

# KASNEB

CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

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MONDAY: 23 May 2016.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

## QUESTION ONE

(a) In relation to the sources of law:

- (i) Explain the meaning of the term "common law". (4 marks)
- (ii) State four characteristics that a custom under African customary law should satisfy to be enforceable. (4 marks)
- (iii) Describe two types of judicial precedents. (4 marks)

(b) Discuss four grounds of an application for judicial review. (8 marks)

(Total: 20 marks)

## QUESTION TWO

(a) Damages are a common law remedy awarded in tort and are intended as compensation for a plaintiff's loss.

In relation to the above statement, describe five categories of damages available to a plaintiff. (10 marks)

(b) In relation to the court system in your country:

- (i) State five superior courts. (5 marks)
- (ii) Explain the composition and jurisdiction of the Kadhi's court. (5 marks)

(Total: 20 marks)

## QUESTION THREE

(a) Moses Mugo and Joshua Wafula are interested in venturing into business.

### Required:

Advise them on three advantages of an artificial person over an unincorporated person. (6 marks)

(b) Explain four essential elements of an enforceable contract. (8 marks)

(c) Identify three types of rights that a surety could enforce against a creditor in a contract of guarantee. (6 marks)

(Total: 20 marks)

## QUESTION FOUR

(a) With reference to settlement of disputes through commercial arbitration, summarise the form and content of an arbitral award. (8 marks)

(b) With reference to negotiable instruments, highlight the conditions that a person must satisfy in order to qualify as a holder in due course. (6 marks)

(c) Explain three duties of a bank to its customers. (6 marks)

(Total: 20 marks)

**QUESTION FIVE**

- (a) Discuss four remedies available to a buyer in case a seller breaches a contract of sale of goods. (8 marks)
  - (b) Distinguish in three ways between a “hire purchase agreement” and a “conditional sale agreement”. (6 marks)
  - (c) Describe three conditions necessary for a valid ratification in the law of agency. (6 marks)
- (Total: 20 marks)**

**QUESTION SIX**

- (a) Explain five rules that govern distribution of losses and assets upon dissolution of a partnership. (10 marks)
  - (b) With reference to the law of insurance:
    - (i) Distinguish between “perils” and “hazards”. (2 marks)
    - (ii) Discuss four elements that an insurable risk ought to possess. (8 marks)
- (Total: 20 marks)**

**QUESTION SEVEN**

- (a) With reference to the law of property, explain two characteristics of a plant breeder’s patent. (4 marks)
  - (b) Explain the differences between “criminal law” and “civil law”. (6 marks)
  - (c) Describe five remedies of a principal for an agent’s breach of duty. (10 marks)
- (Total: 20 marks)**
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