

Name: _____ Index No. _____/_____

3806/104
LEGAL ASPECTS OF
BUSINESS MANAGEMENT
November 2015
Time: 3 hours

Candidate's Signature: _____

Date: _____



THE KENYA NATIONAL EXAMINATIONS COUNCIL
HIGHER DIPLOMA IN BUSINESS MANAGEMENT

LEGAL ASPECTS OF BUSINESS MANAGEMENT

3 hours

INSTRUCTIONS TO CANDIDATES

Write your name and index number in the spaces provided above.
Sign and write the date of examination in the spaces provided above.
This paper consists of **TWO** sections.
Section A is **compulsory**.
Answer any **THREE** questions from Section B in the spaces provided in this booklet.
Candidates should answer the questions in English.

For Examiner's Use Only

Section	Question	Maximum Score	Candidate's Score
A	1	40	
B		20	
		20	
		20	
Total Score		100	

This paper consists of 16 printed pages.

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

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Turn over

SECTION A (40 marks)

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

It is January 2014 and the momentum at Kanye Breweries Limited has almost ground to a halt. The company has been slammed with a law suit by one of the major brewing companies in Kenya. Chances of winning the case are rather slim and as a result, the firm is faced with a possible closure of the Kenya operation, its most profitable branch.

In the early 1980s, the brewing industry in Kenya was dominated by few firms. The firms were substantially large and historically oriented to meeting the needs of the middle class. This approach left out the mass market characterised by low disposable income individuals. Despite its low purchasing power, this market segment had a higher potential for consumption in greater volume of fairly priced alcoholic beverages.

The presence of large scale beer companies presented an insurmountable barrier in terms of capital outlay for new entrants into the brewing industry. Other impediments included consumer loyalty to existing brands, as well as a deterrent regulatory framework. Consequently, there were no operators providing options to the low income mass market.

Mr. Armstrong Kwani, a successful entrepreneur, was quite aware that this neglected mass market presented a business opportunity. He hatched the idea of setting up a brewing firm to cater for the mass market. He thus moved to Uganda from Kenya and founded Kanye Breweries Limited.

The entrepreneur had to find a way of circumventing the regulations and afford his new company a foothold in the beer industry in Kenya. He purchased the raw materials from the East African region. The raw materials were for his company's plant in Uganda. The various alcoholic drinks, which Armstrong had registered in Uganda, bore the trade mark KBL. Coincidentally, the initials KBL also stood for Kenatco Breweries Limited, a leading brewing company in Kenya. Before long, Kanye Breweries Limited low quality alcoholic drinks found their way into the Kenya market.

The trade mark, KBL, made them readily acceptable and they even fetched a higher price than their third generation counterparts that had proliferated the market. A recent presidential directive in Kenya led to the closure of third generation alcoholic drinks outlets. Thanks to the trade mark KBL, Kanye Breweries Limited's low quality alcoholic drinks were spared in the crackdown. Thus the firm has become an overnight monopoly, dealing in third generation alcoholic drinks.

Now, to take full advantage of the vast market, Armstrong undertook to bring his company into compliance with the law of the land. He began by appointing Mr. Mambo as company secretary. Mr. Mambo had previously worked as an untrained teacher. He was halfway through with the certified secretaries professional examinations. On appointment, he promised to complete the examinations and obtain a professional practice certificate.

Taxation was another issue that Armstrong needed to address. In the past, the company had prepared two sets of books of account; one set reflected the true status of the company's financial situation, while the other one constituted window dressed accounts to dupe the taxman.

Additionally, Kanye Breweries Limited was keen to resolve all pending litigation against the company. It instructed the company's advocates to find a way of settling the various suits out of court. A major case involved a class action in which a number of young men who claimed to have turned blind after consuming alcoholic drinks manufactured by the company had filed a case in the High Court of Kenya. The litigants sought to recover damages under the doctrine of strict liability. The suit had attracted a lot of public interest and Armstrong feared that success by the plaintiffs would open the pandora's box, just when the firm's star had started to rise.

Before the clean-up could begin, the management of Kenatco Breweries Limited, a long established Kenyan company, realised that they have a similar trade mark to that of Kanye Breweries Limited. Indeed, Kenatco Breweries Limited established through research that customers believed that all products with the KBL trade mark were from them. The company has sued for infringement of its trade mark. Given the financial muscle and the political and social goodwill enjoyed by Kenatco Breweries Limited, Armstrong is disheartened but is putting on a brave face.

- (a) Explain **five** reasons that make Mr. Mambo unsuitable for the position of the company secretary. (8 marks)
- (b) In relation to the Income Tax Act, outline the offences that the Kanye Breweries Limited may have committed. (12 marks)
- (c) Explain the conditions that should be fulfilled in order for the young men suing Kanye Breweries Limited to succeed under the doctrine of strict liability. (10 marks)
- (d) Outline the particulars that the Kanye Breweries Limited's trade mark must have contained to make it registratable. (10 marks)

SECTION B: (60 marks)

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

2. (a) In respect to International Trade Law, outline **six** activities undertaken in an export transaction. (12 marks)
- (b) Explain **four** types of business crimes that may be committed in an organization. (8 marks)
3. (a) (i) In relation to the law of taxation, explain the meaning of residence of an individual. (4 marks)
- (ii) Explain **three** ways in which residence affects tax liability of an individual. (6 marks)
- (b) Mwajuma purchased a remote controlled toy car from a supermarket for her son, Juma. While Juma was playing with the toy car, he suffered injuries which were as a result of mechanical defects in the toy car. Mwajuma is aggrieved and intends to sue the supermarket in tort. Explain the legal principles applicable in this case. (10 marks)
4. (a) Explain the factors that should be considered before a banking business licence is granted. (10 marks)
- (b) Explain **five** characteristics of a copyright in relation to intellectual property law. (10 marks)
5. (a) Steve Harrison is a demolition worker who has been engaged by Titus Mwadime to bring down a building which has been condemned as uninhabitable. In the course of his work, Steve injured Tito Bahiti, a fellow worker, almost severing his arm. Waringo Rocho, a passerby, saw the almost severed hand and then suffered a nervous shock. Explain the legal principle in this case. (10 marks)
- (b) Explain options available to a bank with regard to security for a loan in the event that a business is unable to repay the loan. (10 marks)
6. (a) A restrictive trade agreement is deemed to be contrary to public interest unless it satisfies certain conditions. Explain **five** such conditions. (10 marks)
- (b) Outline the advantages of registering an invention in the context of intellectual property. (10 marks)