

THE KENYA SCHOOL OF LAW



**PRE-BAR EXAMINATION**

**COMMERCIAL LAW – PRB 006**

**15<sup>TH</sup> JULY, 2016**

**DURATION: 3 HOURS**

**Instructions to Candidates**

- (a) Answer any **Four** Questions.
- (b) Each Question carries **25 Marks**.
- (c) Marks shall be lost for illegible handwriting.

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### Question One

John bought a table from a carpenter at the shopping centre. The agreed price for the table was Kshs.45,000/=, of which John was supposed to pay by three equal instalments. John only managed to pay the first instalment and was unable to pay the rest. He went to Fundi who agreed to renegotiate as long as they convert the agreement into a hire purchase agreement but before they do so they have come to you for your opinion on the same.

- a) Discuss a hire purchase agreement. (15 marks)
- b) Give your opinion to the parties concerning the viability or otherwise of their agreement. (10 marks)

### Question Two

- a) Discuss the rules that govern the delivery of goods as stipulated in the Sale of Goods Act (Cap 31 of the Laws of Kenya) (15 marks)
- b) Discuss five (5) remedies available to buyers for a breach of contract by a seller under a Sale Agreement. (10 marks)

### Question Three

- a) Describe the elements of a promissory note. (15 marks)
- b) Discuss the characteristics of a negotiable instrument. (10 marks)

### Question Four

- a) Explain acts of bankruptcy as provided for under the Kenyan Bankruptcy Act. (15 marks)
- b) Briefly discuss the effects of a receiving order under the Bankruptcy Act. (10 marks)

### Question Five

Discuss the following ways of creating of an agency relationship:-

- a) By agreement. (5 marks)
- b) By ratification. (15 marks)
- c) By estoppel. (5 marks)

### Question Six

Explain the meaning of the maxim *nemo dat quod non habet*, giving Case Law and its exemptions.

(25 marks)

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THE KENYA SCHOOL OF LAW



## PRE-BAR EXAMINATION

LAW OF CONTRACT – PRB 002

13<sup>TH</sup> JULY, 2016

DURATION: 3 HOURS

### Instructions to Candidates

- (a) Answer any **Four** Questions.
- (b) Each Question carries **25 Marks**.
- (c) Marks shall be lost for illegible handwriting.

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### Question One

- a) A contract originates from the standpoint of offer. Explain six ways in which an offer may be terminated. (15 marks)
- b) Under Contract Law an offer must be more than "an invitation to treat". Discuss with relevant examples. (10 marks)

### Question Two

- a) Critically discuss the concept of privity of contract and the exceptions to this concept. (15 marks)
- b) Explain the fundamental differences between the two doctrines of misrepresentation and mistake, under the Law of Contract. (10 marks)

### Question Three

- a) The essential purpose of the contractual relationship is exchange. Discuss with relevant examples. (10 marks)
- b) Contracts may be classified into general classes. Discuss. (15 marks)

### Question Four

- a) Capacity is the legally recognized right of a person to enter into a legally binding agreement. Critically examine the relevance of this statement with relevant case Law. (15 marks)
- b) Distinguish between void and voidable contracts with relevant examples. (10 marks)

### Question Five

- a) Explain the significance of the Doctrine of specific performance under Contract Law. (15 marks)
- b) Legal enforceability of contracts must be upheld by the courts. Critically analyze this statement with relevant examples. (10 marks)

### Question Six

- a) Highlight the fundamental differences between a contract and a tort. (15 marks)
- b) Outline five (5) types of Contracts that have to be in written form for them to be valid. (10 marks)

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THE KENYA SCHOOL OF LAW



## PRE-BAR EXAMINATION

FAMILY LAW AND THE LAW OF SUCCESSION – PRB 005

15<sup>TH</sup> JULY, 2016

DURATION: 3 HOURS

### Instructions to Candidates

- (a) Answer **one** question from Section A and another one from Section B.
- (b) Answer **two** other questions from either Section.
- (c) Each Question carries **25 Marks**.
- (d) Marks shall be lost for illegible handwriting.

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## SECTION A

### FAMILY LAW

#### Question One

Jonaiasis and Junamali became close friends while studying in India. Upon completion of their studies in 2012, Jonaiasis returned to Kenya while Junamali remained in India to pursue further studies.

On arrival in Kenya, Jonaiasis married his childhood girlfriend, Karemba within a month of his arrival. The couple lived happily for the first three years of their childless marriage; during which time Jonaiasis's friends and family began to advise him to divorce his wife and marry another one because his wife was barren. In the meantime Karemba started to drink heavily, a situation which made Jonaiasis very unhappy.

Two months ago Junamali returned to the country and was very happy to note that there were many new buildings in his neighborhood, among them was a night club called Karibu Kenya. One month after his arrival he decided to go for a night out at the club where he met Shelana, a beautiful lady he could not keep his eyes from and decided to marry her as soon as marriage laws permitted. In fact within a month all arrangements were in place for the marriage to take place.

A week ago, Junamali and Shelana got married under the Marriage Act, at the Attorney General's Chambers after which they boarded an Aircraft to Mombasa for their honeymoon. Upon their arrival at Hotel ya Wapenzi, North Coast, Shelana decided to go for a swim in the Indian Ocean. However, Junamali did not wish to swim and decided to sit at the beach to wait for her. An hour later, Shelana emerged from the ocean. When she emerged, Jonaiasis looked at the person who approached him with shock and consternation because the lady he thought was a young beautiful woman walked towards him smiling but was toothless and grey aired. Junamali thought he was seeing a ghost and ran towards the hotel reception as fast as his legs could carry him with Shelana in hot pursuit.

At the reception Junamali picked his bags and rushed out, flagged a taxi and was driven to the airport. He arrived at his parents residence in the night with forlorn look.

Whilst in the flight to Nairobi, Junamali remembered a question one of the hostesses had posed to Shelana, which was:- "Shelana, how are you enjoying your retirement?" It therefore dawned on Junamali that he had married an old retiree, who had not disclosed her real age to him. He decided to end the marriage immediately, but did not know how to do so. He decided to go to see his old friend Jonaiasis.

On arrival at Jonaiasis's residence, Junamali found him sitting under a tree looking far yonder, with a forlorn contenance. On inquiry, Jonaiasis began to narrate his trials and tribulations after his marriage to Karemba; who had since left home and is living with somebody else. The two consoled each other and decided to end their marriages. Two days later, Jonaiasis and Junamali came to your chambers to seek legal advice. With the assistance of the Marriage Act 2014, and decided cases advise:-

- a) Junamali on how he can end his marriage. (12 ½ marks)
- b) Jonaiasis whose childless marriage brought him a lot of grief. (12 ½ marks)

### Question Two

Majorino and Makorina married in 1999 upon the return of Majorino from England after a seven year stay, studying Civil Engineering at the University of Wolver Hampton. Upon his return, Majorino was employed by Ministry of Roads where he worked for many years. However, in 2013 he resigned to start private business as a roads contractor.

During his time as an employee, his spouse worked as a senior administrator, Ministry of Lands but when he started his private practice and began to make a lot of money, Makorina decided to resign from her job and become a housewife. In the meantime Majorino started to have an affair with his Administrative Assistant which his wife advised him against. However, he did not listen which led to their judicial separation. During the couples period of judicial separation, Makorina won Loto's Kshs.100,000,000/= which she used to buy a house in Kitisumali Estate, Nairobi.

Seven months ago, the couple decided to divorce. Decree absolute was pronounced by court a week ago. Now the couple wishes to proceed to court for division of their matrimonial property. The couple has come to your chambers for legal advice on how to do so. With the aid of the Constitution of Kenya, 2010, the Marriage Act, 2014 and the Matrimonial Property Act, 2013, advise the couple accordingly.

(25 marks)

### Question Three

Write short notes on the following:-

- a) Presumption of death as a ground for dissolution of marriage. (5 marks)
- b) Discuss in detail parental responsibility under the Children Act No.8 of 2001, the Constitution of Kenya, 2010 and case law. (5 marks)
- c) Judicial separation. (5 marks)
- d) The different types of Marriages under Customary Law. (10 marks)

SECTION B

THE LAW OF SUCCESSION

**Question Four**

A will is a testamentary document stating the manner in which the maker's property is to devolve upon his death. Discuss the essentials and formalities to be followed for making a will under the Law of Succession Act (Chapter 160 of the Laws of Kenya).

(25 marks)

**Question Five**

Mrs. Kenya Kamorito was married to her husband Jona twenty two years ago and the couple has two adult children. One year ago, Jona lost his job and could not get another one before the demise of his spouse, who died testate. In her will, she bequeathed all her property to their two children and also appointed them executors of her estate. She also asked them to sign the will as witnesses to make it stronger in the absence of competent and independent witnesses.

The two executors, who have not been in good terms with their father, have gone to court to propound the will and be granted a grant of probate in order to deal with the estate of their mother. Mr. Kamorito is worried that their children would soon render him destitute. Mr. Kamorito has now come to your chambers for legal advice. Under the Law of Succession Act, (Cap. 160), advise Kamorito accordingly.

(25 Marks)

**Question Six**

Write short notes on the following:-

- |  |            |
|--|------------|
| a) Privileged Wills.                     | (10 marks) |
| b) Oral Wills.                           | (5 marks)  |
| c) Construction and revocation of Wills. | (5 marks)  |
| d) Gift in Contemplation of death.       | (5 marks)  |

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PRE-BAR EXAMINATION

LEGAL METHODS, SYSTEMS AND CONSTITUTIONAL LAW – PRB 001

13<sup>TH</sup> JULY, 2016

DURATION: 3 HOURS

**Instructions to Candidates**

- (a) Answer questions **ONE** and any other **THREE** questions.
- (b) Each Question carries **25 Marks**.
- (c) Marks shall be lost for illegible handwriting.

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### Question One

- a) Discuss four (4) possible interpretations of the expression "Sources of Law". (10 marks)
- b) Explain the various categories of legal norms that form the basis of exercise of jurisdiction by the courts in Kenya. (15 marks)

### Question Two

Explain five (5) schools of thought in jurisprudence and cite specific examples of the practical relevance of each. (25 marks)

### Question Three

- a) What do you understand by "Legal System"? (5 marks)
- b) Citing specific examples, discuss four (4) major legal systems in the world today. (20 marks)

### Question Four

- a) Discuss three (3) key functions of the legislature in Kenya. (9 marks)
- b) Outline the steps through which a Bill undergoes before it becomes law. (16 marks)

### Question Five

Explain the structure of courts established under the Constitution of Kenya, 2010, and indicate the composition and jurisdiction of each court. (25 marks)

### Question Six

- a) Discuss five (5) pillars of the independence of the judiciary in Kenya. (10 marks)
- b) Distinguish between the expressions "Rule of Law" and "Constitutionalism" as they are understood by legal scholars. (15 marks)

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**PRE-BAR EXAMINATION**

LAW OF TORTS – PRB 003

14<sup>TH</sup> JULY, 2016

DURATION: 3 HOURS

**Instructions to Candidates**

- (a) Answer any **Four** Questions.
- (b) Each Question carries **25** Marks.
- (c) Marks shall be lost for illegible handwriting.

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### Question One

- a) Mwanahamisi works in Mombasa as a clerk in a clearing and forwarding firm. His family of a wife, daughter and two sons live in Mtito Andei. He visits them on weekends. A few weeks ago he got a text message alleging that his daughter aged 13 and in Standard 8 was having a boy-girl relationship with his neighbour's son, Suleiman, aged 16 and in Form 2 at Mtito Progressive High School. One Saturday, Mwanahamisi secretly came home and at about 7.00am went to the neighbour's home and to Suleiman's cottage. He opened the door and began to whip Suleiman furiously with a leather whip. Suleiman sustained bruises on his face, hands and back. His friend, Jakaya also got threatened and cringed under the bed although the whip never landed on him. Mwanahamisi then dragged Suleiman to his own compound and locked him in his cowshed for three hours before releasing him.

Discuss the aspects of Trespass to person that arise from the above scenario. (15 marks)

- b) What are the defences to trespass to person in the Law of Tort? (10 marks)

### Question Two

- a) In a case where a plaintiff claims loss, a defendant may allege that the defendant's act was too remote to result in the consequence that caused loss to the plaintiff.

Discuss the factors that determine remoteness of damages. (20 marks)

- b) Distinguish the following terms (5 marks)
- (i) Act and Omission
  - (ii) Damage and Damages

### Question Three

- a) Where a Plaintiff is suing in the Law of Tort for breach under the Rule in *Rylands v Fletcher*, what aspects will the court look for to be satisfied that the plaintiff has proved his case? (15 marks)

- b) State the different types of DAMAGES that can be awarded in the Law of Tort. (7 marks)

### Question Four

Baba Gaston Junior is a musician who plays a guitar in a local club in Midundo Township. Last weekend, carried away by the cheering of his fans, he began singing a song in a local dialect, alleging that the member of the County Assembly for Midundo Ward was sued in the children's court for child neglect for failing to pay school fees for his biological child with his wife, Msupuu. It turned out that the child who had been living under his care was a child from a neighbouring village, whom the

MCA, Mr. Bidii took out of a humanitarian heart, but the boy, Ras, voluntarily went back to living on the streets inspite of Mr. Bidii's efforts to help him.

A local journalist, Makaratasi, who was in the club listened to the song and published the story in English in the Midundo Newspaper two days later.

- a) Discuss what form of defamation, if any, has occurred above, giving reasons why it is defamation, and who is liable for what aspect. (20 marks)
- b) State the defences to defamation. (5 marks)

#### Question Five

Distinguish between:-

- a) Private Nuisance and Public Nuisance. (5 marks)
- b) Nuisance and Trespass to hand. (10 marks)
- c) Nuisance and the Rule in *Rylands v Fletcher*. (10 marks)

#### Question Six

- a) In what case was the Neighbor Principle outlined? (3 marks)
- b) What factors would guide a court in determining if a defendant or plaintiff acted reasonably? (20 marks)
- c) Which two categories of persons may NOT be sued directly in the Law of Tort? (2 marks)

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