

# KASNEB

CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

PILOT PAPER

September 2015.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

## QUESTION ONE

- (a) Explain three branches of public law. (6 marks)
- (b) Describe the procedure to be followed when the President declines to assent to a bill passed by parliament. (8 marks)
- (c) Explain the doctrine of independence of the judiciary. (6 marks)
- (Total: 20 marks)

## QUESTION TWO

- (a) Highlight four principles that guide the courts in exercising judicial authority. (8 marks)
- (b) Explain three categories of cooperative societies. (6 marks)
- (c) State three rights available to a person who agrees to be answerable for the default or miscarriage of another party. (6 marks)
- (Total: 20 marks)

## QUESTION THREE

- (a) List four grounds that might lead to rejection of an application to register a trademark. (4 marks)
- (b) Where a mortgagor defaults in repayment of the mortgage, the mortgagee has a right to appoint a receiver to realise the assets of the mortgagor.  
Highlight the order of priority of payments by the receiver. (8 marks)
- (c) (i) State the Rule in Rylands v Fletcher. (2 marks)
- (ii) Explain three defences to the rule in c (i) above. (6 marks)
- (Total: 20 marks)

## QUESTION FOUR

- (a) The parties to a contract must precisely perform their obligations on the contract otherwise the contract shall not be discharged.  
Highlight four exceptions to the general rule of precise performance. (8 marks)
- (b) Explain four implied provisions in arbitration agreements. (4 marks)
- (c) In relation to partnership law, explain the liability of the following partners:
- (i) Incoming partner. (2 marks)
- (ii) Infant partner. (2 marks)
- (iii) Outgoing partner. (4 marks)
- (Total: 20 marks)

**QUESTION FIVE**

- (a) (i) Distinguish between “actual authority” and “ostensible authority” of an agent. (2 marks)
  - (ii) An agent must not delegate powers that have been delegated to him.  
Explain four exceptions to this rule. (4 marks)
  - (b) (i) Highlight two differences between “law of tort” and “law of contract”. (4 marks)
  - (ii) Explain three provisions of the limitation of actions Act in relation to contracts. (6 marks)
  - (c) State four remedies that might be granted by the High Court in the enforcement of the fundamental rights and freedoms of an individual. (4 marks)
- (Total: 20 marks)**

**QUESTION SIX**

- (a) In relation to sale of goods, explain four rules relating to auction sales. (8 marks)
  - (b) Describe three obligations of a hirer who terminates a hire purchase agreement before payment of the full hire purchase price. (6 marks)
  - (c) Mpole drew a bill of exchange for Sh.50,000 payable to Hussein for goods supplied. Hussein endorsed the bill to Stella for money owed to Stella. Stella endorsed the bill to her friend Asha as a gift. Asha presented the bill for payment but it was dishonoured.  
Advise Asha as to the person she might sue on the bill. (6 marks)
- (Total: 20 marks)**

**QUESTION SEVEN**

- (a) (i) Distinguish between “assurance” and “insurance”. (2 marks)
  - (ii) In every contract of insurance, the insured has a duty to disclose all material information to the insurer at the time of taking out the policy of insurance.  
Explain the information that need not be disclosed. (4 marks)
  - (b) Highlight three differences between possession and ownership of land. (6 marks)
  - (c) In relation to the law of agency, explain the following:
    - (i) Del credere agent. (2 marks)
    - (ii) Factor agent. (2 marks)
    - (iii) Two circumstances when the principal is not allowed to unilaterally terminate an agency contract. (4 marks)
- (Total: 20 marks)**
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