

CHUKA UNIVERSITY
MAIN EXAMINATION
JANUARY - APRIL 2023 ACADEMIC YEAR
DEPARTMENT OF LAW
BLAW 223– LAW OF BUSINESS ASSOCIATIONS II

APRIL 2023

DURATION: 2 HRS

INSTRUCTIONS

Question ONE is COMPULSORY and answer any other two questions.

QUESTION 1

Shane, Patty and Danny are friends who decided verbally to construct a commercial building on a plot owned by Patty. Danny who is a contractor agreed to construct the building, while Shane who is a real estate agent agreed to secure financing for the project and market the property once it is completed. Each friend handled their responsibility without exchanging any monies. The friends agreed that their contributions to the project was equal and that each would be entitled to a third of the gross proceeds. The property remained in the name of Patty, whereas the contract for materials and labour was executed by Danny. Shane managed to obtain financing through an unsecured loan in her name. The project began and was progressing well at first. However, the construction costs exceeded the project financing once the basic structure was up, and as a result, the suppliers and sub-contractors were not paid.

a) Critically discuss:

- i) Whether a partnership exists between the friends, relying on the provisions of the Partnership Act 2012 and relevant case law. (8 marks)
- ii) Situations in which the Partnership Act 2012 does **not** deem persons to be carrying on business together. (8 marks)

b) Elaborate on the situations in which a partnership may be dissolved

- i) Without a Court Order (7 marks)
- ii) By the Court (7 marks)

QUESTION 2

Kasembeli is a dairy farmer at his Namanga farm. He is a member of Namanga Dairy Farmers' Cooperative Society Ltd. In January 2022, Kasembeli entered into an agreement with Munialo to carry on a dairy project in Namanga. Kasembeli was to finance the start up of the business while Munialo was to use his managerial skills to manage the project. The income from the project was to be put into a joint bank account in which the two were signatories. In May 2022, Munialo suggested to Kasembeli that they join Ushindi Dairy Farmers' Savings & Credit Cooperative Society Ltd. In the same month, Kasembeli borrowed Ksh 600 000 from Namanga Dairy Farmers' Cooperative Society Ltd, which was guaranteed by Mumali, another member of the society. In August 2022, Kasembeli became insolvent and filed a notice to suspend payment of all his debts.

Advise:

- a) Kasembeli on whether he can be a member of Ushindi Dairy Farmers' Savings & Credit Cooperative Society Ltd. (6 marks)
- b) Kasembeli and Munialo as to whether there is a partnership agreement between them. (8 marks)
- c) The effect of Kasembeli's insolvency and subsequent bankruptcy on Mumali and Munialo. (6 marks)

QUESTION 3

Relying on the provisions of the Cooperative Societies Act (2005 revised edition), critically discuss:

- i) the circumstances in which cooperative societies may be dissolved. (8 marks)
- ii) The powers of the liquidator during dissolution (12 marks)

QUESTION 4

Using relevant case law and provisions of the partnerships Act 2012, critically elaborate on:

- a) Liability of Partners (10 marks)
- b) Rights & Duties of Partners (10 marks)

QUESTION 5

Write explanatory notes on:

- a) Partnership Property (5 marks)
- b) Dormant Partner (5 marks)
- c) Implied Authority of a Partner (5 marks)
- d) Capacity to enter into a Partnership (5 marks)