent operates with Mike. Mike is worried that Linda is not a graphic designer and she may not comprehend the nature of their business. Advise Vincent, Mike and Linda on the type of partnership that could achieve Linda's proposal and address Mike's worries and why? (3 Marks)

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COUNCIL OF LEGAL EDUCATION
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UNIT CODE: **A T P I O 8** SUBJECT/UNIT **COMMERCIAL TRANSACTIONS**

REGISTRATION NUMBER:

DATE: **25th October 2022**

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
6	10	EK				
4	10	PS				
3	02	GG				
1	16	PO				
5	07	JW				
TOTAL MARKS	50					

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Questions 6

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6(a) The relationship between Vincent and Mike is that of a partnership because they have come together to carry out business with a view of profit. They are therefore bound by a partnership deed.

Clauses to be included:

a) Personal Details - The partnership deed shall include the name and address of the both Vincent and Mike.

b) Share in Profits & Contribution to losses - This clause shall stipulate the share of both Vincent and Mike in the profit made by the partnership as well as their contribution to losses. Profits are in proportion to their contribution

c) Type of Partnership - The deed shall include the type of partnership that Vincent and Mike want to enter into. It could be a General Partnership, Limited Partnership or a Limited Liability Partnership.

d) Partnership property - It will include what constitutes a partnership property. A partnership property is a property to be used for the purpose of the partnership.

e) Removal - The deed will include the circumstances in which a partner can be removed from the partnership. Can be removed if the partner dies, expels or bankrupt

f) Breakup/dissolution of the partnership - The deed will state the circumstances in which may the partnership may be broken up i.e. when the number of partners fall below 2, when the term for formation of the partnership comes to an end, or when a partner applies to court for bankruptcy.

g) If Vincent & Mike wish to form a General partnership, there is no need of registration. They can only register a Limited Partnership or a Limited Liability Partnership.

i) Name Search and Reservation → Vincent and Mike will apply for a reservation of name their proposed name, Utgatu2! Designs

ii) Application form containing a statement signed by both prospective partners including the following

i. - Proposed name of the partnership

ii. Name and Address of both partners

iii. Place of business of the proposed partnership

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4 Nature of the business in the Partnership

i.) Application fee → Vincent and Mike will be required to lodge an application fee for purpose of registration.

c.) The projector acquired by the partnership constitutes a Partnership property as provided for under Section 18-20 of the Partnership Act

- A Partnership property is one that is obtained and to be used for the purpose of the partnership.

- Mike is therefore liable for breach of this provision and Vincent can

d.) The suitable type of partnership in this case is a Limited Partnership which is provided for under section 54-74 of the Partnership Act

- A limited partnership consists of General Partners and Limited partners.

- Limited partners are liable only to the extent to which to the lowest contribution to shares of profits only to the extent of their contribution.

- Linda will be a limited partner and liable to the extent of her contribution which is 100,000 Kenya Shillings.

- Both Vincent and Mike will be General Partners with Unlimited liability

- Being general partners, both Mike and Vincent will take part in the management of the partnership while Linda will not.

- If Linda contravenes this provision, she will be liable to the extent in which she contravened the provision on management

- Linda will therefore be registered in the partnership ^{as a limited partner} with the consent of both Vincent and Mike as provided for under Section 26 of the Partnership Act

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Questions 4

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4(a) Issue - What details, documentation and features are needed to form the security.

Rule - The Movable Property Security Right Act

Application of rules to issue

- In order to secure a loan for her studies, Salome will have to enter into an agreement under the Movable Property Security Right and register it. Since it is not movable, she can opt to register a charge ^{farm house} ~~for the farm house~~.
- Salome is the grantor because she creates the security for the purpose of securing the loan while the financial institution is the secured creditor as it will have the security right.
- The collateral in this case will be a farm house. However the farm house does not constitute a movable property. A movable property is defined under Section 2 of the Movable Property Security Right as a tangible or an intangible asset. A tangible asset can be things like cars, or any other property that can be moved.
- If Salome wishes to obtain funds from the institution under the MPCR Act, she will have to get a movable asset so as to register.

i) Details of the

- Once she obtains a movable asset, she will become a secured creditor, and grantor while the financial institution will be a secured creditor and the movable asset will be a collateral.
- ~~A security~~ A security right is a property right in a movable asset that is used for the purpose of securing a payment if it is created by a security agreement.

ii) Documentation

Salome will have to enter into an agreement with the financial institution in order to secure her payment. This is termed as a security agreement.

According to Section 6 of the Movable Property Security Right, the security agreement will have the greater, being Salome will need to have the right in the asset to be encumbered or the right to encumber it.

Features

The security agreement will include the following

- a) Initiate and signed by Salome
- b) Contain the details of both Salome and the financial institution
- c) The Secured Obligation - In this case, the payment for her school fees
- d) The details of the collateral.

She will then register in the Registry which is established in section 19 of the MPRAct.

Conclusion

Salome cannot obtain her school fees using the farm house under the Movable Property Security Rights Act. She can only do so with a movable property and follow the guidelines above.
- If she wishes to obtain funds from the farm house, the parents can register a charge over it.

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Questions 46

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b) Shuparu Industries may pursue to raise Capital in the following way -

- Equity financing - through issuance of shares
- Debt financing - through debentures, charges, loans and draft, hire-purchase

~~Equity financing~~

- Shuparu Industries can raise Capital by issuing its shares either to its members or to the public. It can only issue capital shares to the public if it is a public company.
- Members can be also issued with the shares by purchasing them hence adding more finance to the Company.
- The public can be invited for additional finance.

~~Debt finance~~

- This can be done through
 - Debentures - Debentures are documents that acknowledge the debt and can be used as security to raise Capital
 - Charges - The company can either charge their assets under a fixed charge or under a floating charge.
 - Loans - Shuparu Industries can take loans and be used to finance their project
 - Mortgage - It can mortgage their property.

10

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- a) An alternative to administration is Voluntary Arrangement
- Voluntary arrangement occurs when the directors of the Company gives out proposals on how it can realize their debts
 - This can be done through a scheme of arrangement where both the Creditors and the Company agree on how to pay out their debts
 - Once in agreement, a supervisor of the voluntary arrangement will be appointed for the purpose of overseeing the voluntary arrangement
 - After 30 days the supervisor will approach the Court and give out the following details
 - a) That the proposal is one that is likely to achieve the goals and it should be accepted
 - b) A meeting to be held between the Company and the Creditors
 - i) The place of meeting
 - A voluntary arrangement can involve the payment of the debts in installments
 - In the case of Uchumi Supermarket Plc - the Court approved a proposal for voluntary arrangement
 - b) The objectives of administration are provided for in Section 522 of the Insolvency Act.
 - They are as follows
 - i) To maintain the company as a going concern
 - ii) To achieve a better objective as opposed to the creditors as opposed to a liquidation
 - iii) To collect and realize the assets of the Company for the benefit of Creditors.

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Questions 3.

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c) A statutory declaration is one that is prepared by the directors of the company stating the following

a) That it has looked into the affairs of the Company, thus includes the financial reports.

b) Having done so, the directors have formed the opinion that the Company is able to pay its debts as they fall due & thus no members voluntary liquidation.

The statutory declaration is normally lodged with the Registrar of Companies

d) Denver still qualifies to make the application since he is a member of the company.

Other ways that a Company can

People who can apply to Court for Compulsory liquidation

- The directors of the Company or members
- Creditors or Creditatories
- Creditors
- Official Receiver

If a member makes this application, then the Court can only consider the application if

- a) The member is entitled to the relief sought
- b) In the absence of any other relief, it is just and equitable to grant the relief

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Distribution Agreement
between
Vazenda Salt Company Ltd
and
Local distributors Ltd.

This Agreement is made on the 25th of October 2022 between
Vazenda Salt Company Ltd and Local distributors

Parties

Vazenda Salt Company ^{Ltd} is a limited Company incorporated in Kenya.

Local distributor is a Company incorporated in Kenya for the purpose of distributing to Vazenda salt Ltd.

Duration

This agreement takes effect on the 25th October 2022 for a period of 2 years

Breach

In case of breach of terms of this agreement, either party can seek for an Alternative Dispute Resolution or seek redress in Court

Alternative Dispute Resolution

This agreement provides for a mechanism for Alternative Dispute Resolution in case of non-compliance dispute.

Termination

This agreement can be terminated on the end of the period specified in this agreement or on application for termination.

Signature - Director of Vazenda Salt Ltd

Date 25/10/22

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Questions!

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Issue. What are the documents required by the Competition Authority to actualize the collaboration?

Rule - Competition Authority of Kenya.

Application of Rules to issue

The joint venture collaboration between Vezenda Salt Company Ltd and the local marketing company will constitute a merger

- a) Letter of Intent - A letter of intent will include a term sheet that have all the terms of the proposed venture and their intention to merge.
- b) Non-disclosure agreement - A non-disclosure agreement is essential for the both entities as it will prevent them from revealing any information that is confidential.
- c) Exclusivity agreement - An exclusivity agreement will prevent the target company from obtaining offers from other acquiring companies during the process of merger.
- d) Board resolution - A board resolution will should be passed for the intention to merge with the local marketing company. Therefore a copy of the resolution will have to be lodged with the Authority.
- e) Proposed merger agreement - Once the two entities have agreed to merge, a proposed merger agreement will be lodged with the Authority.

Conclusion

In order for the Vezenda Salt Company Ltd to merge with the local marketing company, it will have to lodge the above documents with the Authority.

(c) Section 42 of the Competition Authority requires that proposed merges have to be notified with the Competition Authority

Issue → What are the regulatory requirements?

Do they qualify for exemptions?

Rule Competition Act & Section 41-49

Competition (General) Rules of 2019.

Application of Rules to issue

① Requiratory requirements

In order for Vitisi Company limited to be merged with Lombi + Company, they are required to lodge a notification according to Section 42 of the Competition Authority

- According to 1st Schedule of the Competition (General) Rules of 2019, the following have to be notified

a) If the combined turnover of assets (whichever is higher) of the undertakings is 1B¹⁰⁰ and above and the turnover or assets (whichever is higher) of the target company is 500 Million

- Lombi Company and Vitisi Company limited qualify in this provision since the combined turnover is 1.4 Billion which is above 1 billion ksh. and the target company, Lombi, is 550 million hence above the threshold.

b) If the turnover or assets (whichever is higher) of the acquiring company is above 10 Billion and both come from the same sector.

Vitisi Company limited has a turnover of 850 million kshs hence does not qualify in this provision since they are not from the same sector

c) If the turnover or assets of the companies combined is 10 Billion kshs. one or both from the (carbon based) mineral sector

- This is not (carbon based mineral) sector hence the two companies do not qualify in this provision

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whether they qualify for exceptions

The 5th paragraph of the 1st schedule of the Competition (General) Rules of 2019 provides for exemptions for notification where the entities do not meet the merger threshold but one to be notified

If the combined turnover or assets (whichever is higher) of the merging entities is between 500M - 1 Billion Kshs.

- Since the turnover of both entities is above 1 Billion Kshs, this doesn't apply.

(i) If the companies are in the carbon based mineral sector, regardless of the turnover.

Conclusion

The two companies therefore

Other regulatory requirements -

- A merger is the acquisition of shares, beneficial interest of a company leading to a change in control and includes takeovers

- To constitute a change in control, section 41 states that

- The company should have at least half of the issued share capital of the ~~target~~ target company

- Acquires majority of Voting rights of ~~a company~~ the target company

- Or appoint majority of directors

- For approval of the merger, the competition authority will look

- into the following

a) the extent in which it will affect

- Employees of the company

- How it will lessen competition

- The monopoly of the company in the market

- The ability of national companies to effectively

compete in international market

Conclusion

- The competition authority will have to ensure that the above requirements are met and

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Questions

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the merger between Yezendo salt Company Ltd and
Lombi Company meets the merger notification threshold
therefore it should be notified to the / Authority

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Questions
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either margind) LegIssue → What are the importance of legal due diligenceRule → Competition ActApplication of Rules to issue.

- Mergers and Acquisitions are provided for under section 41-49 of the Competition Act.

- The first step before creating a merger is to do a due diligence.

- Due diligence is where you do a research analysis and verify information and documents.

Legal due diligence:

① Suits → Vifasi Company will check whether there are any suits pending with the company

② Encumbrances → The acquiring company will check whether there are any encumbrances with the company

③ Contracts → The company will check the contracts that Lambi Company has & verify any information

④ Legality of the Company → Vifasi Company will check whether the company is legally incorporated and whether it's operating legally.

⑤ Activity of the Company → Vifasi Company will check whether there are any fraudulent trading with it

Conclusion

The above checklist will assist in conducting legal due diligence

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(5)(a)

Options available for Malikuu

Bankruptcy^{order} is an order made by the court after a successful legal procedure has been made by either a debtor or a creditor.

Section 14 of the Insolvency Act provides for the alternatives to bankruptcy. They are as follows:

a) No asset procedure - This alternative is only suitable if the following conditions are met:

- If Malikuu has never been admitted to the no asset procedure
- If he has never been admitted to bankruptcy
- If he has no negotiable assets
- If he has no other way of paying his debts

b) Summary Installment Orders - This is done upon an application by the Official Receiver.

It provides for a way of paying debts in installments or according to the requirements by the Official receiver.

c) Voluntary arrangement → Malikuu can apply for

Voluntary arrangement where he will propose solutions in which solutions or ways he can clear his debts.

- This has to be agreeable by both the debtor and the creditor and a supervisor will be appointed.

b) Since Malikuu will be petitioning for bankruptcy, it will amount to a debtor's application.

The following will be attached:

a) Verifying affidavit - This is to verify the contents of the petition

b) Statement of financial position - This will set out his profits, losses, incomes & expenditure.

c) Application for appointment of a trustee - This document is important as it will help in getting a bankruptcy trustee for the purpose of administering his estate.

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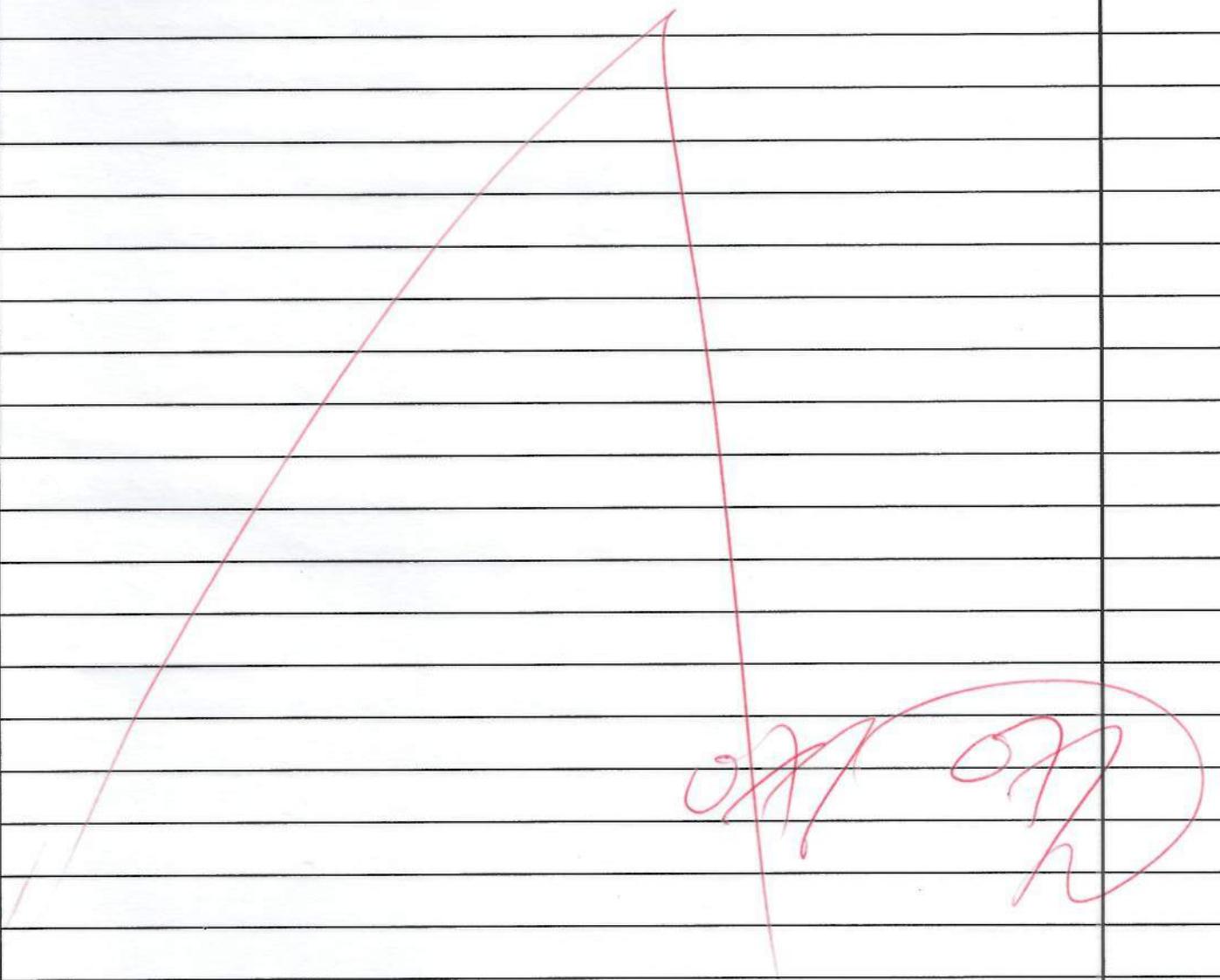
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(c) Additional information required

- Whether there are any disputes with regard to the debts he has.
- Whether there are other pending applications against him with regard to bankruptcy.
- Whether he has made any attempts to pay the debts to the creditors.
- Whether his debts meet the threshold for bankruptcy.

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LEAST SCORED

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201486



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REGISTRATION NUMBER:

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6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
5	00	JK				
6	00	EK				
4	02	FS				
1	01	PO				
2	03	FS				
TOTAL MARKS	06					

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a). Recently there has been an increase in companies being unable to continue with business due to financial burdens, as a case in example in Nakumatt Holdings, ARMT Cements to mention but a few.

Most of these companies usually have debts from creditors who need to be paid.

In this scenario, Malikus can put his Company under Administration. An administrator is basically a person or company that is meant to resuscitate a dying company instead liquidating all the company assets to pay off creditors.

Administrators basically come up with strategies that if implemented, it can be in a position of paying its debts, if need be even the company's mode of operation, management is overhauled as a means of ensuring a fresh start for the company.

Basically an administrator tries to avoid a scenario whereby a company will have to be liquidated in order for creditors to be able to relinquish themselves.

Having said the above, Malikus can put his Company under administration to enable it run until all the credit has been sorted.

Alternatively Malikus can apply for bankruptcy for his company in order to waive him off the burden of paying. It will be an advantage on his end but to the creditors this is money lost..

b) Bankruptcy is a situation whereby a Company or a person is deemed to be unfit to being liable to pay any debt that he/she is owed by a creditor.

Malikou needs to attach certain documents of the Company that he intends to petition for bankruptcy. Bank statement: Bank statement will show how the Company's account have been operating and its current balance, it just a history of how the company accounts have been and if there is any balance that could be offset to clear the debt. It is a simple audit report of the Company's monies.

Memorandum and Articles of the Company: Memorandum are basically documents that are used in the incorporation of any Company, they are an outlook of how the company intends to run after being incorporated/registered. In this case they will prove the existence of the company.

External Audit report: Audits conducted by an independent body will prove if it is necessary for the Company to be granted or declared bankrupt or it can be brought back to life. An audit report can prove that indeed a Company is struggling and that there is no way it can operate any further.

c). It is necessary that when filing for bankruptcy an individual or Company to attach its essential residential details and current residence. If the Company runs in two different locations both the locations need to be attached.

The number of directors depending on what type of Company it is under the law should also be mentioned. This is just for basically showing that

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indeed such a company existed.

If the company is limited by shares, then the shareholders and the percentage of shares that they own, need to be enlisted.

207

a). In drafting the partnership deed; the following clauses shall be included:

i) General Clause: Such a clause is said to be a common agreement pertaining a certain type of business. It is also called a common practice in a certain business. Additionally, it is not a must that a general clause to only include general practices in a certain field. A general clause can also be what is basically included in a partnership deed for example; The deed is between So and So individuals or companies, and their identification.

ii) Special Clauses: This are unique to each deed. It is more like what makes the two partners come together in the formation of the deed and what it binds them together. It can include matters like percentage share or what ration each party shall be receiving as revenue. Special clauses can include the mode of operation of the partnership.

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b) Memorandum of Association: A memorandum of association is simply put as ~~to~~ what brings the Company into existence. This was given more light in the case of Cotman v Brougham where it was stated that a memorandum is basically the backbone of the company upon incorporation.

Articles of Association: Though subordinate to the Memorandum Articles are also quite essentials as it shows the modus operandi of the company after its incorporation.

c) From the look of things, there is nothing wrong in mike using the projector, though the projector belongs to the company, for basic reasoning that both Mike and vincent might have equal shares in the Company. However ~~it's~~ good practice that Company property be used for company usage only and thus it would be cool if Mike could follow such.

d) Linda coming into the picture to offer Capital to Ugatzi designs can simply be termed as being a shareholder as much as she is not a graphic designer, her money can be used as Capital in running the business and in return she shall be receiving dividends for the percentage of shares allocated to her. This will make Ugatzi designs be a limited Company by shares as per Section 6 of the Company Act.

10

a) Salome can use the farm house as Security on ~~the~~ immovable property. Where she will be given the required amount and the house can be used by the creditor until when the debt is cleared. The house at hand shall be used as a charge. Charge is basically "Give me money, if I fail to pay, keep my property" kind of principle. Title in a charge only passes upon default of pay. The chargee shall enjoy use of the ~~Property~~ until the said debt has been cleared.

Additionally the farm house can be put under Bailment, where the bailee will offer the said amount for a specified period of time until the debt has been cleared.

The Security on Immoveable property Act came into existence in 2017 to protect both the Creditor and the Borrower in scenarios whereby either the money was not paid or the borrower loses his/her asset in a fraudulent manner. The Act also states that such an agreement should be filed under the Registrar for purposes of Security on both ends.

b) Shupar Industries can lease part of the 300 acres of land for a specified amount of time so as to acquire the capital they need. A lease is basically a long extension of rent to whoever would want to use the land. The lessee will then give the agreed amount of money to the lessor and the land in question shall be used as security.

Shupar Industries can also ~~use~~ use the land as a charge. The difference between a lease and a

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Questions FAIRDo not write in
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Charge is whereby a lease is exchange more like a long-term rent; whereby a charge is more like using the land as security and failure to pay the borrowed money, property shall move to the lender.

The known land can also be used as bailment where the bailee will offer the agreed amount for a specified period of time until the debt has been cleared. The bailee enjoys use of the parcel of land as it was his only fact the title is still with the bailor. This was defined in Sighon Freight v Air Chartered brokers.

(02/10)

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Questions ONE

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25/10/2022

DISTRIBUTION AGREEMENT

BETWEEN

VERANDA SALT COMPANY LIMITED who shall be referred as "SUPPLIER" from now. The Supplier runs and operates its mills from Eastern Kenya.

AND

TAMU SANA INVESTMENT who shall be referred to as the Supplier "DISTRIBUTOR"; which conducts its business from Western Kenya.

i:- Whereas the Supplier shall be the sole Supplier of Salt to the Distributor for One year unless revised after that period.

ii :- Whereas the Distributor shall be the sole distributor of Veranda Salt in the whole of Western Kenya for a period of One year unless revised after that period.

iii:- The Supplier shall give a grace period to the distributor a period of Twenty One days to pay any incoming stock.

SIGNED BY.

DISTRIBUTOR.

Ak

26/10/2022

SUPPLIER.

DR

26/10/2022

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Questions ONEDo not write in
either marginWITNESSED BY:FOR THE SUPPLIER:[Signature]FOR THE DISTRIBUTOR:[Signature]

b). The two companies will be entering into a joint venture but with the characteristics of Agency relationship the marketing company will be acting as the marketing agent for Veranda Salt Company. Agency is defined in Kelner v Baxter, an agent is one who carries the business of the owner, represents the owner in the owner's best interest.

The documents that will be necessary will be required shall be :

i) The joint venture Agreement: This is to show that both parties are in consensus and that both of them know exactly what they ought to do.

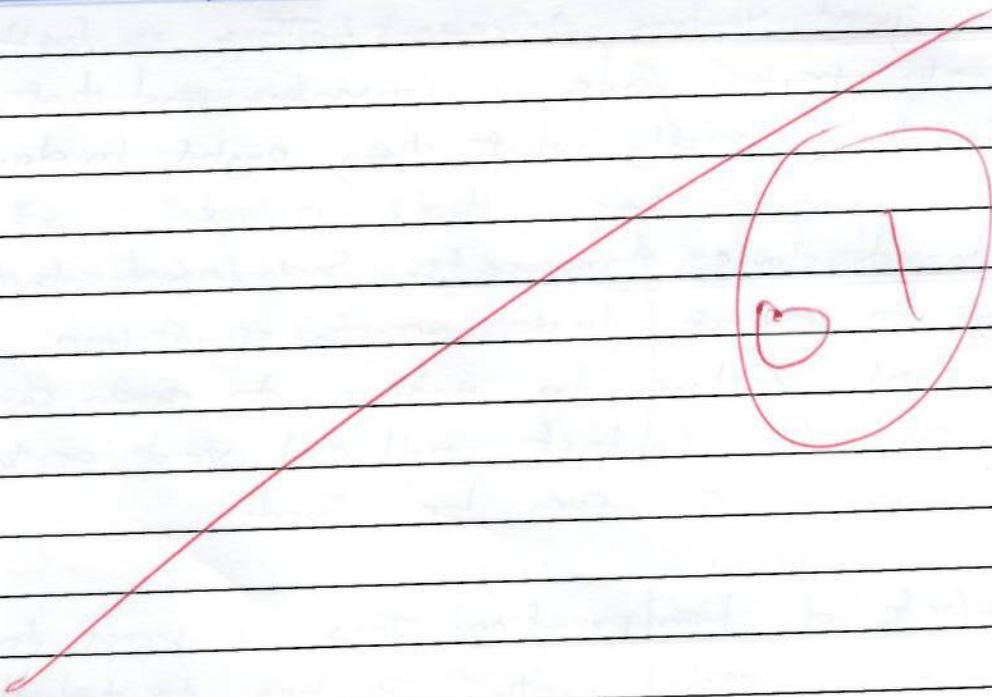
ii) Non-disclosure Agreements: Such agreements are basically to protect trade secrets of certain business and failure to adhere to such can either deem the Contract null and void or the breaching party can even be sued.

iii). Certificate of Incorporation: This is proof to show that indeed both parties to the venture are actually recognized and can be sued or to sue as per the Company Act of Kenya sec 3

d) Legal due diligence has its advantages, such as;

i) Compliance: This can be in many ways for instance, tax compliance, and abidance to the regulation of the land in which the company is registered. It will be very shameful for a company to enter into an agreement with another only to come and find out later that partnering company had many irregularities and thus in one way or the other such irregularities will also affect it..

ii) Legitimacy: Before signing an negotiation agreement it is also only fit to do a legal due diligence report because once a party signs, contracts, transacts with another party, it is assumed that both parties knew that all was in order from both sides. This is known as the Targuard Rule: as was discussed in the case of The Royal British Bank
v Thomas Targuard.



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Questions Two

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Before incorporation of a Company, it is important to know the various types of Companies that exist. Section 3 of the Company Act defines a Company as one that complies with the Act. A Company should have the ability to sue and be sued, transact, own property. There are several types of company in law, these are;

- a) limited Company
- b) Unlited Company
- c) Private Company
- d) Public Company.

From the look of things and frida's situation, the suitable vehicle would be Private Company, for reasons that it can be run by at least One director, that being frida.

Additionally frida is the only source of finance at the moment, and therefore a private Company will be suitable for her.

Section 9 of the Company Act gives life to Private Companies.

b) ? X

i) Real-time Gross Settlement is essential and effective in the following ways:

Instant transfer gone are the days where one would have to go to the bank to deposit the supplier's money; with such a system, one is able to instant clear all the debt that the Company owes electronically.

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Questions Two:

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The System itself has a database where all transaction history can be retrieved and an audit carried out.

Taxable payment. The System also calculates the exact amount that frida needs to be paying, be it V.A.T., Payee

User friendly. It is a system that can be used efficiently with a person who has the basic computer know how.

03/16