

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 108: COMMERCIAL TRANSACTIONS

THURSDAY 22ND NOVEMBER, 2012

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should attempt **FOUR** questions
- (b) Answer **one question from each section** and a **fourth one from any of the three sections**
- (c) All questions carry **15 marks** each
- (d) Marks may be lost for illegibility

SECTION ONE

1. (a) Briefly outline the ways in which agency may be terminated. **(6 marks)**
- (b) What is a power of attorney? **(4 marks)**
- (c) Outline in detail the factors which you must take into account when preparing a power of attorney for an individual. **(5 marks)**
2. (a) State the essential characteristics of a negotiable instrument and explain whether and in what ways, if any, the electronic digital variants thereof satisfy the requirements of the existing relevant law. **(7 marks)**
- (b) Mr. Majani and his wife Maria opened a joint trust bank account for their minor son, Mututho. Both of them are mandatory signatories. While her husband was away overseas, she decided to pay off her sister's hospitalization bill following a domestic fight between the sister and her "come-we-stay" boyfriend. She persuaded Mututho to sign, "on behalf and as agent of your father" a cheque for Kshs.450,000/- drawn on the trust account, explaining that, after all, the money was his (Mututho's). In any case Kshs.50,000/- of this cheque, she said, was to go towards his college-related expenses, too.
- Three months after his return to the country, Mr. Majani noticed on bank statement posted to him, that there was a withdrawal of Kshs.450,000/- from the trust bank account, which he was not aware of. He immediately raised this with the bank. The bank explained that they paid the cheque to his wife because it had what looked like his signature. Mr. Majani insists that the bank must refund the amount into the trust account. The bank contests this, saying that the proceeds were, in any case, used by his family when in need.
- He seeks your advice, adding that he completely repudiates the "unjustified and fraudulent" action and trickery of his wife. **(8 marks)**

SECTION TWO

3. (a) Distinguish the Objects of a company from its Articles of Association. **(4 marks)**
- (b) Citing relevant cases, explain the common law duties of directors of a company in Kenya. **(3 marks)**
- (c) Directors of Amuka Twende, a publicly listed company have approached you on concerns they have on statutory requirements of the Capital Markets Authority and Company Law in Kenya. Their concerns are informed by the recent court ruling in the matter of CMC Motors (Kenya) Ltd where some long serving and well known directors were barred from holding board positions in any publicly listed company in Kenya.