The Management University of Africa

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UNDERGRADUATE UNIVERSITY EXAMINATIONS

SCHOOL OF MANAGEMENT AND LEADERSHIP

DEGREE OF BACHELOR OF ARTS IN DEVELOPMENT STUDIES

BDS 102/BDS 324: LEGAL ASPECT OF DEVELOPMENT

DATE: 8TH APRIL 2024

DURATION: 2 HOURS

MAXIMUM MARKS: 70

INSTRUCTIONS:

1. Write your registration number on the answer booklet.
2. **DO NOT** write on this question paper.
3. This paper contains **SIX (6)** questions.
4. Question **ONE** is compulsory.
5. Answer any other **THREE** questions.
6. Question **ONE** carries **25 MARKS** and the rest carry **15 MARKS** each.
7. **Write all your answers in the Examination answer booklet provided.**

QUESTION ONE

Read the Case Study below carefully and answer the questions that follow:

PINNACLE HOSPITAL

Dr. Maxwell sold his medical practice to Pinnacle Hospital in January 2018. Under the agreement, he became an employee of the hospital earning a gross salary of Kenya Shilling One Million per month. The agreement was for a period of five years from 2023 to 2027. Dr. Maxwell surrendered the databse of all patients and agreed that he would not solicit or compete with the hospital . The contract also provided that Dr. Maxwell would be paid the sum of Kenya Shillings Ten million for the practice.

Two years later, Dr. Maxwell informed Pinnacle Hospital that he was terminating his employment because the hospital had failed to pay the money it owed him under the agreement. Dr. Maxwell also filed a civil case against Pinnacle Hospital at the High Court of Kenya where he sought an injunction to prohibit Pinnacle Hospital from enforcing the terms of the agreement, especifically the noncompete and nonsolicitation clauses.

Pinnacle Hospital then learned that Dr. Maxwell had begun opeating a competing practice in the same building and was treating his former patients there. By opening an office in the same building, Dr. Maxwell was also taking advantage of the good will that the community associated with his name. Dr. Maxwell's following was greatly affecting the hospital's profits.

The Directors of Pinnacle Hospital held an urgent board meeting at the hospital. The meeting resolved that the hospital should file a suit against Dr. Maxwell. In the suit, Pinnacle sought a temporary injunction seeking to restrain Dr. Maxwell from continuing to practice medicine within a 10km radius of the hospital. Pinnacle also asked the Court to order Dr. Maxwell to collect the money they owed him.

Required:

a) In reference to remedies for bearch of contract, differentiate between liquidated damages and an injunction. **(5 marks)**

b) Briefly explain any **five** elements of the agreement signed by the Pinnacle Health Hospital and Dr. Maxwell. **(10 marks)**

c) Briefly explain any **five** duties of Directors of Pinnacle Hospital. **(10 marks)**

QUESTION TWO

a) Elaborate any **five** functions of business regulations in Kenya. **(5 marks)**

b) Merali instructed Wambua, a shop attendant to sell goods only using cash. In February 2023 while Merali was away on a business trip, Wambua sold goods worth Kshs 50,000/= to a customer on credit. The customer later failed to pay for the goods on the agreed date. Advice Merali on whether Wambua is liable to pay the money. **(10 marks)**

QUESTION THREE

a) Briefly explain the legal implication of contracts signed by mentally impaired and intoxicated persons. **(6 marks)**

b) Critically discuss any **three** types of authority exercised by a partner in a partnership firm. **(9 marks)**

QUESTION FOUR

a) A plaintiff, an associate member of Women League filed a claim for defamation against the Defendant for making ethnic slurs about the group. Advise the

Defendant on the legal requirement under the law of defamation and whether the plaintiff is entitled to damages. **(6 marks)**

b) Edwin appointed Anderson as his sales representative in Nairobi. Enumerate any **three** duties that Edwin owes Anderson as his agent. **(9 marks)**

QUESTION FIVE

a) Briefly explain any **three** formalities required for a valid will in Kenya. **(6 marks)**

b) Bob stole an iPad from Asenath and sold it to Michael for Kshs 20,000/=

i. Briefly explain whether Asenath can recover the iPad from Michael. **(3 marks)**

ii. Elaborate any **three** circumstances when Bob can transfer a voidable title to a buyer under the Sale of Goods Act. **(6 marks)**

QUESTION SIX

a) Describe any **three** elements of a crime in criminal law in Kenya. **(6 marks)**

b) Critically analyse any **three** impossibilities that leads to non-performance of a contract. **(9 marks)**