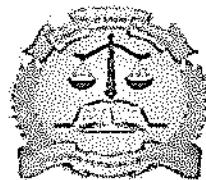


COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 108: COMMERCIAL TRANSACTIONS

FRIDAY 24TH MARCH, 2023.

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) A Candidate **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. Alfa Kenya Co. Ltd. (Alfa), is a large private non-listed company, incorporated in Kenya, with two main business operations i.e. mining and shipping, and manufacturing of mining and shipping machinery and equipment. Alfa is in the process of considering whether or not to undertake a restructuring programme. Alfa's annual turnover is USD \$12 million. Five Alfa members of the Board of Directors (who own 60% of the equity share capital in total) hold the view that the restructuring programme would not only simplify the company's structure, but also, and most importantly, become a tool for raising extra funds for expansion of mining and shipping business. According to these members, few years after the implementation of the proposed restructuring programme, a reverse takeover should be undertaken to obtain a listing on the Nairobi stock exchange in order to raise new finance.

However, the other four members of Alfa's Board of Directors (who own 40% of the equity share capital in total), have raised doubts about the restructuring programme and the reverse takeover, and are of the opinion that the company should either join hands or purchase one of the two foreign corporate entities - Indaba Mining Ltd., a Ugandan company that is the market leader in manufacturing equipment for mining sector in Uganda or Ethiopian Shipping Services Ltd, that holds 40% of the local market share in Ethiopian shipping industry. Both foreign entities seem very attractive for acquisition. This is because Indaba's Mining Ltd. annual turnover in the Common Market amounts to USD \$10.2 million and the company has its subsidiaries in Rwanda and Egypt with export revenues of USD \$ 5 million from both countries. The Ethiopian company's annual turnover in the Common Market amounts to USD \$10.5 million and the company also has two subsidiaries - one in Mauritius and the other in Seychelles, which accrue sales revenue in excess of USD \$ 5 million. Such expansion, according to four members of Alfa Board of Directors, will have a huge positive regional impact.

- i. Should Alfa Kenya Co. Ltd., decide to proceed to negotiate a merger with one of the foreign entities, typically, what documents will the company be expected to execute during the initial preparatory stage of a merger and acquisition (M&A) transaction noting to explain their general content. (5 marks)
- ii. Advise Alfa Kenya Co Ltd. on the jurisdictional thresholds for notification of M&A transactions, explaining whether there are any exceptional circumstances in which Alfa Kenya Co Ltd. may be exempted from notification requirements. (6 marks)

iii. What conditions would have to be present, should the Board of Directors of Alfa Kenya Co. Ltd. decide to form a Joint Venture. (4 marks)

B. You represent Nawiri PLC, a client of many years. Muhatia, the chief executive officer of Nawiri recently came to your office and indicated that Nawiri has been in talks with Tarajia PLC concerning a possible acquisition of Tarajia by Nawiri. Muhatia further indicated that Nawiri and Tarajia are in agreement that the proposed transaction makes commercial sense and should be progressed to its conclusion. Tarajia has shared a Letter of Intent with Nawiri and Muhatia indicating that the content in the Letter of Intent accurately reflects preliminary discussions between the two firms. Nawiri's Board is very keen on signing the Letter as a good faith gesture to facilitate further negotiation and due diligence.

Muhatia has sought your legal advice on the wisdom or otherwise of agreeing on a Letter of Intent, having heard from various sources that Letters of Intent have both risks and benefits.

Advise Muhatia on the risks and benefits of the parties agreeing on a Letter of Intent and whether Nawiri should proceed to sign the draft. (5 marks)

QUESTION TWO

Timely Limited is a limited company that is incorporated and has its registered office in South Africa. The company is desirous of setting up a branch in Kenya to carry out their watch making business. Due to your expertise on matters company law, the directors have approached you in your offices to discuss how they may go about setting up their watch making business in Kenya. Advise them on the following aspects:

- a) Requirements for registering a foreign company branch in Kenya. (4 marks)
- b) In their discussions with you, the directors would like to know in detail the different shares that are available for issue in a company. (4 marks)
- c) The directors would like to further understand the need and process of disclosure of Beneficial Ownership of Companies in Kenya. (2 marks)

QUESTION THREE

Ponda Mali is an astute businessman who could identify opportunities in areas which no one had thought of. At one point, he identified an important plant in Sehe Forest and sold it to a local pharmaceutical company which in turn paid him millions of shillings for this discovery. In a recent business encounter, he came across some rare earths in

one remote village. Upon further analysis, he realized that the rare earths could be used to make explosives if mixed with certain chemicals. Excited about the prospects of making billions of shillings, Ponda Mali literally invested all he had in buying machineries and equipment in preparation. Unfortunately, as fate would have it, his license to commercialize the rare earths was denied on national security grounds and as a matter of fact, the government nationalized the grounds in which the rare earths could be found and gave their military control over it. Ponda Mali received no compensation and this affected his financial situation since some of the machineries and equipment had been purchased via loans. He has to date financial obligations to his creditors and the shareholders of his company who are worried that their investments would soon be lost.

- (a) Ponda Mali is aware that he is staring at bankruptcy. He approaches you, as his legal advisor, to explore whether there are alternatives to bankruptcy. Advise him. (3marks)
- (b) Ponda Mali is still concerned that one of the creditors who has been sending him angry letters may apply for a bankruptcy order. He has asked you to write a legal opinion discussing the requirements or conditions to be satisfied regarding when a creditor may apply for a bankruptcy order in respect of debtor. (3 marks)
- (c) Ponda Mali fortunately enjoys a very cordial relationship with his bank despite his recent misfortunes. Using this special relationship with the bank, he has managed to identify some farmers who were willing to supply him with beans for exportation. His suppliers have asked for a letter of guarantee, and, as the legal officer, you have been requested to draft one and hand it over for signing by the bank manager.
Prepare a draft letter of guarantee mentioned above. (4marks)

QUESTION FOUR

Your friend, Mamboleo works as a Kiswahili Language Tutor for a local institution, a job he has done for the last eight years. During that time, demand for tutors in the language has steadily increased, especially as the country has become a business hub in the region, attracting investors and students from abroad. He is keen on leaving his current employment to start his own business but is short on capital. He has some livestock in his rural home, a motorbike that he uses for transport and sundry household items. He is not sure whether he can raise capital using these assets as security.

Mamboleo has approached you for advice on the specific nature of the security agreement he needs to enter into with a would be lender, the requirements for the agreement to be valid and the steps regarding registration of the agreement. Advise Mamboleo. (10 Marks)

QUESTION FIVE

Loriane has been running her own ice cream business independently, for the last couple of years. The business initially started slowly but has grown during the last 12 months. To help out with the administrative side of the business, her brother-in-law, Ian became involved 8 months ago. Initially, Loriane was paying him a nominal wage but more recently, 4 months ago to be precise, she began to add to the wage, 5% of the businesses' monthly profit. Ian who has recently taken early retirement has been looking for a project to get involved in, given his previous commercial experience.

Loriane is currently rethinking her business relationship with Ian, because she has established that he is using the business premises and office equipment for other consultancy work that he does. To add to that, she discovered that the other consultancy services have been rendered to 2 neighborhood businesses, one of which is an ice cream parlor located within a local supermarket. Ian has been able to attract the consultancies due to the success of Loriane's business.

Citing relevant legal authorities, advise Loriane on whether she could bring any claim against Ian. (10 marks)

QUESTION SIX

Milky Way Ltd. is a Kenyan company that manufactures and distributes for sale and sells dairy products such as yoghurt, whipped cream and creamy cheese. In March 2022, Milky Way Ltd. received two tax assessments from the Kenya Revenue Authority (KRA), both for the period 2010-2018. One assessment was in respect of corporate income tax liability for Kshs.10 million and the other one, in respect to Value Added Tax (VAT), which was for Kshs. 5 million. Both assessments were issued on the basis of under-declaration (income and VAT receipts) by the taxpayer.

Milky Way Ltd. contends that they had correctly self-assessed their tax liability and duly paid the required taxes, while KRA argues that the company attempted to evade the tax liability, and demands immediate payments.

Milky Way Ltd. have come to you for a legal opinion on the following questions:

- (a) Whether KRA can issue Milky Way Ltd. with an assessment for 2010-2018?
(6 marks)
- (b) As a taxpayer dissatisfied with the KRA's assessment, what are the major steps
that Milky Way Ltd should take before going to the Tax Appeals Tribunal?
(4 marks)

**HIGHEST
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Officer	Initials
Checker	LW
Data Entry	MA
1 st Verification	KM

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

UNIT CODE: A T P 108 SUBJECT/UNIT COMMERCIAL TRANSACTIONS

REGISTRATION NUMBER:

24th MARCH 2023

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
4	08	JO				
3	05	GG				
2	10	JO				
5	10	EK				
1	14	JW				
TOTAL MARKS	50					

Write on both sides of the paper

Questions 4

Do not write in
either margin**FACTS.**

- Mamboleo owns, livestock, a motorbike and Sundry Household Items

ISSUES

1. Whether the above items can serve as security for a loan

2. Nature of Security agreement

3. Validity of a security agreement.

4. Process of Registration

RULES

I will be guided by the Movable Properties Security Rights Act 2017.

ANALYSIS & APPLICATION**ISSUE 1**

The Livestock, motorbike and household items are all movable properties. They fall within the definition of movable property as per Sec. 2 of the Movable Property Security right Act 2017 (MPSRA).

Therefore, these items can be used to secure the loan.

NATURE OF SECURITY AGREEMENT

- A security agreement has or must be in writing.

- It is an agreement entered between a grantor and a secured creditor.

- In this case, Mamboleo is the grantor whereas the lender is the secured creditor.

- The security agreement will need to be drafted and executed by both parties.

- It states the obligations of each party to the agreement and defines their duties.
- This agreement confers security rights to the secured creditor.
- It also serves to identify parties to the agreement as well as the property (movable) that is used to secure the obligation.

REQUIREMENTS FOR A VALID AGREEMENT

- i) It must be in writing.
- ii) It must identify the grantor.
- iii) It must describe or identify the secured Creditor.
- iv) It must describe the collateral that is the subject matter of the agreement.
- v) It must state or describe the secured obligation eg Payment of a loan amount.
- vi) It must give the obligations of each party.
- vii) It must be authorized by the grantor.
- viii) Must be signed by both parties (execution).

STEPS OF REGISTRATION

The registration of the security agreement is done on the BRS. BRS (Business Registration System)

i) Initial Notice

The first step in the registration is the initial notice.

This is a notice that is entered in the Movable Properties Security registry indicating the interest of the secured creditor over

~~the movable property'~~

The Secured Creditor registers this initial notice that indicates

- i) The identity of the secured creditor
- ii) The identity of the grantor
- iii) Description of the collateral
- iv) Terms of the security agreement.

~~(c)~~ ii) APPROVAL

Upon registration, then the notice has to be approved by the grantor.

This approval confers the Secured Creditor rights over the movable property. Further it gives it third party effectiveness.

Upon this registration of the initial notice, a search over the property will indicate the Secured Creditors Rights!

~~(d)~~ iii) Perfection

Perfection of the securities is the registration of the security right.

CONCLUSION:

Movable can use the three listed properties to borrow a loan from a lender. They are movable properties within the definition under Sec 2 of the MPRSA.

For the loan to be granted, he has to enter into an agreement with the lender which will confer rights to the lender over the properties.

9) Alternatives to Bankruptcy

i) NO ASSET PROCEDURE.

- Where the individual does not have any realizable assets

ii) Voluntary Arrangements

Where the individual enters into a scheme or arrangement with the creditors on how he will settle "the debts"

iii) Payment in instalments

Where the individual enters into an agreement with the creditors to repay the amount owed in instalments.

B). OPINION

FACTS

- Mr. Dondo ~~Meli~~ Meli is owed by creditors
-

ISSUES.

Requirements or conditions to be satisfied in an application for bankruptcy order.

Rules.

The Insolvency Act 2015 is the principle piece of legislation governing the process of bankruptcy.

Bankruptcy ~~occ~~ occurs where an individual is not able to repay the debts as they fall due.

This application can only be made to the High Court.

Conditions To Be MET

The applicant must prove to the court that

- i) There is a debt owing.
- ii) That the debt is not being questioned.
- iii) There is no any disagreement on the existence of the debt.
- iv) That the debtor is unable to repay the debt.
- v) That a statutory demand has been issued.
- vi) That the amount in question is above 100,000.
- vii) That no other application has been brought on the same issue.
- viii) That the debtor has some realizable assets.

DEED OF GUARANTEE

This Deed of Guarantee is entered this
— day of March 2023 in the following
Terms:-

PARTIES

- ii The Bank - G
- iii Ponda Meli
- iii The Farmers.

SCOPE

The Bank acts as the guarantor and
guarantees that it will pay to the
farmers any amount owing from our
client Ponda Meli upon the supply of
beans for export.

TRANSACTION / GUARANTEED OBLIGATION

This guarantee only serves or is effective for
the supply of beans for exportation to Mr.
Ponda Meli by the farmers.

ALTERATION

This guarantee is irrevocable and can only be
altered with the consent of the farmers.

UNDERTAKING

We undertake that we will pay to yourselves
any amount due from Mr. Ponda Meli within
14 days of your issuance of a notice of
deficit from Mr. Ponda Meli.

Write on both sides of the paper

Questions 3Do not write in
either marginTIME

This guarantee will be effective for a period of one year and can be renewed upon application.

LIMITATION

The guarantee is only limited for the supply of beans for export.

DISPUTE RESOLUTION

Any dispute between the parties will be referred to arbitration should negotiations fail.

Execution

In witness of this guarantee, the parties append their signature as below:

Signed by: Chidya

The BANK MANAGER

Guarantor

Farmers Representative.

68

Pondo meli

Client

WITNESSED BYBm - Commissioner for Oaths.

REQUIREMENTS OF REGISTERING A FOREIGN COMPANY BRANCH IN KENYA

The requirements include:

- i) Requisite application forms.
- ii) Certificate of registration of incorporation of the company in the foreign country.
- iii) The registered office ⁱⁿ of the other country.
- iv) List of directors of the company.
- v) Nature of business of the company.
- vi) Copies of identification documents of the company.
- vii) Proposed Directors of the company in Kenya.
- viii) Name of at least one director who is a Kenyan and who is a natural person.
- ix) Memorandum and Articles of Association of the company.
- x) The operating hours of the business.

SHARES

i) ORDINARY SHARES

- These are the Ordinary shares of the company issued at the formation.
- They have voting rights and the holders take part in the company meetings since they have voting rights.
- They earn dividends from the profits of the company.
- The holders rank lowly in case of liquidation.

ii) PREFERENCE SHARES

These are also called preferential shares.

They do not have voting rights.

- The holders have a higher rank in priority as compared to holders of ordinary shares in the payment in case of liquidation.
- In dividends, they may have a fixed dividend figure set up front.
- They are paid their dividends before the other numbers.

iii) Redeemable Shares

- These are shares that can be bought back by the company.
- The company can buy them back from the people who were allotted.
- This is with the compensation of their face value.

i) Irredeemable Shares

These are shares that can not be redeemed.

The company can not purchase them back from the shareholders.

ii) Called up Shares

~~The~~

B

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Questions 2c

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BENEFICIAL OWNERSHIP.

- Companies are separate legal entities.
- Once incorporated, there is a veil of incorporation.
- However, under beneficial ownership, the intent is to ascertain the real beneficiaries in the company.
- This serves to eliminate instances of fraud or fraudulent trading.
- It also helps over the issue of sham companies.
- The beneficial owners of the company are established during the incorporation stage.
- The revelation of these owners serves to promote transparency.

(610)

9. FACTS

- Lorran has been running a sole proprietor business until Ian came into the picture.
- Ian has been receiving salary from the business and lately, the salary is pegged at 10% of the profits of the company at ₹ 1,00,000/-.
- Ian has been handling other consultancies.

ISSUES

- Whether Ian is a partner.
- The nature of the new business arrangement.
- Duties of Ian.
- Whether a claim can be brought against Ian.

RULES

In this scenario, I will be guided by the Partnerships Act 2002.

APPLICATION

- The business had been running as a sole proprietor.
- To consider whether there arises the issue of partnership, I will be guided by the Partnership Act.
- Section 2 of the Partnerships Act defines a partnership as any business that is run by two or more people with an aim of making profits.
- A partnership can be created with or without a partnership deed or not.
- Further, a person can become a partner in a partnership by implication or if he holds out to be a partner.

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Questions 5

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- Partners do not earn salary but share the Partnership Profit.

- Although Ian had been earning salary, there had been a change in Remuneration and this is pegged at 5% of the monthly Profit.

DUTIES OF IAN:

Ian has a duty Not to have Conflict of interest.

He is in the business of Lorians and therefore he should not conduct himself in a manner that leads to conflict of interest.

The Partnership Act 2012 places duty of avoiding conflict of interest on all partners.

- They must avoid instances where their obligations to the business will be interfered with.

Duty to Promote the success of the business
 Ian has a duty to promote the success of the business. He should avoid instances where he is conflicted by promoting the businesses of the competitors.

Partnership Property

Ian has been using the business premises to run other errands. The business premises are a partnership property.

In this case, misuse of the premises to run his consultancy is contrary to his duties to the firm / business.

He has been rendering his services to other businesses which are in direct competition with Lorians business and this is

against his duty to the firm.

Agency Relationship:

In this transaction, Ian is an agent of Loriane as well as an agent of the business. His actions should not violate his duty being an agent of the business.

By serving the interest of a competitor, Ian is in breach of his duty as an agent of the business as well as an agent of Loriane.

Fiduciary duty:

Ian has a fiduciary duty to the business as well as to Loriane. He should account for his deeds as well as act in good faith. Promotion of the business of a competitor is done in bad faith and in breach of his fiduciary duty.

Application & Conclusion

Owing to the above, Ian is in breach of his duty to the business. Even though there is no partnership deed, a partnership relationship can be presumed to have arisen out of implication.

Impliedly, Ian is a partner.

Now partners are agents of a business.

The Partnership Act bestows several duties to be partners among them a duty to avoid conflict of interest, fiduciary duties as well as being agents to the business.

In our case, Ian is in breach of these duties and therefore Loriane has a

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Questions 51

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Valid claim against Ian.

Remedies:

She may do any of the following:

- i) Call on Ian to account for all the income that is generated from the business consultancy.
- ii) Sue for breach of duty to the business.
- iii) Claim for the funds generated while in the business.
- iv) Terminate the employment contract.

Finally in conclusion, we find that Ian breached his duties to both Loriane as well as his duty to the business. Therefore Loriane can bring a claim of any of the remedies listed above or all.

RB

Risks & Benefits of LETTER OF INTENT.

A Letter of intent Passes both risks and benefits to both parties in the take over transaction. These include:

Benefits:

- It is a show of commitment of the parties to the transaction.
- Opens avenue for further interaction and progression of the transaction.
- Allows parties to review the terms of the engagement.
- May be used to show a sign of goodwill by the parties.

RISKS

The risks of a letter of intent include

- There may be breach of confidentiality.
- May destabilize the operations of a company once it is known that a take over has been initiated.
- May harm the prospect of expansion and acquisition of funding.
- Opens up the business for competitive bids.
- It has negative publicity or gives/presents a business in a negative picture.
- The parties to the agreement may renege on the provisions of the letter.

Write on both sides of the paper

Questions 1

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Whether Newiri should sign

I would advise Newiri to Not to sign the letter in draft.

- First of all the benefits of signing the letter of intent do not outweigh the risks
- Secondly, it will impose duties and obligations to Newiri Company that the company may not be willing to perform.
- I would also recommend against it because, this will create a negative publicity of the company leading to negative impact on the business of Newiri.

i) Letter of intent.

It is a document that will have been initial agreement between the two parties. It will indicate the intention of the parties in entering the merger.

ii) Letter of Offer.

This letter will be an offer to the shareholders of the company being acquired in which it makes an offer for purchase of their shares.

iii) Non-Disclosure Agreement.

This is a document that will serve to ensure that the parties to the agreement do not disclose any information that they may access as a result of the transaction.

It serves to bind the parties to a secrecy agreement which "buys" their silence. Parties will be barred from disclosing any information to third parties on any process or information that they will have come across during the negotiation steps.

iv) Non-Compete Agreement.

This is an agreement between the parties to the merger or acquisition that they will not engage in another business that is a competitor to the new entity upon the merger.

v) Due Diligence Questionnaire

This is a questionnaire that the parties will fill to satisfy themselves that

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Questions 17 - 1

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the transaction they are entering into is about
board and that they will not inherit any
adverse claims or liabilities that was not
known at the initial stages.

I A (ii)

JURISDICTIONAL THRESHOLDS OF MERGERS.

Exemptions of Notifications in Kenya during
mergers is dependent on the total values of
assets or Turnover of the acquiring company as
well as that of the target company.
It will also depend on whether it has hit
the COMESA competition commission threshold
for notification.

In Kenya, the process is governed by the
competition Act. This is because merger of
companies has far reaching implications on the competition
and thus there is a requirement for notification
Approval by the competition Authority.

THRESHOLDS.

- If the total or aggregate assets of the
target company as well as acquiring company is
less than 500 million, then that merger
is not notifiable to the competition
competition authority.
- For an acquisition that is notifiable
Or has reached the notification threshold
of the COMESA competition commission,

then also, that acquisition will be exempted from Notification.

iii) If the total Turnover ^{or assets} of the target and acquiring Company is between \$ 500 million to One billion, then that Merger will be required to be notified to the Competition Authority but does not require an approval.

iv) In companies that deal with the prospecting of Minerals + Carbon and fuels and Petroleum Products, then these are exempted from Notification.

v) Where the total Turnover of the target and acquiring firm is between 1 billion to 10 billion, then the transaction must be notified to the competition authority and approval granted.

vi) In instances where the total turnover is above \$ One billion and ~~the~~ more than two thirds of the business proceeds is ~~got~~ from within Kenya, then that merger is Notifiable.

However, if more than 2/3 of the business is outside Kenya, then it is not notifiable.

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Questions **Q 1 a ii)**.....Do not write in
either margin

Whether true are the big Exemptions Applicable

The Merger in this transaction involves countries in the Commesa region.

- The values have reached the Commesa Competition Thresholds and therefore will be notified to Commesa.

Exceptional Circumstances for exemption

Exemption Of Notification for Alfa Kenya Co

LTo will apply if:

- i) They are involved in Prospecting and Mining of Carbon minerals.
- ii) If the transaction has hit the Commesa Competition Commission Threshold
- iii) IF at Least ~~2~~ two thirds of the business is ~~located outside Kenya~~.
- iv) If the total Turnover or assets is less than 500 million.

Q 1 iii

CONDITIONS OF A JOINT VENTURE.

- i) Parties must agree or execute a Joint venture agreement.
- ii) The Joint venture has to be registered
- iii) It must be approved by the Competition Authority

(iv) Willingness of the Parties to enter into a joint venture.

LEAST SCORED

Officer	Initials
Checker	DW
Data Entry	PM
1 st Verification	KM

219396



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

UNIT CODE: A T P I 08 SUBJECT/UNIT

Commercial Transactions

REGISTRATION NUMBER:

DATE: 27th March 2023

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
2	03	JO				
1	01	JW				
3	00	GG				
5	01	EK				
6	00	EK				
TOTAL MARKS	05					

a)

A foreign company branch may be registered in Kenya after satisfying the following requirements:

- i) The foreign company must have an office in Kenya i.e. Have a ~~an~~ physical location.
- ii) The foreign company must have at least one Kenyan Director handling the company's business in Kenya.
- iii) The foreign company must be ^{duly} registered with the documents of registration held by the registrar of companies.

03/10

i) During the initial preparatory stage of a merger and acquisition transactions of foreign entities, a merger and acquisition agreement is expected to be executed. This document contains the details of governing the merger and acquisition.

Another document that requires to be executed is a statement on capital detailing the shareholders of the companies and how much shares they hold.

ii) Alfa Kenya Co. Ltd, on its quest for a merger and acquisition with both Indaba Mining Ltd of Uganda and Ethiopian Shipping Services Ltd should ensure proper notification is done of the M&A transaction. As Indaba Mining Ltd & Ethiopian Shipping Services Ltd are on another jurisdiction, notification has to done effectively meeting the jurisdiction threshold required. Alfa Kenya has to insure that both Indaba Mining Ltd and Ethiopian Shipping Services are notified of the Merger and acquisition transaction. Alfa Kenya Ltd will however be exempted from notification requirements of the subsidiary subsidiaries. In the case of Indaba Mining Ltd, its subsidiaries in Rwanda and Egypt do not require notification once the parent company receives it. Such is the case with

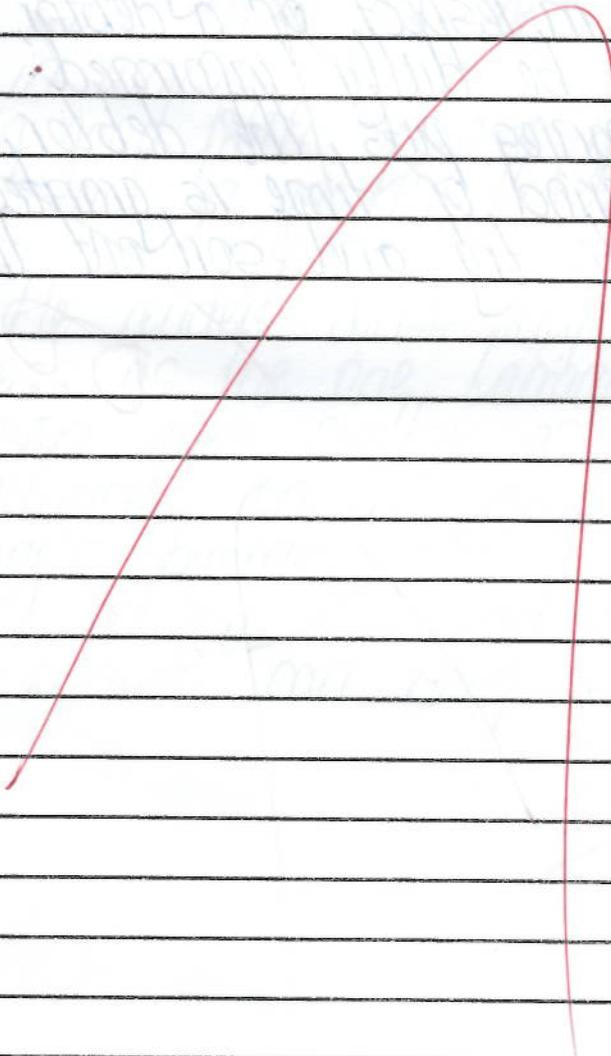
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Questions 1

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Ethopian Shipping Services Ltd, with its
subsidiaries in Rwanda and Egypt, Seychelles
and Mauritius.

iii) Should the Board of Directors of Alfa Kenya
Co. Ltd, decide to form a joint venture, majority
majority of the shareholders should be in
agreement, and give their go ahead. This
should be agreed to at a general meeting
held after sufficient notice of the meeting
has been given.



(68)

a) Due to a bad business decision, Ponda Mali is staring at bankruptcy. As an alternative to bankruptcy, the court can place Ponda Mali's company in receivership. This ensures that Ponda Mali can continue on his business ventures though limited, and maybe buy him time to be able to pay off his creditors.

b) In order for a creditor to apply for a bankruptcy order in respect of a debtor, the debtor must be fully informed. The registrar of companies puts the debtor on notice and a period of time is granted to the debtor to try and sort out the creditors.

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Write on both sides of the paper

Questions 5

Do not write in
either margin

Lorraine has been a sole proprietor of her business before bringing her brother-in-law to help her with the administrative side of the business. For 4 months, Ian has been Lorraine's employee as she was paying him a nominal wage for the other recent 4 months, however, Lorraine began to add to Ian's wage, 5% of the business's monthly profit. This was attributed to Ian's expertise that led to the success of Lorraine's business. By adding to Ian's wage the 5% of the business's monthly profit it can be taken that Ian has a stake in Lorraine's business even thou this is not expressly discussed and in writing; Ian is therefore expected to act in good faith as a stakeholder. He, however, doesn't act in good faith by using the business premises and office equipment for other consultancy work. He renders consultancy services to a similar business as the one Lorraine is involved with. He even goes further as to attract the consultancies on the basis of the success of Lorraine's business. As a stakeholder, Ian doesn't act in the good faith of the business and Lorraine can bring a claim against him.

b)

Before going to the Tax Appeals Tribunal, Milky Way Ltd can get an auditor to assure them on whether they had correctly self-assessed their tax liability and in full, duly paid the required taxes. With an auditors report as their backing they can challenge the KRA assessment.