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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

JKUAT

ATP108: COMMERCIAL TRANSACTIONS

Examination Series: April 2025

Date: 22ND APRIL 2025

Time: 09:00AM-12:00PM

Duration: 3 hours

Instructions to Candidates:

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

FOR EXAMINER'S USE ONLY

Question Number	Examiner		Internal Moderator		External Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials	Mark	Initials
1.								
2.								
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6.								
Total Marks								



QUESTION ONE

Erico is a recent graduate of a prestigious information technology institution. He has big dreams coupled with the ambition and drive to match his dreams. For the last few years, Erico has been working on an Artificial Intelligence (AI) based service by the name of Skynet that can be accessed via the internet. Erico has been able to build out his service with the help of hundreds of volunteers and a steady stream of financing from a foreign investor known as Shylock Jones. Erico expects that he will be able to unveil his service in the coming months. In preparation for Skynet's coming-out party, Erico has registered a private company by the name of Skynet Holdings Limited in which Erico serves as the sole director/shareholder. Erico's friend and fellow IT enthusiast Stella recently caught wind of the project and she is interested in coming on board as a director and majority shareholder in Skynet Limited.

- a) Stella and Erico have paid you a visit and instruct you to prepare the relevant documentation to add Stella as a director and shareholder of Skynet. Briefly outline the paperwork to be lodged with the registrar to effect these changes. (5 marks)
- b) As a condition to being a part of the Skynet enterprise, Stella, with the assistance of her well-off family injected capitation into the company to the tune of **Kenya Shillings One Hundred Million (Kshs. 100,000,000/=)**. Erico holds a duly registered copyright over the Skynet AI in his favor and he has even signed a security agreement in favor of Stella in her capacity as a director of Skynet Limited to ensure that the service remains under the control of Stella and the company for the foreseeable future. Stella now seeks your advice on how to perfect her security right under the movable property security rights (MPSR) regime and whether said security rights extends to all the anticipated future proceeds for Skynet. Please advise her. (4 marks)
- c) As expected, the Skynet AI becomes a resounding success and the company licenses out the AI to several companies and even the government. With several income streams available to them, Erico and Stella are kept very busy managing their product and the company's finances. In a bid to get her house in order, Stella visits you once again and admits that even before she perfected her security in Skynet, she knew of the existence of a security right in favor of Shylock Jones but the same was never perfected by Mr. Jones. Advise Stella on whether Shylock Jones has a claim against her or the company in terms of MPSR priorities and whether her knowledge of Mr. Jones' right affects her interest in any way and if she could claim to be an innocent purchaser for value? (4 marks)
- d) Several years after the success of Skynet, Erico informs you that his success went to his head and he made several bad financial decisions. As a result, he has been adjudged a bankrupt pursuant to an adjudication order. In spite of his status as a bankrupt, Erico sought out Shylock Jones once again and borrowed some money from him and in exchange, surrendered all the administrative rights, share files and permissions to the Skynet AI to Shylock Jones who is now in control of the service.



QUESTION FOUR

Raha Entertainment and Jamii TV have been in talks to streamline their respective businesses. Raha Entertainment operates a widely watched TV station focused on family entertainment. Raha is also a new entrant into the TV streaming business and is in the market for content to populate said streaming service dubbed “Raha One.” Jamii TV on the other hand has a vast library of locally produced content but has in recent years favored the production and airing of more mature programming and is seeking to do away with its library of children content. As a result, Jamii found a willing partner in Raha to purchase its star animated children’s’ program - The Zola and Udi Show together with its offshoots, The Zola and Udi Magic Show and Zola and Udi in the Jungle. Jamii considers the children’s show as a valuable piece of its intellectual property (IP) portfolio as they have been able to monetize the said characters by selling t-shirts, toys and books related to the show’s characters. Raha is aware that adding the show to their content library may prove advantageous to their streaming business model which is a pay-per-view service set to be launched soon. Raha’s assets/turnover (whichever is higher) does not exceed USD 3 million while Jamii’s threshold is USD 1 million. Raha is only interested in acquiring the one TV program from Jamii.

- a) Raha’s CEO has been in talks with Raha’s board and other advisers and he has been informed that the proposed merger may be notifiable. Briefly explain to Raha the three (3) categories of mergers (relevant to these facts) in terms of the Competition Authority of Kenya’s (CAK) threshold guidelines and where Raha’s proposed merger would fall. (4 marks)
- b) You are further informed that Jamii prefers an outright sale of its Zola and Udi property versus a shares acquisition by the acquirer. With the foregoing in mind, highlight four (4) important areas to be targeted at the due diligence stage of this transaction. Assume that you act for the acquirer. (4 marks)
- c) In terms of the asset purchase, Raha’s CEO makes it very clear to you that his company is very keen on two (2) considerations with respect to the asset purchase - “selective acquisition” and “liability control.” Analyze these two concepts vis-à-vis the companies’ visions as highlighted in the fact pattern. (2 marks)

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