

**3806/104**  
**LEGAL ASPECTS OF**  
**BUSINESS MANAGEMENT**  
**July 2012**  
**Time: 3 hours**



**THE KENYA NATIONAL EXAMINATIONS COUNCIL**  
**HIGHER DIPLOMA IN BUSINESS MANAGEMENT**

**MODULE I**

**LEGAL ASPECTS OF BUSINESS MANAGEMENT**

**3 hours**

**INSTRUCTIONS TO CANDIDATES**

*This paper consists of TWO sections: A and B.*

*Answer the Compulsory question ONE in section A and any other THREE questions in section B.*

*Question ONE carries 40 marks while the other questions carry 20 marks each.*

*Write all your answers in the answer booklet provided.*

**This paper consists of 5 printed pages.**

**Candidates should check the question paper to ascertain that  
all the pages are printed as indicated and that no questions are missing.**

## SECTION A

*Question ONE is compulsory.*

1. *Read the case below and answer the questions that follow.*

Wheels Company Ltd is a company dealing with the sale of brand new and second hand cars and specialising in Japanese models imported from both Japan and Dubai.

James, John, Henry and Tom are the directors of the company.

During the year 2000, the company took steps to insure some of its property and a proposal form was sent to the company by Kinga Insurance Company Ltd. John, who was the managing director, signed the form without reading the contents and the terms carefully. A fire has since destroyed part of the business premises. The company is seeking compensation from the insurance company who has denied liability claiming that the risk should have been specifically notified which was not the case.

Henry when signing an order form relating to a supply of spare parts, agreed to accept the goods by signing it for and on behalf of Weels Co. The transaction relating to the spare parts had not been agreed upon by the board of directors.

The stereo and speakers of Tom's car have not been in working condition for three months. Wheels Co. Ltd has a store where car spare parts and accessories are kept. Tom, without the directors knowledge and consent, takes a car stereo and a pair of speakers from the store and uses them to replace the ones in his car.

Karen a customer is interested in purchasing a car. She visits the company's yard and sees a car that she is interested in. She seeks assistance from one of the salesmen, who informs her that the car is a New 1998 model. She proceeds to buy the car but later discovers that the car is a 1995 model registered in 1998. She feels aggrieved, as she was under the impression that she was buying a 1998 model.

The company also customizes all their vehicles with signature blue tinted windows. James, one of the company's director who wishes to protect the company's signature blue tinted windows applied for a patent to the Registrar of patents, so as to stop other dealers from using the same. James application is rejected by the Registrar.

In light of the above scenarios and the relevant laws applicable, explain.

- (a) John's liability towards the company. (8 marks)
- (b) Explain the company's liability in respect of the contract relating to the spare parts. (8 marks)
- (c) Explain the intentions which may constitute theft with reference to Tom's actions. (8 marks)

- (d) In light of both consumer protection law and the Trade Descriptions Act, explain to Karen the legal principles applicable. (8 marks)
- (e) Explain to James the circumstances under which inventions are not patentable. (8 marks)

### SECTION B

Answer any **THREE** questions in this section.

2. (a) Kamau and his five friends are returning home late at night after working a late shift at a local factory. They decided to take a short cut through Njuguna's compound. Njuguna mistakes them for buglers and rushes out carrying a panga while raising the alarm. Kamau and his friends ran and tried to scale a wall but Kamau slips and falls. Njuguna proceeds to hack and seriously injure Kamau all over the body despite Kamau being defenceless and pleading his innocence.
- In light of the law of torts:
- (i) advise Kamau on the remedies available to him in tort. (4 marks)
- (ii) explain the defences Njuguna invoke if sued. (4 marks)
- (b) Weka Finance Ltd is a financial institution which carries on the business of accepting deposit and repaying public money on demand or at the expiry of a fixed period and employing such deposits on lending, investing or any other manner at the risk of the person depositing the money. Weka Finance Ltd has three directors, Wanyonyi, Wafula and Ndolo. The institution has not submitted an audited accounts of the institution for the past two years. The central bank of Kenya directs them to do so or have an auditor appointed by the Central Bank. Weka Finance Ltd appoints Wafula as auditor and soon presents to the Central Bank with the audited reports. In light of banking law, elaborate on the categories of persons not qualified for appointment as auditor of an institution. (12 marks)
3. (a) In relation to the Companies Act, explain six points of distinction between the Memorandum and Articles of Association. (12 marks)
- (b) Chibanda has worked for Mona Ltd for four years. He has been earning a basic salary of Ksh.50,000 per month plus other allowances. His annual salary increment is calculated at 5% of his basic salary. He has realised that with increased income, his tax liability has not only increased in absolute terms but also faster as a proportion of his income. Chibanda approaches you for legal advice on the following:

- (i) The type of tax being imposed on him. (2 marks)
- (ii) The classification of tax based on rates. (6 marks)
4. (a) Kioko is an officer working with the Ministry of lands. Muta, who has just bought a commercial plot in town needs to verify whether the documents relating to title to the land are in order approaches Kioko for assistance. Kioko hides the documents and demands money from Mutua to arrange for processing a new set of documents. Mutua is aggrieved and approaches you for legal advice. In light of criminal law, explain to Mutua the legal principles applicable. (12 marks)
- (b) Tamu Ltd is a company that manufactures soft drinks. It's registered trade mark is a bottle tilted slightly to the left. Kiiu Ltd is a new entrant in the industry and it introduces as its trademark, a bottle tilted slightly to the right. Tamu Ltd is aggrieved by Kiiu's action and approaches you for legal advice. In light of intellectual property law:
- (i) Explain the legal remedies that may be available to them in an action for infringement of their trademark. (8 marks)
5. (a) Manoti, a businessman enters into an agreement with Jipanga, a landlord, to rent a business premises, They sign a lease agreement, after which Manoti proceeds to open a stationary shop. When local government officials visit his shop and request for a trading license, Manoti claims that he does not need a license as he has already signed a lease agreement. The local government officials close down his business. Manoti is aggrieved by their action and seeks your advice.
- (i) Explain to Manoti the reasons which might have led to the closure of his business. (2 marks)
- (ii) Explain to him the distinction between a license and a lease. (12 marks)
- (b) In relation to the consumer protection law, explain the meaning and characteristics of labour as a factor of production. (6 marks)
6. (a) With reference to the Restrictive Trade, monopolies and Price Control Act, explain trade agreements which are regarded as restrictive to trade. (10 marks)
- (b) Kibet, a businessman commissioned swift liners, a shipping agency to carry fruits which he was exporting to Ukando, a foreign country. The fruits were packed in carton's as he could not get strong wooden crates. While on the high seas through no fault of the carrier, a fire broke out and destroyed some of the cartons. The ships crew who were on a go-slow due to alleged poor working conditions did not manage to put out the fire in time.

Kibet, who is aggrieved intends to sue swift liners and approaches you for legal advice.

In light of International Trade law:

- (i) State the legal principles applicable in this case. (8 marks)
- (ii) Advise Kibet. (2 marks)