



CCP PART III SECTION 6

DEBT RECOVERY

THURSDAY: 30 November 2017.

Time Allowed: 3 hours.

Answer ALL questions. Marks allocated to each question are shown at the end of the question.

QUESTION ONE

- (a) By a written agreement dated Friday, 3 March 2017, Chris Msaidizi advanced Triza Kopa, a colleague and a good friend a sum of Sh.12,000 payable within one month. Triza Kopa never repaid the sum within the agreed duration. On Wednesday, 4 October 2017, Chris Msaidizi wrote a demand letter to Triza Kopa demanding payment to which Triza Kopa replied: "Too bad, you will never get your money back even if you sue me as threatened". Chris Msaidizi feels aggrieved and seeks your legal advice.

Required:

Analyse the legal principles applicable in the above case and advise Chris Msaidizi on the viability of recovering the debt. (8 marks)

- (b) Define the following terms as used in debt recovery:

(i) Time limitation. (1 mark)

(ii) Laches. (1 mark)

- (c) Discuss five issues that might be considered by a company when the company is contemplating to convert debt into equity. (10 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Tom Tata owed his uncle Jerry Bwire Sh.3 million as at 30 October 2016. He also owed three other persons some unspecified sums of money. On 11 November 2016, Tom Tata paid Sh.500,000 and transferred a residential house worth Sh.2.5 million to Jerry Bwire in full satisfaction of Jerry Bwire's claim. On 1 December 2016, Tom Tata filed a bankruptcy petition in his own name seeking to be declared bankrupt. The bankruptcy trustee has since learnt about these facts and has approached you for legal advice.

Required:

Analyse the legal principles applicable in the above case and advise the bankruptcy trustee. (8 marks)

- (b) In the context of alternative dispute resolution mechanisms:

(i) Outline six roles of the mediator in facilitative mediation. (6 marks)

(ii) Explain six advantages of institutional arbitration. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) John Kabaka, a resident of Kampala, Uganda entered into a contract with Daudi Robi, whose company is resident in Nairobi, Kenya.

After John Kabaka performed his part of the contract, Daudi Robi became reluctant to pay and after sometime he disappeared to Kenya. On learning this, John Kabaka obtained legal advice and filed a suit in the High Court of Uganda. The court directed that the summons of the case be served upon Daudi Robi in Nairobi.

Required:

Advise John Kabaka on the procedure to be followed in the service of summons of the High Court of Uganda upon Daudi Robi in Kenya. (10 marks)

- (b) Hezron Shikwekwe has been appointed as the liquidator of Pamry Partnership. Hezron Shikwekwe has never participated in a winding up process and he has therefore approached you for guidance.

Required:

Advise Hezron Shikwekwe on the following two areas to enable him effectively discharge his role as the liquidator of Pamry Partnership:

- (i) General duties of a liquidator. (4 marks)
- (ii) Powers that a liquidator might exercise without sanction of the court. (6 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Juma Chacha was declared bankrupt three years ago. The court later on made an order for the bankrupt's discharge. While making the order of discharge, the court prohibited Juma Chacha from engaging in certain matters without its approval.

Required:

With reference to the above statement, analyse the matters that Juma Chacha might not engage in without the court's approval. (10 marks)

- (b) (i) State two contents of a judgement. (2 marks)
- (ii) Zahara Rai entered into a commercial contract with Moses Mshamba who is a farmer. Unfortunately, Moses Mshamba breached the contract and so Zahara Rai successfully sued him and got a favourable judgement.

Zahara Rai applied for execution of the judgement and got attachment orders against Moses Mshamba's farm produce.

Required:

In relation to execution of judgement, analyse the legal provisions on attachment of agricultural produce. (8 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Evaluate five circumstances in which a creditor might apply to the court for attachment of a debtor's property before judgement. (10 marks)
- (b) Drecor Public Limited Company was incorporated on Monday, 4 April 2016. The company has never been issued with a trading certificate since it was registered. The members of the company are getting concerned as they feel that their investment might never bear fruits. The members have approached you for advice.

Required:

With reference to the insolvency law applicable in your country, advise the members of Drecor Public Limited Company on the following:

- (i) Whether Drecor Public Limited Company might be liquidated. (2 marks)
- (ii) Four circumstances under which a company might be liquidated by the court. (4 marks)
- (iii) Four persons entitled to make application to the court for liquidation of a company. (4 marks)

(Total: 20 marks)

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