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CPA PART I SECTION 1

CS PART I SECTION 1

CCP PART I SECTION 1

COMMERCIAL LAW

MONDAY: 21 May 2018.

Time Allowed: 3 hours.

Answer any FIVE questions.

ALL questions carry equal marks.

**QUESTION ONE**

- (a) With specific reference to sources of law:
- (i) Explain three advantages of an unwritten constitution over a written one. (6 marks)
  - (ii) Distinguish between "obiter dicta" and "ratio decidendi". (4 marks)
- (b) Highlight six differences between a "co-operative society" and a "partnership". (6 marks)
- (c) Highlight four consequences of incorporation of companies. (4 marks)
- (Total: 20 marks)**

**QUESTION TWO**

- (a) Highlight six functions of the judiciary in your country. (6 marks)
- (b) With regard to the doctrine of separation of powers, state four functions of the executive. (4 marks)
- (c) One of the important legal maxims in the application of the law of agency is expressed as: "A delegate cannot further delegate".

In relation to the above statement, discuss five circumstances under which an agent might appoint a sub-agent.

(10 marks)

**(Total: 20 marks)**

**QUESTION THREE**

- (a) In relation to the contract of sale of goods:
- (i) Explain three categories of unascertained goods. (6 marks)
  - (ii) Explain the meaning of the term "resale". (2 marks)
  - (iii) State four circumstances when the unpaid seller might exercise the right of resale. (4 marks)
- (b) Discuss four areas of jurisdiction of the Environment and Land Court in your country. (8 marks)
- (Total: 20 marks)**

**QUESTION FOUR**

- (a) Enumerate four rights of an indemnity holder in a contract of indemnity. (4 marks)
- (b) State six circumstances under which a contract of guarantee might be declared void. (6 marks)
- (c) Ken Jembe advertised the sale of his farm. He was approached by Peter Potea who wanted to buy the farm. In the course of negotiating the price, Peter Potea asked Ken Jembe how many sheep could be reared on the farm. Ken Jembe replied, "I have not used the farm for sheep rearing but I think it could support 2,000 sheep". Peter Potea bought the farm and immediately purchased 2,000 sheep to rear on it. However, the farm was unable to accommodate the sheep and Peter Potea is aggrieved. He intends to sue Ken Jembe for misrepresentation.

Advise Peter Potea.

(10 marks)

**(Total: 20 marks)**

**QUESTION FIVE**

- (a) (i) In relation to the law of property, distinguish between “joint tenancy” and “tenancy in common”. (4 marks)
- (ii) Enumerate six lawful ways through which a person might acquire property other than by purchase. (6 marks)
- (b) With specific reference to the tort of trespass:
- (i) Identify two types of trespass to goods. (2 marks)
- (ii) Discuss four defences available under the tort of trespass to goods. (8 marks)
- (Total: 20 marks)**

**QUESTION SIX**

- (a) Summarise four conditions that must be met before a partner in a firm could bind other partners in transactions with third parties. (4 marks)
- (b) Explain three obligations of a partner to his/her fellow partners. (6 marks)
- (c) Under the Hire Purchase Act, certain provisions are deemed void if contained in the hire purchase agreement. With reference to the above statement, explain three such provisions. (6 marks)
- (d) Identify four branches of civil law. (4 marks)
- (Total: 20 marks)**

**QUESTION SEVEN**

- (a) (i) Highlight five duties of an insurer in a contract of insurance. (5 marks)
- (ii) State five ways through which an insurance contract might be terminated. (5 marks)
- (b) Explain two circumstances under which a party might challenge an arbitral award in the High Court. (4 marks)
- (c) Summarise three ways of terminating a banker-customer relationship. (6 marks)
- (Total: 20 marks)**
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