



**LAW SCHOOL**

**BACHELOR OF LAWS & PRE-KENYA SCHOOL OF LAW CORE**

**COURSES COMPLIANCE PROGRAMMES**

**BUSINESS ASSOCIATIONS I**

**RLLB 303**

**EXAMINER: J. NYAGA**

**DATE: 24<sup>TH</sup> AUGUST, 2016**

**TIME: 3:00 HOURS**

**INSTRUCTIONS:**

1. This Examination is made up of a total of **four (4)** questions.
2. You **MUST** answer **ALL FOUR** questions.
3. Question 1 and 4 carry 25 marks (each) while questions 2 & 3 carry 10 marks (each).
4. This is a **PARTIALLY CLOSED BOOK** exam. You are **ONLY** allowed to bring **UNANNOTATED (CLEAN)** copies of the relevant statutes (highlighting and underlining is permitted).

**QUESTION 1: (25 marks)**

Mary owned an old building located along the Nairobi-Nakuru Highway, somewhere near Limuru town. Mary was desirous of converting this building into an African Art and Curios shop. She hoped that her clientele would be the innumerable tourists who travel along that road. Having no experience or interest in art or curios, Mary approached her friend Becky, a passionate collector and enthusiast of African art and curios. After lengthy discussions, the two executed the following written agreement:

- a) Mary would avail the building, pay for all utilities, and also avail Kshs. 100,000/= capital for purchasing business stock (African art and curios).
- b) Becky would avail Kshs. 30,000/= for purchasing stock which amount would be repaid by Mary (to Becky) when the business terminated.
- c) Since Becky was more knowledgeable about African art and curios, she (Becky) would manage the shop, make all purchases, and receive a salary of Kshs. 10,000/= per month plus another 5% of the gross receipts during any applicable month.
- d) 50% of the net profits would go to the purchase of new stock. The balance of the net profits would go to Mary.
- e) The business would operate under the name “Roadside Afro Art & Curios” (hereafter referred to as “RAAC”)

Unfortunately, due to an unanticipated reduction of the number of tourists visiting Kenya, business did not pick up as expected. After one year of operation, a debt of Kshs. 40,000/= is now owed to Old Fashioned Ltd (hereafter referred to as “Old Fashioned,”) the principal supplier of African art and curios purchased by Becky in the name of RAAC. Old Fashioned has now instituted suit against RAAC, Mary and Becky.

Required: identify and analyze (fully) the legal issues raised by the above fact-pattern.

**QUESTION 2: (10 marks)**

Jim and Jack are brothers who want to start a “guided mountain climbing” business. They both have considerable mountain climbing experience and both want to be involved in the business, including accompanying total novices on climbing trips lasting for more than one week. They have spoken to

numerous insurance agents about the possibility of getting insurance to cover any potential liabilities, but they have been informed that they cannot get insurance to cover this type of high-risk business (because of the high potential for personal injury). They come to you seeking legal advice about forming their business. What business form(s) would you recommend for this business? Why? What are the advantages and disadvantages of this business form?

**QUESTION 3: (10 marks)**

Mkulima is a member of Limuru Chicken Farmers' Cooperative Society (LCF). During the members' General Meeting held on 25<sup>th</sup> May, 2016, Mkulima learnt the following from LCF's Managing Committee:

- a) That LCF Managers propose to amend the society's by-laws to include a new rule which will assign more voting rights to those members who hold more than 100 shares in the society. For such members, their vote will count as three votes, while the vote by members who hold less than 100 shares will be counted as one vote.
- b) That the Cabinet Secretary in charge of Agriculture has mandated that all cooperative societies should sell their members' eggs to "such buyers and for such prices as shall be determined by the Cabinet Secretary from time to time."

Mkulima, being aggrieved by the above-stated two developments, is contemplating filing a civil suit in court to seek appropriate redress. He has sought your legal advice. Advise Mkulima.

**QUESTION 4: (25 marks)**

Albert, Betty, and Carol own and operate the Roy BAC Timber LLP (hereafter referred to as "BAC"). Each contributed one-third of the capital, and they also share the business' profits and losses equally. Their agreement provides that all purchases worth more than Kshs. 25,000/= must be authorized in advance by two partners and that only Albert is authorized to draw and sign cheques on behalf of BAC. Unknown to Albert or Carol, Betty purchases on the firm's account a

Kshs. 15,500/= diamond bracelet and a Kshs. 40,000/= power saw and also orders Ksh. 5,000/= worth of timber, all from Dan, who operates a jewelry store and is also engaged in various activities connected with the timber business. Before Betty made these purchases, Albert had told Dan that Betty is not authorized to buy timber on behalf of the firm. Albert refuses to pay Dan for Betty's purchases. Dan visits the BAC's Timber yard to collect and Albert, again, refuses to pay him. While at the timber yard, Dan calls Albert an unprintable name, and Albert then punches Dan on the nose, knocking him out. While Dan is lying unconscious on the ground, Jake, an employee of BAC negligently drops a log on Dan's leg, breaking three bones. The firm and the three partners are solvent.

- a) Analyze and discuss (fully) the rights of Dan against BAC, Albert, Betty, Carol and Jake. **(20 marks)**
- b) If BAC were a Limited Partnership with Carol as the LP, and Carol had contributed Kshs. 20,000/= towards the firm's capital, how much would Betty and Albert's liability in respect of the debt owed to Dan be? Why? Analyze and discuss fully **(5 marks)**

*The End! Good Luck!*