



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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MAY – JULY 2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

210: COMMERCIAL LAW II
(Bankruptcy and Commercial Securities)

Date: JULY 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

Q1. Anne Tiringa has been charged with illegally transferring five million dollars from the NYS (her employer) to a German bank account jointly held with Adolf Panzer the new boyfriend. Nevertheless the DPP has obtained a court order permitting the Government of Kenya to freeze her assets (local and foreign) pending resolution of the corruption matter.

This couple has now instructed your legal firm to file two (2) bankruptcy petitions (in Kenya and Germany) with the goal of shifting their assets beyond reach of this freezing order.

Provide a critical analysis of the bankruptcy issues and bankruptcy principles applicable in this matter in accordance with the Insolvency Act No.18 of 2015 (Laws of Kenya). **(30 marks)**

Q2. Discuss the definition and usage of any one (1) of the following concepts:

- Act of Bankruptcy;
- Insolvency Practitioner;
- Receiving Order
- Public Examination of the Debtor.
- Discharge of Bankrupt.

(20 marks)

Q3. Provide two (2) similarities and two (2) differences between debtor and creditor petitions under the new Insolvency Law of Kenya (Act 18/2015). **(20 marks)**

Q4. Discuss two (2) similarities and two (2) differences between Chattels Mortgages and Loan Mortgages under the laws applicable in Kenya today. **(20 marks)**

Q5. Last October 2017, Katibu Minista obtained two (2) bullet-proof Prados valued at fifty (50) million shillings from Dala Motors with a down-payment of ten million shillings and the balance payable by annual instalments over the next four (4) years. Katibu Minista was however declared bankrupt two months ago (June 2018) and the Official Receiver has now advertised the sale of his assets (including the two cars).

Describe the rights and obligations of both Katibu Minista (bailee) and Dala Motors (bailor) as per the hire purchase law applicable in Kenya today. **(20 marks)**

END