

# COUNCIL OF LEGAL EDUCATION



## EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

*GOODBYE KSL EXAMS*

### **ATP 108: COMMERCIAL TRANSACTIONS**

MONDAY 5<sup>TH</sup> DECEMBER, 2016

DURATION: 3 HOURS

#### **Instructions to Candidates**

- (a) This paper contains **Five 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

Chester Transporters Limited (CTL) has been your client since you assisted its four members incorporate it in 2011. Charles the Managing Director, has approached you with the following information:

- CTL has been going through a rough patch over the last one year and is unable to raise funds from its usual financiers. Charles and some of the other directors believe that CTL can trade its way out of the quagmire if funds were sourced by means other than credit.
- Charles believes that he may have found the solution in Nobert, an old friend who runs a business similar to CTL's and who has shown an interest in equity. Nobert has made a few demands in relation to his investment in CTL, the key one being appointment to the Board.
- Ellen, one of the directors is not keen on the proposal to bring Nobert on board and insists that CTL should explore all other possible options. She and Nobert have had a long running feud over property in their rural area and do not see eye to eye. The other directors feel that she is being unreasonable.

Charles seeks your advice on the following matters:

- (a) How can Ellen be removed from her position as director and what steps might she take to resist the removal or to assert her rights? **(14 marks)**
- (b) Ellen and one other director have travelled abroad on a two week business trip leaving Charles and Timothy as the only two directors in town. Charles is considering the option of him and Timothy calling a general meeting immediately to pass an ordinary resolution appointing Nobert.

Advise on the validity of that meeting.

**(6 marks)**



## QUESTION TWO

Brian is in the business of buying and selling second hand motor vehicles. The vehicles are usually displayed at a large yard located along Langata Road in Nairobi. Brian also receives and sells cars on behalf of individual owners at a commission. Such cars are also usually displayed at the same yard. At around 9.00 a.m. on 1<sup>st</sup> May 2015, Alice went to Brian's yard and saw a car which she wanted to buy. The owner of the car, Oscar had left it with Brian with instructions that Brian was to obtain "good offers" but that he (Brian) was not to accept any offers without first consulting with Oscar.

Unfortunately, Oscar had, inadvertently left the car's logbook in the car's glove compartment. Using this document, and holding himself out to be Oscar, Brian sold Oscar's car to Alice. Alice paid the full purchase price in cash. She also obtained from Brian (who was pretending to be Oscar) the car's log book together with a duly executed transfer form. Alice did not, however, drive away the car on the day as she was travelling out of town. On the same day in the afternoon, Oscar came and took away his car, telling Brian that he had changed his mind and was no longer interested in selling it. Upon her return, Alice made several unsuccessful