

**COUNCIL OF LEGAL EDUCATION**



**EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES.**

**ATP 108: COMMERCIAL TRANSACTIONS**

**MONDAY 22<sup>nd</sup> JULY, 2019.**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains Five (5) printed pages including the cover page, with a total of Six questions.
- (b) Candidates **MUST** answer FIVE 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

Leah, Evans, Mike and Grindle want to start a business. They wish to deal in handcrafts and ornaments. They have a starting capital of Kshs.8 Million. They have agreed to divide the ownership of the business into eight shares. Each member to be allocated two shares. They hope that with time they will have more members along with capital to expand the business. They also wish to limit the exposure they might face. Leah and Evans have agreed to be the directors. Mike and Grindle are anxious about the business. They wish to protect their privacy and the business from unscrupulous parties who may endanger it. They have approached your office.

- (a) Advise them on the structure of business they should establish and why. (8 marks)
- (b) Write to Leah, Evans, Mike and Grindle on the procedure they will have to follow in order to establish this structure. (4 marks)
- (c) Evans, while on holiday in or about December 2018 met his niece Olivia. While having a chat about the business, Evans inquired from Olivia whether she knew anybody who could supply them with the necessary machinery to commence operations. She proposed that Evans purchase the necessary machinery from her father Duncan at a preferably cheaper price. Evans agreed to this arrangement. Three months later, a formal contract was drawn up and executed by Evans on behalf of the business and Duncan. In or about April 2019, Evans accepted delivery of the machinery. He did not inspect or obtain written guarantees from Duncan as to the quality of the machinery. The machinery has since broken down. Duncan has also forwarded his invoice to the business for the machinery supplied to be settled. Leah, Mike and Grindle are shocked they were not privy to Evans' transaction. They wish to distance themselves from this arrangement. They have approached you. Advise them:
- i) Whether the business can refuse to honour Evans' contract with Duncan. (2 marks)
- ii) Whether the business has any remedies against Evans and on what grounds. (2 marks)
- (d) Owing to tensions with the other members over his transaction with Duncan, Evans has decided to sell his shares to Duncan. They have since executed a Share Transfer Agreement. Duncan now claims to be a member of the business.
- Leah, Mike and Grindle have approached your office. They wish to know the status of Duncan and whether he has any interest in the business. Advise them. (4 marks)

## QUESTION TWO

Upepe Energy, a local wind power developer has obtained all necessary approvals from relevant Government Agencies and has just finalized its feasibility study for a 50MW wind power project in Kalacha area of Turkana County.

To obtain a Power Purchase Agreement (PPA) approval after negotiation with the other party, Upepe Energy is required to prove availability of funds for the development of the project within agreed timelines. The 50MW project costs USD46 million. Elite Energy, a Danish Company with a branch office in Nairobi, is willing to finance the project through Equity and Debt financing. The two companies have agreed on the financing terms and have established a Special Purpose Vehicle (SPV) for the project.

- (a) Explain the two methods of financing proposed by Elite Energy.
- i) Equity financing. (2 marks)
- ii) Debt financing. (2 marks)