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## COUNCIL OF LEGAL EDUCATION

### EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

REGISTRATION NUMBER:

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VENUE: Co-operative University ☐ Kenya School of Law ☐ KNEC ☐

#### ATP108: COMMERCIAL TRANSACTIONS

Examination Series: November 2024

Date: 22<sup>ND</sup> November 2024

Time: 09:00AM-12:00PM

Duration: 3 hours

#### Instructions to Candidates:

- Enter your registration number and tick the exam venue in the space provided.
- Answer **FIVE (5)** questions, including question **ONE** which is **COMPULSORY**.
- Question **ONE** carries **20 Marks**. All other questions carry **10 Marks** each.
- Attempt each question in the space provided. Additional space is provided at the back of the booklet.
- Answers **MUST** be supported by relevant statutory provisions and case law where required.
- Do not write your name in the booklet.
- Ensure your handwriting is **LEGIBLE**.

#### FOR EXAMINER'S USE ONLY

Question Number	Examiner		Internal Moderator		External Moderator		Quality Assurer	
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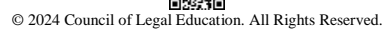
## QUESTION ONE

Selina is a college graduate resident in Kenya and the purveyor of an online scholarly writing website known as The Writers Hub. Selina and her team specializes in connecting scholars from all over the world, who are engaged in various research writing projects with peer reviewers (mostly based in Kenya). The peer reviewers evaluate the research quality and its suitability for publication in exchange for payment. Selina has received multiple offers to mainstream her services and bring on board investors to grow the business.

- a. As a leading commercial law practitioner, you have been approached by Selina to assist her incorporate a private company limited by shares. Briefly explain to your client the following:
  - i. The procedure to incorporate such a vehicle? (6 Marks)
  - ii. Statutory forms that must be submitted to effect registration? (4 Marks)
- b. Upon successful incorporation of The Writers Hub Limited with Selina as the sole director and holder of 50% of the issued shares of the company and the company having adopted the model articles of association, Selina now seeks your counsel with respect to onboarding an investor who wishes to invest in the business venture in exchange for a preferred class of shares. Analyze whether or not the company can legally create different classes of shares and the procedure for allotment and transfer of said shares. (6 marks)
- c. One (1) year down the road and as part of the company reorganization after the onboarding of the investor, it is resolved that Selina will transfer The Writers Hub headquarters - a bungalow situate in Nairobi and registered in Selina's name, which doubled up as an office and Selina's residence - to the company.  
Advise Selina on the following:
  - i. What is the effect of this proposed transaction with respect to Capital Gains Tax (CGT) payable? (2 Marks)
  - ii. What is current applicable rate of CGT tax and how is it computed? (2 marks)

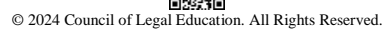
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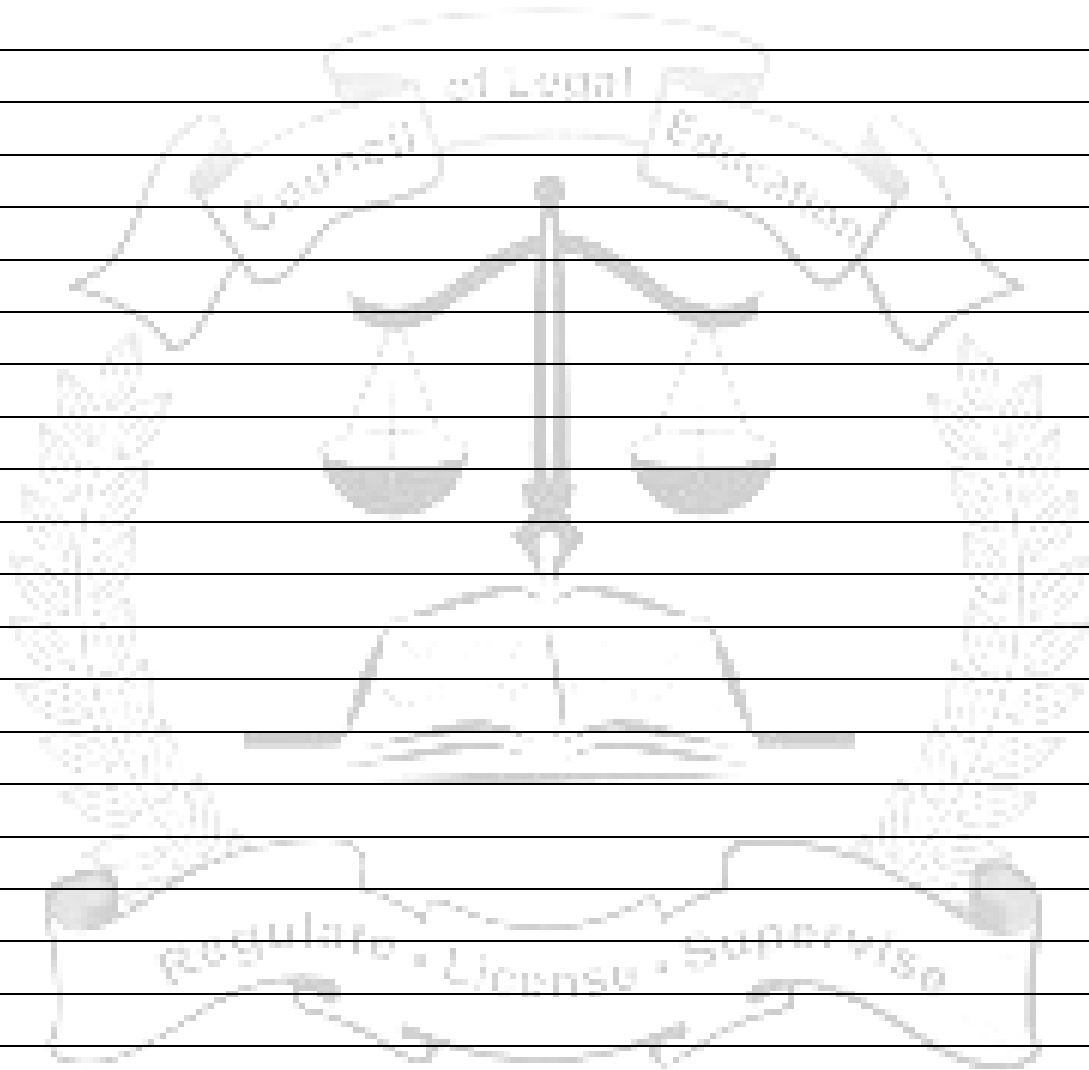
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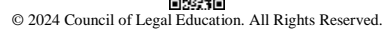
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## QUESTION TWO

- A. ABC Ltd, a thriving technology company in Kenya, has been steadily expanding its market presence. Recently, ABC Ltd entered into negotiations with XYZ Ltd, another tech company with a strong presence in East Africa, for a potential merger. The merger is seen as a strategic move to enhance their competitive advantage in the region. However, concerns have been raised about the potential impact on competition within the tech industry.

As part of the due diligence process, ABC Ltd has engaged legal and financial advisors to ensure compliance with the relevant legal frameworks in Kenya. The companies are also aware that they must obtain approval from the Competition Authority of Kenya (CAK) before the merger can proceed.

Discuss the process of obtaining approval and the factors that the authority would consider in determining whether to approve the merger between ABC Ltd and XYZ Ltd. (5 Marks)

- B. Leading Packaging Suppliers Ltd (LPSL) has offered your law firm a retainer contract as a result of your efficient incorporation of the company in 2019. Your first job on the retainer is given to you by Evans, the managing director, who approached you with a request for a legal advice. Evans informed you that due to COVID - 19 pandemics, LPSL lost a lot of business and from 2020 has been going through serious financial difficulties such that the company is in need of financial resuscitation. Evans and other directors believe that LPSL can overcome financial problems if they could obtain significant credit facility. They have tried to approach local commercial banks, but were unable to get any advancement. In an attempt to find a solution, Evans spoke to his long-term friend, Kevin, who runs a similar business and who expressed interest in LPSL's equity. Kevin agreed to invest in LPSL, but on condition of his appointment to the company's Board of Directors. When Evans presented the idea of Kevin's investment in LPSL's equity to the Board of Directors, he met strong resistance to it from Peter, who had in mind a different, but a smaller investor. The rest of LPSL's directors were in support of Evans' candidate. Thus, to solve the impasse, Evans is interested in removing Peter from the Board. Advise Evans on the procedure that needs to be followed to remove a director from office.

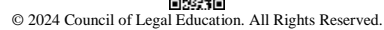
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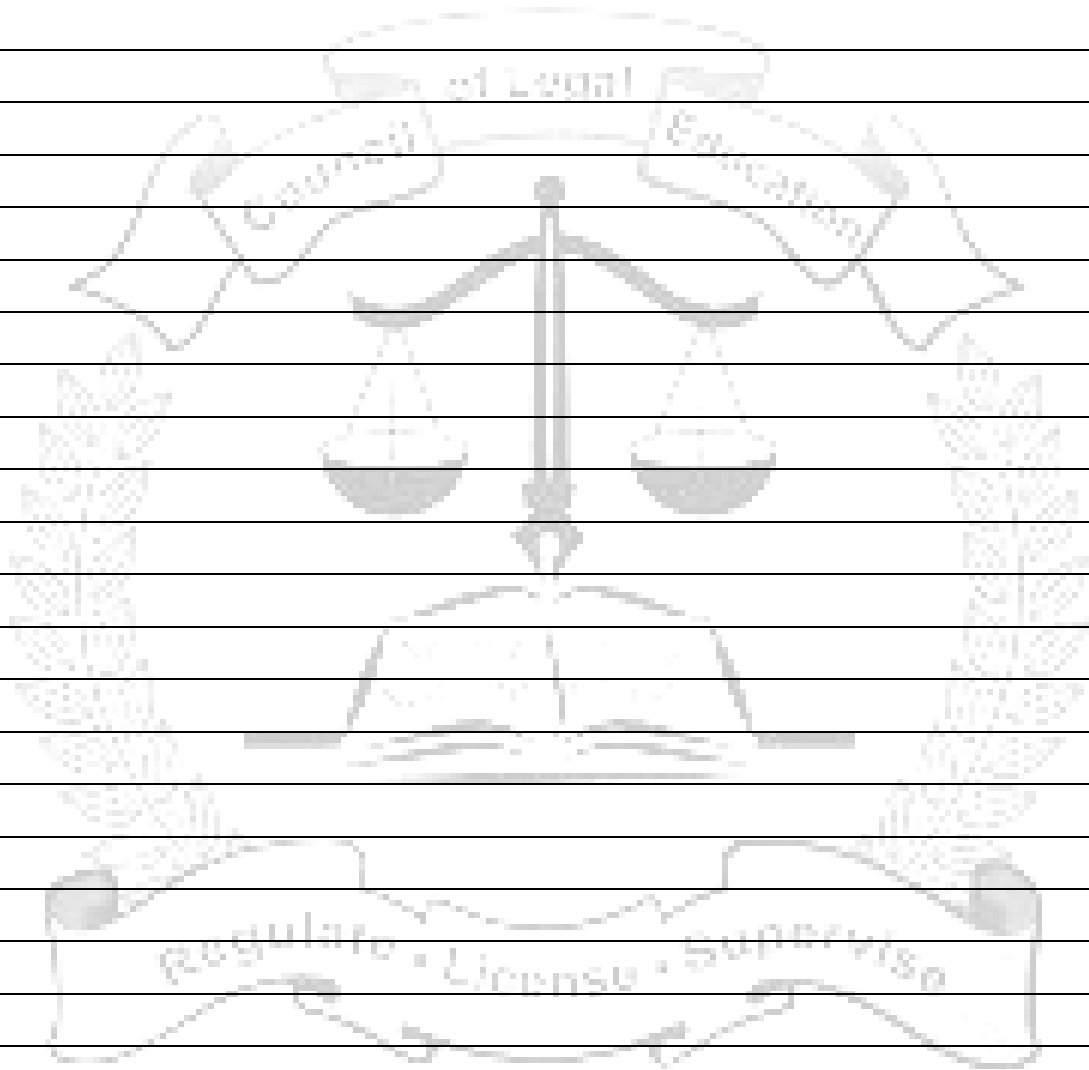




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### QUESTION THREE

Your client Urban Oasis Ltd is a private company that is very active in the real-estate sector and specializes in luxury office space. The current share ownership structure of Urban Oasis Ltd is: Simba Tajiri - 60% and Chui Mpendastarehe - 40%.

Legacy Estates Ltd is a private company that owns and manages a commercial property known as 'Golden Gate'. Golden Gate is a prime office building located in Upperhill, Nairobi. The current share ownership structure of Legacy Estates Ltd is: Sungura Mjanja - 60% and Paka Mtiifu - 40%.

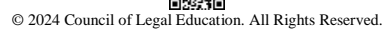
Urban Oasis Ltd would like to purchase 'Golden Gate' from Legacy Estates Ltd for the price of Kshs. 400 million. However, instead of purchasing the property directly, Urban Oasis Ltd prefers to purchase all the shares in Legacy Estates Ltd through a Share Purchase Agreement.

**Draft a Share-purchase Agreement for this transaction.**

(10 marks)

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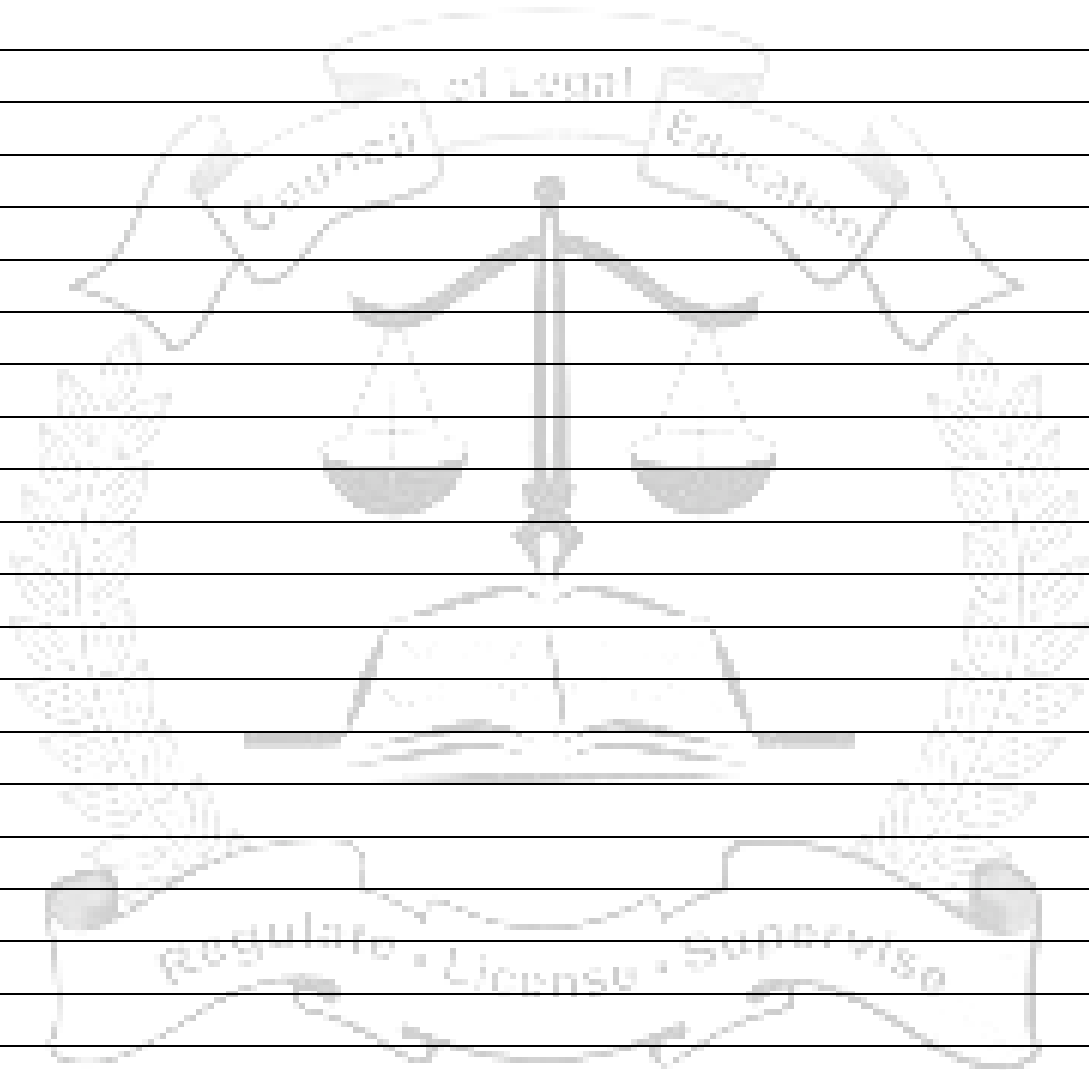
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QUESTION FOUR

(a) Bizo has always been a very talented entrepreneur with multiple business interests. Recently, he discovered that the gas business was very lucrative and decided to invest in it. He set up the facility near Tembo Estate despite challenges with obtaining the necessary approvals. After many years of operation, one unfortunate day, the gas facility exploded killing many people and destroying property worth millions. Bizo is now facing criminal negligence and multiple suits claiming civil damages. Bizo’s creditors have sent him a letter threatening a bankruptcy law suit. Bizo is concerned that the creditors may issue an execution process against him.

Advise Bizo on the circumstances under which a creditor’s execution process may not be issued or continued. (5 marks)

(b) Bizo’s business partner Tasi took to the social media to complain that Bizo has always used short cuts and that the crisis would have been averted if he had followed the right procedures. He also said that the business had agreed that Bizo purchase and install adequate safety equipment on the facility but he had failed to procure the same and instead opted for cheaper substandard equipment from unknown sources. Tasi now claims that the business is in trouble because of Bizo’s fault and has threatened to go to court.

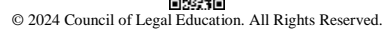
Write a brief advising Tasi on the specific cases that the court may step in to dissolve a partnership on application by a partner and whether he stands a chance to win in court.

(5 Marks)

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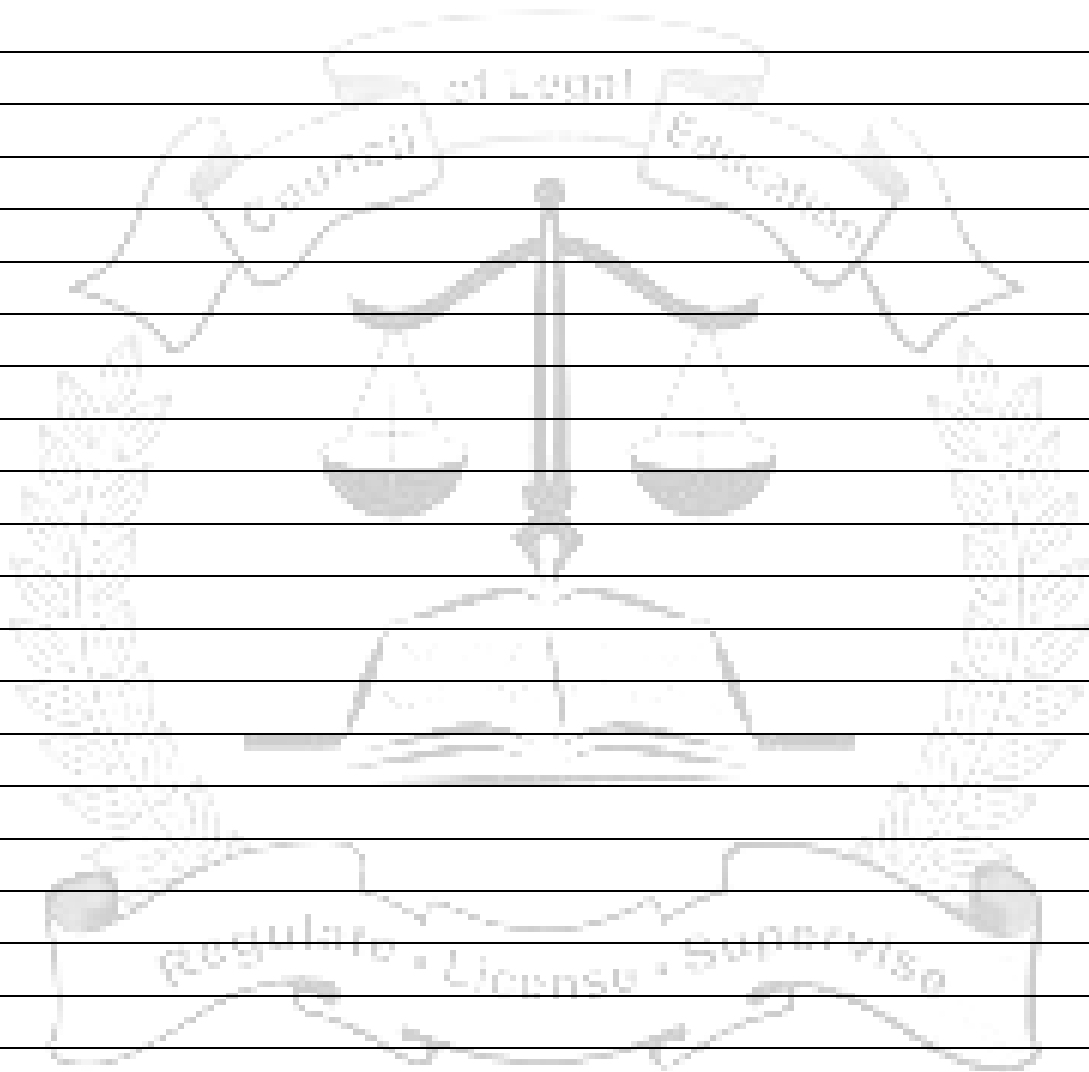
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QUESTION FIVE

Tim and Rose are software developers who developed *Borrow*, a software application that enables customers to borrow loans at low interest rates and longer payment terms than banks in Kenya. Their frustration at dealing with their customers’ defaults in loan repayment has led them to start calling people whose phone numbers appear in their customers’ phone contact lists and thereafter, pressuring them to tell loan defaulters to pay their loans.

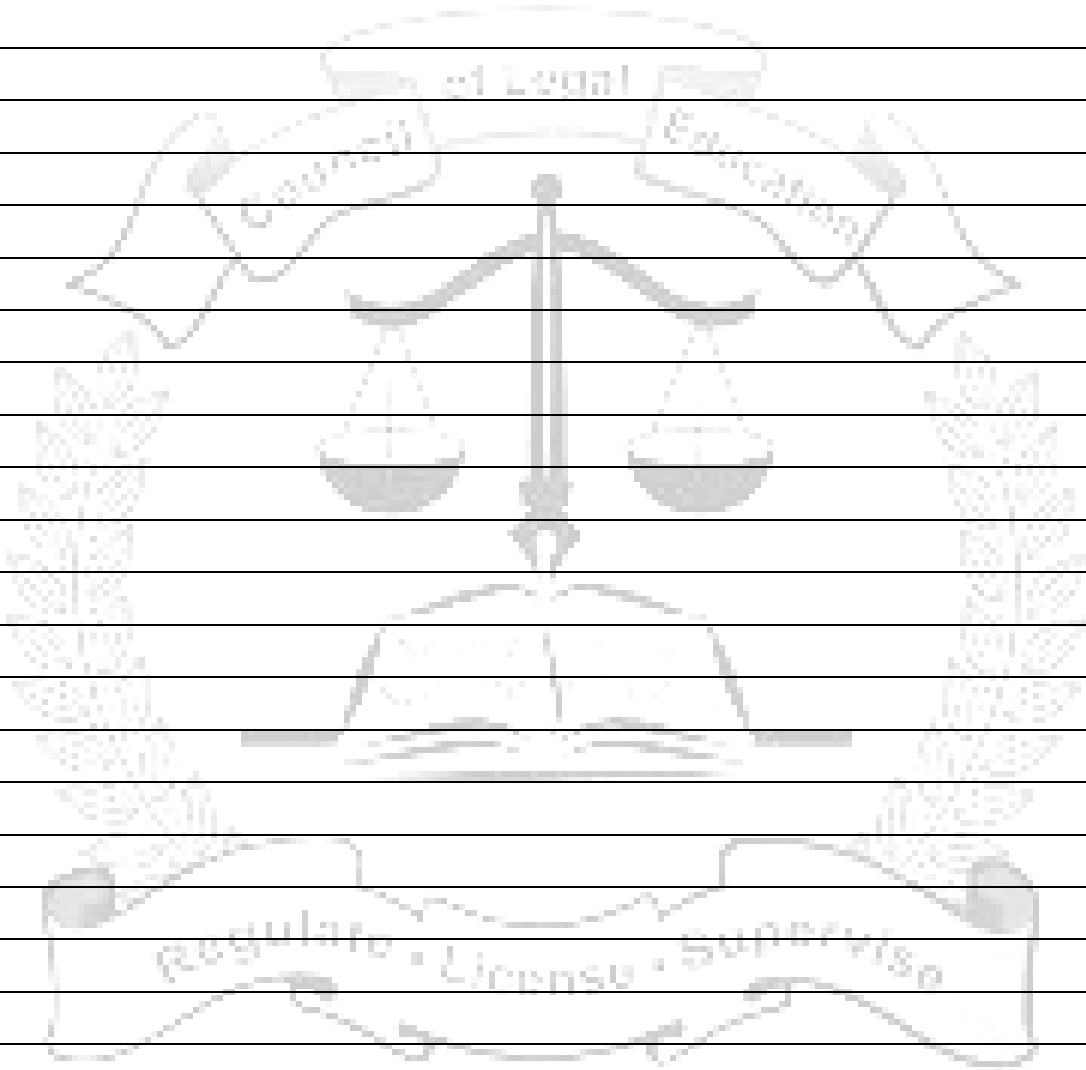
At a recent industry forum, the software developers were informed that their method of dealing with loan defaults is illegal in Kenya. Their concern about this information is the basis for contacting you, a recent law graduate, for a legal opinion about the matter.

Citing relevant legal provisions, provide the legal opinion. (10 marks)

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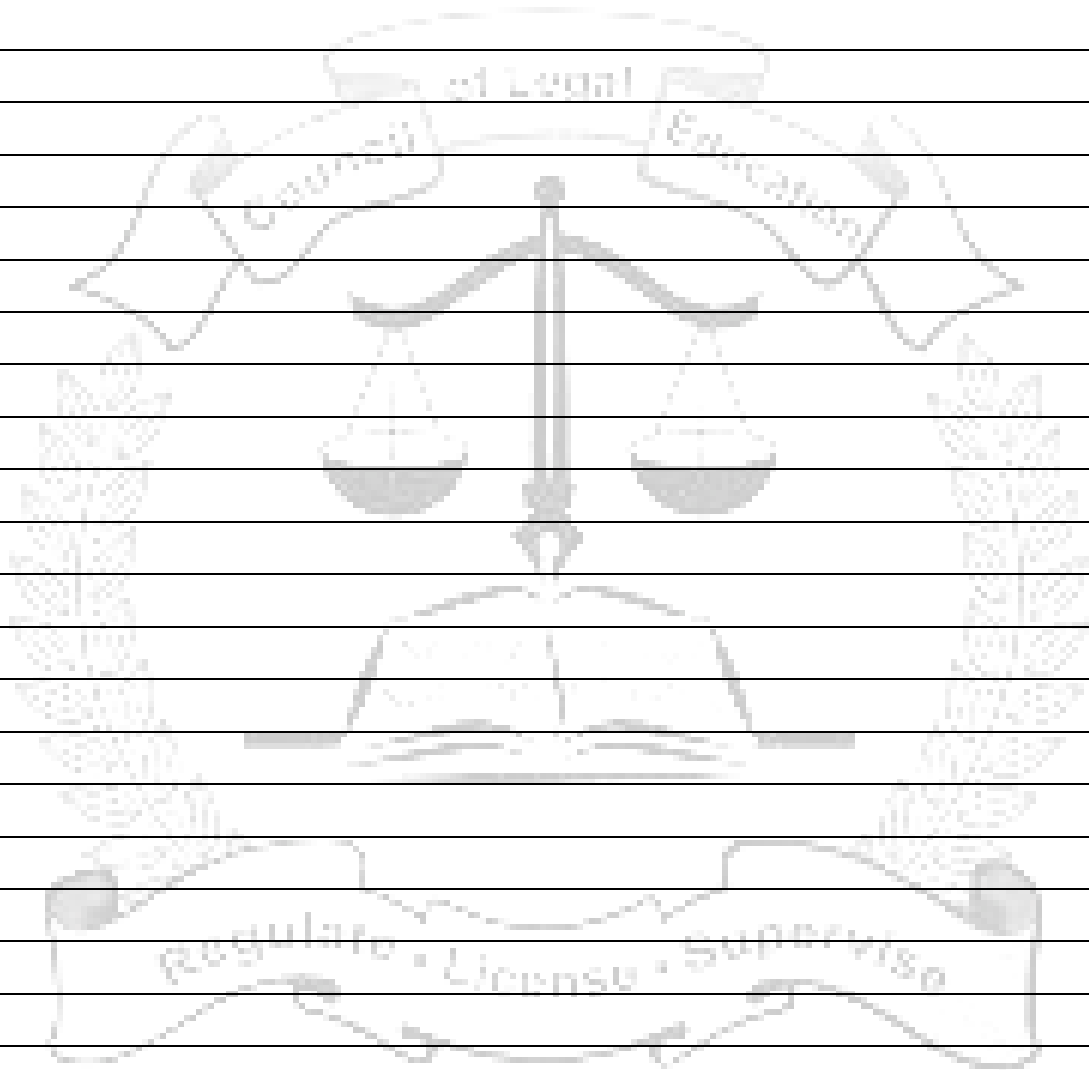
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## QUESTION SIX

On 2<sup>nd</sup> September, 2017 Umu Gedi drafted and served a statutory demand for winding up M/S Bridal Outfits Limited for their failure to deliver to her a wedding dress and several bridesmaids dresses to the tune of Kenya Shillings One Million (Ksh. 1,000,000/=). The notice was brought under section 220 of the repealed Companies Act and it was a demand for the Company to pay the said sum of Ksh. 1,000,000/= or face an application for a winding up order. On 3<sup>rd</sup> October, 2017, Umu Gedi filed a petition under the new Act before the High Court for purposes of liquidating the company.

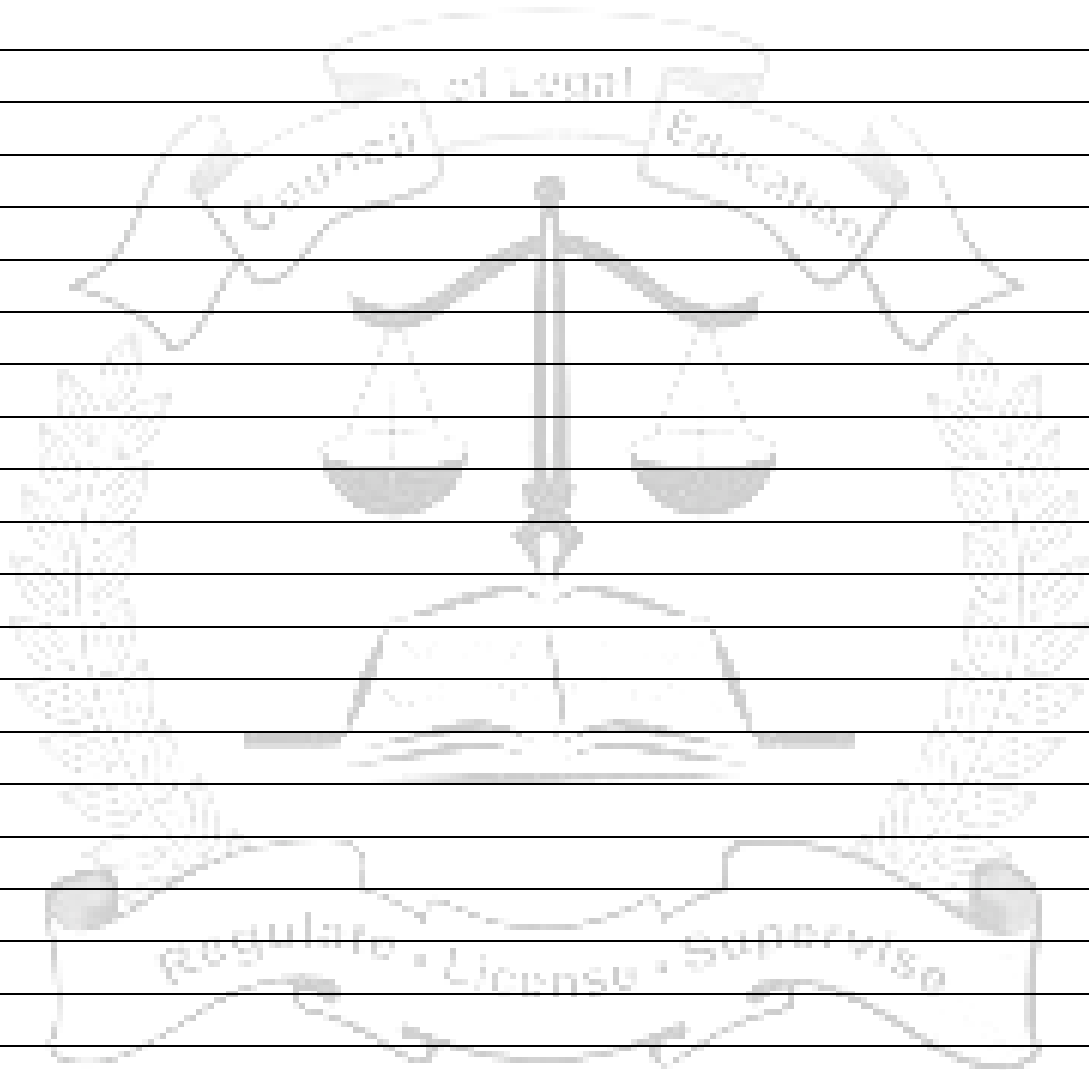
- a) As a legal clerk to the Hon. Judge to whom this matter has been assigned, advise your boss on whether this particular action can be maintained in light of a statutory demand that refers to a repealed statute. (2 marks)
- b) Despite service of the statutory demand, M/S Bridal Outfits has failed to respond to Umu Gedi. Briefly explain whether Bridal Outfits qualifies as a company unable to pay its debts pursuant to the Act. (3 marks)
- c) You have been appointed as a liquidator of Bridal Outfits Limited and it is your considered opinion that the company may benefit more from an administration order. Briefly explain the procedure a liquidator will use to make an application for administration order and its effect on the company going forward. (5 marks)

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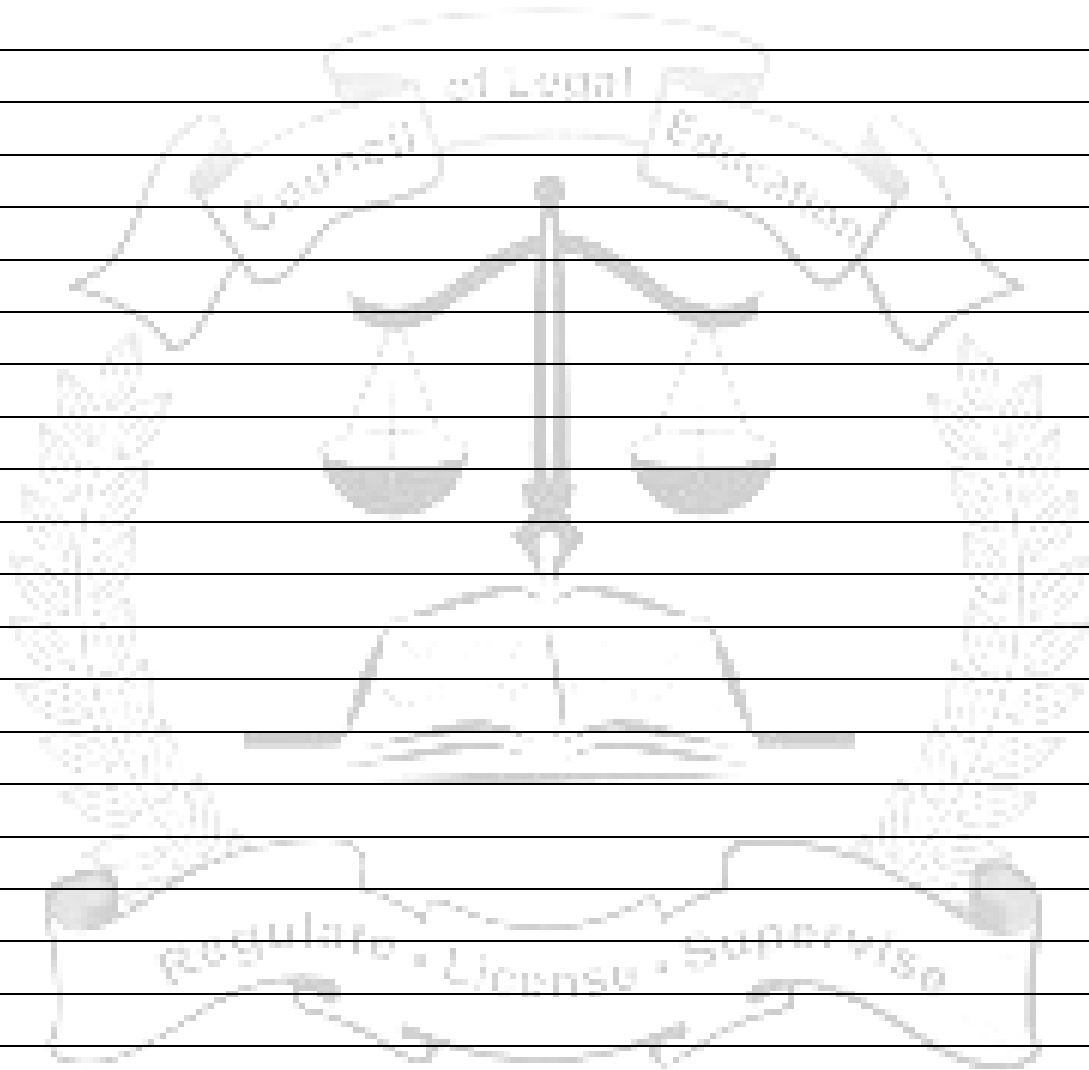
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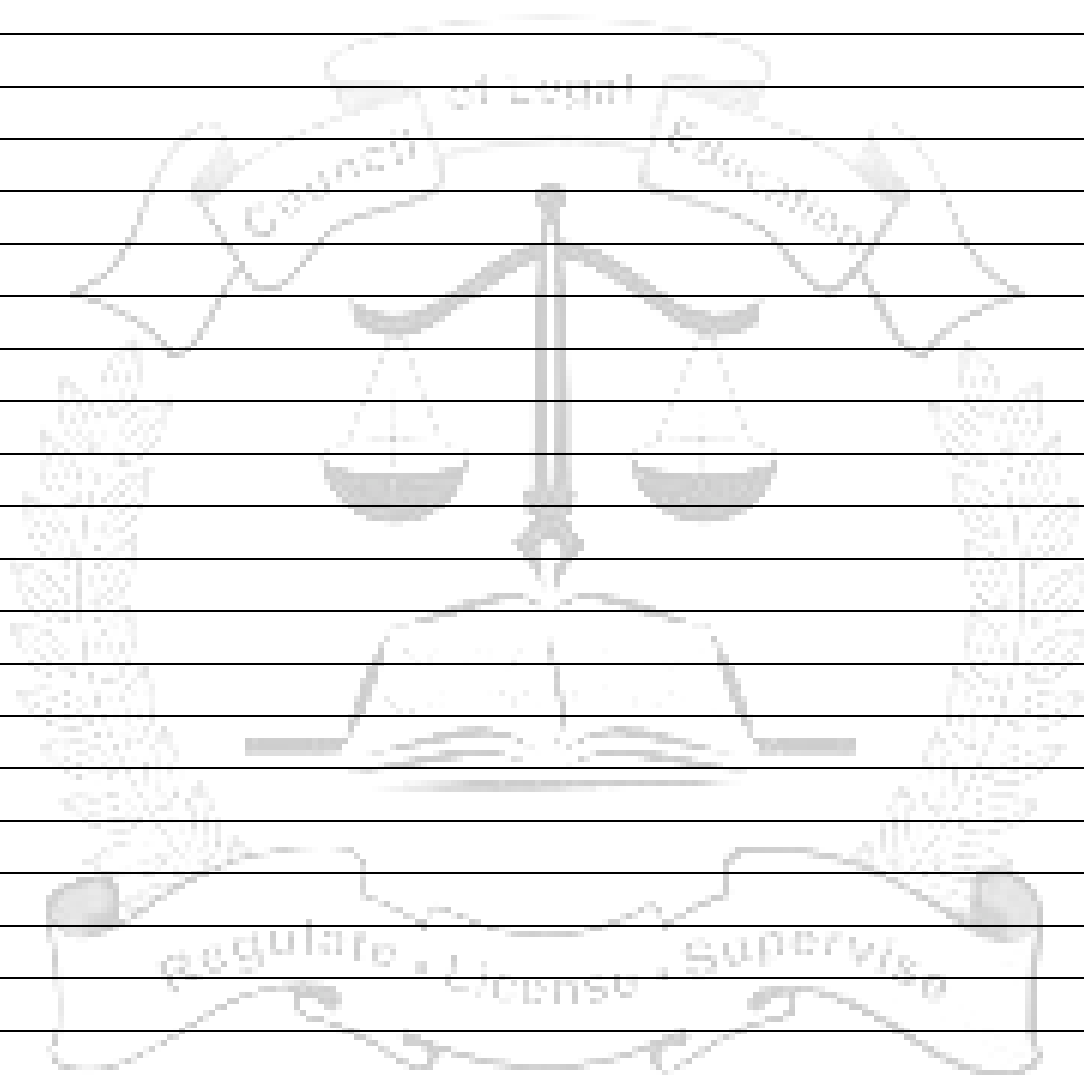
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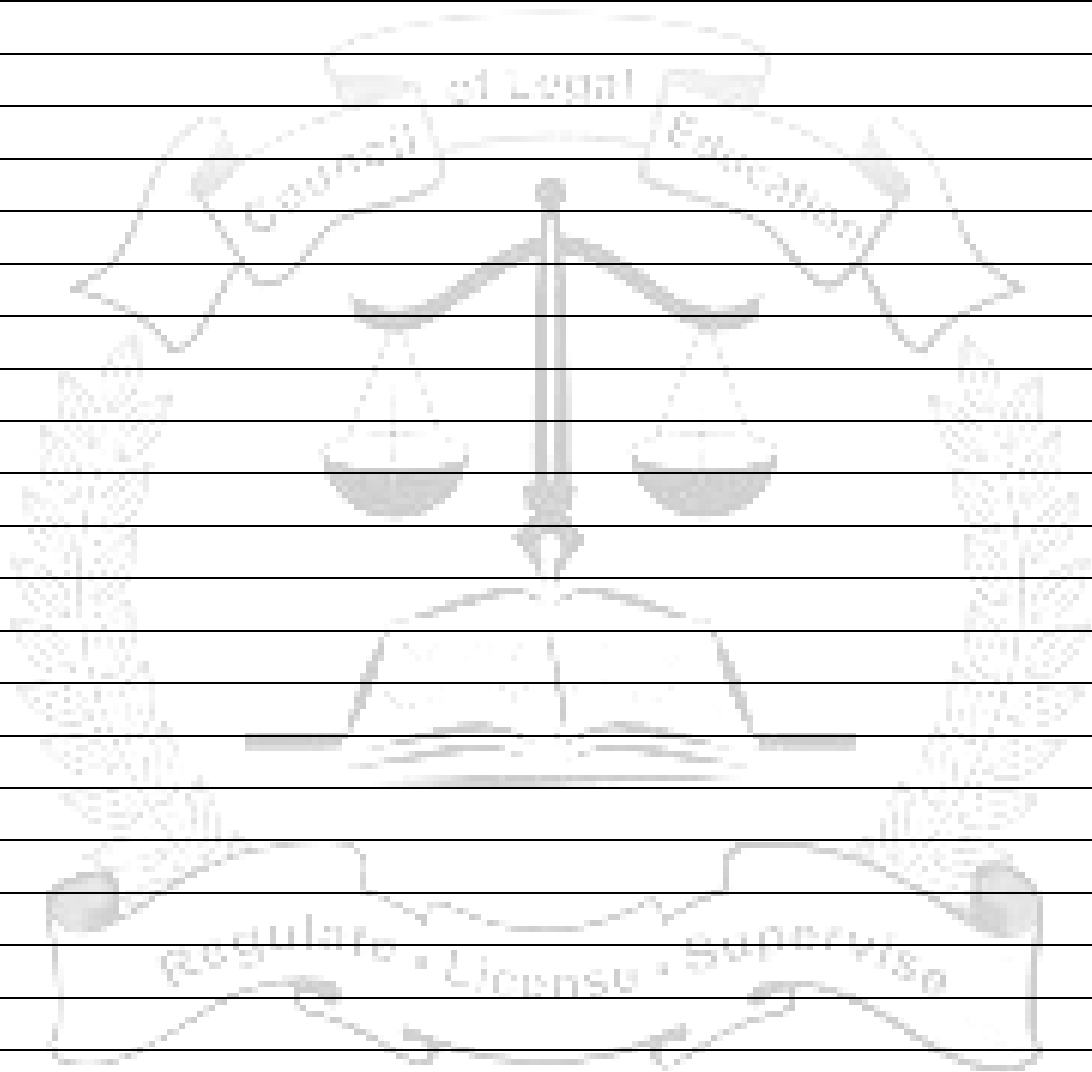
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