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CCP ADVANCED LEVEL

PILOT PAPER

DEBT RECOVERY MANAGEMENT

December 2021.

Time Allowed: 3 hours.

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

QUESTION ONE

Bamboo Knitters obtained an arbitration award in year 2020 against Socrates Importers and Forwarders. This was from a commercial dispute of wrongful claim of Sh.20 million which was an error in application of exchange rate by the importer billing department. The import used Sterling Pound rate instead of UAE currency. The importer has since failed to honour the award.

Required:

- (a) Advise Bamboo Knitters an alternative to formal reinforcement of the Arbitral award it can use to enforce the award. (6 marks)
- (b) Explain what is meant by the terms:
 - (i) Debtor – Initiated Arbitration. (2 marks)
 - (ii) Consumer Arbitration. (2 marks)
- (c) An inter-ministerial team formed by the government of your country to address the MSE, insolvency disputes, has invited you to get your advise on how to improve on the legal framework governing bankruptcy disputes among MSEs’.

Required:

As a debt specialist, advise the inter-ministerial team on eight objectives of effective insolvency systems for MSEs according to the principles for effective insolvency and creditor/debtor regimes issued by the World Bank. (8 marks)

- (d) In relation to corporate insolvency, explain the term “operational creditor”. (2 marks)

(Total: 20 marks)

QUESTION TWO

- (a) Highlight set of information obtained from a judgement debtor during questioning by the court. (7 marks)
- (b) “Administration has been mentioned as best alternative compared to liquidation”.

Required:

- (i) Enumerate five persons who can make application of administration order to the court. (5 marks)
- (ii) Explain the term “administration order”. (2 marks)
- (c) Describe the order of setting claims for a company that goes into liquidation. (6 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Kawedo is a limited liability partnership. The partners are Mr. Kamau, Mr. Weru and Ms. Damiana. The two have been operating the business for 20 years. A dispute between two partners and one partner Mr. Weru is threatening to bring the partnership to a standstill. Mr. Weru, negotiated a financing deal seeking Sh.2 billion COVID fund established by Tourism fund, without disclosing to the partners the commission for marketing. Kamau and Damiana are claiming that Mr. Weru has blood ties with the Fund Manager and that the fund is negotiated at a fixed interest rate rather than reducing balance.

Required:

- (i) Analyse six actions by a partner that may be considered as having acted in bad faith. (6 marks)
 - (ii) Advise partner Weru on three obligations he has in the discharge of his duty of disclosure. (3 marks)
- (b) Mr. Oyugi is the chairperson of Keroka Business Owners Association. A member of the association can directly lend to each other either in kind or in cash. In the last three years, the chairperson has noted a trend of mudslinging, defamation cases and libel among his members. This is as a result of failure by some members to honour payment agreement on soft loans and trade credit advance to them by their fellow business owners. Mr. Oyugi has heard of newly established small claims court that can expeditiously help resolve disputes compared to magistrates’ court.

Required:

Advise Mr. Oyugi on:

- (i) Claims that his member have which cannot be addressed through small claim’s court. (7 marks)
 - (ii) Advantages of small claims court over magistrate court in following up of personal debts. (4 marks)
- (Total: 20 marks)**

QUESTION FOUR

- (a) “Court Action for Debt Recovery should be considered as the last resort”.

Required:

- Assess five circumstances when a company can result to court action in recovering debts. (5 marks)
 - (b) Explain four qualifications required for one to be appointed as an insolvency practitioner. (4 marks)
 - (c) Analyse the risks company directors face if their insolvent company goes into liquidation. (4 marks)
 - (d) In relation to alternatives to bankruptcy:
 - (i) Describe what is personal insolvency agreements. (4 marks)
 - (ii) Analyse three effects of personal insolvency agreements. (3 marks)
- (Total: 20 marks)**

QUESTION FIVE

- (a) “Test for insolvency is the company’s inability to pay its debts.

Required:

- Explain four circumstances under which a company will be deemed incapable of paying its debts under Insolvency Act of 2015. (4 marks)
 - (b) In relation to Insolvency Act of 2015, explain effects of liquidation on the following:
 - (i) Shareholder. (2 marks)
 - (ii) Creditor. (3 marks)
 - (iii) Voidable transactions. (3 marks)
 - (iv) Contracts. (3 marks)
 - (c) Analyse five circumstances under which an auctioneers licence can be revoked by Auctioneers Board. (5 marks)
- (Total: 20 marks)**

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