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Questions.

	Page
Test Paper 1 June 2019…….	1
Test Paper 2 December 2020……..	6
Test Paper 3 October 2021……..	10
Test Paper 4 December 2021……..	15
Test Paper 5 June 2022…..…….	19
Test Paper 6 December 2022..……	24
Test Paper 7 May 2023…….	30
Test Paper 8 November 2023……..	36
Test Paper 9 May 2024……	42
Test Paper 10 December 2024……	47

Answers.

	Page
Test Paper 1 June 2019……..	53
Test Paper 2 December 2020……..	61
Test Paper 3 October 2021……..	69
Test Paper 4 December 2021……..	76
Test Paper 5 June 2022…..…….	83
Test Paper 6 December 2022..……	90
Test Paper 7 May 2023…….	98
Test Paper 8 November 2023……..	106
Test Paper 9 May 2024…….	114
Test Paper 10 December 2024……	123



Questions

TEST PAPER 1
CTA MAY 2018

Attempt four of the five questions

Question 1

Wandera, a Kenyan and Ouma, a Ugandan, live at the border town of Busia. Armed with 2 SMG automatic rifles and pangas, they broke into Biddi Sacco offices and stole Uganda Shs 100 million. As luck was not on their side, they unknowingly dropped their identification documents in the Biddi Sacco offices. They were arrested and taken to Busia Police Station. Since Mr. Kagoda, the Sacco Manager was only interested in the recovery of the money, and the suspects had shown willingness to refund the money, the elders and Local councilors have requested the O.C CID to apply the Samia traditional rules and procedures of reconciliation and compensation. The OC CID is skeptical about the request.

In another development, Okot a prominent and well known businessman in Pachi town, ordered from Maani, a businessman in Kamwe, for two lorries of water melons worth Uganda Shs 5 million.

Koti, a shop attendant in Okot's shop eavesdropped heard a phone conversation between Okot and Maani, as Okot's mobile phone was on loud volume. Koti travelled to Kamwe the next day and introduced himself to Maani. He showed Maani his National ID which read Koti, and Maani mistakenly believed him to be Okot with whom he was dealing with in the watermelon business. Koti deposited Shs 500,000 and they agreed that Shs 4,500,000 would be paid on delivery of goods in Pachi. Maani allowed Koti to take the two lorries of watermelons. Koti sold the watermelons at Kirya town, before reaching Pachi town.

The next day, Okot called Maani to confirm the payment and delivery of the watermelons in Pachi town. Maani then told Okot that he (Okot) had taken the watermelons the previous day but Okot informed Maani that he had not travelled away from Pachi town for any business since their telephone conversation.

In another scenario, Munta constructed an apartment in Jera town. Bayo an accountant with BF Bank rented the apartment and painted it with weather guard paint at his own cost. Since Munta and Bayo were good friends, they found no need of making a written agreement. Six months later, Bayo was sacked from BF Bank and consequently failed to pay rent. Munta tried to evict him but Bayo refused to give vacant possession, arguing that there was no written agreement outlining details about rent.

In yet another scenario, Tugu a resident of Namu village owns a private mailo land of Kyadondo Block B, plot A. He constructed a commercial building called Tugu Commercial Plaza. He established gardens of cabbages, cassava and yams on one part.

Muyaye who purports to be working with Buganda Land Board now wants Tugu to pay ground rent, arguing that all mailo land in Buganda belongs to the Kingdom. Tugu has refused to pay.

Required:

Raise issues and resolve them

(Total 25 marks)

Question 2

Milky Ltd deals in dairy products. The company off loads dairy products into its retail shop every morning before 6:00 a.m.

One day, the delivery van arrived late and off-loading went beyond 6:00 a.m. On the same morning, Kinomu, together with her 4 year old son, approached Milky Ltd's shop to buy milk. The floor of the main area was being mopped and a large sign of "cleaning in progress" was at the main entrance of the building. When Kinomu and her son reached the shop entrance, Kinomu suddenly slid and fell. Her leg got injured and her reading glasses broke.

It transpired that 2 packets of yoghurt had spilled on the floor when products were being carried into the shop. The yoghurt had fallen behind the open door and slowly spilled towards the entrance of the shop. When Kinomu fell, the manager of Milky Ltd led her son from the traumatising scene to the room next to the shop, where old, empty packages were given to him to play with. Unknown to the manager, the packages had metallic objects which cut and injured the boy's hands. Kinomu is convinced that the company was careless and now wants it to cater for the injuries sustained by both of them. Milky Ltd has denied responsibility for the injuries because Kinomu should have been more careful, and the company never invited her and her son to their premises at that time.

On many occasions, Milky Ltd ordered for dairy products from Abaca Dairies through Byona Enterprises, which sometimes delivered the dairy products to Milky Ltd's shop. Milky Ltd always cleared the purchase price for Abaca Dairies upon delivery of the dairy products to its shop. One time, Byona Enterprises got products worth Uganda Shs 500,000 from Abaca Dairies and loaded them as usual on its vehicle, but never delivered them to Milky Ltd. Byona Enterprises had not informed Milky Ltd about the loading of the products and did not inform Abaca Dairies that the products were not for Milky Ltd.

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Two weeks later, Milky Ltd received a demand note from Abaca Dairies for payment of Shs 500,000 but Milky Ltd refused to pay, claiming that it never ordered Byona Enterprises to carry out that transaction. It was later discovered that Byona Enterprises had closed and no former employee of the Enterprise was anywhere to be seen.

Required:

Raise all issues involved and resolve them

(Total 25 marks)

Question 3

Lumonde Ltd deals in making and selling Irish potato chips. Following its recent Annual General Meeting (AGM), it was discovered by Bizi, a shareholder, that Zaka, the company director, had prevented the filing of the company's annual returns on the ground that it would expose company secrets.

Bizi, who was critical on how the company affairs were being conducted, discovered that the dividends at the AGM had been declared out of proceeds from the allotted and paid-up shares to raise capital. Zaka confirmed that the company had spent all its profits on administrative expenses, without the consent of the shareholders. He, however, argued that the dividends declaration had been made in good faith to motivate the shareholders. Bizi feels that Zaka had mismanaged the company affairs.

In another development, Mudo, a reknown importer and exporter of goods from South Africa, contracted DCI Ltd for transportation by ship, delivery to be on or before 20 June 2017. One of the terms of agreement was that "time was of essence" as the goods were wanted for mid-year exhibition at Mugogo Hall, between 25 to 30 June, 2017. Due to overwhelming demands for transportation services, the shipment of goods was delayed for 2 weeks. Additionally, mechanical faults of the ship resulted into a further delay of two more weeks, after closure of the exhibition. Although Mudo had accepted to receive the goods, he is demanding for damages from DCI Ltd because he missed the exhibition.

In a related event, Mudo is also conflicting with FF Ltd from which he had bought 400 cartons of apples. The apples had been declared fit for human consumption by health officials in South Africa, and they were carried on the same ship of DCI Ltd. In the contract made with FF Ltd, the apples would be in a good consumption state for at least 3 months after departure from the seller. However, on arrival to Uganda, the apples were condemned as unfit for human consumption by the standards authority. Mudo informed FF Ltd about it but FF Ltd has denied any liability.

Required:

Raise and resolve all the issues arising from the facts.

(Total 25 marks)

Question 4

Katta is employed as a machine operator at BTS Ltd. The company deals in metal fabrication. The machine operators produce hot metal products. BTS Ltd provides its workers with over-all clothes, boots, sunglasses, and hard plastic gloves. The company deducts Shs 10,000 every month from Katta's salary for the equipment provided by the company. BTS Ltd justifies the deduction basing on high costs of machinery and high power tariffs. Katta's complaint about the deduction compelled management to convene a meeting of all workers. At the end of the meeting, Katta was issued a dismissal letter. All other workers were warned against complaining about flimsy issues.

In another incident, Farmers Sacco bought land from Oma, situated at Soro road, Plot 120. When Farmers Sacco started developing the land, they were stopped by Erongot, who sued the Sacco for trespass. He sought a court declaration that he was the registered owner of the land. Lawyers for both parties have opted for alternative dispute resolution and the Assistant Registrar of the High Court has been appointed to mediate in the matter. The Assistant Registrar has given a limit of 30 days to conclude the mediation hearing. Erongot's lawyer is, however, of the view that the period given is inadequate to gather all necessary evidence.

In another scenario, Musa who is employed by K.M Dairies has, of late, revealed a lot of commercial secrets of K.M Dairies to Saku Dairies. This has infuriated Mr. Kaamu, the manager of K.M Dairies, who would like to sue Musa but does not like court process. He is now seeking for an alternative process.

Required:

Raise the relevant issues and resolve them.

(Total 25 marks)

Question 5

Vilungu Ltd has been in existence for over three years. Initially, the company's performance was good but for the last two years, it has gone through many challenges.

Nzale works as a secretary in the company. Last year, she was given a maternity leave for 45 days following her delivery. Due to complications of delivery, she requested for more days of leave but they were not granted. She was told to choose between resigning and taking only the leave days that had been granted to her.

Another employee, Zipa, a mechanic, who has worked in the works and repair department for a year has never received guidelines about his work nor further

training. The department workers were only given overalls for work to protect their clothes from grease and dirt. One day while Zipa was repairing of a machine, his left eye was hit by a flying piece of metal. Due to the intense pain he felt, he accidentally touched some corrosive chemical with his bare hands. The chemical poured onto some new spare parts belonging to Rock Metal Works, a long-time customer of Vilungu Ltd. The chemical damaged the parts. Zipa was taken to hospital for treatment. On recovery, Zipa anticipated to receive compensation for all damages. He was informed that it was his careless action that had resulted into the damage of the parts, for which Rock Metal Works is now demanding replacement.

In an effort to overcome liquidity challenges, Vilungu Ltd decided to sell its piece of land to Yokya, a real estate developer. Vilungu Ltd's representative informed Yokya, that the land was a prime piece of land and suitable for real estate development. Subsequently, Yokya agreed to buy the land, signed a contract and paid half of the purchase price. However, Yokya returned two days later after it had rained intensively. He complained that the land was actually a wetland and not suitable for real estate development. He claims that he was tricked to sign a contract for the purchase of land.

Required:

Raise relevant issues and resolve them.

(Total 25 marks)

Attempt four of the five questions

Question 1

Songambere Ltd carries out business of fish sales. The business has been progressing well for a number of year however, recently the company started experiencing some challenges.

At one occasion, a company vehicle overturned and the fish fell onto the property of Gambo. Some passersby looted most of the fish but a mound of broken pieces of fish remained on Gambo's land. After 3 days, a strong stench filled the air. Despite Gambo's demand that Songambere Ltd removes the fish, the company has ignored him. Gambo has now decided to sue the company in the Court of Appeal for what he believes was a crime committed against him and his family. He has approached you for guidance on the matter, including the procedure he can use for the best results.

In one of its business deals, Songambere Ltd had hired Tikka Ltd to deliver fish by boat to a fish market. Ordinarily, such a delivery takes 2 hours. Tikka Ltd was aware of the Wednesday fish market that the fish had to be there by 4:00 p.m. However, Tikka company boat set off at 5:00 p.m. when all potential good customers had gone. Songambere Ltd lost profits of Shs 4 million as result of selling off the fish at very low prices.

It later on emerged that Tikka Ltd's boat had made a detour for its company business before delivering the fish. As fate would have, strong winds forced the boat to anchor and wait as the waves toned down, before delivering the fish. Tikka Ltd insists that what happened was an act of God, where the strong winds prevented timely delivery of the fish. Songambere Ltd is convinced that Tikka Ltd did not fulfill its duty, so it is seeking for your advice.

In yet another scenario, on one Monday morning, Birebe approached Songambere Ltd which had offered to sell old containers used in the fish business. Birebe was told to write and address a letter of acceptance to the management of the company. Birebe wrote the letter the next day, and immediately posted it to the company. When Songambere Ltd did not get any communication from Birebe after two days, it sold the containers to another person on Wednesday afternoon. However, Birebe arrived at the company offices on Thursday morning to receive the containers, but was informed that it was too late for him to purchase them. Birebe is not convinced with the company's response and insists on pursuing the matter.

Required:

Identify the relevant issues and resolve them. **(25 marks)**

Question 2

Twenty years ago, Singh, a German national arrived in Uganda in search of greener pastures. He is an expert in electronic technology. 10 years after expiry of his contract, he decided to remain in Uganda. He now knows the Luganda language and has been given the name, 'Kiwanuka'. Recently, he bought a freehold titled land in Busiro from Machati but he is facing challenges.

Upon presentation of a duly signed transfer forms and receipts of payment of relevant fees for registration, he was informed that he was legally barred from purchasing the land, given the nature of its tenure.

Machati who had sold the land to him, learnt about the challenges faced by Singh. He thereafter sold the same land and executed a transfer to Ntono a Ugandan member of parliament. Subsequent to the transfer of the land into her name, Ntono faced resistance from tenants who were occupying the land at the time Machati bought it from the Land Authority (LA).
The conditional page for the land title read as follows:

(a) Use restricted to residential.
(b) Tenants, if any, to be compensated.

It transpired that while Machati was driving his Prado TX, he received a call from Ntono to solve the problem of tenants or else he faces jail on top of refunding the money advanced. In a panic, the car which he was driving with one hand swayed and knocked Zuni, who was walking along the road as a pedestrian. Zuni sustained injuries on both legs.

In the meantime, Ntono is also facing another challenge. Pastor Bata recently established a wooden-built church next to her home. Bata's followers pray at the top of their voices using strong loudspeakers from 7.00 pm until morning. As a result of the noise from the church, Ntono's performance in Parliament has been affected. Most of the time, she dozes and does not contribute to discussions. She now wants to sue Pastor Bata's church.

Required:

Raise and resolve all the issues arising from the facts. **(25 marks)**

Question 3

Bakanto, a businessman in Mbale, employed his friend, Oga, to purchase for him bicycles. They were to be supplied to one of the newly created district local government not later than 15 February, 2018. He knew Oga as an honest, good negotiator and shrewd businessman. Moses Matu, the Local Council V Chairman, of the newly created district who does his programmes on time, wanted to deliver the bicycles to Local Council I (LC I) Chairmen as scheduled.

Oga purchased the bicycles from Shah in Nairobi, Kenya at a reasonable price on behalf of Bakanto. He made an advance payment and loaded the bicycles on a train to Kampala. The train arrived late and the bicycles reached the district headquarters on 20 February 2018. By the time of delivery, the district local government had cancelled the order, due to the delay. Consequently, Bakanto refused to receive the bicycles, arguing that Oga was responsible for the delay which resulted into cancellation of the order. Bakanto immediately revoked the agency, disregarding the fact that Shah is demanding for his money from Oga. Oga is confused and needs advice.

In another development, Amandi owns a wholesale shop on Adumi Avenue in Arua municipality. He sells bitenge clothes, second-hand clothes and generators, all imported from the Democratic Republic of Congo. His friend, Mbode, a businessman in Kampala and a customer for over 10 years, recently ordered for 200 bales of second-hand clothes at a total cost of Shs 200 million. He paid an installment of Shs 50 million, and the balance was to be paid at the time of delivery.

Mbode received the 200 bales of clothes and loaded them on a truck. As he was about to set off, it was reported on various radio stations that the High Court in Kampala had declared Mbode insolvent. Amandi stopped movement of the truck and returned the goods into his possession. He informed Mbode that the goods would be resold if the balance due was not paid within a week's time. Amandi sold the goods after ten days had elapsed. Mbode's trustee in bankruptcy is now ready to pay the balance and is demanding for the goods from Amandi.

Required:

Identify and resolve issues. **(25 marks)**

Question 4

Mpozi Ltd was incorporated in 2017 with the help of Lwana. Lwana assisted in preparing documents, securing capital and directors for the company. Among other things, Lwana had borrowed money from Kapo, on the understanding that when the company stabilises, all the money would be paid.

On incorporation of the company, Lwana informed the directors about the money he had borrowed and they adopted the debt, on behalf of the company. Meanwhile, it transpired that the company had overspent in preparation to commence business. Therefore, no money has been paid to Kapo to-date. Lwana has now presented a demand note from Kapo but the directors are skeptical about payments, which they view as pre-incorporation concerns of Lwana.

Mpozi Ltd recently held a general meeting in which the shareholders got concerned about the way directors conducted business. In the meeting, Fudu a member, sent a representative who was not a member of the company, but was

given authority by Fudu to handle matters on his behalf. Fudu later learnt that his representative was denied an opportunity to make contributions to the discussion on his behalf. According to the chairman of the meeting, non-members are not permitted to deliberate on company matters.

Other concerns in the company were about employment issues. Zaidi who had worked for the company since incorporation, had been redundant for 3 months. He had learnt that this was a deliberate strategy used by the directors so that they would report a need to lay off some employees. However, the department where Zaidi is deployed is overloaded with work. When he complained about his situation, Zaidi was told that he has no room for complaint.

Prior to Zaidi's ordeal, Meno had received a dismissal letter on grounds that as a store manager, he had not handled his work well. According to Meno, the letter referred to an instance where some missing items from the store had, in fact, been used by the directors in their meeting. Apart from that incident, there had been no loss or mishandling of work in the stores at any time in the last 14 months. Lwana, Kapo, Fudu and Mpozi Ltd employees want advice concerning their situations.

Required:

Raise all relevant issues and resolve them. **(25 marks)**

Question 5

Tabora is a business man in Kono town. His son Rapo, who is 15 years old, is a day scholar, studying in Kono Town College. Rapo rides his bicycle to school every day. One day, he parked the bicycle by the road side, from where a speeding hit and run motor vehicle knocked it beyond repair. At that time, Tabora was on a business tour to China, where he spent two months. Rapo was writing his S.4 exams and badly needed transport. He bought a sports bicycle on credit from Fula, who knew him and his father very well. Rapo pledged that his father would pay the Shs 200,000 they agreed upon.

When Tabora came back, he declined to pay for the bicycle arguing that:

(i) Rapo was below 18 years and as such, he was not in position to contract.
(ii) The price for the bicycle was not adequately matching the market price.

Fula took the matter to the High Court (Commercial Division) and all pleadings were filed. A year has passed without any action taken by court.
When Fula visited court to find out the progress, he was referred to a police commander, for Alternative Dispute Resolution (ADR) by Malewa, who claimed to be a court clerk.

Required:

Raise and resolve all issues arising from the facts. **(25 marks)**

Attempt four of the five questions

Question 1

Mutega is the Local Council (LC) I Chairman of Balefu village, where many parents are in the habit of not sending their children to school. The children spend their days in gardens with their parents. This concern was discussed in the local council meeting. The Council thereafter passed a by-law for the village, signed by Mutega the chairman, compelling all parents in the village to take their children to school. When the residents heard about the by-law, they all decided to resist it. They argued that the Local Council had no powers to enforce such laws on them.

Dalu, one of the residents in Balefu village, has decided to file a criminal suit against Mutega, the Council chairman. According to Dalu, Mutega committed a crime when he allowed such high-handed decisions of the Council, to use excessive power.

In another incident, Bekyo contracted with his uncle Mbazi to supply water to his home every week, for which Shs 7,000 would be paid per week. Bekyo had mental disability, although his disability occurences were not frequent. It was for this reason that it was agreed that Mbazi pays Bekyo at the beginning of every week, to ensure Bekyo's stability throughout the week. Last week, Bekyo failed to supply water to Mbazi's home. Mbazi went to Bekyo's home demanding for the agreed services but Bekyo was hidden by his mother. She told Mbazi that he was such a shameless uncle, who had no pity on a sick man. Mbazi insisted that Bekyo had contracted to supply water when he was of sound mind and there was no reason why he could not perform his duties as agreed.

When Bekyo heard the loud arguments between Mbazi and his mother, he emerged from his hideout and told Mbazi that he had nothing to do with that contract anymore. He said that he had been persuaded by his other uncle and mother to contract with Mbazi, in order to earn some money for food at home. Mbazi still insists on performance of the contract.

Required:

Raise the relevant issues and resolve them. **(25 marks)**

Question 2

Mure is a registered proprietor of land registered in Mailo register Block 189 Plot 2426 situated at Namatale and measuring 80 hectares. He has been living on this land with his family and other people. Among the people he was staying with, was Batogo, aged 50. Batogo started staying with Mure 25 years ago and used to work as a shamba boy on Mure's farms. Batogo was very well behaved and Mure decided to reward him with 2 hectares of land in 1994 and told him to use it for growing crops, since he had a wife and family.

Batogo lived peacefully on the land of his boss until Mululu, the son of Mure, who was a lawyer by profession, advised his father to evict Batogo. Mululu's reason was that Batogo was a threat, and was likely to take over their land. Mure heeded the advice of his son and ordered Batogo to vacate his land.

In another instance, Ndolo, one of the people staying on Mure's land, entered into a lease agreement with Mure. According to the lease agreement, Ndolo was to occupy and use 8 hectares of land for grazing sheep and planting some perennial crops. Later on, Ndolo realised a lot of money from sports betting business and established a fuel station on the land. Mure is not comfortable with the new development.

In yet another scenario, Dongo, a neighbour of Ndaba had a swimming pool in his compound. Ndaba on the other hand reared poultry as his way of living. One day, there was a heavy rainstorm in that area, which caused Dongo's swimming pool to flood into Ndaba's land. As a result, Ndaba's chicken drowned. Consequently, Ndaba lost income which he was expecting to get from the chicken. Dongo contends that he had nothing to do with the flooding water.

In another instance, Mburu who is a resident of Lubowa, had a function at his home. His daughter was celebrating completion of her studies as a graduate of law. Guests were served with lots of eats and drinks and there were all sorts of entertainment, including the 'best disco in town'. Tonto, one of the uncles of the law graduate, was among the invited guests. He got a break and slept in one of the visitor's rooms after taking a lot of whisky. When he went behind the house to ease himself, he fell into water reservoir and broke his leg. He decided to sue Mburu. Mburu argued that Tonto fell because he was drunk and therefore could not succeed in suing him.

Required:

Raise and resolve the issues involved. **(25 marks)**

Question 3

Lwamata is a prominent businesswoman in Fort Portal. She deals in timber. She has been doing the purchasing, marketing and selling of timber personally. The business has expanded, and she now wants to concentrate on the selling of timber only. She entered into a contract with Zenyana to act as her agent. On one occasion, Lwamata instructed Zenyana to buy timber size 4" x 6" at Shs 4,000 each but Zenyana bought 6" by 6" timber at Shs 6,000 each, from Kabreen Ltd. Kabreen Ltd is now demanding for the balance of Shs 3 million from Lwamata. Lwamata has refused to pay, arguing that it was not her responsibility to do so.

Meanwhile, Lwamata managed to sell all the timber that Zenyana bought from Kabreen Ltd. When Zenyana demanded for payment of what was due to her, Lwamata only paid the commission but refused to pay the extra Shs 2 million Zenyana incurred to purchase the timber.

In a related scenario, Gampe Ltd a construction company, made an order to buy timber from Lwamata on 10 February 2019. A sale agreement was completed on WhatsApp within 2 minutes. It was agreed that Gampe Ltd would send the money for the timber on Lwamata's mobile money account and that Lwamata would deliver the timber upon receipt of the money. When Lwamata received the money she delivered part of the timber, claiming that transport costs had gone up. Gampe Ltd is now contemplating on suing Lwamata for failure to fulfill her obligation.

In another development, Lwamata's eldest son Kadi deals in secondhand phones in Muko town. Bumbula bought a phone from Kadi at Shs 200,000 and he was given a receipt. One month later while Bumbula was at church, John, whose phone had recently been stolen, saw Bumbula with it. When John claimed for the phone from Bumbula, Bumbula told him that this was a different phone which he had bought and he showed him (John) the receipt. John recognised matching details of his stolen phone from the receipt and insists that Bumbula should hand over the phone to him.

Required

Raise the relevant issues and resolve them. **(25 marks)**

Question 4

Kata Ltd's director, Ponde, caused publication of the company prospectus, inviting the public to buy shares. It stated that the company was a going concern and had no pending legal matters whatsoever. Tepe, a reknown investor, relying on the information, bought from the company 50 shares worth Shs 20 million. Unknown to Tepe, at the time he bought shares from the company, there was a pending suit against the company. Two months later, the company share value dropped as a result of payment of Shs 100 million, being damages and costs of the suit. Ponde had defended the suit on behalf of the company, but the case was decided against the company. As a result, Tepe made a loss of Shs 5 million when he sold his shares 6 months later.

Kata Ltd faced more problems and was, subsequently, voluntarily liquidated. Seka, Rafiki and Twala are debenture holders who had been issued with debentures in series on 20 June, 25 July and 30 August in the previous year, respectively. Twala wants to be paid first because he had borrowed money from a money lender, who was charging a high interest. Seka and Rafiki have vowed to challenge Twala.

In another development, Kodeki has been an employee of P.P Ltd for 6 months, which was stipulated in the employment contract as the probation period. Kodeki has been sick for a month as a result of injuries he sustained from a motor cycle accident while travelling from work. Upon resuming work, Kodeki was informed by the company director that his probation period had been extended to 8 months. In addition, the director rubbished Kodeki's claim for payment for the one month he was sick. Kodeki is seeking for redress.

Required:

Raise and resolve all the issues arising from the facts. **(25 marks)**

Question 5

Dilu Enterprises Ltd and Mane Ltd are both involved in several business ventures. They have recently had disagreements and the two companies decided to use arbitration to resolve the disagreements. They approached the Centre for Arbitration and Dispute Resolution (CADER) for assistance, and CADER appointed two arbitrators to handle the disputes. One of the arbitrators was called Kyon, who originated from the Pacific Islands. When CADER communicated the appointments, Dilu Enterprises Ltd rejected Kyon, arguing that it was not proper to appoint a foreigner.

In another incident, CADER had completed an arbitration matter between Mane Ltd and Sonde, a businessman. A settlement agreement for Mane Ltd to pay

Sonde was signed in conclusion of the matter. Unfortunately, Sonde was involved in an accident and died before settlement of the agreed amount. Plida who was Sonde's personal representative, claimed for payment in vain. Mane Ltd was of the view that since Sonde had died, there was no obligation to pay anymore.

In another scenario, Zimbi contracted Mukozi to build a storehouse. Mukozi was to supply all necessary materials for building up-to completion. Mukozi did not complete the building and when Zimbi looked for him in vain, he (Zimbi) completed the storehouse, using materials that Mukozi had left on the site. When Mukozi later came back to claim for full payment of the contract price, Zimbi refused to pay on the ground that Mukozi abandoned his work and could no longer claim for payment.

Zimbi later on offered to sell the storehouse to Pangi. In response, Pangi's lawyer accepted the offer and wrote to Zimbi an acceptance which he sent with a contract for Zimbi's signature. In the contract, Pangi's lawyer had included terms which Zimbi had not communicated. Following Zimbi's rejection of the contract, Pangi's lawyer is now threatening to sue for performance of the contract by Zimbi.

Required:

Raise all relevant issues and resolve them. **(25 marks)**

Attempt four of the five questions

Question 1

Rukubuza is trader based in Kamwenge district. On 1 March 2020, he ordered for 100 jerrycans of GNATS oil from Nyakato Traders based in Kampala. There was a clause in the contract that stated, 'Warranted only equal to sample'. Nyakato Traders instead delivered 100 jerrycans of Gnuts oil. Rukubuza rejected the entire consignment over failure by Nyakato Traders to meet their obligations.

In yet another development, Rukubuza agreed to buy a woollen carpet from Kenyana. When the carpet was delivered, it could not fit in Rukubuza's room and he immediately sent it back. After revising its size, it was returned the following day. Unfortunately, it was stolen from Rukubuza's premises before it could be fitted in the room. Rukubuza has since then declined to pay for it despite reminders from Kenyana.

In also transpired that Rukubuza's wife, Nandutu owns Kazimiri Ltd which deals in manufacturing mattresses. The company's premises are based in Bwaise, a Kampala suburb. On 2nd February 2020, employees of Kazimiri Ltd agreed not to report for work because one of the colleagues had succumbed to a respiratory difficulty arising from inhaling dust from the mattresses. Earlier alone, the employees had requested management of Kazimiri Ltd to provide them with safety gears but in vain. Kyakabale, one of the directors of the company is threatening to discipline all absentees.

Required:

Raise and resolve the issues involved.

(25 marks)

Question 2

Baluku was desirous of buying land in Kibuga trading center in 2018. He approached Bwambale, who owned a big piece of land in the area. Bwambale agreed to sell 1 acre of land to him. An agreement was signed by both parties and Baluku paid Shs 20 million as consideration. Bwambale handed over the certificate of title to Baluku, which he successfully transferred into his name. One year later, Bwambale died. The administrator of his estate now wants Baluku off the land, and is not ready to listen to any of his explanations.

In a related scenario, Baluku sold the same land to Fujjo a night dancer, and when the agreement was signed, the certificate of title was thereafter transferred into Fujjo's name. One week later, Baluku was involved in a nasty car accident and died. One night, while Fujjo was night dancing, his house caught fire and all his property was burnt, including the certificate of title. Bwambale's

administrator is claiming that Fujjo acquired the land fraudulently and intends to use all means possible to reclaim Bwambale's land.

In a another scenario, Fujjo's wife Aciru who works with Bua Ltd, gave birth on 2nd February, 2020. Two weeks later, she received a call from the company about terminating her maternity leave. She was informed that if she failed to report to work the following day, her contract would be terminated.

It also transpired that on 20 February 2020 the management of Bua Ltd resolved to transfer some of the employees in the production department to JP Ltd, a newly established company. The employees are not happy with the new development, arguing that they sense unfavourable working conditions in the new company, and that their contracts had not provided for such. Management responded that it was compulsory for all staff to join the new company or stand a risk of being dismissed with immediate effect.

Required:

Raise and resolve the issues involved.

(**25 marks)**

Question 3

Businge is a revenue collector in Zimpe Town Council. It is his duty to visit each business in his jurisdiction, assess and collect the assessed revenues. On 15 February 2020 during the course of his duties at Abamunu General Hardware, he was hit by a box full of tiles that fell off from the shelves and injured him. The owner of the hardware claims that none of his staff had tampered with the box and therefore he was not liable for the injuries caused on Businge.

In another incident, Byamukama a lorry driver at Abamunu General Hardware, was delivering cement from Kasese in a company truck. When he reached Kyenjojo town, he branched off from to check on his wife, as he was about to reach his house, the truck lost control and rammed into a nearby clinic, killing a doctor and 2 patients instantly. When contacted, Abamunu General Hardware management insisted that Byamukama was the right person to respond to any of the queries.

On 1 March 2020, the directors of Abamunu General Hardware resolved to alter the objects of the company, from the hardware business to real estate business. When one of the shareholders, Bagonza heard about the resolution which they intended to file with the registrar of companies, he was protested.

In the same meeting, the directors also resolved to reduce the share capital of Abamunu General Hardware. This still did not go well with Bagonza and other shareholders.

Required:

Raise and resolve the issues involved.

(25 marks)

Question 4

On 23 January 2020, Bumbula, an estate agent was instructed by Mwaiso who owns land in Kikwe town, to find a purchaser for the land and to sell it as well. Bumbula successfully sold the land to Mpindi at Shs 120 million and accepted a deposit of Shs 30 million, on behalf of Mwaiso. Unfortunately, Mpindi has defaulted in paying the balance and Mwaiso is now threatening to sue Bumbula.

In another scenario, Atlantic Ltd, a transportation company, entered into a contract with Kimera for transportation of goods that had been entrusted with Kumwe Freighters. Kimera clearly indicated that he was acting as an agent of Kumwe Freighters Ltd. The contract clearly spelt out that Kumwe Freighters Ltd responsibility in delivering the cargo would cease as soon as the cargo was shipped. It later transpired that Atlantic Ltd did not fulfill its obligations. Kimera wishes to single handedly sue Atlantic Ltd.

In another incident, Opedo a certified public accountant was appointed to represent David Ajuna, trading as DA & associates, in a transaction of supplying furniture to the firm. The supplier agreed and supplied the furniture on the same day, payment of which was to be made in two weeks' time. Unknown to Opedo, David Ajuna had run insane the day before the supplies were delivered. Ajuna was admitted to Butabika Hospital for one week and was discharged on recovery. Opedo now wants David Ajuna to pay for the supplies.

In a related development, Udi, Ajuna's other agent, heard that Ajuna was admitted at Butabika, he entered into an engagement with an audit client, on behalf of DA & associates. At the time when he signed the agreement with the client, Udi did not know that Ajuna had fully recovered and that he was discharged from hospital a week ago. Udi received Shs 5 million from the client but never informed Ajuna. Ajuna has now dismissed him without notice.

Required:

Raise and resolve the issues involved.

(**25 marks)**

Question 5

Kapo bought 5 acres of land from Anoti, one of the leading real estate broker in Barahiija village. He paid Shs 50 million cash, in the presence of his (Kapo's) father and Anoti's wife. No written agreement was signed although Kapo took photographs as he made payments. When Kapo started delivering material for construction, Abigaba appeared with a security officer and the Local Council chairperson. They arrested Kapo for trespass. When Anoti was asked about the sale of land, he denied having sold any land to Kapo, and asked Kapo to produce evidence to that effect.

In a related matter, Kapo went to Oduge, Anoti's father's home, and took his car, claiming that as the father of Anoti, he is liable to pay Kapo all the money paid for the land, and that the car would be sold off to recover the money.

In another incident, Kahuma also known as Kitoko, is a drunkard, who also owns land in Mitoona village. On 31st December 2019, Kahuma was approached by Okello as he was taking his 10th bottle of beer. Okello presented papers to Kahuma, who immediately signed without reading through. One week later, Okello hired graders to clear part of Kahuma's land. Kahuma who very furious burnt one of the graders. When Okello arrived at the site, he reminded Kahuma that he (Kahuma) had sold to him part of the land as per the signed agreement. Kahuma denies any knowledge about the said agreement.

In yet another scenario, Tusiime works as an administrator with KB Ltd, a civil engineering constructions company. Tusiime was never absent for the whole month of January 2020. However, her immediate supervisor did not, at any time, give her work to do throughout that month. On 2nd February 2020, Tusiime received a warning for termination, because she did not do any work during the month.

Required:

Raise and resolve the issues involved.

(25 marks)

TEST PAPER 5
CTA OCTOBER 2021

Attempt four of the five questions

Question 1

Malevu, a registered proprietor of land comprised in Block 25 plot 2578 situated at Karo died in 2019. He left his land title with one of his sons, Mbaliga. Mbaliga held a meeting with family members where they resolved that the land title be transferred into his names. He prepared for the transfer of land and paid all the required fees. Upon presentation of the land title together with the transfer forms to the Registrar of titles, the Registrar rejected the transfer of the title into Mbaliga's names. Determined to pursue his goal, Mbaliga presented the minutes of the family meeting before the Registrar in order to convince her to transfer the land but she declined.

In another instance, Malevu's friend, Mpale established a stone quarry in Kanda village as well as a factory that crushes stones. The business was booming within the first weeks. Prior to commencing the business, he had assured residents that his business was not going to affect them in any way. Within one week, the business started with blasting of stones. On one occasion, a stray stone particle hit Musolo, who was sitting in his compound near the quarry. It shuttered his leg and it was amputated. It also transpired that when stone crushing commenced dust filled the entire village. All iron sheets were covered with dust, crops were also affected and most residents developed cough. Kanda residents are disturbed but they do not know what to do.

In another development, Mpuna, a vendor in Kawunga town council while vending watches found people celebrating the birth of twins at Karesu's home. He joined the celebrations and started eating and taking beers until evening. When he finally got up to go, he slipped and fell down, losing all his front teeth. Mpuna is now demanding damages from Karesu but Karesu has vowed not to pay him arguing that he had not been invited.

Required:

Raise and resolve all the issues involved.

(25 marks)

Question 2

On 10th February 2021, Bongole who was a car dealer advertised in the New Life paper the sale of a TX Prado at Shs 60 million. The deadline for the offer was 20th February, 2021. When Kabozi saw the advertisement, he immediately called Bongole to express his interest in the car. Kabozi offered Shs 55 million for the car but Bongole rejected, insisting that he wanted Shs 60 million. On 20th February 2021, Kabozi agreed to buy the car at Shs 60 million but Bongole declined to sell it to him. Kabozi wants to sue Bongole for breach of contract.

In another development, Kabozi was approached by Kamuli, a land a dealer. Kamuli offered to sell 5 acres of land to Kabozi in Busita. Kamuli convinced Kabozi that it was the best price he could be offered in the market. Kabozi accepted to buy and paid Shs 60 million in cash to Kamuli. Kamuli promised to draft the sale agreement and to bring it along with the duplicate certificate of the title. Since payment for the land, Kabozi has been trying to reach Kamuli on phone but in vain. Kabozi is now stranded.

In another scenario, Bundagu municipality enacted a Byelaw on 1 July 2020 called the Bundagu Municipality solid waste-management Byelaw, 2020. The purpose of the Byelaw was to regulate and enforce proper and effective solid waste management within Bundagu municipality. Among other provisions, the Byelaw required that solid waste that is not managed at the owner's property be disposed of at approved solid waste-disposal site after thoroughly sorting it. According to the Byelaw, anyone who would go against the Byelaw would pay a fine of Shs 500,000. Kasasiro a well-known waste collector in Bundagu, did not sort the waste as required by the law. Consequently, Bundagu enforcement officer arrested him and he was required to pay a fine of Shs 500,000. Kasasiro, refused to pay the fine, arguing it is only Parliament that has powers to make laws.

In yet another scenario, Bikondo who is a prominent farmer in Nakabugo parish, on 20th March 2021 while making his usual checks in his garden, found out that 20 bunches of bananas had been stolen. He reported the case to the area LC I and police. Bikondo was advised by police to go to the market and check if he could trace his bananas. When he visited the market, he found Kapere with 20 bunches of bananas. Bikondo ran back to police and reported that he had found the thief. Kapere was immediately arrested by police and taken to Nakabugo police station on the same day.

On 22 March 2021, Kapere was arraigned before magistrate Kobogole. During the Court proceedings, Kapere recalls the magistrate having said at some point that 'He who alleges must prove'. Though Kapere was consequently convicted and jailed at Nakabugo prison. To date, he has never understood the meaning the statement.

Required:

Raise and resolve all the issues involved.

(25 marks)

Question 3

Gogoma is a shareholder and director of Habbs Ltd, a public company limited by shares. In March 2020, he allotted shares for which cash was paid. The money was used for company activities but no return was made. In November 2020

when the registrar of companies was on regular inspection, he was briefed about the state of returns. He consequently summoned Gogoma. Gogoma neglected the summons, arguing that he was not responsible for what he termed 'clerical work'.

Following the above incident, Gogoma together with Jogo held an extra ordinary general meeting and made decisions on the way forward for the company. Other shareholders of the company have vowed to have that meeting's decisions invalidated for lack of quorum.

In another development, Loki, an employee of Habbs Ltd occupied an office in a room with neither windows nor ventilators. When his friend Pada visited him, he could hardly breathe. Pada decided to fight for his friend and reported the matter to the commissioner for occupational safety and health, as a whistle blower. In reaction, the commissioner wrote to Habbs Ltd to put provisions for sufficient fresh air in all office premises.

In a related sad development, Loki was involved in an accident as he was travelling back home from work. Unfortunately, his body was not transported by the company as management informed Loki's family members that there was no money. Loki's family members got a loan from company staff SACCO and transported the body to Bwiko district for burial. Despite several demands by Loki's family members, Habbs Ltd has declined to refund the transport fees.

Required:

Raise and resolve the issue.

(25 marks)

Question 4

Bangi, a reknown trader, requested Gondya a taxi driver, to transport 5 boxes of fresh apples to Gulu. The apples were to be handed over to Kosa, Bangi's agent. When Gondya's taxi reached Gulu, Kosa was nowhere to be seen. Gondya called Bangi several times but Bangi just assured Gondya that Kosa would collect the apples. Unknown to both of them, Kosa was sick in hospital, and could not collect the apples as expected.

In order to prevent loss, Gondya paid for a temporary licence in a nearby market for space, and sold the apples. Gondya later handed over the money from the sales to Bangi and requested for a commission as well as refund for the cost of the market licence. Bangi, however, declined to pay any commission or refund, on ground that he had not given Gondya any permission to act for him.

In another scenario, Kosa had used his money to purchase rice from farmers and loaded it on a bus to Kampala for Bangi, with all costs paid. When the bus delayed to reach, Bangi called Kosa and informed him that he should consider

the agency relationship terminated. Bangi's reason was lack of trust in Kosa. Despite Kosa's pleas and claims, Bangi refused to reconsider his decision.

Bangi thereafter decided to do business without his agent. He went and bought 100 bags of rice on credit from Dunjo Farmers, loaded it on a truck heading to his shop. Soon after setting off, he was stopped by a lorry driver of Dunjo Farmers. When Bangi stopped, the driver immediately arranged to off load all the rice and loaded it on Dunjo Farmers lorry. The driver explained that instructions had been given to him to recover the rice. Furiously, Bangi called the office of Dunjo Farmers and he was informed that since a story about his bankruptcy was all over the news, they had to remain in possession of their goods.

In another scenario, Pio acquired furniture from Joika Ltd, which offers credit sales as well as hire purchase to its customers. Pio paid an installment and later sold the same furniture to Kyama, before completing all payment. Joika Ltd made several demands to Pio to either pay or return the furniture but it was later discovered that Pio had actually sold it to Kyama. Joika Ltd is of the view that they can recover their furniture from Kyama.

Required:

Identify the relevant issues and resolve them

(25 marks)

Question 5

Kwelo and Lwari were partners, but developed some misunderstanding concerning distribution of profits. Kwelo was complaining that Lwari was taking a lot of profits from the partnership business. Lwari maintained that he contributed more capital in the business entitling him to get more than his partner. Kwelo presented the case to a tribunal for arbitration. After receiving a statement from Kwelo, the tribunal summoned Lwari to file statement of defence and he was served as required by law. Lwari did not file a defence and the tribunal went ahead to decide the matter against Lwari. Lwari is now complaining that it was unfair for the tribunal to decide the case without his defence.

In another instance, Boreka bought a car from Zompi at a value of Shs 80 million shillings. He paid Shs 20 million as deposit but failed to pay the balance after the stipulated date. Zompi asked Boreka to pay or else he would take the vehicle from him. Boreka's employer thereafter agreed with Zompi to pay him Shs 10 million in addition to the Shs 20 million earlier paid as a deposit and leave the car with Boreka. After two months Zompi started demanding for the balance but Boreka insists that the contract was terminated when his employer paid Shs 10 million.

In another scenario, Muleto agreed with Sanka that Sanka would get him a bull to slaughter on his wedding day. The bull was to cost Shs 1.5 million and cash

was paid to Sanka. On the eve of the wedding ceremony, Sanka brought a heifer and told Muleto that he failed to get the bull as agreed because they were not in the market. Muleto insists that he wanted the bull, not a heifer.

In a related scenario, Kuute, a businessman had a farm where he grazed his cows for sale each at Shs 400,000 only. When Mugaga was passing by, he saw the note and got interested because the price was very attractive, compared to the market price. Mugaga went to see Kuute and requested him to show him the cows. They moved around the farm and Mugaga chose one of the biggest cows. When Mugaga handed Kuute Shs 400,000 to pay for the cow, Kuute told him that there was no cow in his farm that goes for Shs 400,000. Mugaga insisted that the note was an offer for all the cows in the farm and as a way of acceptance, he paid Shs 400,000 so he must take that cow.

Required:

Raise issues and resolve them.

(25 marks)

Attempt four of the five questions

Question 1

Sabu who had been a director of Bakampa Ltd for several years has had a rough patch recently. At one time, he was declared by order of the registrar of companies to be disqualified from the office of directorship due to various reasons that were pointed out in the order. Despite the fact that he is still a member of the company, Sabu is obsessed with being a director, and is now working with his friends towards formation of a new company. When a former friend of his and other directors cautioned him about his actions, Sabu responded that it was a free world, full of alternative possibilities.

In a related scenario, Sabu met with two directors who were also members of Bakampa Ltd at Garden city, with whom they decided to advocate for winding up of Bakampa Ltd. Some of the other members of the company were sent messages in their WhatsApp inboxes, about the intended winding up of Bakamba Ltd. Sabu quickly drafted a resolution which was intended to be taken for registration with the registrar of companies. However, Goni, one of the directors who didn't attend a meeting with Sabu and other members, want to challenge the intended application to wind up the company.

In another scenario, Rungi, an employed of the company and a friend to Sabu, was suspected of leaking valuable company information since Sabu ceased being a director. It was alleged that he often communicated with Sabu using the office phone. A tapping device was installed to record conversations and subsequently Rungi was suspended from work for five weeks, pending further inquiries, and investigations into the matter. Rumi feels that he has been wronged and seeks your advise.

Unlike Rungi who is faced with an impending dismissal, Mukozi has been working with Bakampa Ltd on probationary terms, for eight months now. However, he (Mukozi) has been making inquiries about the probability of signing a contract of service but has always been informed that management is aware, and working towards addressing it. Mukozi is becoming desperate because jobs are not easy to get, yet he thought he would have signed a contract of service by this time. He needs to be advised about the situation.

Required:

Raise the relevant issues and resolve them.

(25 marks)

Question 2

Lulipo, Kajanja and Gereya are some of the five partners carrying out business in Kikuubo area. Over time, the partners wanted to expand their capital base but they could not afford to contribute more money into business, until Lulipo approached Lento, who advised him to persuade the others to register a limited liability firm. Lento was willing to join as a limited liability partner, and Pala, a colleague of Gereya, showed interest to join as a general partner if they all agreed with the proposal. The partners agreed with the proposed limited partnership and the name of Byonna firm. However, Lulipo suggested that the name should end with "LLP," to be Byonna LLP, but the others suspected foul play, considering the combination of Lulipo, Lento and Pala's names, as well as Lulipo's name itself. Lulipo informed them that the change was for the good of the firm, but they, instead, approach you for advise.

The firm was registered and business went on very well for some time. Unfortunately, Lento one day got involved in an accident and was badly injured. Despite all effort to save his life, Lento died, and the other partners feared for the future of the partnership. Lento's death came at a time when the firm was making a lot of profit, and they were all determined to continue with the firm business. They now seek your advise on the matter.

In another scenario, one of the firm's customers endorsed a bill in favour of the firm, as a way of paying money owed to the firm. However, before the bill was presented for payment, the firm was informed by a reliable source that the customer who endorsed the bill for the firm had a defective title. This could adversely affect the partnership as it would be a blow to the firm business and profit. The partners have decided to consult and get advise about the situation the firm is facing, and how best to handle it.

The partnership further had to tussle out a challenge, whereby Murefu, another customer, requested to negotiate a bill to the partnership in payment of supplies. At that time, Murefu was a holder in due course of the bill. When the firm accountant looked at the bill, he queried the fact that the amount of money

Murefu intended to endorse in favour of the firm was less than the amount that had been endorsed in the bill. The firm accountant rejected the bill, despite all explanations put forward by Murefu.

Required:

Raise the relevant issues and resolve them.

(25 marks)

Question 3

Dabo and his wife have for a long time stayed on a piece of land they acquired soon after getting married. The land was about 10 acres, where they had a residential house, farms and some tenants near the far boundaries. Due to the difficult economic situation, less income was being realised from the farms, yet they (Dabo and his wife) had a lot of family expenses. Dabo, therefore hatched a plan to sell off some piece of the land which was abit distant form the family house to Funa. Eventually, Dabo sold an acre of land to Funa, but later on when they had some misunderstandings, Funa who was under the influence of alcohol, talked about the acre of land he had bought from Dabo. Consequently, Dabo's wife was up in arms, contesting the sale and threated to go to court against Dabo, but Dabo insisted that she had no basis for such reaction.

In another scenario, Dabo's brother Kifesi, is a trustee for the estate of their late father, which includes a number of properties from which all beneficiaries get interest. Among the things they agreed upon as a family, Kifesi had to manage the estate property in a way that would ensure an income for all beneficiaries. At one time, Kifesi sold off a portion of land to get money for injecting in the development of one property. The beneficiaries did not like the move since they were of the opinion that there would be more sales in future and mismanagement of estate matters. Kifesi tried to explain but in vain, so he decided to consult you for advise.

In a different scenario, Ddembe Cooperative Society was a duly registered society and all its members were given a copy of its byelaws. One of the provisions in the byelaws was to strictly comply with the deadlines of subscription, and any other annual or monthly payments due. In one general meeting held recently, members were told to air their views and complaints. Sijja, one of the members raised a complaint about the operation of the Society.

His main concern was that he delayed to pay annual subscription but when he eventually got the money to pay, he was informed that he had to pay some extra money as fine, which he protested.

It has also transpired that Ntegera, one the members of the cooperative society was pushing for appointment of another external auditor for Ddembe Cooperative society. His concern was that Mbala audit firm had been appointed twice for a two year term as external auditors, which was the maximum period provided in the society regulations. However, management seemed to be reluctant to appoint another auditor, with reason that Mbala audit firm had done a very good job, and should continue to audit. Ntegera's argument against management's stand was in vain, so he has approached you for advise.

Required:

Raise all relevant issues and resolve them.

(25 marks)

Question 4

Muhogo is a farmer who owns a big cassava plantation. One day, he found Tifu in his garden with cassava he had uprooted from the garden, in a polythene bag. Muhogo filed a suit against Tifu in the Local Council I court (LC I court). The court made a decision that Tifu should pay money worth the value of the cassava on top of handing over the cassava. Tifu is, however, determined to contest the LCI court decision.

In a different scenario, Mateka Ltd is a company in Uganda. The company deals in the manufacturing of toothpaste. On 1 February 2023, Mateka Ltd ordered for stevia powder which is an ingredient used in the manufacture of toothpaste, from Home Products Ltd, a company incorporated in Uganda but located in Kenya. Mateka Ltd clearly instructed Home products Ltd to use the routes indicated on the map attached to the order. However, the driver of Home products Ltd used a different route, which delayed the delivery for 5 days. The truck got involved in an accident, and half of the products were destroyed. When the remaining products were delivered to Mateka Ltd, it declined to pay for all the products.

In another scenario, Muza, a coffee dealer got an order from Budi to supply 5 bags of coffee at a total cost of Shs 500,000. They agreed on the terms of sale

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which included delivery of the coffee by Muza. However, when Muza delivered the coffee on the day and time agreed upon, Budi declined to pay, without giving any reason for not paying. Muza is perturbed and wants you to advise him about t the next step to take.

In yet another scenario, Vuya is a poultry farmer who rears broiler chicken. Over time, his workers' routine has been to clean the poultry houses only after complaints about the stench from the chicken houses have been received from the neighbours. Whenever the neighbours talk to him about the stench, Vuya's response has always been that the neighbours have no reason to complain since they found him in the area. Safari who rented a house near Vuya two months ago, is contemplating to sue Vuya.

Required:

Raise and resolve issues involved.

(25 marks)

Question 5

Landa has been having sleepless nights due to rampant burglaries and thefts in his area of residence. In order to have some peace of mind at night, he bought a security dog from Dogs Ltd, after assurance from the salesman that their company had the best-trained security dogs. Landa made a part-payment for the dog and took it home. Two nights after buying the dog, Landa's home was broken into and, to his surprise, the dog never barked at all. In the morning, he was shocked to receive a demand note from Dogs Ltd for payment of the balance due. He declined to pay, arguing that Dogs Ltd should not even demand for any payment.

In another scenario, Onzo made an agreement with Pendo for purchase of his (Onzo's) land cruiser. At that time, Onzo had two land cruisers on sale, one of them a 1999 model and the other one was a 2005 model. The purchase price agreed upon was Shs 50 million which Pendo paid cash down and waited for delivery. Onzo knew that he was selling the 1999 model, whereas Pendo thought he was buying the 2005 model. On the agreed date, the 1999 model was delivered to Pendo but he rejected it, on ground that he had paid for the 2005 model. The different expectations have disturbed both of them and left them wondering about the next course of action.

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In another scenario, the managing director of Katu Ltd had a work contract with a clause which stated, *'No person shall act in your position unless you have officially resigned or been removed from office'.* On 20 February 2023, the managing director went for a conference in the United Kingdom. While at the conference, the finance director called and told him about an urgent purchase which needed to be done from Patel. The managing director delegated the procurement director through email, to conclude the purchase. When Patel later demanded for payment from Katu Ltd, he was informed by the finance director that he could not be paid because the procurement director had no authority to sign on behalf of the managing director.

Baringo and Manzi are both founders and directors of MB Ltd. Baringo recently found out that the profits of the company were going down, so he hired auditors to carry out an investigative audit. During the audit, it was established that Manzi was using company vehicles to do his private work but Manzi denied doing so. Consequently, Baringo decided to take the matter to an arbitration tribunal for determination. Manzi was a crafty man, so, he bribed the chairman of the tribunal and he emerged winner despite the clear evidence that Manzi had bribed the chairman of the tribunal. Baringo now intends to challenge the arbitral award.

Required:

Raise the relevant issues and resolve them.

(25 marks)

TEST PAPER 7
CTA 2 - JUNE 2023

Question 1

Sabu who had been a director of Bakampa Ltd for several years has had a rough patch recently. At one time, he was declared by order of the registrar of companies to be disqualified from the office of directorship due to various reasons that were pointed out in the order. Despite the fact that he is still a member of the company, Sabu is obsessed with being a director, and is now working with his friends towards formation of a new company. When a former friend of his and other directors cautioned him about his actions, Sabu responded that it was a free world, full of alternative possibilities.

In a related scenario, Sabu met with two directors who were also members of Bakampa Ltd at Garden city, with whom they decided to advocate for winding up of Bakampa Ltd. Some of the other members of the company were sent messages in their WhatsApp inboxes, about the intended winding up of Bakamba Ltd. Sabu quickly drafted a resolution which was intended to be taken for registration with the registrar of companies. However, Goni, one of the directors who didn't attend a meeting with Sabu and other members, want to challenge the intended application to wind up the company.

In another scenario, Rungi, an employed of the company and a friend to Sabu, was suspected of leaking valuable company information since Sabu ceased being a director. It was alleged that he often communicated with Sabu using the office phone. A tapping device was installed to record conversations and subsequently Rungi was suspended from work for five weeks, pending further inquiries, and investigations into the matter. Rumi feels that he has been wronged and seeks your advise.

Unlike Rungi who is faced with an impending dismissal, Mukozi has been working with Bakampa Ltd on probationary terms, for eight months now. However, he (Mukozi) has been making inquiries about the probability of signing a contract of service but has always been informed that management is aware, and working towards addressing it. Mukozi is becoming desperate because jobs are not easy to get, yet he thought he would have signed a contract of service by this time. He needs to be advised about the situation.

Required:

Raise the relevant issues and resolve them.

(25 marks)

Question 2

Lulipo, Kajanja and Gereya are some of the five partners carrying out business in Kikuubo area. Over time, the partners wanted to expand their capital base but they could not afford to contribute more money into business, until Lulipo approached Lento, who advised him to persuade the others to register a limited liability firm. Lento was willing to join as a limited liability partner, and Pala, a colleague of Gereya, showed interest to join as a general partner if they all agreed with the proposal. The partners agreed with the proposed limited partnership and the name of Byonna firm. However, Lulipo suggested that the name should end with "LLP," to be Byonna LLP, but the others suspected foul play, considering the combination of Lulipo, Lento and Pala's names, as well as Lulipo's name itself. Lulipo informed them that the change was for the good of the firm, but they, instead, approach you for advise.

The firm was registered and business went on very well for some time. Unfortunately, Lento one day got involved in an accident and was badly injured. Despite all effort to save his life, Lento died, and the other partners feared for the future of the partnership. Lento's death came at a time when the firm was making a lot of profit, and they were all determined to continue with the firm business. They now seek your advise on the matter.

In another scenario, one of the firm's customers endorsed a bill in favour of the firm, as a way of paying money owed to the firm. However, before the bill was presented for payment, the firm was informed by a reliable source that the customer who endorsed the bill for the firm had a defective title. This could adversely affect the partnership as it would be a blow to the firm business and profit. The partners have decided to consult and get advise about the situation the firm is facing, and how best to handle it.

The partnership further had to tussle out a challenge, whereby Murefu, another customer, requested to negotiate a bill to the partnership in payment of supplies. At that time, Murefu was a holder in due course of the bill. When the firm accountant looked at the bill, he queried the fact that the amount of money

Murefu intended to endorse in favour of the firm was less than the amount that had been endorsed in the bill. The firm accountant rejected the bill, despite all explanations put forward by Murefu.

Required:

Raise the relevant issues and resolve them.

(25 marks)

Question 3

Dabo and his wife have for a long time stayed on a piece of land they acquired soon after getting married. The land was about 10 acres, where they had a residential house, farms and some tenants near the far boundaries. Due to the difficult economic situation, less income was being realised from the farms, yet they (Dabo and his wife) had a lot of family expenses. Dabo, therefore hatched a plan to sell off some piece of the land which was abit distant form the family house to Funa. Eventually, Dabo sold an acre of land to Funa, but later on when they had some misunderstandings, Funa who was under the influence of alcohol, talked about the acre of land he had bought from Dabo. Consequently, Dabo's wife was up in arms, contesting the sale and threated to go to court against Dabo, but Dabo insisted that she had no basis for such reaction.

In another scenario, Dabo's brother Kifesi, is a trustee for the estate of their late father, which includes a number of properties from which all beneficiaries get interest. Among the things they agreed upon as a family, Kifesi had to manage the estate property in a way that would ensure an income for all beneficiaries. At one time, Kifesi sold off a portion of land to get money for injecting in the development of one property. The beneficiaries did not like the move since they were of the opinion that there would be more sales in future and mismanagement of estate matters. Kifesi tried to explain but in vain, so he decided to consult you for advise.

In a different scenario, Ddembe Cooperative Society was a duly registered society and all its members were given a copy of its byelaws. One of the provisions in the byelaws was to strictly comply with the deadlines of subscription, and any other annual or monthly payments due. In one general meeting held recently, members were told to air their views and complaints. Sijja, one of the members raised a complaint about the operation of the Society.

His main concern was that he delayed to pay annual subscription but when he eventually got the money to pay, he was informed that he had to pay some extra money as fine, which he protested.

It has also transpired that Ntegera, one the members of the cooperative society was pushing for appointment of another external auditor for Ddembe Cooperative society. His concern was that Mbala audit firm had been appointed twice for a two year term as external auditors, which was the maximum period provided in the society regulations. However, management seemed to be reluctant to appoint another auditor, with reason that Mbala audit firm had done a very good job, and should continue to audit. Ntegera's argument against management's stand was in vain, so he has approached you for advise.

Required:

Raise all relevant issues and resolve them.

(25 marks)

Question 4

Muhogo is a farmer who owns a big cassava plantation. One day, he found Tifu in his garden with cassava he had uprooted from the garden, in a polythene bag. Muhogo filed a suit against Tifu in the Local Council I court (LC I court). The court made a decision that Tifu should pay money worth the value of the cassava on top of handing over the cassava. Tifu is, however, determined to contest the LCI court decision.

In a different scenario, Mateka Ltd is a company in Uganda. The company deals in the manufacturing of toothpaste. On 1 February 2023, Mateka Ltd ordered for stevia powder which is an ingredient used in the manufacture of toothpaste, from Home Products Ltd, a company incorporated in Uganda but located in Kenya. Mateka Ltd clearly instructed Home products Ltd to use the routes indicated on the map attached to the order. However, the driver of Home products Ltd used a different route, which delayed the delivery for 5 days. The truck got involved in an accident, and half of the products were destroyed. When the remaining products were delivered to Mateka Ltd, it declined to pay for all the products.

In another scenario, Muza, a coffee dealer got an order from Budi to supply 5 bags of coffee at a total cost of Shs 500,000. They agreed on the terms of sale

which included delivery of the coffee by Muza. However, when Muza delivered the coffee on the day and time agreed upon, Budi declined to pay, without giving any reason for not paying. Muza is perturbed and wants you to advise him about t the next step to take.

In yet another scenario, Vuya is a poultry farmer who rears broiler chicken. Over time, his workers' routine has been to clean the poultry houses only after complaints about the stench from the chicken houses have been received from the neighbours. Whenever the neighbours talk to him about the stench, Vuya's response has always been that the neighbours have no reason to complain since they found him in the area. Safari who rented a house near Vuya two months ago, is contemplating to sue Vuya.

Required:

Raise and resolve issues involved.

(25 marks)

Question 5

Landa has been having sleepless nights due to rampant burglaries and thefts in his area of residence. In order to have some peace of mind at night, he bought a security dog from Dogs Ltd, after assurance from the salesman that their company had the best-trained security dogs. Landa made a part-payment for the dog and took it home. Two nights after buying the dog, Landa's home was broken into and, to his surprise, the dog never barked at all. In the morning, he was shocked to receive a demand note from Dogs Ltd for payment of the balance due. He declined to pay, arguing that Dogs Ltd should not even demand for any payment.

In another scenario, Onzo made an agreement with Pendo for purchase of his (Onzo's) land cruiser. At that time, Onzo had two land cruisers on sale, one of them a 1999 model and the other one was a 2005 model. The purchase price agreed upon was Shs 50 million which Pendo paid cash down and waited for delivery. Onzo knew that he was selling the 1999 model, whereas Pendo thought he was buying the 2005 model. On the agreed date, the 1999 model was delivered to Pendo but he rejected it, on ground that he had paid for the 2005 model. The different expectations have disturbed both of them and left them wondering about the next course of action.

In another scenario, the managing director of Katu Ltd had a work contract with a clause which stated, *'No person shall act in your position unless you have officially resigned or been removed from office'.* On 20 February 2023, the managing director went for a conference in the United Kingdom. While at the conference, the finance director called and told him about an urgent purchase which needed to be done from Patel. The managing director delegated the procurement director through email, to conclude the purchase. When Patel later demanded for payment from Katu Ltd, he was informed by the finance director that he could not be paid because the procurement director had no authority to sign on behalf of the managing director.

Baringo and Manzi are both founders and directors of MB Ltd. Baringo recently found out that the profits of the company were going down, so he hired auditors to carry out an investigative audit. During the audit, it was established that Manzi was using company vehicles to do his private work but Manzi denied doing so. Consequently, Baringo decided to take the matter to an arbitration tribunal for determination. Manzi was a crafty man, so, he bribed the chairman of the tribunal and he emerged winner despite the clear evidence that Manzi had bribed the chairman of the tribunal. Baringo now intends to challenge the arbitral award.

Required:

Raise the relevant issues and resolve them.

(25 marks)

TEST PAPER 8
CTA 2 - NOVEMBER 2023

Question 1

Gumete Ltd is a public company that was incorporated in Uganda over 20 years ago. Dogi one of the members, was not happy with the way the company was managed, and decided to sell his shares to Membe. However, the directors declined to effect the transfer on grounds that other members had to be informed first, and possibly preferred to purchase the share themselves.

It also transpired that at one point, the company's business was slow, due to lack of sufficient funds. The directors decided to issue shares to the public in order to raise more capital. Bintu, one of the directors, was tasked with preparing all necessary documents. He prepared the prospectus which he and Wango signed and the names of the other 3 directors who did not sign were duly indicated in the prospectus. A copy of the prospectus was taken first to the Capital Markets Authority for approval, then to the Registrar of companies. However, Bintu was turned away by the office of the registrar. On further inquiry, he was informed that the prospectus could not be issued.

In another scenario, Kyanaku, an employee of Gumete Ltd, received news that his wife had been rushed to hospital from her place of work. When he went to the hospital, he discovered that his wife had suffered a miscarriage. The following day, Kyanaku applied for leave to enable him take care of his wife, and he was given a go-ahead, having been granted four days from Friday to Monday. Kyanaku felt the leave days granted were not enough.

In yet another scenario, Aya had worked with the company for six years however, misunderstandings with management caused him to stop working as effectively as before. This culminated into the termination of his contract. During his time of working with Gumete Ltd, Aya and his family had been housed in the company's residential building which was located near the company's headquarters. Upon termination, he was given a termination letter, indicating that his terminal benefits would be paid in a month's time. It is now two months since his termination and the company's estates manager has demanded for his vacation of the company premises. Aya has declined to vacate before getting what is due to him but the estates manager now intends to take further action against him.

Required:

Raise and resolve the relevant issues.

(25 marks)

Question 2

Munda and Welu are both business men who often have related business deals, depending on the items they are buying or selling. At one time, Munda sold a number of household equipment to Welu on credit, and they agreed that payment would be made in a month's time. However, as the days for payment drew near, Welu did not have enough cash to give Munda. He explained his dilemma to Munda who agreed that Welu should endorse to him a bill of exchange that had been drawn by Hagi, and was to be paid by Byona bank. Two days later when Munda presented the bill to Byona bank for payment, it was not accepted. Munda went back to Welu, gave him the dishonoured bill and claimed for payment, but Welu explained that only Hagi who had drawn the bill would have an explanation for its dishonour. He further reminded Munda that they had agreed that the bill was sufficient for payment of the money due. Munda now seeks for your advise.

It has also transpired that, Welu had, in turn, returned the bill to Hagi. Three days later, Hagi also received a letter from Welu, informing him about a case that was to be filed against him in relation to payment of the money owed. However, Hagi denied any responsibility for a past transaction. He responded that Welu could not impart responsibility of the bill on him, when no notice of dishonour had been given to him, as required by law. Welu is determined to find the best solution to this challenge and requests you to advise him.

In a different scenario, Ntono, Demu and Kolo were partners, carrying on business as Ntodeko firm and dealing in computer accessories. Their business was very profitable and they had no challenges. In the partnership deed, they had agreed to continue business in case any partner left or died. It so happened that Demu was one day involved in an accident and later on died. Ntono and Kolo continued with the firm business. A year after Demu's death, Cash deals Ltd sent a demand note to Ntodeko firm, specifying the three partners as owing him money that had been advanced to them. The loan had been given to the firm two months after Demu's death. Following the demand note, the administrator of Demu's estate was asked to contribute towards payment, since the firm name still indicated the late Demu as a partner. Demu's administrator ignored all demands.

Later on, Ntono and Kolo got more partners but continued to use the same firm name. They later on decided to change the constitution by which the firm operations were guided. One of their creditors thereafter claimed for delayed payment and the firm paid some money, although it was not sufficient to cover the debt. The creditor then notified each of the individual partners, including Demu. The creditor was of the view that it was easier to claim for payment from

individual partners than using the firm as liable. The administrator of Demu's estate thereafter wrote to the creditor, threatening to sue him if he continued to drag Demu's name into his claims.

Required:

Raise and resolve all the relevant issues.

(25 marks)

Question 3

Tigu is a long time business associate of Sheka, especially in matters concerning land transactions. In May last year, the two pooled resources together and bought 50 acres of land in Roha village. Since then, they have been carrying out different commercial activities together and earning income from the proceeds of sale. Recently, Tigu, who is younger than Sheka suggested that they formalise ownership by registering the land as joint tenants but to Tigu's surprise, Sheka is uncomfortable with Tigu's suggestion to register joint tenancy.

Sheka is also facing another land-related challenge, following his recent acquisition of a lease on land belonging to Bura. Whenever Sheka attempts to maximise the use of his leased piece of land, Bura imposes unnecessary restrictions on him. According to Bura, anyone who acquires a lease on his land must abide by his whims or else, they risk a reduction of the lease period or the size of land to use. Sheka is unhappy and has approached you for advice.

In another scenario, Sheka who has been appointed as a temporary auditor for Bifuna cooperative society, is facing challenges with some members of the society. It all started when the society's auditor died at a time when urgent audit information was required by the office of the registrar of cooperative societies. On inquiry by the registrar about a person who could help to generate the information, Bifuna society suggested Sheka, who had previously served as assistant registrar for a cooperative society in his home village. The registrar immediately appointed him as the society auditor, for the purpose of enabling the society present the required information. However, this did not go down well with other members, who now intend to challenge the move.

In a different scenario, Fele, a trustee of the estate of Tigu's father, recently invested some of the trust funds in a piece of titled mailo land that had been leased to Pahim, for a period of 35 years. It so happened that the lease period had so far run for one year and that Pahim was faithfully paying all rent for the land. Tigu and other beneficiaries are skeptical about the trustees' use of trust money, which in their opinion was outside the acceptable investments that Fele could make. However, Fele believes it was a worthwhile investment and has now approached you for further advice.

Required:

Raise all the relevant issues and resolve them.

(25 marks)

Question 4

Shunks Ltd is going through a tough time, following the threats of court cases against the company. One such case was where Vavi, its neighbour, is threatening to sue the company for what he calls nuisance occasioned to him and to the community at large. The company creditors and debt collectors normally bang the company gate and make noise to access the premises. Vavi's family is bothered by creditors who often mistake their house for the company offices. Other neighbours are also concerned that they often get blocked from the access road, by the many cars parked near the company premises. Vavi needs your advice.

In a bid to have sanity in the community, the area LCI chairman and his committee have met and made different decisions, including rules concerning all office premises in the community and management of the daily operations, in order to be in harmony with people who reside in the area. The rules have been titled "Community By-laws" and the LC committee is now in full gear to have them printed and distributed to people or put up as notices to any intending newcomers in the community. Office owners in the area are vehemently opposed to the LC committee move and are intend to stop it. Advise them.

In a different scenario, Shunks Ltd sold 20 boxes of plumbing materials on credit to Ndaba, with an agreement that full payment would be made within two months' time. Ndaba's driver collected the materials from Shunks Ltd's stores and drove off. However, some minutes after Ndaba's driver had left, the company's marketing manager who was in town, called the store manager and instructed him not to release any items to Ndaba or his representative. The store manager informed the marketing manager that the items had been taken, but he was ordered to use any means possible to get them back immediately. Fortunately, Ndaba's driver had made a stop-over by the roadside kiosk to buy a drink, and as he was drinking, the store manager came rushing, demanded for the materials and took them back to the company stores. The marketing manager had just heard about Ndaba being declared bankrupt but Ndaba denied everything when asked about it.

In yet another incident, Shunks Ltd delivered floor tiles to Kiki enterprises, after concluding a contract of sale and full payment made by Kiki enterprises. Later when Kiki enterprises unpacked one of the boxes of tiles, some tiles were found cracked while others were broken. Kiki enterprises rejected all the delivered tiles

and communicated its rejection to Shunks Ltd's marketing manager. The marketing manager requested for the return of the tiles by Kiki enterprises, in vain. Kiki enterprises simply ignored the company's marketing manager.

Required:

Raise and resolve the relevant issues.

(25 marks)

Question 5

One Monday morning, Jalu-Opts offered to sell its old stock of filing cabinets to Muwe on an understanding that Muwe had to post signed documents of purchase by close of business on Friday. On Tuesday evening, Muwe signed and sent the required documents by registered mail, to Jalu-Opts. The documents were received by Jalu-Opts on Thursday at midday. This was after another offer had already been made to Kwakosi enterprises on Wednesday afternoon. Kwakosi enterprises accepted by immediate payment for the cabinets and picked them on Thursday morning. When Muwe arrived on Thursday evening with a truck to pick the cabinets from Jalu-Opts, he was informed that the cabinets had already been sold to another buyer, since Muwe failed to fulfill his obligation. Muwe had evidence of the registered mail to confirm postage on Tuesday and to indicate acceptance of the offer as was agreed, but when he showed it to Jalu-Opts, he was ignored. Muwe seeks your advise now.

Bingu and Tema have been long-time business colleagues, where Tema usually gets supplies from wholesale stores and delivers them to Bingu for sale. Most wholesale traders are now aware of the normal arrangement between the two. At one time, Bingu declined to pay for supplies that Tema got on credit from Chaka traders. Chaka traders later on sent a demand note to Bingu, for payment of the supplies. Bingu declined to pay and informed Chaka traders that the demand should be directed to Tema whom it had dealt with. Chaka traders now seeks for your advise on the way forward.

In another scenario, Tema delivered 10 boxes of alcohol-based sanitiser from suppliers to Bingu, at an extra cost spent in transporting them. Bingu readily received the supplies and paid for them. However, at around the same time, Tema decided to terminate his dealing with Bingu and informed him accordingly. When Tema requested for payment of the extra costs spent on transportation of sanitisers, Bingu ignored him, claiming that their normal arrangements had stopped.

As time passed, Bingu's relationship with the wholesale store suppliers worsened. Bingu and owners of the wholesale stores decided to settle their matters amicably, without going to court and they agreed upon an arbitrator to preside

over their matters. The arbitrator was willing to handle the matters but he set an exorbitant amount of fees to be paid, with an explanation that their matters were complicated and there was no need to dispute the amount of fees. Bingu is now hard pressed for money, and is suspicious about the arbitration fees set by the arbitrator. All Bingu's pleas for a more reasonable fee were ignored. He wants advice about the next step to take.

Required:

Raise and resolve the relevant issues.

(25 marks)

TEST PAPER 9
CTA 2 - MAY 2024

Question 1

Nene Ltd is a company that provides cleaning services in Kuna municipality. In some instances, its agents act on its behalf. One such agent is Pipi who often gets good deals and signs for the company, as per policies and guidelines. In one incident, Pipi committed Nene Ltd to an agreement for a credit purchase of cleaning materials worth Shs 2 million from Goya Enterprises, to be paid within a month's time. Pipi had ignored the company Credit policy which provided that credit purchases by its agents should not exceed Shs 1 million. He reasoned that the deal was too good to be ignored. The Finance manager paid Goya Enterprises for the materials but told Pipi that the amount used for payment would be deducted from his commission. Pipi is disappointed and feels trapped, so he approaches you for advice.

In another scenario, Nene Ltd was requested to provide services for Jogo company on credit. The next day, Nene Ltd received a negotiable instrument signed by Faya who was Jogo company's agent, on which he had indicated "signed for Jogo company" against his signature. When the bill was presented to the bank for payment, it was not accepted, for justifiable reasons. Nene Ltd then sent a demand note to Faya for payment of the money due, but Faya refused to pay.

In another scenario, Jogo company had paid Nene Ltd using a cheque, which was to mature in a month's time. The cheque was kept with the Finance department where it was misplaced and all efforts put in towards recovery seemed futile. A decision was made to request Jogo company for another cheque as a duplicate bill for the same amount. Nene Ltd was ready to make a commitment to indemnify Jogo company against any losses if the first cheque was found after another one was signed. Jogo company has, however, declined to do so. Advise the company.

In a different incident, Kuna municipality council has proposed to pass a law for the business community, to enable economic development in the municipality. The proposed law will require all profitable businesses to remit 5% of their profit towards setting up smaller businesses in the municipality. The council's view is that such a law would become a custom or super law over time for commercial activities, and all other existing commercial laws in Uganda would be rendered redundant or ineffective. When the business community inquired about the apparent overhaul of foundational commercial laws in the supreme law of the country, the municipality responded that all was possible in this country.

Required:

Identify all relevant issues and resolve them.

(Total 25 marks)

Question 2

Ttunga Ltd renewed contracts of all its employees, including Lukebe, who had been working for the company for the last 2 years. When Lukebe applied for leave, it was denied and he was told to read his renewed contract carefully. Lukebe scrutinized the contract and discovered that it provided for compensation to be given, resulting from foregoing annual leave, at a rate of compensation to be determined by the company. Lukebe wanted to rest and now seeks for your advice.

In a different scenario, Pata decided to sell part of his family farm land to get startup capital for his retail business without consulting his wife. He sold the piece of land to Cuku who made part-payment and waiting for the processing of transfer papers before making full payment. Pata thereafter told his wife to append her signature on the transfer papers but the wife refused to sign, after getting advise from a local friend. In the meantime, Cuku is demanding for the papers to enable him get a title for the land.

Cuku and Pata's continued with a good business relationship and one day, Cuku persuaded Pata to join their registered cooperative society, Yowa cooperative society, that deals in land transactions. Pata was admitted as a member of Yowa cooperative society and was instructed to fulfill all requirements, which included payment of the subscription fee and buying shares. Pata paid the subscription fee and advanced a big amount of money to pay for shares. However, when other members got information that Pata was to own more than one third of the total paid-up shares, they disputed this. The matter was then taken up by the board for consideration.

Yowa cooperative society directors were also faced with what they considered to be unnecessary confrontations from members, concerning the cooperative's auditor. Mihungi firm has been auditing the cooperative's books of account for the past three years without any problem and the directors expected to maintain the firm to continue for one or two more years. Ndhidi who had some knowledge of auditing informed other members that what the directors wanted to do was wrong. Members are now demanding for a change of auditor.

Required:

Identify the issues in this case and resolve them.

(Total 25 marks)

Question 3

Prime Consult is a business entity that entered into a contract with Zihomu, a well-known business man, to supply with items on credit, worth Shs 2 million, payable after one month. Chapa who is one of the long-serving officers signed the contract on behalf of Prime Consult. Unknown to Chapa, Zihomu often depends on medication for stability of his mental capabilities. When no payment was received from Zihomu after five weeks, Chapa went to Zihomu's business office to demand for payment of the company money. He found Zihomu in an unstable mental state and was advised to forget about any agreement made with him. In the many years Prime Consult dealt with Zihomu, Chapa never suspected that Zihomu sometimes had episodes of mental instability. On behalf of Prime Consult, Chapa has now approached you for advice.

Prime Consult also had challenges in a matter involving Pasha Investments, which was one of its big clients. When both companies failed to iron out some issues, they decided to use arbitration, and Pasha Investments suggested Mr. Kamal, who had vast experience in Alternative Dispute Resolution. However, Prime Consult is not comfortable with allowing Kamal to arbitrate their matters, since his origin was of foreign nationality. Despite the fact that Prime Consult does not have any competency issues against Mr. Kamal, the business entity prefers a person of Ugandan origin as arbitrator. Prime Consult has so far failed to propose a suitable person as arbitrator.

Pasha Investments also has another arbitration matter with Ndemye, who used to be its partner in business. Their matter had been set to be handled by a Ugandan arbitrator called Mugi, but despite a long lapse of time, no hearing date has been given to date. Although Ndemye seems not to mind the delay, the manager of Pasha Investments is contemplating taking appropriate action to change the situation, even if it means termination of Mugi's mandate.

In a different scenario, Pasha Investments and Prime Consult bid for a two-year supply of office materials to a government entity. The bidding process was concluded with Prime Consult as winner. Pasha Investments was not satisfied with the result and applied to the Public Procurement and Disposal of Public Assets Authority (PPDA) for review of the matter. However, information was received by management of Prime Consult that the authority is headed by a good friend of Pasha Investment's Chief Executive Officer and they are afraid that the final decision may be swayed. Prime Consult has registered its complaint with the tribunal.

Required:

Raise all relevant issues and resolve them.

(Total 25 marks)

Question 4

Tingu Ltd a company the deals in ceramic products is now facing compensation demands from the relatives of Kasobezo who sustained injuries after he was hit by a pile of ceramic tiles as he passed by the floor below the premises of Tingu Ltd. Kasobezo's neck and back were injured and he was rushed to a clinic for treatment. Advise them.

In another scenario, a fire broke out in Senyi slum area, where a number of properties and businesses were affected. In a bid to prevent further damage and loss, Vumba Authority officers broke down many neighboring shack houses and poorly constructed business structures, to enable access of Fire Brigade vehicles to stop the raging fire. The authority thereafter wrote an official letter to the public that it did not expect any claims from owners of broken structures, since they were built illegally and breaking them was an emergency, to stop further damage. Kabindo owned one of the structures that were broken down by the Vumba Authority officers. He furiously stormed into the authority office to claim for compensation for the damages. Advise him.

In another scenario, Wetuli firm a partnership business dealing in agricultural equipment has recently faced some challenges, one of which concerned agricultural equipment belonging to Zuno, who was one of its loyal suppliers. Wetuli firm buys and sells agricultural equipment as well as providing storage for customers at a fee. Zuno had at one time travelled and when some of the equipment he had paid for arrived, he requested Wetuli firm to receive and keep it for him. The partners agreed to this arrangement and the equipment was kept in the firm's store for safe custody. Two weeks later when Zuno went to pick the equipment from Wetuli firm he discovered that one of the partners had hired out the equipment for a fee from the local farmers. Zuno now wants the firm to either replace the equipment or pay its money's worth.

Following the challenge that Wetuli firm faced with Zuno's equipment, Gezi one of the partners, suggested that their general partnership be converted to a limited liability partnership. Apparently, the firm had other issues including pending court cases, and was likely to face more challenges if it lacked resources to pay for its obligations. In such a situation, personal income or property of each partner was likely to be used for payment. According to Gezi, conversion to a limited partnership would help to eliminate personal liability. The partners welcomed the idea and they have now approached you for further advice.

Required:

Raise all the relevant issues and resolve them.

(Total 25 marks)

Question 5

Kyotera Ltd has been going through a turbulent time since incorporation. One time when a general meeting was called in order to resolve some issues of the company, most of the members boycotted the meeting. This was because they had grievances which had lasted for some years without being resolved. However, three members attended. When the meeting was called to order, Kibaate who was one of the three members present, raised his concern that the meeting should be postponed since the number of members present was inadequate. The directors ignored him, stating that the present members would represent the others who refused to attend. Kibaate furiously walked out of the meeting, threatening to dispute any resolution made during that meeting.

Kibaate wanted to prepare for action against the directors, whom he referred to as "errant" company directors. He approached the company Secretary and requested to inspect the register of directors and secretaries. To his surprise, the secretary told him that he could only inspect the register for one hour, as instructed by the directors. The secretary who was in a hurry advised him to make an appointment for the following day in order to inspect the register. Kibaate is so frustrated with the turn of events and seeks for your advice.

In another scenario, Kyotera Ltd bought goods from Festa Products, which often shipped bulk items through Spedrite Co. The understanding was that Kyotera Ltd would get the goods from Spedrite Co. after one month. Two months ago, Festa Products got all the goods and informed Kyotera Ltd that the goods had been received by Spedrite Co. for onward shipping. However, Kyotera has not received any goods and has written to Festa Products, threatening to sue it for the goods' value.

Mingi, who is a trustee of the estate of a late member of Kyotera Ltd, has also faced challenges with some of the estate properties. The estate comprises of many properties and Mingi decided to appoint Funa to assist him with managing properties in Kenya, and to do all that was necessary for proper administration. Funa also became so busy at one time, so he appointed a colleague to be his substitute in case of any emergency relating to the properties. Recently, a warehouse which formed part of the estate properties was leaking and needed urgent repair. When Mingi was informed about it, he referred the matter to Funa, who also instructed his substitute to do the necessary repairs. However, despite reminders made, this was not done and Onga's property was damaged during the rainy season. He is now demanding for compensation from Mingi.

Required:

Raise all the relevant issues and resolve them.

(Total 25 marks)

TEST PAPER 10

CTA 2 - DECEMBER 2024

Attempt four of the five questions

Question 1

Mulodo's father bought land from Nsereko 30 years ago. When his father passed on two years ago, Mulodo and his family continued occupying the same land. Reko, Mulodo's neighbour, has an access road running through his land, which Mulodo and his family have been enjoying as an easement for the last 30 years. In 2022, Reko tampered with the access road by constructing a wall fence, which Mulodo claims has denied an access route and right of way to his family. Reko insists that Mulodo's claim is not justified because his family can access their land from the main road. Mulodo claims that access via the main road is not convenient.

In another scenario, Reko bought a kibanja Shs 60 million from Sana, in 2021. In 2022, Reko sold the kibanja to Zono at Shs 70 million and Zono started occupying the land after securing the boundaries with a chain-link. When Sana got to know about it, he filed a civil suit against Reko and Zono, in the chief magistrate's court to recover damages.

In yet another scenario, Ovia and Lumba entered into a lease agreement for a term of 10 years subject to a periodic payment of rent to Ovia, in advance. Ovia and Lumba did not sign a formal lease agreement but had an oral discussion over dinner, at a café. Lumba has been occupying the property but is in default of rent payment for 5 years. Despite several demand notes from Ovia, Lumba has not heeded to them. After a long struggle, Ovia got help from 'Muscle Men' (Kanyamas), took Lumba's vehicle and sold it to recover her rent arrears. This displeased Lumba, who is now planning to sue Ovia for wrongfully selling his vehicle.

It has transpired that Ovia purchased another piece of land from Gamwenge at Shs 50 million. Gamwenge gave Ovia the transfer forms, passport photographs and National identity card to Ovia for purposes of effecting the transfer. However, when Ovia presented Gamwenge's certificate of title, transfer forms, passport photos and her national identity card to the registrar of titles, the registrar, who was her ex-lover, refused to make the transfer. The registrar insisted that Ovia had not paid stamp duty, but Ovia is convinced that it was just malice, following the end of their affair a few years ago. She intends to report the matter to the commissioner of land registration.

Required:

Raise the relevant issues and resolve them. **(25 marks)**

Question 2

Rwabuka was employed with Tino Ltd as a technical officer at their Lwengo office. It was alleged at one time that Rwabuka was involved in vandalism of street-light conductors and that he had constructed illegal electricity lines. He was invited for a disciplinary hearing but he later alleged that he was not given an opportunity to be heard. After the disciplinary hearing, Rwabuka was suspended from employment and thereafter, summarily dismissed. According to the Dismissal Letter, the reason for his dismissal was for allegedly operating a mill in the names of Peto Amusu, but Rwabuka alleged that this was never brought to his attention during the disciplinary hearing. Rwabuka vehemently denies that he operates a mill and insists that he was unlawfully dismissed. Tino Ltd insists that Rwabuka fundamentally breached contractual obligations, including illegal construction and connection of electricity lines in Lwengo town.

Tino Ltd thereafter dismissed Alimedi, who was a practising Muslim, when he did not start work five minutes before the start of his scheduled shift, because he was still praying. Alimedi claims that he was harassed and taunted at work by his born-again manager, based on his religion and appearance. He claims that the manager had, on several occasions, made derogatory remarks about his long beard, which is worn as a symbol of his faith, and that Tino Ltd has failed to take any action to stop Alimedi's behavior. According to the manager, Alimedi's complaints only point to "stray, isolated comments and utterances." He further told Alimedi that he was fired because he does not tolerate Muslims and that if Alimedi told anybody, he would deny it and there would be no way to prove it.

In another incident, one of the workers called Ozi was electrocuted and he was hospitalised for two months. He was later discharged but when he reported to his work station in Lwengo, he realised that he had not been paid for the two months he was in hospital. The Human Resource Manager informed him that he was not paid because he had not worked for the last two months. Ozi is now threatening to sue Tino Ltd.

In another scenario, Lavina who is a single mother, usually takes her son aged two years (Jojo) to a local playground. One day, Lavina met Dicky who was also a single father, and started talking with him. Lavina seemed to have been distracted by Dicky's good looks and charm. Meanwhile, Jojo was walking towards the road. Dicky noticed a possible catastrophe and rushed off, after Jojo. He managed to save Jojo from being run over by Fara, who was driving safely, within the required speed limit. However, Dicky was knocked by Fara and got serious injuries when Fara skidded off the road and crashed into some playground equipment, but luckily, there were no children in that area. Dicky wants to sue Fara.

Raise a resolve the relevant issues **(25 marks)**

Question 3

Ganzi and Pora were business partners selling cosmetics as agents of a Kenyan cosmetics company. Ganzi was the active partner who conducted the day-to-day affairs of the business, while Pora, who is a dentist, was a sleeping partner. The partnership was governed by a deed which they signed, but overtime, Ganzi started feeling that he was putting in a lot of effort to run the business, whose profits are shared equally. As a result, he gave Pora notice of termination of the business. Prior to this notice, Ganzi executed another agreement and started a new business called Kenyan cosmetics company, which was trading under his own name. Ganzi continued carrying on business using the terminated partnership premises. The change of name and execution of new agreement with Kenyan cosmetics company during the subsistence of the partnership came to the knowledge Pora, who is furious and wants an account for his share of the profits.

Relatedly, Akayi drew a cheque on Mushari Bank, in favour of Kandi. Kandi received the cheque and crossed it generally. Thereafter, the cheque was stolen by Twesi, who went to Villa Bank, opened an account in Kandi's name and deposited the cheque on the account. Villa Bank presented the cheque to Mushari Bank, which verified and confirmed it, and thereafter requested for its due diligence pay. Kandi is furious and is seeking for recovery of her money from Mushari Bank.

In another scenario, Buza, a successful money lender, advanced a loan of Shs 6 million to Tery, who was struggling to take his children back to school. Tery issued an undated cheque which was completed in all other aspects, to Buza, as security for the loan. Without Tery's consent, Buza inserted a date on the cheque and presented it for payment at Grow Investment Bank, and it was honored. Tery is now furious because of the bank payment, and insists that the bank should have noticed that the hand writings and ink on the cheque were different. He is threatening to sue the bank for having honoured the cheque.

Furthermore, Tery issued a cheque of Shs 20 million, in favour of Guma. Tery had a sufficient amount of money in his account with Pere Bank. However, Pere Bank had financial challenges and is now under receivership. When Guma decided to present the cheque after two years from the date it was issued to him, he found Pere Bank in an advanced stage of winding up. Guma is now threatening to sue Tery, to recover his money.

Required:

Raise and resolve the relevant issues. **(25 marks)**

Question 4

Banza trades as Kihungu Farmers, a company with 1000 shares, 4000 cattle and 100 goats, all owned by him. Banza's son Doni who is 17 years old, has been helping on the farm since he was 2 years old, and Banza hopes that one day Doni will get involved in managing the farm. Last year, on Doni's sixteenth birthday, Banza told him; *"Son, I want to start giving you some responsibility on this farm. From now on, we will look at 10 cows in my flock as yours, and one day, you shall profit from them".* The cattle were kept together as one flock and Doni continued to help on the farm, to care for all of them. Last year, an anthrax outbreak resulted into death of the cattle, with only 10 remaining. Doni was of the opinion that it was time for him to sell and enjoy profit from the cattle, with the presumption that the 10 surviving ones were the ones entrusted to him. However, his father insists that he is the owner of the 10 survivors.

In a different scenario, Lefu left his farm to his brother Gumi for use during his life time. Lefu by secret trust asked Gumi to bequeath the house to his (Lefu's) son Mutu and his wife, in the event that Gumi dies. When Gumi died, it was discovered that he had by will left the farm to his son Ndanye, who was also the executor of his estate. When Mutu and his wife learnt about the turn of events, they started to claim that the farm was held by Gumi in trust for them, and that it should be given to them.

Another scenario involved Amora Ltd, which was incorporated in June 2003, with a share capital of Shs 5 million, divided into 100 shares of Shs 50,000 each. The majority shareholders were Lulisa and Mara, holding 50 and 40 shares respectively. The remaining 10 shares were owned by Zora. The company is now facing challenges in the way its affairs are conducted. Among other challenges, one piece of land owned by Amora Ltd has been transferred to another company which is owned by the majority shareholders, despite the existence of a caveat lodged by Zora; payment of colossal sums of money as rent for Amora Ltd, yet it occupied its own premises; and forcing Zora to sell his shares at a paltry sum of Shs 10 million. Zora is contemplating seeking for protection.

A different scenario concerned Dew Ltd, which was incorporated in 2020 with three shareholders, Kosa, Pata and Meso. Kosa and Pata, who are the majority shareholders and directors, have decided to handle most of the company matters including custody of all cheque books and related accounting records, after suspecting underhand activities by some company officers and staff. Meso has been approached by the internal auditor, whose grievance is the inability to comply with report making requirements, due difficulty to access the company records. Meso is determined to correct the situation and seeks advice from you.

Required:

Raise the relevant issues and resolve them. **(25 marks)**

Question 5

Moda and his 23 University friends reside in Zombe and have been saving and issuing each other loans, in rounds. The group made a profit of Shs 10 million last year and they shared it equally. They now want to register a cooperative society using the name Twezimbe Society. They drafted proposed byelaws in English and have proposed an executive committee of five members, chaired by Moda. All the necessary paperwork showing their ages and residences have been signed and Moda was tasked to handle the registration process of the society with the registrar of cooperatives. However, the registrar refused to register the society on the ground that they had not fulfilled all requirements as provided by law. Moda and his friends are puzzled and need your assistance to enable them achieve their objective.

Moda is also a member of Ggaga Corporative Society. At its annual general meeting this year, the majority of members proposed and succeeded in reappointing Rukora Associates as the society auditors. Rukora Associates has been the society auditor for the last three years, but members are of the opinion that it should continue since it carried out its tasks and duties diligently, effectively and efficiently. However, a few of the members are not happy with the re-appointment and are considering an option of leaving the society.

In another scenario, Moda's girlfriend Racha bought a second-hand wrist watch from Sawa's shop. Prior to buying, Racha specifically informed Sawa that she wanted a good 'waterproof' watch. Sawa showed her a watch with a tag 'waterproof' and the leaflet advertising it claimed that it excellently kept time. She relied on the tag and the attached leaflet to buy the watch, at Shs 150,000. Two weeks later, Racha realised that the watch was not waterproof and that it lost more than one in minute in time, every week. She returned the watch to Sawa and wants a refund. Sawa is of the view that since she had already bought and taken the watch a fortnight ago, she cannot return it.

Another scenario involved City Wines Ltd, which recently agreed with Tailo, the managing director of WB Ltd, to buy 600 bottles. Tailo confirmed that their company had 600 bottles which were available for sale but they were all of different sizes. Upon City Wines Ltd.'s willingness to take all the bottles, an agreement was signed. Tailo then proposed to City Wines Ltd that confirmation of the price would depend on the final number and sizes of all the bottles, which he had to measure and confirm after one week. City Wines Ltd agreed to Tailo's proposal. Unfortunately, during the following week, an earthquake struck the town and all of WB Ltd.'s bottles were destroyed and WB Ltd was not able to avail any bottles to City Wines Ltd. City Wines Ltd still insists that WB Ltd should fulfill its obligations as per the Agreement.

Required:

Raise and resolve the issues. **(25 marks)**

Answers

ANSWERS TO TEST PAPER 1
CTA JUNE 2018

Solution 1

Issues:

(i) Whether the Samia customary law could be used to settle the case.
(ii) Whether the contract between Koti and Maani was valid.
(iii) Whether there was a valid tenancy agreement between Munta and Bayo.
(iv) Whether the claim by Buganda Land Board for Tugu's payment of ground rent was lawful.
(v) Whether there were remedies available to the parties.

Resolution of issues:

(i) Wandera and Ouma committed robbery, which is a capital offence, and for which the elders requested the use of customary law to settle the case.
In Uganda, customary law is not applicable in such a case. The offence committed is criminal and only triable by the High Court.
Therefore, the Samia customary law could not be used to settle the case.

(ii) Where there is a contract with a person who represents him/herself to be what he/she is not, the contracting party is taken to have intended to deal with that person who physically appears before him/her. In such circumstance, if the property in goods passes, the contract is valid (See Boulton vYones 1875).
In this case, Koti physically appeared in Maani's shop and Maani contracted with him under the mistaken belief that he was Okot. Maani allowed Koti to take the goods after agreeing on the terms of payment.
Therefore, the contract between Koti and Maani was valid.

(iii) The contract between Munta and Bayo was not written. Bayo failed to pay rent and refused to give vacant possession of the apartment on the ground that there was no written agreement.
There is no legal requirement that a tenancy agreement must be written. Therefore, there was a valid tenancy agreement between Munta and Bayo.

(iv) In Uganda, private mailo land is owned in perpetuity and the owner is under no obligation to pay ground rent. Ground rent is only paid for official mailo land.
In the instant case, Tugu's land is under private mailo. Therefore, the claim by Buganda Land Board for Tugu's payment of ground rent was unlawful.

(v) Remedies available to the parties

- Biddi Sacco may seek for a Court order for refund of the money stolen by Wandera and Ouma.
- Munta may petition Court for an eviction order against Bayo.
- Tugu may seek a Court order for a declaration that no ground rent is payable by an owner of private mailo land.

Solution 2

Issues:

(i) Whether Kinomuhad a cause of action against Milky Ltd.

(ii) Whether Milky Ltd was liable for injuries sustained by Kinomu's son.

(iii) Whether there was an agency relationship between Milky Ltd and Byona Enterprises.

(iv) Whether Milky Ltd was liable for products taken by Byona Enterprises from Abaca Dairies.

(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) According to the law of torts, when there is a breach of duty caused by an omission to do something which a reasonable man would do, and as a result of which a victim sufferers injury to his person or property, then an action for negligence can be brought.

In this case, Kinomu slipped and fell at the entrance of Milky Ltd's shop, as a result of which she was injured and her glasses broke. Milky Ltd had a duty of care towards its customers to ensure that none of them were injured from any negligent act of the Company. Although there was a "cleaning in progress" sign, it was at the entrance of the building. Milky Ltd was negligent when it failed to take care that no spills occurred to occasion injury to anyone.

Therefore, Kinomuhad a cause of action against Milky Ltd.

(ii) When the manager of Milky Ltd led the little boy to a neighbouring room he gave the boy liberty to play with old, empty packages. In torts, this amounted to an occupier allowing a lawful visitor to enter his premises. In such circumstances, the occupier owes the visitor (the boy) the duty to take care necessary for reasonable safety on the premises. Where an occupier gives permission to a child to use objects on his premises, the occupier will be responsible for any injury that child may suffer. This is because the occupier is deemed to know habits or natural inclinations of a child, i.e. inquisitive and tendency to explore things around them.

When the boy was let into the room with old packages, it should have been expected that he would play with the packages. His injuries were a direct result of this and therefore, Milky Ltd is liable for injuries sustained by Kinomu's son.

(iii) Milky Ltd on many occasions, ordered for dairy products through Byona Enterprises and would clear all costs involved on delivery of the products to its shop. This conduct implied a relationship between the two.

Implied agency is inferred from the conduct of parties.

Therefore, there was an agency relationship between Milky Ltd and Byona Enterprises.

(iv) Where an agency relationship is implied from the conduct of parties, the principal is estopped from denying the agency authority to a third party, who relied on the conduct between the two parties.

It, therefore, follows that Milky Ltd is estopped from denying its authority to Byona Enterprises to carry out that transaction. Therefore, Milky Ltd was liable for the products taken by Byona Enterprises, from Abaca Dairies.

(v) Remedies available to the aggrieved parties.

Kinomu may seek for a Court order for damages from Milky Ltd.

Kinomu may also seek a Court order to compel Milky Ltd pay damages for injuries to her son.

Abaca Dairies may seek for an order of Court for payment of Shs 500,000 by Milky Ltd.

Milky Ltd may, thereafter, pursue a refund from the directors of Byona Enterprises, if they can be traced.

Solution 3

Issues:

(i) Whether Zaka was justified to prevent the filing ofLumonde Ltd's annual returns.

(ii) Whether the declaration of dividends to the shareholders of Lumonde Ltd was lawful.

(iii) Whether DCI Ltd was liable for the delay of delivery of Mudo's goods

(iv) Whether FF Ltdwas liable for breachof the contract made with Mudo.

(iv) What remedies are available to the parties?

Resolution of issues

(i) Under S.198 (d) of the Companies Act 2012, one of the duties of a director is to ensure compliance with the Companies Act or other law.

In the instant case, the director caused the company's failure to file returns as

required by law under 132 and 134 of the Company's Act 2012. This was in breach of his duty. Therefore, Zaka was not justified to prevent the filing of the company's annual returns.

(ii) Under S.69 (2) of the Companies Act 2012, a company is not legally authorised to pay dividends save from profits. In the instant case Zaka declared dividends out of proceedings of sale of shares. Therefore, the declaration of dividends to the shareholders of Lumonde Ltd was unlawful.

(iii) The legal principle in carriage of goods is that where a carrier causes unnecessary delay, he is liable to pay damages.

In the instant case, delay was due to overwhelming demands of transportation services and mechanical faults of the ship. Therefore, DCI Ltd was liable for the delay of delivery of Mudo's goods.

(iv) Under the law sale of goods, it is an implied term of contract that goods sold by description must be of merchantable quality i.e. reasonably fit for purposes for which they were bought.

In the instant case, the contract with FF Ltd provided that the apples would be in a good consumption state for at least 3 months after departure from the seller the ship arrived after one month and on arrival, the apples were condemned unfit for human consumption. Therefore,FF Ltd was liable for breach of the contract made with Mudo.

(v) Remedies available to parties

- Lumonde Ltd may seek for a court order compelling Zake to make good any damage caused to the company as a result of failing to make returns in time.
- Lumonde Ltd may seek for court order for damages for breach of duty fromZaka.
- Mudo may seek for an order of court for general damages from DCI Ltd.
- Mudo may seek for an order of court for general damages from FF Ltd

Solution 4

(i) Whether the monthly deduction from Katta's salary was lawful.

(ii) Whether Katta's dismissal by BTS Ltd was lawful.

(iii) Whether the 30 days' limit given by the High Court Assistant Registrar for conclusion of mediation was justified.

(iv) Whether there was an alternative process available to KM Dairies to settle the matter against Musa.

(vi) What remedies are available to the parties

Resolution of issues:

(i) Section 46(2) of the Employment Act, 2006 prohibits an employer from deducting costs of any protective gear or tools of trade wages of an employee.

In this case, BTS deductsShs10,000 every month from Katta's salary for the payment of equipment. This was a prohibited deduction. Therefore, the monthly deduction from Katta's salary was unlawful.

(ii) Termination shall be deemed to take place where the contract of service is ended by the employer with notice (S. 65(1) (a) of the Employment Act, 2006).
In the instant case, Katta was dismissed by BTS Ltd without notice. Hence, Katta's dismissal by BTS Ltd was unlawful.

(iii) Under the mediation rules, Judicature (mediation) rules, 2013,the time provided for conclusion of mediation is 60 days.
In this case, the High Court Assistant Registrar gave the parties 30 days within which to conclude the matter. Therefore, the 30 days' limit given by the High Court Assistant Registrar for conclusion of mediation was not justified.

(iv) Where an employer is dissatisfied with the conduct of an employee, the employer may either seek administrative action from a labour officer or proceed for action in the industrial Court.
In this case, Musa who is an employee of KM Dairies revealed secrets of his employer to S.K Dairies. As a result, KM Dairies would like to bring an action against Musa, without going through the ordinary Court process. It is at liberty to pursue an administrative action against Musa. Therefore, KM Dairies has an alternative process available to settle the matter against Musa.

(v) Remedies available to the parties.
- Katta may complain to the labour officer for the refund of the deducted money.
- Katta may seek for an order from the labour officer for re-instatement
- Erongot's lawyer may seek for a Court order for a retrial of the mediation.

Solution 5

Issues

(i) Whether Vilungu Company was justified to refuse granting Nzale more days of maternity leave.

(ii) Whether Vilungu Company was liable for injuries sustained by Zipa.

(iii) Whether Vilungu Company was liable for the replacement of Rock Metal Works' spare parts.

(iv) Whether there was a valid contract between Vilungu Company and Yokya.

(v) Whether the aggrieved parties have any remedies.

Resolutions of issues.

(i) According to S.56 (1) of the Employment Act, 2006 a female employee has a right to maternity leave of 60 working days from work, as a consequence of pregnancy.

In this case, Vilungu Company granted Nzale only 45 days, despite her request for more days on the ground of complications while delivering. This was wrong and against the law. Therefore, Vilungu Company was justified to refuse granting Nzale more days of maternity leave.

(ii) Zipa who worked for Vulugu Company was injured in the course of his employment, when a metal hit his eyes and his fingers were injured thereafter. Vilungu Company only provided overalls to staff in that particular department, without giving other equipment like gloves and goggles for protection of the hands and eyes respectively.

Under Section 13(g) of the Occupational Safety and Health Act, 2006, it is the responsibility of an employer to provide, where necessary, adequate personal protective equipment to prevent, as far as reasonably practicable, the risk of accidents or adverse affects on health.

In this case, the workers in Zipa's department were not given protective equipment for their eyes, hands or other parts of their body. This was against the law and amounted to an offence. Vilungu Company was therefore, liable for injuries sustained by Zipa.

(iii) When Zipa got injuries in the left eye, he accidentally touched some corrosive chemical which poured onto Rock Metal Works' spare parts, damaging them. At that time, there was a master/servant relationship between Vilungu Company and Zipa.

Under the law of torts, where there is a master/servant relationship, the master is always liable for the torts committed by the servant in the course and scope of his duties.

Vilunga Company cannot claim that Zipa is liable for the damage of Rock Metal Works' spare parts. Instead, the Company is vicariously liable for the damage of Rock Metal Works' spare parts. Therefore, Vilungu Company was liable for the replacement of Rock Metal Works' spare parts.

(iv) At the time of contracting to buy land from Vilungu Company, Yokya was told by the Company representative that it was a prime piece of land and suitable for real estate development. This was later found to be untrue, yet Yokya had relied on the untrue statements to enter into the contract.

In contract, misrepresentation occurs when a party to a contract is induced to contract by a misleading statement and if such statement was made with the knowledge of its falsehood, it amounts to fraudulent misrepresentation. Misrepresentation of facts is actionable, and the victim

has the option of rescinding the contract. The statement made by Vilungu Company's representative amounted to mispresentation of facts. Therefore, there was a valid contract between Vilungu Company and Yokya, which was voidable at Yokya's option.

(v) Remedies available to the parties

- Nzale may complain to the labour officer to compel the Company to grant her full maternity leave of 60 working days.
- Zipa may seek for a Court order against Vilungu Company for damages.
- Rock Metal Works may seek for a Court order compelling Vilungu Company to replace its spare parts.
- Yokya may rescind the contract and seek for an order of Court to be refunded money paid to Vilungu Company.

ANSWERS TO TEST PAPER 2
CTA NOVEMBER 2018

Solution 1

Issues:

(i) Whether the Court of Appeal was the proper place for Gambo to sue the company.

(ii) What was the proper procedure for Gambo's case?

(iii) Whether Tikka Company was liable for the loss incurred by Songambere Ltd.

(iv) Whether Songambere Ltd was justified not to sell its containers to Birebe.

(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) The Court of Appeal in Uganda is, as its name suggests, a Court with appellate jurisdiction in civil and criminal matters that originate from the High Court.

In this case, Gambo believes that Songambere Ltd committed a crime of leaving rotting fish on his property, which is now letting off a strong stench.

The action against Songambere Ltd can be handled by the Magistrates Courts with original jurisdiction, as well as the High Court which has unlimited civil and criminal jurisdiction. Therefore, the Court of Appeal was not the proper place for Gambo to sue the company.

(ii) When Songambere Ltd left fish on Gambos property, it started rotting and smelling for Gambo and his family, thus a nuisance to them. It was an unlawful interference on Gambo's land, preventing enjoyment of the right to the use of his land. This was private nuisance to Gambo's right to fresh air. It was not a criminal act against Gambo and his family. Therefore, the proper procedure for Gambo's case was civil procedure.

(iii) According to Section 66(i) of the Contracts Act, 2010, discharge of a contract by frustration can only occur where one party cannot show that the other party assumed the risk of impossibility to perform.

In the instant case, Tikka Company pleaded an act of God as a frustrating event, when strong winds prevented delivery on time.

Tikka Company boat's set-off time at 5:00 p.m, an hour later that the expected time of delivery indicated that Tikka Company assumed the risk of impossibility to perform. The strong winds could not be taken as an act of God, since the delay could have been avoided. The existence of a

market for fish implied possible fluctuation of prices, which was reasonably foreseeable by Tikka Company.

Therefore, Tikka company was liable for the loss incurred by Songambere Ltd.

(iv) One of the rules governing acceptance under the law of contract is that acceptance is effected the moment an acceptance letter is posted to the correct address of the offeror.

Section 3(2) of the Contracts Act, 2010 provides that communication of acceptance of an offer is made by an act of a party who accepts the offer.

In this case, Songambere Ltd instructed for a written mode of acceptance of offer addressed to the company, which Birebe did, and posted. Postage concluded the acceptance by Birebe, thus, the company could not sell to another party. Therefore, Songambere Ltd was not justified to sell its containers to another person, instead of Birebe.

(v) Remedies available to the parties

- Gambo may sue and claim for damages from Songambere Ltd.
- Gambo may seek for a Court order to compel Songambere to remove the smelling fish.
- Songambere Ltd may seek for a Court order against Tikka company, for payment of Shs 4 million which was lost profits and damages.
- Birebe may sue and claim for damages from Songambere Ltd, for breach of contract.

Solution2

Issues:

(i) Whether the rejection of transfer of land from Machati to Singh was lawful.
(ii) Whether Ntono was liable for compensation of the tenants on the land.
(iii) Whether Machati was liable for the injuries sustained by Zuni.
(iv) Whether Ntono had a cause of action against Pastor Bata's church.
(v) What remedies are available to the parties?

Resolution of issues:

(i) Under Section 40 of the Land Act 1988 (as amended), non-citizens are only entitled to acquire registered interest under lease tenure system.

In the instant case, Singh bought a freehold titled land in Busiro from Machati and wanted to have it registered under a freehold tenure. He was informed that he was legally barred from purchasing the land due to the

nature of its tenure. Therefore, the rejection of transfer of the land from Machati to Singh was lawful.

(ii) Under the registration of Titles Act a conditional page in a freehold title is part and parcel of the land title. All obligations contained therein are transferred with the transfer of ownership (Section 128).

In the instant case, the conditional page bore a statement of compensation to tenants. The liability for compensation of the tenants was impliedly transferred from Machati to Ntono, upon the transfer of rights of proprietorship. Therefore, Ntono was liable for compensation of the tenants on the land.

(iii) The principle in the case of Donoghue V. Stevenson 1932is to the effect that a person is liable for negligent acts if his conduct results in injury of another whom he reasonably contemplated to sustain injury. This happens when the duty of care falls below that of a reasonable person in the circumstances.

In the instant case, Machati was driving with one hand while talking on phone. His vehicle swayed and knocked Zuni who was moving along the road as a pedestrian. Machati, as a reasonable driver, should have exercised reasonable care to avoid knocking Zuni. Therefore, Machati was liable for the injuries sustained by Zuni.

(iv) Under the law of torts, any occupier of premises is entitled to quiet enjoyment of the surroundings.

In the instant case, Pastor Bata's church followers prayed at the top of their voices from 7.00 p.m. until morning. Thus, violating Ntono's right of quiet enjoyment of her surroundings. Therefore, Ntono had a cause of action against Pastor Bata's church.

(v) Remedies available to the parties

- Singh may claim in equity, for a refund of money paid for the land, from Machati.
- Tenants on Ntono's land may seek a Court order for compensation from Ntono.
- Zuni may seek for a Court order for damages from Machati, for injuries sustained.
- Ntono may sue and claim for damages from Pastor Bata's church, for nuisance.

Solution 3

Issues:

(i) Whether Oga is liable for the cancellation of the District LG order.

(ii) Whether Bakanto's revocation of the agency with Oga was justified.

(iii) Whether Amandi's retention of Mbode's goods was lawful.

(iv) Whether Amandi was justified to sell the retained goods.

(iv) What remedies are available to the parties?

Resolutions:

(i) The law of agency is to the effect that when an agent acts with reasonable skill, care, and diligence, he does not stand liable for any eventualities that occur during the period of the agency (Section 148 Contracts Act, 2010).

In this case, Oga acted with reasonable skill and diligence, paid for the bicycles and loaded them onto the train in time. The delay of the train was beyond his control. Therefore, Oga is not liable for the cancellation of the District LG order.

(ii) Under S138 Contract Act, 2010, a principal is not allowed to revoke an agency if it is partly exercised and will leave the agent exposed to liability.

In this case, the revocation of the agency by Bakanto was based on his misconception about the cause for cancellation of the District LG order. Oga is now faced with a challenge of paying the balance due to Shah, for the bicycles.

Therefore, Bakanto was not justified to revoke the agency relationship with Oga. Therefore, Bakanto's revocation of the agency with Oga was not justified.

(iii) Under the law of Sale of Goods, where there is a sale of goods and the buyer becomes insolvent, the unpaid seller has a right of lien and of stopping goods in transit, and can refuse to deliver goods to the buyer until full payment of the price has been made.

In the instant case, Amandi retained the goods after he was informed that Mbode had been declared insolvent.

Therefore, Amandi's retention of Mbode's goods was lawful.

(v) An unpaid seller of goods has the right to resale in exercise of his right of lien, provided he notifies the buyer about his intention to resale (see R.V. Ward V Bignall, 1967).

In this case, Amandi retained Mbode's goods and put him to notice of one week within which he expected full payment. The goods were sold ten

days later, after expiry of the notice. Therefore, Amandi was justified to sell the retained goods.

(vi) Remedies available to the parties

- Oga may seek for a Court order of indemnity from Bakanto, for the expenses he incurred.
- Shah may seek for a Court order against Bakanto for payment of the balance due.
- Amandi may seek for a Court declaration order that the retention and sale of Mbode's goods was justified.

Solution 4

(i) Whether Mpozi company is liable to Kapo for payment of the borrowed money before its incorporation.

(ii) Whether the chairman's denial of Fudu's representative the opportunity to discuss was justified.

(iii) Whether Zaidi was justified to complain about non-provision of work.

(iv) Whether Meno's dismissal was lawful.

(v) Whether the aggrieved parties have any remedies.

Resolution of issues

(i) The contract/agreement between Kapo and Lwana was made prior to the incorporation of Mpozi company. Lwana at that time was promoting Mpozi Company and acted on its behalf. On incorporation, Lwana presented the concern to the directors, who in turn adopted the debt on behalf of the Company.

S.54 (3) of the Companies Act, 2012, provides that in all cases when a company adopts a pre-incorporation contract, the liability of a promoter of that company ceases. Therefore, Mpozi company was liable to Kapo for payment of money borrowed, before its incorporation.

(ii) Fudu who was a member of Mpozi company requested a non-member to represent him at the general meeting, i.e. appointed a proxy to represent him.

According to S.143(1) of the Companies Act, 2012, a member who is entitled to attend and vote at a meeting is entitled to appoint another person, whether a member or not, as his/her proxy to attend, speak and vote at such meeting.

In this case, the chairman denied Fudu's proxy to discuss during the meeting for reason of not being a member. Therefore, the chairman's denial of Fudu's representative the opportunity to discuss was not justified.

(iii) Every employer is duty bound to provide work to his employee during the period for which a contract of service is binding (S.40 of the Employment Act, 2006).In this case, Zaidi has been denied work and thus rendered redundant for 3 months, despite the work existing in his department. This was against the provision of law. Therefore, Zaidi was justified to complain about non- provision of work.

(iv) Meno was dismissed from Mpozi Company on the ground that he had not handled his work well. This was based on an incident where some items were missing from the store. These items were found to have been used during a directors' meeting. No loss had been made in the store when Meno was a manager.

Section 68(1) of the Employment Act, 2012 provides that where an employer fails to prove reasons for dismissal, such dismissal shall be deemed to have been unfair within the meaning of S.71.

S.71 explains unfair dismissal to include a situation where an employee has been in continuous service for 13 weeks before termination.

Meno had worked for a long time and no just reason was given for his dismissal. Therefore, Meno's dismissal was unlawful.

(v) Remedies available to the aggrieved parties:

- Kapo may seek for a Court order against Mpozi company, for payment.
- Fudu may seek for a court declaration that his proxy was unlawfully disallowed to discuss in the meeting.
- Zaidi may complain to the labour officer to compel Mpozi company to provide him with work.
- Meno may complain to the labour officer for an order of reinstatement or compensation.

Solution 5

Issues:

(i) Whether the contract between Fula and Rapo was valid

(ii) Whether the price for the bicycle was justified.

(iii) Whether Court was justified to spend a year without fixing the mediation hearing.

(iv) Whether a Police commander was the proper person to handle Alternative Dispute Resolution.

(v) What remedies are available to the parties?

Resolution of issues:

(i) The common law principle under the law of contracts is that an infant (minor) is bound by an agreement whose object is to enable him obtain necessaries, education or any other beneficial service.

In the instant case, Rapo who was a minor, bought a bicycle from Fula to enable him ride to school. Given Rapo's station in life and the fact that he was writing his S.4 exams, the bicycle was a necessity.

Therefore, the contract between Fula and Rapo was valid since Rapo had capacity to contract for necessities.

(ii) One of the general rules about consideration is that it need not be adequate but sufficient since Court will not compare reciprocal promises (See White V. Bluett, 1853).

In this case, Rapo's father Tabora, declined to pay for the bicycle arguing that the price for the bicycle was not adequately matching the market price. Since Rapo and Fula agreed that the bicycle would cost Shs 200,000, this was sufficient consideration for it. Therefore, the price for the bicycle was justified.

(iii) Under Rules 7 & 8 of the Judicature (Mediation) Rules No.13 of 2013, Court is required to fix a Meditation hearing 14 days after the filing of all pleadings and conclude the same in 60 days.

In this case, a year had lapsed since Fula filed all pleadings but no date had been fixed for the mediation hearing.

Therefore, court was not justified to spend a year without fixing the mediation hearing.

(iv) Under the Judicature (mediation) rules No.13 of 2013 (see interpretation section), a Police Commander is not one of the officers authorised to conduct a mediation hearing.

In the instant case, Fula was referred to a police commander for the ADR.

Therefore, a Police Commander was not the proper person to handle Alternative dispute resolution hearing.

(v) Remedies available to the parties.

- Fula may seek for a Court order compelling Tabora's payment of the bicycle.

- Fula may complain to the Principle Judge, seeking for a directive that the High Court (Commercial Division) to fix a date for the mediation hearing.

ANSWERS TO TEST PAPER 3
CTA MAY 2019

Solution 1

Issues:

(i) Whether it was lawful for Balefu Local Council I to pass a by-law.

(ii) Whether Dalu was justified to sue Mutega under criminal procedure.

(iii) Whether there was a valid contract between Bekyo and Mbazi.

(iv) WhetherBekyo was justified to rescind the contract with Mbazi.

(v) Whether there are any remedies for the aggrieved parties.

Resolution of issues:

(i) Legislation in Uganda is passed by Parliament following due process. Parliament may, however, delegate this role to designated persons (Article 97(2)of the 1995 Constitution). This includes the Local Government Council, which is the highest political authority in a district (Art 180(1) of the Constitution (amendment) Act, 2005).

In this case, Balefu village Local Council I passed a by-law for the people of Balefu village. The Local Council I does not pass by-laws, but only handles matters arising out of by-laws, made under the Local Government Act (see: S.10(c) Local Council Courts Act, 2006). Therefore, it was not lawful for Balefu Local Council I to pass the by-law.

(ii) Excessive use of power to do something beyond the given jurisdiction is a matter of civil nature, not criminal law.
In the instant case, Balefu village Council I used powers beyond their jurisdiction to passa by-law. Dalu wants to file a suit to challenge their action under criminal law, but this would only be done under civil procedure.Therefore, Dalu was not justified to sue Mutega under criminal procedure.

(iii) Under the law of Contract, a person is said to be of sound mind if at the time of contracting, the person is capable of understanding the contract and forming a rational judgment to its effect upon his/her interests (S.12 contracts Act, 2010).
In the instant case, Bekyo and Mbazi entered into a contract, although Bekyo was known in the village to have mental disability. At the time of entering into the contract, Bekyo was of sound mind. Therefore, there was a valid contract between Bekyo and Mbazi.

(iv) Under contract law, there is undue influence for a contract if one of the parties is in a dominating position. This dominating position includes a situation where the mental capacity of a party is temporarily affected by reason of mental distress (see:Ss.14 (1) & (2)(c) of the Contracts Act 2010). Such a contract is voidable at

the option of the party whose consent (S.16 (1) and (Lancashire loans Ltd v Black, 1934).was obtained by undue influence.

In this case, Bekyo had mental disability. He entered into a contract with his uncle who was in a dominating position over him. Bekyo later on opted out of the contract, stating that he had been persuaded by his mother and uncle to contract.Therefore, Bekyo was justified to rescind the contract with Mbazi.

(v) Remedies available to the aggrieved parties.

- Villagers ofBalefu village may seek for a declaration order of Court that the Local Council I's by-law was not lawful.
- Dalu may pursue a case against Balefu Local Council I under civil procedure.
- Bekyo may seek for a declaration order of court that the contract made with Mbazi be rescinded.

Solution 2

Issues:

(i) Whether Mure was justified to evictBatogo from his land.
(ii) Whether Ndolo's change of business was lawful.
(iii) Whether Dongo was liable for the loss of Ndaba's chicken.
(iv) WhetherMburuwasliable for Tonto's broken leg.
(v) Whether there are remedies available.

Resolution of issues:

(i) S.29 (2) of the Land Act, 1998 defines a bonafide occupant as a person who before coming into force of the 1995 Constitution, had occupied and utilized land unchallenged by the registered owner for 12 years, or more.

In theinstant case, Batogo stayed on Mure's land for 25 years since 1994, without being challenged byMure. He qualified as a bonafide occupant who cannot be evicted from the land. Therefore,Mure was not justified to evictBatogo from his land.

(ii) Under the Registration of Titles Act Cap 230, Laws of Uganda, a lease agreement is an arrangement made between two parties, that allows one of those parties, to use land belonging to the owner. It is a legal contract specifying the terms under which one party (lessee) agrees to lease land from another party (lessor), for a specified period of time, and specified use for the land.

In this case, Ndolo was to graze sheep and grow perennial crops. When he got a lot of money, he established a fuel station, which was not in the lease agreement, thereby breaching the lease agreement.Therefore, Ndolo's change of business was unlawful.

(iii) An inevitable accident is one which cannot be prevented by exercise of ordinary care, caution or skill. In order to establish a defence of inevitable accident, it is

necessary to prove that the alleged accident was not capable of being prevented by ordinary care or diligence (see: Stanley v Powell, 1876).

In the instant case, the rainstorm that caused Dongo's swimming pool to flood into Ndaba's land and the drowning of Ndaba's chicken, was an inevitable accident that could not be prevented by Dongo. Therefore,Dongo was not liable for the loss of Ndaba's chicken.

(iv) An occupier of premises owes to all visitors the duty to take such care as, in all circumstances of the case,is necessary to see that the visitor will be reasonably safe in using the premises for the purpose he has been invited or permitted to be there(see: Rich v. Commissioner for railways [1959] 33 A.L.I.R. 176).

In the instant case, Mburuinvited Tonto for the graduation celebration. When Tonto went to ease himself behind the house, he fell into a hole and his leg got broken. Therefore,Mburuwas liable for Tonto's broken leg.

(v) Remedies available.

- Batogo may seek an order of Court for a permanent injunction against eviction from the land.
- Mure may terminate Ndolo's lease.
- Tonto may seek for an order of Court, for an award of damages against Mburu.

Solution 3

Issues:

(i) Whether Lwamatawas liable to pay Shs 3 million to Kabreen Ltd.

(ii) Whether Lwamatawas liable to pay Zenyana for the extra costs incurred.

(iii) Whether Lwamata was justified to deliver part of the timber to Gampe Ltd.

(iv) WhetherJohn was justified to claim the phone from Bumbula.

(v) Whether there are any remedies available to the parties.

Resolution of issues:

(i) Section 145 of the Contracts Act 2010 provides that an agent has no authority to act beyond the instructions of the Principal. If he does so, he/she is liable for the losses incurred by the Principal.

In the facts, Lwamata instructed Zenyana to buy timber of 4" x 6" timber at Shs 4,000 each but Zenyana bought timber of 6" x 6" timber at Shs 6,000 each, thereby incurring an extra cost of Shs 3 millionLwamata refused to pay the extra cost because Kenyana had gone against her instructions. Therefore, Lwamatawas not liable to pay Shs 3 million to Kabreen Ltd.

(ii) S. 156 (1) of the Contracts Act, 2010 provides that a Principal must indemnify an agent against the consequences of all lawful acts done by the agent in exercise of the authority conferred upon that agent.

Section 156 (2) provides that the principal is liable to indemnify the agent against loss and liability where the agent acts in good faith.

In the facts, Zenyana bought 6" x 6" timber at Shs 6,000 each instead of 4" x 6" timber at Shs 4,000each, which was against Lwamata's instructions.Therefore, Lwamatawas not liable to pay Zenyana for the extra costs incurred.

(iii) Section 34 (1) of the Sale of Goods and Supply of Services Act 2017 is to the effect that it is the duty of the seller to deliver the goods and the buyer to accept and pay for the goods.

In the facts,Gampe Ltd paid the money for the timber as agreed in the sale agreement but Lwamata delivered only part of the timber. Lwamata claimed that this was because of the increased transport costs. However, Lwamata's claims cannot exonerate her from her obligations. Therefore, Lwamata was not justified to deliver only part of the timber to Gampe Ltd.

(iv) The general rule in sale of goods is that where goods are sold by a person, the buyer acquires no better title than the seller had. However, the exception to this rule is that a valid title can be given, provided that the buyer buys the goods in good faith, without notice of any illegality(see:Phillips v Brooks, 1919).

In the instant case, Bumbula bought the phone from Kadi at Ug shs 20,000. When John whose phone had recently been stolen, saw Bumbulawith it, he claimed forthe phone from Bumbula. John also recognised matching details of his stolen phone from the receipt and demanded that Bumbula should hand over the phone to him. However, Bumbulahad bought the phone with good faith without any knowledge of the theft, thus getting good title to it and he got a receipt for it. Therefore, John was not justified to claim the phone from Bumbula.

(v) Remedies available to the parties.

- Kabreen Ltd may sue Zenyana for the recovery of Shs3 million.
- GampeLtd may seek for a court order for specific performance of the contract with Lwamata.
- Gampe Ltd may seek for a court order for damages.

Solution 4

Issues:

(i) Whether Kata Ltd was liable to Tepe for the loss he incurred in selling his shares.
(ii) Whether Twala's claim for priority of payment was justified.
(iii) Whether P.P Ltd was liable to pay Kodeki for the one month he was sick.
(iv) Whether the extension of Kodeki's probation to 8 months was justified.
(v) Whether there are any remedies available to the parties.

Resolution of issues

(i) In company law, where a statement in a prospectus which invited a person to subscribe for shares contains a material misrepresentation resulting into loss or injury to the subscriber, the company may be held liable, if any of its officers

knew the statement to be false or had no reason to believe it to be true (see: Derry v Peek,1889).

In the instant case, Kata Ltd published a prospectus which stated that the company had no pending legal matters whatsoever. Teperelied on this information and bought 50 shares worth Shs 20 million. Six months later, the company lost the case and its share valuedecreased as a result of paying damages and costs of the suit.Consequently, Tepeincurred a loss of 5 million shillings when he sold his shares. Therefore,Kata Ltd was liable to Tepe for the loss he incurred in selling his shares.

(ii) Under common law, if debentures are issued in series without indicating that they rank pari passu, they may be paid according to the date of issue.

In this case, Seka,Rafiki and Twala's debentures were issued in series on 20th June, 25th July and 30th August respectively. Twala's debenture was issued last and would accordingly be paid last. Therefore Twala's claim for priority of payment was not justified.

(iii) Under S.55 (1) (a) of the Employment Act 2006, an employee who has completed not less than one month's continuous service with an employer and who is incapable of work because of sickness, is entitled to full wages and benefits sick pay for the first month's absence from work.

In the instant case, Kodekihad worked for 6 months before he fell sick for one month. When he resumed work, he was informed that he would not be paid for the one month he was absent. This was against the provision of law. Therefore,P.P Ltd was liable to pay Kodeki for the one month he was sick.

(iv) Under section 67 (2) of the Employment Act 2006, the maximum 6 months' probation period can be extended for not more than 6 months, upon agreement with the employee.

In the instant case,Kodeki's6 months' probation period was increased to 8 monthswithout his consent, which was against the law. Therefore, the extension of Kodeki's probation to 8 months was not justified.

(v) Remedies available to the parties.

- Tepe may seek for a Court order to recover of Ug shs 5 million from Kata Ltd.
- Kodeki may complain to the labour officer to obtain an order for paymentof wagesfrom Kata Ltd for the month he was sick.
- Kodeki may complain to the labour officer for an order to ensure that P.P Ltd complies with the law, concerning the probationary period.

Solution 5

Issues:

(i) Whether Dilu enterprises was justified to reject the appointment ofKyon as an arbitrator.

(ii) Whether Mane Ltd was liable to pay Plida.

(iii) Whether Zimbi is liable to pay Mukozi.

(iv) WhetherZimbi was justified to reject the contract sent by Pangi's lawyer.

(vi) Whether there are any remedies available to the parties.

Resolution of issues:

(i) Section 11(1) of the Arbitration and Conciliation Act,2000 provides that no person shall be precluded by reason of nationality from acting as an arbitrator, unless otherwise agreed by the parties.

In this case, only Dilu enterprises rejected the appointment of Kyon as an arbitrator, whom it regarded as a foreigner. This was against the provision of the law concerning arbitration. Therefore, Dilu enterprises was not it justified to reject the appointment of Kyon as an arbitrator.

(ii) Section 7(1) of the Arbitration and Conciliation Act, 2000 provides that an arbitration agreement is not discharged by the death of any party to the agreement, and such agreement is enforceable by the personal representative of the deceased.

In the instant case, Sonde died before Mane Ltd had fulfilled the settlement agreement to pay him. When Plida, the personal representative of Sonde claimed payment from Mane Ltd, no payment was made. Mane Ltd was of the view that after Sonde's death, no further claims were to be made. This was against the provision of law.Therefore, Mane Ltd was liable to pay Plida.

(iii) S.35 of the Contracts Act 2010 provides that a party's refusal to perform a contract in its entirety may put an end to the contract by the other party. Partial performance of a contract entitles a party to benefit for only part of the performed contract (see: Sumpter v Hedges [1898] 1QB 673).

In this case, Mukozi only performed part of the contract when he failed to complete the building of Zimbi's storehouse. Zimbi completed the building and refused to pay Mukozi for the full contract price. Therefore, Zimbiwas only liable to pay Mukozi for part of the work which Mukozi did.

(iv) Under contract law, an acceptance can only be effective if it is absolute and un-qualified. There is no contract if acceptance includes terms that were not part of the offer (see Jones v Daniel [1894] 2 ch 332).

Section 7(1) of the Contracts Act, 2010 provides that an offer can only be converted into a promise if it is absolute and unqualified.

In this case, Zimbi offered to sell his storehouse to Pangi. Pangi's lawyer sent an acceptance, together with a contract that included terms which Zimbi had not agreed upon. Zimbi rejected the contract because of the additional terms that qualified the acceptance.Therefore, Zimbi was justified to reject the contract sent by Pangi's lawyer.

(v) Remedies available to the parties:

- CADER may advise Dilu about the legality of a foreigner being appointed as an arbitrator.
- Plida may seek for a court order, compelling Mane Ltd to pay him.
- Mukozi may sue Zimbi for payment of part of the work done.
- Mukozi may sue Zimbi for payment of materials bought.

ANSWERS TO TEST PAPER 4
CTA DECEMBER 2020

Question 1

Issues involved

(i) Whether Rukubuza was justified to reject the consignment of Jelly cans.
(ii) Whether Kamanzi was liable to pay Kenyana for the stolen carpet.
(iii) Whether the sit-down strike by employees of Kazimiri Co. was lawful.
(iv) Whether the employees' demand for safety gears was justified.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) As a general rule in sale of goods, there is an implied condition that the bulk shall correspond with the sample. In a sale by sample as well as description, it is not sufficient that the bulk of goods correspond with the sample if the goods do not also correspond with the description (S. 14 (2) Sale of Goods and Supply of services Act, 2017; Nichol v Godts, 1854).
In the facts, Rukubuza agreed to buy100 Jelly cans of GNATS from Nyakato Traders and the contract of sale had a clause which stated, "Warranted only equal to sample". When Nyakato Traders delivered 100 Jelly cans of Gnuts oil, Rukubuza rejected the entire consignment. Nyakato Traders Ltd delivered Gnuts new oil instead of GNATs oil, which was different in description. Therefore, Rukubuza was justified to reject the consignment of Jelly cans.

(ii) S. 22 of the Sale of Goods and Supply of services Act, 2017 provides that property in unascertained goods passes from the seller to the buyer when goods are ascertained. Furthermore, S.26 (b) of the Sale of Goods and Supply of services Act, 2017provides that where there is a contract of sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, property does not pass until that thing is done, and the buyer has notice of it.
In the facts of this case, Rukubuza agreed to buy a woollen carpet from Kenyana with specific measurements, to fit in his room. When the carpet was delivered to Kamanzi, it could not fit in his room, so, he sent it back. It was returned the next day, but was stolen from Rukubuza's premises before it could be laid in the room, to ascertain whether it was exactly what Rukubuza expected. Therefore, Kamanzi was not liable to pay Kenyana for the stolen carpet.

(iii) S. 76 (1) of the Employment Act 2006 provides that organizing or intention to organize a strike or other form of industrial action shall not constitute a fair reason for dismissal, where the strike or other industrial action is lawful.
In the facts, Kazimiri Ltd employees agreed not to report for work when one of the employees died due to inhaling dust from mattresses. Employees had requested management to provide them with safety gears, in vain. Therefore, the sit-down strike by employees of Kazimiri Co. was lawful.

(iv) S.19 (1) & (2) of the Occupational Health and Safety Act, 2006 provides that an employer is obliged to provide suitable protective gear to employees at work, where the level of air pollution in a working environment exceeds exposure

limits. It is the duty of the employer to ensure that personal protective equipment is used whenever it is required.

In the instant case, employees of Kazimiri Co. had requested management to provide them with safety gears, in vain. Therefore, the employees' demand for safety gears was justified.

(v) Remedies available to the aggrieved parties:

- Rukubuza may seek for a Court order against Nyakato Traders for damages for breach of contract.
- Rukubuza may seek for a declaratory order of Court that he was not liable to pay Kenyana.
- The employees of Kazimiri Co may complain to the labour officer against the Company concerning their work environment.
- The employees may complain to the labour officer to compel access to safety gear.

Question 2

Issues:

(i) Whether Baluku was the lawful owner of the land in Kibuga trading center.
(ii) Whether Bwambale's claim for the land Muhindo bought from Baluku is justified.
(iii) Whether the intended termination of Aciru's maternity leave was lawful.
(iv) Whether Bua Ltd.'s transfer of employees to JP Ltd was lawful.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) S. 59 of the Registration of Title's Act, cap 230 (RTA) is to the effect that a certificate is a conclusive evidence of title. This means that the person appearing on the title is conclusively the owner of the land unless the land was acquired by fraud.

In the facts of this case, Baluku bought 1 acre of land from Bwambale in Kibuga trading center, in 2018. They signed a sale agreement and Bwambale gave the certificate of title to Baluku, after payment of Shs 20 million for it. Baluku then transferred the land into his name before Bwambale's death, a year later. Therefore, Baluku was the lawful owner of the land in Kibuga trading center.

(ii) Section 59 of the Registration of Titles Act, cap 230 (RTA) is to the effect that a certificate is a conclusive evidence of title. However, if the title is lost or destroyed, the person having knowledge of the circumstances may, through a statutory declaration, apply for a special certificate of title from the Registrar of Titles (S. 70 of the RTA).

In the instant case, Baluku had sold the same piece of land to Fujjo before his death a year later. They signed an agreement and the certificate of title was thereafter transferred into Fujjo's name, before it unfortunately got burnt when Fujjo's house caught fire. Therefore, Bwambale's claim for the land Rukubuza bought from Baluku is not justified.

(iii) S. 56 of the Employment Act 2006 provides that a female employee is entitled to 60 working days of leave from work with full salary pay and she has the right to return to the job that she previously held, before the leave.

In this case, Fujjo's wife, Aciru who worked with Bua Ltd, gave birth and after two weeks she was called to inform her about immediate termination of her maternity leave. She was further told that failure to report for work would result into termination of her contract. This was against the provision of law. Therefore, the intended termination of Aciru's maternity leave was not lawful.

(iii) S. 28 (1) of the Employment Act 2006 provides that a contract of service shall not be transferred from one employer to another without the consent of the employee.

In the instant case, management of Bua Ltd resolved to transfer some employees to JP Ltd, which was a newly established company. The employees were not happy with the new development, but management of Bua Ltd made it compulsory for all the staff to join the new company or else risk dismissal. This was not lawful under the Employment Act. Therefore, Bua Ltd.'s transfer of employees to JP Ltd was not lawful.

(v) Remedies available to the aggrieved parties:

- Baluku may seek for a court order declaring him the lawful owner of the land.
- Fujjo may apply for a special certificate of title under the RTA, cap 230.
- Aciru may complain to the labour officer to compel the grant her maternity leave.
- Bua Ltd employees may seek for a Court order declaring the staff transfer unlawful.

Question 3

Issues:

(i) Whether Abamunu General Hardware was liable for injuries sustained by Businge.

(ii) Whether families of the deceased persons had a cause of action against Abamunu General Hardware.

(iii) Whether the directors' resolution to alter objects of the company was lawful.

(iv) Whether the directors' resolution to reduce the company share capital was lawful.

(v) Whether there are any remedies available to the aggrieved parties

Resolution of issues:

(i) Under the law of torts, a breach of duty of care occurs if a person causes an injury or loss to another person, which he could have avoided by using reasonable care (Byrne v Boadle, 1863).

In the instant case, Businge a revenue collector, was injured by a box full of tiles during the course of his duties at Abamunu general hardware. The Hardware owner, however, denied any liability, claiming that none of his staff had

tampered with the box. The Hardware owner and employees owed a duty of care to avoid causing any such injuries by ensuring that the box was reasonably held up. Therefore, Abamunu General Hardware was liable for injuries sustained by Businge.

(ii) In torts, where there is a relationship of master and servant, the former is always liable for the torts committed by the latter in the course and scope of his duties. An employer is, therefore, liable for any tort which his employee commits in the course of his employment (Selle v Associated Motor Boat Co Ltd (1968) Nzarireho Kigubaire (1968).

In this case, Byamukama who was driving Abamunu General Hardware's lorry from Kasese where he had picked cement, branched off in Kyenjojo town to check on his wife. He then lost control, rammed into a clinic and killed a doctor and 2 patients. Byamukama was in the course of his employment at the time of the accident but went outside the scope of his employment when he diverted to do his own things, and thus, was on a frolic of his own. Therefore, the families of the deceased persons had no cause of action against Abamunu General Hardware.

(iii) S. 10 of the Companies Act 2012 provides that a company may, by special resolution, alter the provisions in its Memorandum of Association with respect to its objects.

In this case, directors of Abamunu General Hardware resolved in their meeting to alter the objects of the company, from the hardware business to real estate business. There was no special resolution passed in a general meeting. Therefore, the directors' resolution to alter objects of the company was not lawful.

(iv) S. 76 of the Companies Act 2012 provides that reduction of a company's share capital must be by a special resolution.

In the facts of this case, the directors in their meeting resolved to reduce the share capital of Abamunu General Hardware. No special resolution of a general meeting which is required by law, was passed. Therefore, the directors' resolution to reduce the company share capital was not lawful.

(v) Remedies available to the aggrieved parties:

- Businge may seek for a Court order against Abamunu General Hardware, for damages.
- Families of deceased persons may seek for a Court order against Byamukama, for damages.
- Shareholders of Abamunu General Hardware may seek for a declaratory order of Court that the director's resolution to alter company objects was unlawful.
- Bagonza and other shareholders of Abamunu General Hardware may seek for a declaratory order of Court that the director's resolution to reduce share capital was unlawful.

Question 4

Issues:

(i) Whether Bumbula is liable to pay Mwaiso the balance due on purchase of land.
(ii) Whether Kimera was justified to sue Atlantic Ltd.
(iii) Whether Ajuna is liable to pay for the supply of DA Firm's furniture.
(iv) Whether Ajuna was justified to dismiss Udi.
(v) Whether there are any remedies available to the aggrieved parties

Resolution of issues:

(i) S. 169 of the Contracts Act provides that a principal will be liable for acts of an agent where he/she by word or conduct induced the third party to believe that the act is within the scope of the authority of the agent. Therefore, where a person by word or conduct holds out another person as having authority to transact on his behalf, he will be bound by the contracts such a person makes, as if he had expressly authorized him (Ryan v Pilkington, 1959).
In this case, Bumbula acted as an agent of Mwaiso to sell land to Mpindi at Shs 120 million and accepted a deposit of Shs 30 million, on behalf of Mwaiso. When Mpindi defaulted in paying the balance, Mwaiso threatened to sue Bumbula. The sale of land was considered by Maiso to be okay and within Bumbula's scope of authority. Therefore, Bumbula is not liable to pay Mwaiso the balance due on purchase of land.

(ii) A person who contracts as an agent cannot assume the character of principal if the name of the alleged principal was actually given to the third party (Fairlie v Fenton, 1870).
In the instant case, Kimera acted as an agent of Kumwe Freighters Ltd but when Atlantic Ltd did not fulfill its obligations, Kimera wanted to sue Atlantic Ltd. The contract was entered into with him as an agent of Kumwe Freighters Ltd. Therefore, Kimera was not justified to sue Atlantic Ltd.

(iii) As a general rule in agency, insanity of the principal terminates the authority of an agent as well as the contract of agency, even if the agent is not aware of it (S. 135 (e) of the Contracts Act, 2010; Yonge v Toynbee, 1910).
In the instant case, Opedo represented David Ajuna's as DA Firm, in the transaction of supplying furniture to the firm. The supply was made, and payment was to be made in two weeks' time. However, the day before supply, Ajuna (the principal) became insane, was admitted to Butabika Hospital until a week later when he was discharged on recovery. Opedo now wants David Ajuna to pay for the supplies. The agency relationship between Ajuna and Opedo terminated the day before supplies were delivered, when Ajuna became insane. Therefore, Ajuna is not liable to pay for the supply of DA Firm's furniture.

(iv) S. 135 of the Contracts Act, 2010 provides that a principal may terminate an agency by revoking his/her authority. The principal has the right to dismiss the agent without notice, especially where the agent does not declare profits and does not give proper accountability (Fishing and Ice co v Ansell, 1888).

In the instant case, Udi who was Ajuna's other agent, heard that Ajuna was admitted at Butabika and he made an agreement with an audit client, on behalf of DA Firm. At that time, he did not know that Ajuna had fully recovered, so, he received Shs 5 million from the client but never informed Ajuna. Consequently, Ajuna dismissed Udi without notice. Udi had made secret profits and failed to give accountability to the principal. Therefore, Ajuna was justified to dismiss Udi.

(v) Remedies available to the aggrieved parties:

- Bumbula may seek for a Court order to declare him as agent not liable to pay Mwaiso.
- Kumwe Freighters Ltd may seek for a Court order to compel payment by Atlantic Ltd.
- Ajuna may seek for a declaratory order of Court that Opedo had no authority to act.
- Ajuna may seek for an order of Court to compel Udi's accountability of money received.

Question 5

Issues:

(i) Whether there was a valid contract between Kapo and Anoti.
(ii) Whether it was lawful for Kapo to take Oduge's car.
(iii) Whether there was a valid contract between Kahuma and Okello.
(iv) Whether KB Ltd was justified to warn Tusiime about termination.
(v) Whether there are any remedies available to the aggrieved parties

Resolution of issues:

(i) S. 10 (5) of the Contracts Act 2010, provides that a contract the subject matter of which exceeds twenty five currency points shall be in writing. In the schedule to the Act, a currency point amounts to twenty thousand shillings.

In the instant case, Kapo bought 5 acres of land from Anoti and paid Shs 50 million in cash, in the presence of his (Kapo's) father and Anoti's wife. However, no written agreement was signed, but Kapo took photographs as he made payments. The money paid for the land was for UGX 50 million, far above the threshold of twenty five currency points (Shs 500,000). Therefore, there was no valid contract between Kapo and Anoti.

(ii) Under contract, no person shall be liable to, or benefit from a contract he/ she is not party to (BM consults (1999) Ltd v Uganda National Farmers Federation & Anor, 2014).

In the instant case, Kapo went to the home of Oduge (Anoti's father) and took his car, claiming that Oduge was also liable to pay Kapo all the money paid for purchasing the land. Oduge was not privy to the contract between Kapo and

Anoti. Therefore, it was not lawful for Kapo to take Oduge's car.

(iii) S.12 (1) of the Contracts Act 2010 provides that for purposes of entering into a contract, a person is said to be of sound mind, if at the time of entering into the contract, that person is capable of understanding the contract and of forming a rational judgment as to its effect upon his or her interests.

In this case, Kahuma was a drunkard who was approached by Okello, as he was finishing his 10th bottle of beer. Okello presented papers to Kahuma, who immediately signed them without reading through. A week later, Okello used a grader to clear part of Kahuma's land and when Kahuma burnt the grader, Okello reminded him that he had sold part of the land as per the signed agreement. At the time of the purported sale and signing of the agreement, Kahuma was drunk and could not have been capable of understanding the contract and of forming a rational judgment as to its effect upon his or her interests. Therefore, there was no valid contract between Kahuma and Okello.

(iv) S. 40 (1) of the Employment Act 2006 provides that an employee is entitled to be provided with work according to the contract and for its duration except where the contract is frustrated, suspended or prevented by an act of God.

In the instant case, Tusiime was never absent for the whole month of January 2020, but her supervisor never gave her work to do throughout the month. On 2nd February 2020, Tusiime received a termination letter, stating that she would not be paid because she did not do any work during the month. She was, instead given a warning for possible termination since she did not do any work. This was against the law, which makes it a duty of the employer to provide work for an employee. Therefore, KB Ltd was not justified to warn Tusiime about termination.

(v) Remedies available to the aggrieved parties:

- Kapo may seek for a Court order to compel Anoti's refund of his money.
- Oduge may seek for a declaratory order of Court that he was not privy to the contract.
- Kahuma may seek for a Court order to declare the contract void.
- Tusiime may complain to the labour officer for an order to compel KB Ltd to fulfill its obligations.

ANSWERS TO TEST PAPER 5

CTA OCTOBER 2021

Solution 1

Issues:

(i) Whether the Registrar of Titles was justified to reject the transfer of land to Mballiga.

(ii) Whether Kanda villagers have a cause of action against Mpale.

(iii) Whether Mpale was liable for the injury of Musolo.

(iv) Whether Karesu was liable for negligence.

(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) In order to transfer land from a registered proprietor, there must be a transfer form signed by the registered proprietor and signed by the purchaser (S.92 Registration of Titles Act, 1924). If the registered proprietor is dead, the legal representative may apply to the Registrar of Titles to have his/ her names registered on the title as an administrator of the estate of the deceased.

In the instant case, Mbaliga held a meeting with members of the family and went ahead to the Registrar to have the land transferred into his names. This was a wrong procedure, thefore, the Registrar of Titles was justified to reject the transfer.

(ii) A public nuisance is an act which interferes with the enjoyment of a right which all members of a community are entitled to. A public nuisance basically is a crime actionable at the suit of the Attorney General on behalf the public at large.

In the instant case, Mpale established a quarry which caused a lot of dust in Kanda village and caused suffering of coughs. Therefore, Kanda villagers have a cause of action against Mpale.

(iii) If one man is near to another or near to the property of another, a duty lies on him not to do that which may cause a personal injury to that other or may injure his property (See Donoghue v Stevenson1932).

In the instant case, Mpale established a quarry well knowing that there are people around, in his neighbourhood. Musolo was hit by a stone from the blast, and Mpale had a duty of care which was not exercised by him. Therefore, Mpale was liable for the injury of Musolo.

(iv) Occupier's liability is concerned with visitors, who include anyone to whom the occupier has expressly or impliedly allowed to enter or use his premises.

In the instant case, Mpuna was not invited to the premises of Karesu. Mpuna was an unlawful visitor. Therefore, Karesu was not liable for negligence.

(v) Remedies available to aggrieved parties.

- Mbaliga may apply for letters of administration for the estate of the late Malevu and take them to the Registrar of Titles to effect the transfer of title.
- Kanda villagers may seek for a court injunction against Mpale's operation in the quarry.
- Musolo may petition court for an order of payment of damages against Mpale.

Solution 2

Issues:

(i) Whether there was a valid contract between Bongole and Kabozi.

(ii) Whether there was a valid contract between Kabozi and Kamuli.

(iii) Whether Kasasiro was liable to pay the fine of Shs 500,000 to Bundagu municipality.

(iv) Whether Kapere had a burden to prove that he did not steal the bananas.

(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) When a counter-offer is made, it suspends and destroys the original offer (Hyde v Wrench, 1840). Where an offeree's acceptance amounts to a counter-offer, no contract arises.

In our facts, Bongole offered to sell his car at Shs 60 million and Kabozi offered Shs 55 million to buy the car. Kabozi's Shs 55 million offer was a counter-offer, which destroyed the original offer. Therefore, there was no valid contract between Kabozi and Bongole.

(ii) Section 10(5) of the Contracts Act 2010 is to the effect that a contract, the subject matter of which exceeds 25 currency points, shall be in writing.

In the instant case, the agreement was for Shs 60 million which amounted to 3000 currency points. It was not in writing as required by law.

Therefore, there was no valid contract between Kabozi and Kamuli.

(iii) Article 79 of the Constitution of the Republic of Uganda 199, is to the effect that an authority may enact a law where there is an Act of Parliament authorizing it. Section 39 of the Local Government Act 2015 (as amended) also gives powers to municipalities to make Byelaws.

In the instant case, Bundagu municipality enacted a solids waste-management Byelaw, which was to regulate and enforce efficient solid waste management. However, Karasi never sorted his solid waste as required by the law. He claimed that municipalities had no powers to make laws, and for that reason, he refused to pay the fine of shs 500.000 to Bundagu municipality.

Bundagu municipality had lawfully enacted the solid waste management Byelaw. Therefore, Kasasiro is liable to pay the fine of shs. 500,000 to Bundagu municipality.

(iv) The general rule in law is that he who alleges must prove. This simply means that the burden of proof is with the person who alleges that the other person committed a crime (Woolmington v DPP, 1935)

In this case, it was Bikondo who alleged that Kapere stole his bananas. Therefore, Kapere had no burden to prove that he did not steal the bananas.

(v) Remedies available to the aggrieved parties

- Bongole may seek for a court declaratory order that there was no contract between him and Kabozi.
- Kimuli may seek for a court order declaring that the contract between him and Kabozi was invalid.
- Bundagu municipality may sue Kasasiro for payment of the fine for waste management.
- Kapere may appeal against the decision of the lower court against him.

Solution 3

Issues:

(i) Whether Gogoma was liable for not making a return of allotment of shares to the Registrar.

(ii) Whether decisions made by Gogoma and Jogo in the extra-ordinary general meeting were valid.

(iii) Whether Habbs Ltd was liable for failure to provide sufficient fresh air in all work rooms.

(iv) Whether Habbs Ltd was liable for transporting Loki's body to Bwiko district.

(v) Whether there are remedies available to the parties.

Resolution of issues:

(i) S.61(1) (a) of the Companies Act 2012 provides that returns of allotment of shares should be made to the Registrar within 60 days by delivery of the same with details of share values and particulars of the allocatee.

In this case, Gogoma the director allocated shares that were paid in cash but no return was made from March to November 2020, a period of 8 months. Therefore, Gogoma was liable for not making a return of allotment of shares to the Registrar.

(ii) S.141 (c) of the Companies Act 2012 is to effect that public company's quorum for a meeting shall be 3 persons.

In the instant case, only 2 persons attended the extra-ordinary general meeting. Therefore, the decisions made by Gogoma and Jogo in the extra-ordinary general, meeting were not valid.

(iii) S.47 (4) of the Occupational Safety and Health Act 2006 imposes a duty on the employer to provide a system for securing and maintaining circulation of fresh air in each workroom.

In the instant case, the room where Loki used to sit had no windows and ventilation, hence no circulation of fresh air.

Therefore, Habbs Ltd was liable for failure to provide sufficient air in Loki's office.

(iv) S.42(3) of the Employment Act 2006 provides that the employer is responsible for transportation of the body of an employee who may die from work or while traveling to work, to a place notified by the employee's next of kin.

In the instant case, Loki died at Habbs Ltd's premises and his family members notified Habbs Ltd about the burial place. However, Habbs Ltd declined to pay the transport expenses. Therefore, Habbs Ltd was liable for failure to transport Loki's body to Bwiko district.

(v) Remedies available to the parties.

- Habbs Ltd may sue Gogoma for damages and costs that may be incurred by the company resulting out of the default to make returns.
- The shareholders of Habbs Ltd may seek for court's declaratory order to invalidate decisions made in the extra-ordinary meeting.
- Loki's family may seek for a court order for payment of damages suffered.
- Loki's family may seek for a court order for recovery of transport expenses of Loki's body to Bwiko district.

Solution 4

Issues:

(i) Whether Bangi was liable to pay Gendya.
(ii) Whether Bangi was justified to terminate the agency with Kosa.
(iii) Whether Dunjo Farmers was justified to repossess the 10 bags of rice.
(iv) Whether Joika Ltd can recover the furniture from Pio.
(v) Whether there are remedies available to the parties.

Resolution of issues

(i) S.124 of the Contracts Act, 2010 provides that in an emergency an agent has authority to do any act to protect the principal from loss, as would be done by a person of ordinary prudence.
The principal in an agency also has a duty to pay commission to the agent and to indemnify the agent where lawful acts are made by the agent (S.156 Contracts Act, 2010).
In the instant case, Gondya acted as Bangi's agent of necessity when he sold the apples that could perish if not sold. Therefore, Bangi was liable to pay Gondya.

(ii) According to S.136 of the Contracts Act 2010, an agency cannot be terminated without an express contract, if the agent has interest in the property forming the subject matter of the agency and where such interest is prejudiced. In this case, Kosa used his money to buy and transport rice by bus to Bangi. Following a delay in the bus transportation, Bangi terminated the agency, disregarding the interest that Kosa had in the agency.
Therefore, Bangi was not justified to terminate the agency with Kosa.

(iii) S.55 of the Sale of goods and supply of services Act, 2017 provides that when a buyer of goods becomes insolvent, the unpaid seller who has parted with the goods has the right of stopping them in-transit and resuming possession, until payment.

In this case, Dunjo farmers had sold 100 bags of rice to Bangi on credit. While Bangi was on his way from Dunjo Farmers, he was stopped and the goods off-loaded from his truck, and were loaded onto the lorry of Dunjo Farmers. This was after the news of Bangi's bankruptcy was heard. Dunjo Farmers repossessed the rice in exercise of their right as an unpaid seller.
Therefore, Dunjo Farmers were justified to repossess the 100 bags of rice.

(iv) Where there is a credit sale of goods, once a seller parts with possession of the goods, ownership immediately passes to the buyer. The seller loses all rights against the goods (see Lee V Butter, 1893).

In this case, Joika Ltd sold to Pio furniture on credit and Pio resold the furniture to Kyama. Pio had paid only one installment and Joika Ltd wanted Pio to pay in full or else return the furniture. However, Pio had already resold to Kyama, who had already obtained good title to the furniture. Therefore, Joika Ltd cannot recover the furniture from Pio.

(v) Remedies available to the parties.

- Gondya may seek for an order of court to compel Bangi to pay his commission as well as indemnity for costs incurred.
- Kosa may sue Bangi to obtain a declaratory court order on unlawful termination.
- Kosa may seek for a court order to compel Bangi to pay his commission and indemnity.
- Joika Ltd may seek for an order of court for payment of the balance by Pio.

Solution 5

Issues:

(i) Whether the arbitral tribunal was justified to proceed without a statement of defence.

(ii) Whether there was a valid contract between Boreka and Zompi.

(iii) Whether there was breach of contract by Sanka.

(iv) Whether there was an offer between Kunte and Mugaga.

(v) Whether there are remedies available to the parties.

Resolution of issues:

(i) S.25(c) of the Arbitration and Conciliation Act, 2000 provides that unless agreed by the parties, if, without showing sufficient cause any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue with the proceedings and make the award on the evidence before it.

In the instant case, Lwari was summoned and did not indicate any sufficient cause for not filing a statement of defence. Therefore, the arbitral tribunal was justified to proceed without a statement of defence.

(ii) As a general rule, consideration must be of value. An act or omission or promise will only amount to consideration if the law recognizes that it has some economic value. The courts have held that a promise to pay a lesser sum on a day earlier than the due date for debt payment, if accepted by the creditor, is sufficient to relieve the debtor from further liability (See Pinnel's case, 1602 and E.A Plaus Ltd v Smith [1974] HCB 97).

In the instant case, Boreka's employer agreed with Zompi to pay him shs 10 million in addition to the deposit of shs 20 million, to leave the car with Boreka. Therefore, there was a valid contract between Boreka and Zompi.

(iii) A condition is a term of major importance and it is said to go to the root of the contract. The breach of a condition entities the innocent party to avoid the contract and claim damages. Under the Sale of Goods and supply of services Act, 2017, the innocent party is permitted, if he wishes so, to damages for breach of the condition.

In the instant case, Sanka was supposed to produce a bull for the wedding but instead he brought a heifer. Therefore, there was a breach of contract by Sanka.

(iv) Under contact law, an offer is a promise in exchange for performance by another party. An invitation to treat is merely a supply of information to tempt a person into making an offer (Pharmaceutical Society of Britain v Boots chemistry, 1953).

In the instant case, Kuute put a note on the farm that there were cows for sale at Shs 400,000 each. This was an invitation to treat but not an offer. Therefore, there was no offer between Kunte and Mugaga.

(v) Remedies available to the parties

- Zompi may seek for a court order to compel Boreka to pay the balance due to him.
- Kwelo may seek for a declaratory order of court, justifying the award of the arbitral tribunal.
- Muleto may seek for a court order against Sanka, for payment of damages.
- Kunte may seek for a declaratory order of court confirming that the note displayed on the farm was merely an invitation to treat.

ANSWERS TO TEST PAPER 6
CTA JUNE 2023

Solution 1

Issues:

(i) Whether Sabu was justified to work towards the formation of a new company.
(ii) Whether the intended proposal by Sabu and other directors was lawful.
(iii) Whether the suspension of Rungi was lawful.
(iv) Whether it was lawful for Mukozi to work on probationary term for eight months.
(v) Whether there are any remedies available to the parties.

Resolution of issues:

(i) Section 199(2) (d) of the Companies Act 2012 provides that a person disqualified as a director shall not be involved in the formation of a new company.

In the instant case, Sabu who had been a director of Bakampa Ltd for several years was declared by the Registrar of Companies to be disqualified from the office of directorship. He thereafter started to work towards forming a new company with his friends. This was contrary to the provision of law, concerning a disqualified director. Therefore, Sabu was not justified to work towards the formation of a new company.

(ii) Section 271 (1) of the Companies Act 2012 is to the effect that where it is proposed to wind up a company voluntarily, the directors of the company may, at a meeting of the directors, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the liquidation.

In the facts, Sabu had met with two directors who were also members of Bakampa Ltd and they decided to advocate for winding up of the company, and other members were informed through their WhatsApp inboxes. Following the meeting, Sabu drafted a resolution which was intended to be registered with the Registrar of companies, although Goni who was a director and other members who were not in the meeting challenged the move. The law requires registration of a statutory declaration of solvency of the company in such circumstances, which was not done. Furthermore, Sabu was no longer a director of the company and had no right to be involved in such transactions. Therefore, the intended proposal by Sabu and other directors was not lawful.

(iii) Section 63(1) & (2) of the Employment Act 2006 provides that when an employer, in conducting an inquiry, has reason to believe that it may reveal a cause for dismissal of an employee, the employer may suspend that employee with half pay, and the suspension shall not exceed four weeks.

In the instant case, Rungi was known to be Sabu's friend and was suspected of leaking valuable company information since Sabu ceased to be a director, by communicating with Sabu using the office phone. After installation of a tapping

device, Rungi was thereafter suspended from work for a period of five weeks, pending inquiries and investigations into the matter. The law clearly provides for such suspension not to be for a period of more than four weeks. Therefore, the suspension of Rungi was not lawful.

(iv) Section 67(2) of the Employment Act 2006 provides that the maximum length of a probationary period is six months, but it may be extended for a further period of not more than six months with the agreement of the employee.

In this case, Mukozi has been working with Bakampa Ltd on probationary terms, for eight months but no contract of service has been signed by him and despite several inquiries made, he has always been informed that management was aware and working towards that. This was contrary to what the law provides, concerning length of a probationary period. Therefore, it was not lawful for Mukozi to work on probationary term for eight months.

(v) Remedies available to the parties

- Other members may seek for an administrative order against Sabu's new company.
- Goni and other members may seek for a court order against the intended winding up.
- Rungi may complain to the labour officer to declare his suspension unlawful.
- Mukozi may complain to the labour officer to declare the probationary term unlawful.

Solution 2

Issues:

(i) Whether other partners were justified to suspect Lulipo's suggestion of Byonna LLP as the firm name.

(ii) Whether it was lawful for the business of Byonna LLP to continue after Lento's death.

(iii) Whether a bill negotiated by a customer with a defective title would adversely affect firm business.

(iv) Whether the accountant was justified to reject the bill Murefu intended to negotiate to the firm.

(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 48(2) of the Partnerships Act 2010 provides that a partnership registered as a limited liability partnership under section 50 shall, at the end of its name, add the letters "LLP".

In this case, the partners agreed to register a limited liability partnership to be called Byonna firm. However, when Lulipo suggested that the name should end with "LLP," to be Byonna LLP, the others suspected foul play, because the

combination of Lulipo, Lento and Pala's names, as well as Lulipo's name itself. The suggestion for LLP at the end of the firm name was a requirement of law. Therefore, other partners were not justified to suspect Lulipo's suggestion of Byonna LLP as the firm name.

(ii) Section 52(5) of the Partnerships Act 2010 provides that a limited liability partnership shall not be dissolved by the death or bankruptcy of a limited liability partner.

In the instant case, Lento who was a limited liability partner got an accident and later died. The partners feared for the future of the partnership because Lento's death was at a time when the business was highly profitable and they were all determined to continue with the firm business. The law allows for a limited liability partnership to continue business despite the death of a limited liability partner. Therefore, it was lawful for the business of Byonna LLP to continue after Lento's death.

(iii) Section 37(c) (i) of the Bills of Exchange Act 2000 is to the effect that where the title of the holder of a bill is defective, if he or she negotiates the bill to a holder in due course, that holder in due course obtains a good and complete title to the bill.

In the instant case, one of the firm's customers endorsed a bill in favour of the firm, as a way of paying money owed to t, which was a concern about the effect to the partnership business and profits. The law provides a holder in due course for a defective bill endorsed to him/her as having obtained good title. Therefore, a bill negotiated by a customer with a defective title would not adversely affect firm business.

(iv) Section 31(b) of the Bills of Exchange Act 2000 provides that a valid endorsement must be an endorsement of the entire bill, and a partial endorsement which purports to transfer to the endorsee a part only of the amount payable, does not operate as a negotiation of the bill.

In this case, Murefu who was a firm customer, requested to negotiate a bill to the partnership in payment of supplies, which bill he had as a holder in due course. However, the firm accountant rejected the bill because the amount of money Murefu intended to endorse in favour of the firm was less than the amount that had been endorsed in the bill. This was against the provision of law, as it is not taken to be a negotiation. Therefore, the accountant was justified to reject the bill Murefu intended to negotiate to the firm.

(v) Remedies available to the aggrieved parties:

- Lulipo may seek for a declaratory order of court that the firm name had to end with LLP.
- The firm may seek for a declaratory court order that business can continue after Lento's death.
- The firm may seek for a declaratory court order that the defective bill did not adversely affect it.

- The firm may seek for a court order to declare that Murefu's bill did not amount to negotiable.

Solution 3

(i) Whether Dabo's wife was justified to contest the sale of family land to Funa.
(ii) Whether it was lawful for Kifesi to sell part of the estate land.
(iii) Whether Sijja's refusal to pay a fine for late subscription was lawful.
(iv) Whether the non-appointment of another audit firm for the Society was lawful.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 39 (1) (a) of the Land Act 1998 provides that no person shall sell, exchange, transfer, pledge, mortgage or lease any family land, except with the prior consent of his or her spouse.

In this case, Dabo and his wife owned 10 acres, where they resided, had farms and some tenants. Dabo sold an acre of land to Funa, without the knowledge or consent of his wife and when Funa gave information about the sale, his wife contested the sale and threatened to go to court. The sale of family land by Dabo was clearly contrary to the provision of law. Therefore,
Dabo's wife was justified to contest the sale of family land to Funa.

(ii) Section 16(1) of the Trustees Act 2000 provides that where trustees are authorized by the instrument creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession.

In the instant case, Dabo's brother Kifesi, was a trustee for the estate of their late father, and the family had agreed that Kifesi had to manage the estate property to ensure an income for all beneficiaries. However, when he sold a portion of land to get money for injecting in the development of one property, all beneficiaries did not like that and were of the opinion that there would be more sales in future and mismanagement of estate matters. The sale by Kifesi was within the expectation of the provision of law, since he was deemed to have the power to do so. Therefore, it was lawful for Kifesi to sell part of the estate land.

(iii) Section 32(1) of the Cooperative Societies (Amendment) Act, 2020 provides that the byelaws of a registered society may, subject to any regulations made under this Act, provide for the imposition of fines on its members for any infringement of its byelaws.
In the instant case, Ddembe Co-operative Society's byelaws provided for strict compliance with deadlines of paying subscription fees and any other annual or monthly payments. In the general meeting, Sijja who was one of the members raised a complaint about the operation of the Society. His concern was about fines paid for any delayed payment, and he informed the meeting that he would

not pay any fine. This was against the law. Therefore, Sijja's refusal to pay a fine for late subscription was not lawful.

(iv) Section 55Q of the Cooperative Societies (Amendment) Act, 2020 provides that no audit firm or individual auditor shall serve the same savings and credit cooperative society as external auditors for a continuous period exceeding four years.

In the instant case, Ntegera had some basic knowledge of the law relating to co-operative societies and he inquired about appointment of another external auditor for Ddembe Co-operative society. His concern was that Mbala audit firm had been appointed twice for two-year terms as external auditor, which was the maximum period provided in the society regulations. However, management was reluctant to appoint another auditor. This was against the provision of law. Therefore, the non-appointment of another audit firm for the Society was not lawful.

(v) Remedies available to the aggrieved parties:

- Dabo's wife may seek for a court order to nullify the sale of family land without her consent.
- Kifesi may seek for a court order to declare that the sale of a portion of estate land as lawful.
- The Society may seek for a court order declaring Sijja's obligation to pay the fine.
- Ntegera may seek for a court order to compel appointment of another audit firm.

Solution 4

Issues:

(i) Whether Tifu is justified to contest the LC I court decision.
(ii) Whether Mateka Ltd.'s refusal to pay for all goods delivered by Home Products Ltd was lawful.
(iii) Whether Budi's refusal to pay Muza for the 5 bags of coffee was lawful.
(iv) Whether Safari had a cause of action against Vuya.
(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 254 (1) of the Penal Code Act 2014 provides that a person who fraudulently and without claim of right takes anything capable of being stolen, is said to steal that thing.
Section 10 of the Local Council Courts Act 2006, is to the effect that every local council court shall have jurisdiction for the trial and determination of cases of civil nature.

In the instant case, Muhogo owns a big cassava plantation, where he found Tifu with cassava which had been uprooted from the garden. Muhogo sued Tifu in the Local Council I Court (LC I Court), which decided that Tifu pays money worth

the cassava uprooted, and also hand over the cassava. The action Tifu did amounted to stealing cassava, which is a criminal and beyond the jurisdiction of the local council court. Therefore, Tifu is justified to contest the LC I court decision.

(ii) Section 27(4) of the Sale of Goods and Supply of Services Act 2018 provides that where a delivery has been delayed through the fault of the buyer or the seller, the goods are at the risk of the party at fault as regards any loss, which might not have occurred, but for that fault.

In this case, Mateka Ltd ordered for stevia powder from Home Products Ltd and clearly instructed Home products Ltd to use the routes indicated on the map which was attached to the order. However, the driver of Home products Ltd used a different route, which delayed the delivery for 5 days, such that by the time they were delivered, half of the products were destroyed. Mateka Ltd refused to pay for all the products. The law is clear that loss is for the party at fault for the delayed delivery. Therefore, Mateka Ltd.'s refusal to pay for all goods delivered by Home Products Ltd was lawful.

(iii) Section 34 (1) of the Sale of Goods and Supply of Services Act, 2018 provides that It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for the goods, in accordance with the terms of the contract of sale.

In the instant case, Muza who is a coffee dealer got an order from Budi to supply 5 bags of coffee at a total cost of UGX 500,000. They agreed that Muza was to deliver the coffee. However, the coffee was delivered as agreed, Budi refused to pay, without giving any reason to Muza. Budi's refusal to pay for the coffee was contrary to the provision of law. Therefore, Budi's refusal to pay Muza for the 5 bags of coffee was not lawful.

(iv) Under the law of torts in cases of nuisance, it is not a defense that the plaintiff came to the place of nuisance or that the defendant is merely making reasonable use of his premises *(Sturges v Bridgman, 1879).*

In the instant case, Safari rented a house near Vuya two months ago but soon discovered that Vuya rears broiler chicken, from which a stench from the chicken houses goes to the neighbours. In Vuyo's opinion, the neighbours have no reason to complain since they found him in the area, working at his premises. This is not a defenses as recognized by law.
Therefore, Safari had a cause of action against Vuya.

(v) Remedies available to the aggrieved parties:

- Tifu may appeal against the LCI court decision for lack of jurisdiction.
- Mateka Ltd. may seek for a court order declaring its refusal to pay for the goods lawful.
- Muza may seek for a court order to compel Budi to pay for the 5 bags of coffee.
- Safari may seek for damages and court injunction order against nuisance from Vuya's farm.

Solution 5

Issues:

(i) Whether the agreement between Landa and Dogs Ltd was valid and enforceable.
(ii) Whether there was a valid agreement between Onzo and Pendo.
(iii) Whether the delegation of the procurement officer by the managing director was lawful.
(iv) Whether Baringo was justified to challenge the arbitral award.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 16 (1) of the Contracts Act 2010 provides that where consent to an agreement is obtained by fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was obtained by fraud or misrepresentation.

In this case, Landa bought a security dog from Dogs Ltd and made part payment for it, after having been assured by the salesman that the company had the best-trained security dogs. However, two nights after buying the dog, Landa's home was broken into and, to his surprise, the dog never barked at all. That same morning, he receive a demand note from Dogs Ltd for payment of the balance due, which he declined to pay. Landa was the innocent party who had entered into the contract on the basis of the fraudulent misrepresentation by the salesman.
Therefore, the agreement between Landa and Dogs Ltd was valid but only enforceable at Landa's option.

(ii) Section 17(1) of the Contracts Act 2010 provides that where both parties to an agreement are under a mistake as to a matter of fact which is essential to the agreement, consent is obtained by mistake of fact and the agreement is void.

In the instant case, Pendo agreed to buy Onzo's land cruiser, at a time when Onzo had two models of land cruisers, one of 1999 and the other one of 2005. Pendo paid cash down and waited for delivery. However, whereas Onzo knew that he was selling the 1999 model, Pendo thought he was buying the 2005 model. When the 1999 model was delivered to Pendo, he rejected it on ground that he had paid for the 2005 model. This was a case of consent obtained by mistake. Therefore, there was a void agreement between Onzo and Pendo.

(iii) As a general principle in law, a delegate cannot further delegate *(De Busche v Alt, 1878).*

In this case, the managing director of Katu Ltd had a contract with a clause stating that no person should act in his position, unless he officially resigned or was removed from office. While he attended a conference in the United Kingdom, he was informed about an urgent purchase of which needed to be done from Patel, so he delegated the procurement director through email, to conclude the purchase. However, when Patel later demanded for payment from

Katu Ltd, he the finance director told him that he could not be paid because the procurement director had no authority to sign on behalf of the managing director. The managing director is an agent of the company and he delegated the procurement director to sign on his behalf. This was not right because even his contract included a clause prohibiting any person to act in his position. Therefore, the delegation of the procurement officer by the managing director was not lawful.

(iv) S.34 (2) of the Arbitration and Conciliation Act, 2000 provides that an arbitral award may be set aside by court only if the arbitral award was procured by corruption.

In the instant case, it was established that Manzi bribed the tribunal chairman, who was supposed to determine a matter concerning suspected use of company vehicles by Manzi to do his private work. Manzi emerged winner of the tribunal matter despite the clear evidence that he had bribed the chairman, consequent to which, Baringo wanted to challenge the arbitral award. This was within the law. Therefore, Baringo was justified to challenge the arbitral award.

(v) Remedies available to the aggrieved parties:

- Landa may seek for a court order declaring the agreement with Dogs Ltd void, at his option.
- Pendo may seek for a court order declaring the agreement with Onzo void.
- Katu Ltd may seek for a court order to declare the procurement officer's delegation unlawful.
- Baringo may seek for a court order to declare the arbitral award unlawful.

TEST PAPER 7 SOLUTIONS
CTA 2 - JUNE 2023

Solution 1

Issues:

(i) Whether Sabu was justified to work towards the formation of a new company.
(ii) Whether the intended proposal by Sabu and other directors was lawful.
(iii) Whether the suspension of Rungi was lawful.
(iv) Whether it was lawful for Mukozi to work on probationary term for eight months.
(v) Whether there are any remedies available to the parties.

Resolution of issues:

(i) Section 199(2) (d) of the Companies Act 2012 provides that a person disqualified as a director shall not be involved in the formation of a new company.

In the instant case, Sabu who had been a director of Bakampa Ltd for several years was declared by the Registrar of Companies to be disqualified from the office of directorship. He thereafter started to work towards forming a new company with his friends. This was contrary to the provision of law, concerning a disqualified director. Therefore, Sabu was not justified to work towards the formation of a new company.

(ii) Section 271 (1) of the Companies Act 2012 is to the effect that where it is proposed to wind up a company voluntarily, the directors of the company may, at a meeting of the directors, make a statutory declaration to the effect that they have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months from the commencement of the liquidation.

In the facts, Sabu had met with two directors who were also members of Bakampa Ltd and they decided to advocate for winding up of the company, and other members were informed through their WhatsApp inboxes. Following the meeting, Sabu drafted a resolution which was intended to be registered with the Registrar of companies, although Goni who was a director and other members who were not in the meeting challenged the move. The law requires registration of a statutory declaration of solvency of the company in such circumstances, which was not done. Furthermore, Sabu was no longer a director of the company and had no right to be involved in such transactions. Therefore, the intended proposal by Sabu and other directors was not lawful.

(iii) Section 63(1) & (2) of the Employment Act 2006 provides that when an employer, in conducting an inquiry, has reason to believe that it may reveal a cause for dismissal of an employee, the employer may suspend that employee with half pay, and the suspension shall not exceed four weeks.

In the instant case, Rungi was known to be Sabu's friend and was suspected of leaking valuable company information since Sabu ceased to be a director, by communicating with Sabu using the office phone. After installation of a tapping

device, Rungi was thereafter suspended from work for a period of five weeks, pending inquiries and investigations into the matter. The law clearly provides for such suspension not to be for a period of more than four weeks. Therefore, the suspension of Rungi was not lawful.

(iv) Section 67(2) of the Employment Act 2006 provides that the maximum length of a probationary period is six months, but it may be extended for a further period of not more than six months with the agreement of the employee.

In this case, Mukozi has been working with Bakampa Ltd on probationary terms, for eight months but no contract of service has been signed by him and despite several inquiries made, he has always been informed that management was aware and working towards that. This was contrary to what the law provides, concerning length of a probationary period. Therefore, it was not lawful for Mukozi to work on probationary term for eight months.

(v) Remedies available to the parties

- Other members may seek for an administrative order against Sabu's new company.
- Goni and other members may seek for a court order against the intended winding up.
- Rungi may complain to the labour officer to declare his suspension unlawful.
- Mukozi may complain to the labour officer to declare the probationary term unlawful.

Solution 2

Issues:

(i) Whether other partners were justified to suspect Lulipo's suggestion of Byonna LLP as the firm name.

(ii) Whether it was lawful for the business of Byonna LLP to continue after Lento's death.

(iii) Whether a bill negotiated by a customer with a defective title would adversely affect firm business.

(iv) Whether the accountant was justified to reject the bill Murefu intended to negotiate to the firm.

(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 48(2) of the Partnerships Act 2010 provides that a partnership registered as a limited liability partnership under section 50 shall, at the end of its name, add the letters "LLP".

In this case, the partners agreed to register a limited liability partnership to be called Byonna firm. However, when Lulipo suggested that the name should end with "LLP," to be Byonna LLP, the others suspected foul play, because the

combination of Lulipo, Lento and Pala's names, as well as Lulipo's name itself. The suggestion for LLP at the end of the firm name was a requirement of law. Therefore, other partners were not justified to suspect Lulipo's suggestion of Byonna LLP as the firm name.

(ii) Section 52(5) of the Partnerships Act 2010 provides that a limited liability partnership shall not be dissolved by the death or bankruptcy of a limited liability partner.

In the instant case, Lento who was a limited liability partner got an accident and later died. The partners feared for the future of the partnership because Lento's death was at a time when the business was highly profitable and they were all determined to continue with the firm business. The law allows for a limited liability partnership to continue business despite the death of a limited liability partner. Therefore, it was lawful for the business of Byonna LLP to continue after Lento's death.

(iii) Section 37(c) (i) of the Bills of Exchange Act 2000 is to the effect that where the title of the holder of a bill is defective, if he or she negotiates the bill to a holder in due course, that holder in due course obtains a good and complete title to the bill.

In the instant case, one of the firm's customers endorsed a bill in favour of the firm, as a way of paying money owed to t, which was a concern about the effect to the partnership business and profits. The law provides a holder in due course for a defective bill endorsed to him/her as having obtained good title. Therefore, a bill negotiated by a customer with a defective title would not adversely affect firm business.

(iv) Section 31(b) of the Bills of Exchange Act 2000 provides that a valid endorsement must be an endorsement of the entire bill, and a partial endorsement which purports to transfer to the endorsee a part only of the amount payable, does not operate as a negotiation of the bill.

In this case, Murefu who was a firm customer, requested to negotiate a bill to the partnership in payment of supplies, which bill he had as a holder in due course. However, the firm accountant rejected the bill because the amount of money Murefu intended to endorse in favour of the firm was less than the amount that had been endorsed in the bill. This was against the provision of law, as it is not taken to be a negotiation. Therefore, the accountant was justified to reject the bill Murefu intended to negotiate to the firm.

(v) Remedies available to the aggrieved parties:

- Lulipo may seek for a declaratory order of court that the firm name had to end with LLP.
- The firm may seek for a declaratory court order that business can continue after Lento's death.
- The firm may seek for a declaratory court order that the defective bill did not adversely affect it.

- The firm may seek for a court order to declare that Murefu's bill did not amount to negotiable.

Solution 3

(i) Whether Dabo's wife was justified to contest the sale of family land to Funa.
(ii) Whether it was lawful for Kifesi to sell part of the estate land.
(iii) Whether Sijja's refusal to pay a fine for late subscription was lawful.
(iv) Whether the non-appointment of another audit firm for the Society was lawful.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 39 (1) (a) of the Land Act 1998 provides that no person shall sell, exchange, transfer, pledge, mortgage or lease any family land, except with the prior consent of his or her spouse.

In this case, Dabo and his wife owned 10 acres, where they resided, had farms and some tenants. Dabo sold an acre of land to Funa, without the knowledge or consent of his wife and when Funa gave information about the sale, his wife contested the sale and threatened to go to court. The sale of family land by Dabo was clearly contrary to the provision of law. Therefore,
Dabo's wife was justified to contest the sale of family land to Funa.

(ii) Section 16(1) of the Trustees Act 2000 provides that where trustees are authorized by the instrument creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession.

In the instant case, Dabo's brother Kifesi, was a trustee for the estate of their late father, and the family had agreed that Kifesi had to manage the estate property to ensure an income for all beneficiaries. However, when he sold a portion of land to get money for injecting in the development of one property, all beneficiaries did not like that and were of the opinion that there would be more sales in future and mismanagement of estate matters. The sale by Kifesi was within the expectation of the provision of law, since he was deemed to have the power to do so. Therefore, it was lawful for Kifesi to sell part of the estate land.

(iii) Section 32(1) of the Cooperative Societies (Amendment) Act, 2020 provides that the byelaws of a registered society may, subject to any regulations made under this Act, provide for the imposition of fines on its members for any infringement of its byelaws.
In the instant case, Ddembe Co-operative Society's byelaws provided for strict compliance with deadlines of paying subscription fees and any other annual or monthly payments. In the general meeting, Sijja who was one of the members raised a complaint about the operation of the Society. His concern was about fines paid for any delayed payment, and he informed the meeting that he would

not pay any fine. This was against the law. Therefore, Sijja's refusal to pay a fine for late subscription was not lawful.

(iv) Section 55Q of the Cooperative Societies (Amendment) Act, 2020 provides that no audit firm or individual auditor shall serve the same savings and credit cooperative society as external auditors for a continuous period exceeding four years.

In the instant case, Ntegera had some basic knowledge of the law relating to co-operative societies and he inquired about appointment of another external auditor for Ddembe Co-operative society. His concern was that Mbala audit firm had been appointed twice for two-year terms as external auditor, which was the maximum period provided in the society regulations. However, management was reluctant to appoint another auditor. This was against the provision of law. Therefore, the non-appointment of another audit firm for the Society was not lawful.

(v) Remedies available to the aggrieved parties:
- Dabo's wife may seek for a court order to nullify the sale of family land without her consent.
- Kifesi may seek for a court order to declare that the sale of a portion of estate land as lawful.
- The Society may seek for a court order declaring Sijja's obligation to pay the fine.
- Ntegera may seek for a court order to compel appointment of another audit firm.

Solution 4

Issues:

(i) Whether Tifu is justified to contest the LC I court decision.
(ii) Whether Mateka Ltd.'s refusal to pay for all goods delivered by Home Products Ltd was lawful.
(iii) Whether Budi's refusal to pay Muza for the 5 bags of coffee was lawful.
(iv) Whether Safari had a cause of action against Vuya.
(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 254 (1) of the Penal Code Act 2014 provides that a person who fraudulently and without claim of right takes anything capable of being stolen, is said to steal that thing.
Section 10 of the Local Council Courts Act 2006, is to the effect that every local council court shall have jurisdiction for the trial and determination of cases of civil nature.

In the instant case, Muhogo owns a big cassava plantation, where he found Tifu with cassava which had been uprooted from the garden. Muhogo sued Tifu in the Local Council I Court (LC I Court), which decided that Tifu pays money worth

the cassava uprooted, and also hand over the cassava. The action Tifu did amounted to stealing cassava, which is a criminal and beyond the jurisdiction of the local council court. Therefore, Tifu is justified to contest the LC I court decision.

(ii) Section 27(4) of the Sale of Goods and Supply of Services Act 2018 provides that where a delivery has been delayed through the fault of the buyer or the seller, the goods are at the risk of the party at fault as regards any loss, which might not have occurred, but for that fault.

In this case, Mateka Ltd ordered for stevia powder from Home Products Ltd and clearly instructed Home products Ltd to use the routes indicated on the map which was attached to the order. However, the driver of Home products Ltd used a different route, which delayed the delivery for 5 days, such that by the time they were delivered, half of the products were destroyed. Mateka Ltd refused to pay for all the products. The law is clear that loss is for the party at fault for the delayed delivery. Therefore, Mateka Ltd.'s refusal to pay for all goods delivered by Home Products Ltd was lawful.

(iii) Section 34 (1) of the Sale of Goods and Supply of Services Act, 2018 provides that It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for the goods, in accordance with the terms of the contract of sale.

In the instant case, Muza who is a coffee dealer got an order from Budi to supply 5 bags of coffee at a total cost of UGX 500,000. They agreed that Muza was to deliver the coffee. However, the coffee was delivered as agreed, Budi refused to pay, without giving any reason to Muza. Budi's refusal to pay for the coffee was contrary to the provision of law. Therefore, Budi's refusal to pay Muza for the 5 bags of coffee was not lawful.

(iv) Under the law of torts in cases of nuisance, it is not a defense that the plaintiff came to the place of nuisance or that the defendant is merely making reasonable use of his premises *(Sturges v Bridgman, 1879).*

In the instant case, Safari rented a house near Vuya two months ago but soon discovered that Vuya rears broiler chicken, from which a stench from the chicken houses goes to the neighbours. In Vuyo's opinion, the neighbours have no reason to complain since they found him in the area, working at his premises. This is not a defenses as recognized by law.
Therefore, Safari had a cause of action against Vuya.

(v) Remedies available to the aggrieved parties:

- Tifu may appeal against the LCI court decision for lack of jurisdiction.
- Mateka Ltd. may seek for a court order declaring its refusal to pay for the goods lawful.
- Muza may seek for a court order to compel Budi to pay for the 5 bags of coffee.
- Safari may seek for damages and court injunction order against nuisance from Vuya's farm.

Solution 5

Issues:

(i) Whether the agreement between Landa and Dogs Ltd was valid and enforceable.
(ii) Whether there was a valid agreement between Onzo and Pendo.
(iii) Whether the delegation of the procurement officer by the managing director was lawful.
(iv) Whether Baringo was justified to challenge the arbitral award.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 16 (1) of the Contracts Act 2010 provides that where consent to an agreement is obtained by fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was obtained by fraud or misrepresentation.

In this case, Landa bought a security dog from Dogs Ltd and made part payment for it, after having been assured by the salesman that the company had the best-trained security dogs. However, two nights after buying the dog, Landa's home was broken into and, to his surprise, the dog never barked at all. That same morning, he receive a demand note from Dogs Ltd for payment of the balance due, which he declined to pay. Landa was the innocent party who had entered into the contract on the basis of the fraudulent misrepresentation by the salesman.
Therefore, the agreement between Landa and Dogs Ltd was valid but only enforceable at Landa's option.

(ii) Section 17(1) of the Contracts Act 2010 provides that where both parties to an agreement are under a mistake as to a matter of fact which is essential to the agreement, consent is obtained by mistake of fact and the agreement is void.

In the instant case, Pendo agreed to buy Onzo's land cruiser, at a time when Onzo had two models of land cruisers, one of 1999 and the other one of 2005. Pendo paid cash down and waited for delivery. However, whereas Onzo knew that he was selling the 1999 model, Pendo thought he was buying the 2005 model. When the 1999 model was delivered to Pendo, he rejected it on ground that he had paid for the 2005 model. This was a case of consent obtained by mistake. Therefore, there was a void agreement between Onzo and Pendo.

(iii) As a general principle in law, a delegate cannot further delegate *(De Busche v Alt, 1878).*

In this case, the managing director of Katu Ltd had a contract with a clause stating that no person should act in his position, unless he officially resigned or was removed from office. While he attended a conference in the United Kingdom, he was informed about an urgent purchase of which needed to be done from Patel, so he delegated the procurement director through email, to conclude the purchase. However, when Patel later demanded for payment from

Katu Ltd, he the finance director told him that he could not be paid because the procurement director had no authority to sign on behalf of the managing director. The managing director is an agent of the company and he delegated the procurement director to sign on his behalf. This was not right because even his contract included a clause prohibiting any person to act in his position. Therefore, the delegation of the procurement officer by the managing director was not lawful.

(iv) S.34 (2) of the Arbitration and Conciliation Act, 2000 provides that an arbitral award may be set aside by court only if the arbitral award was procured by corruption.

In the instant case, it was established that Manzi bribed the tribunal chairman, who was supposed to determine a matter concerning suspected use of company vehicles by Manzi to do his private work. Manzi emerged winner of the tribunal matter despite the clear evidence that he had bribed the chairman, consequent to which, Baringo wanted to challenge the arbitral award. This was within the law. Therefore, Baringo was justified to challenge the arbitral award.

(v) Remedies available to the aggrieved parties:

- Landa may seek for a court order declaring the agreement with Dogs Ltd void, at his option.
- Pendo may seek for a court order declaring the agreement with Onzo void.
- Katu Ltd may seek for a court order to declare the procurement officer's delegation unlawful.
- Baringo may seek for a court order to declare the arbitral award unlawful.

TEST PAPER 8 SOLUTIONS
CTA 2 - NOVEMBER 2023

Solution 1

Issues:

(i) Whether the directors' decline for Dogi to sell shares to Membe was lawful.
(ii) Whether the rejection by the Registrar's office of Gumete Ltd.'s prospectus was justified.
(iii) Whether the grant of four days' leave to Kyanaku from Friday to Monday was lawful.
(iv) Whether Aya's refusal to vacate the company's residential building was justified.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) Sections 5(a) & 6 of the Companies Act 2012 are to the effect that unlike a private company, a public company does not have restrictions on transfer of its shares.
In this case, Dogi a member of Gumete sold his shares to Membe, a businessman, but the directors refused to let him sell until other members were informed and/or preferred for purchase. This was against the law. Therefore, the directors' decline for Dogi to sell shares to Membe was not lawful.

(ii) According to Section 60 (a) & (b) of the Companies Act 2012, a prospectus shall not be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication the Capital Markets Authority has approved the company's prospectus in accordance with the Capital Markets Authority Act; and there has been delivered to the registrar for registration a copy of the prospectus signed by every person who is named in it as a director or proposed director of the company or by his or her agent authorised in writing.

In the instant case, Bintu who was one of the directors, prepared a prospectus which he and Wango signed but the other directors did not sign, although their names were indicated. When Bintu took the prospectus to the Registrar of companies, he was turned away because the prospectus could not be issued. This was in line with the provision of law. Therefore, the rejection by the Registrar's office of Gumete Ltd's prospectus was justified.

(iii) S. 57(1) of the Employment Act 2006 provides that a male employee shall, immediately after the miscarriage of his wife, have the right to a period of four working days' leave from work.

In the instant case, Kyanaku's wife got a miscarriage but when Kyanaku applied for leave, he was given four days from Friday to Monday, which included weekend days. This was against the law, which provided for working days. Therefore, the grant of four days' leave to Kyanaku from Friday to Monday was not lawful.

(iv) Section 43 (5) of the Employment Act 2006 provides that where the employee is being housed by the employer, the employee shall not be required to vacate the premises until he or she has been paid his or her terminal benefits.

In the instant case, Aya's contract was terminated and the termination letter indicated that his terminal benefits would be paid in a month's time. Two months had passed without him getting the benefits and Aya refused to vacate the premises before getting benefits, despite demands from the company's estates manager to do so. His action was within the law. Therefore, Aya's refusal to vacate the company's residential building was justified.

(v) Remedies available for the aggrieved parties:
- Dogi may seek for a court order declaring his lawful right to sell shares to Membe.
- The Registrar's office may by order compel all directors to sign before publishing the prospectus.
- Kyanaku may complain to the labour officer for an order to get his lawful paternity leave.
- Aya may seek for a court order to compel payment of his benefits before vacation on premises.

Solution 2

Issues:
(i) Whether Welu was liable for the dishonored bill of exchange drawn by Hagi.
(ii) Whether Hagi was liable for the dishonoured bill of exchange which was endorsed for Munda.
(iii) Whether the administrator of Demu's estate was liable to pay the debt to Cash deals Ltd.
(iv) Whether the firm creditor was justified to claim payment of his debt from Demu.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:
(i) Section 42 (2) of the Bills of Exchange Act 2000 provides that when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary.
In the instant case, Welu owed money to Munda but lacked cash, and the agreed that he endorses a bill of exchange that had been drawn by Hagi for his benefit, and use it to pay off the debt. However, the bill was not accepted by Byona bank when Munda presented it for payment. When Munda gave back the bill to Welu and claimed for payment, Welu told him that only Hagi who had drawn the bill could explain its dishonor. This was not right as provided by law. Therefore, Welu was liable for the dishonored bill of exchange drawn by Hagi.
(ii) Section 48 (f) of the Bills of Exchange Act 2000 provides that in order for a notice of dishonour to be valid and effectual, the return of a dishonoured bill to the drawer or an endorser is, in point of form, deemed a sufficient notice of dishonour.
In this case, Welu had returned the bill to Hagi and three days later written to Hagi, informing him about a case that was to be filed against him for payment of the money owed. However, Hagi said that Welu could not impart responsibility of

the bill on him, without any notice of dishonour as required by law. This was not true and not in line with the provision of law. Therefore, Hagi was liable for the dishonoured bill of exchange which was endorsed for Munda.

(iii) Section 16 (3) of the Partnerships Act 2010 provides that where, after a partner's death, the partnership business is continued in the firm name, the continued use of that name or of the deceased partner's name as part of the firm's name shall not of itself make his or her administrators of the estate or effects liable for any partnership debts contracted after his or her death.

In this case, Ntono, Demu and Kolo were partners of Ntodeko firm, with a partnership deed that provided for continued business if a partner left or died. Demu died following an accident but Ntono and Kolo continued with the firm business. A year after Demu's death, Cash deals Ltd demanded for payment from the firm and specified the three partners as owing him money, which had been given to the firm two months after Demu's death. The administrator of Demu's estate ignored all demands to contribute towards payment of the loan. This was provided by law. Therefore, the administrator of Demu's estate was not liable to pay the debt to Cash deals Ltd.

(iv) Section 38 (1) of the Partnerships Act 2010 provides that where a person deals with a firm after a change in its constitution, he or she is entitled to treat all apparent members of the old firm as still being members of the firm, until he or she has notice of the change.

In the instant case, Ntono and Kolo got more partners and continued using the same firm name. After the firm constitution was changed, one of their creditors claimed for his payment, some of which was paid by the firm, although it was not sufficient to cover the debt. The creditor then notified individual partners including Demu, for payment. However, the administrator of Demu's estate threatened to sue the creditor if he continued to drag Demu's name into his claims.

There had been no notice given to the creditor about Demu's death. Therefore, the firm creditor was justified to claim payment of his debt from Demu.

(v) Remedies available to the aggrieved parties:

- Munda may seek for a court order compelling Welu to pay his money.
- Welu ma seek for a court order to declare Hagi liable for the dishonoured bill of exchange.
- Demu's administrator may seek for a court order declaring no-liability for Cash deals Ltd.'s debt.
- The firm creditor may seek a declaratory court order justifying the claim of his debt from Demu.

Solution 3

Issues:

(i) Whether Sheka was justified to refuse registration of the 50 acre land as joint tenants with Tigu.

(ii) Whether it was lawful for Bura to impose rules and threats on Sheka's use of the leased land.

(iii) Whether it was lawful for the registrar to appoint Sheka as auditor of Bifuna cooperative society.
(iv) Whether Fele's investment of trust funds in a titled mailo land leased by Pahim was lawful.
(v) Whether there are any remedies available for the aggrieved parties.

Resolution of issues:

(i) According to section 56 of the Registration of Titles Act 2011, two or more persons who are registered as joint proprietors of land shall be deemed to be entitled to the land as joint tenants; and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares.
In the instant case, Tigu and his long-time business associate Sheka pooled resources and together and bought 50 acres of land. Tigu recently suggested to Sheka that they formalise ownership of the land by registering it as joint tenants, but Sheka was not convinced about it. As per the provisions of law, when land is registered as joint tenants, it means that if anyone of them dies, his interest and that of his family in the land, will be extinguished. Therefore, Sheka was justified to refuse registration of the 50 acre land as joint tenants with Tigu.

(ii) Section 3 (5) (c) of the Land Act 1998 provides that leasehold tenure is a form of tenure under which one person, namely the landlord or lessor, grants or is deemed to have granted another person, namely the tenant or lessee, exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending.
In the instant case, Sheka acquired a lease on Bura's land but whenever he attempts to maximise the use of his lease, Bura imposes restrictions on him and says that anyone with a lease on his land must abide by his whims or else risk a reduction of the lease period or the size of land to use. This was against the deemed enjoyment of exclusive possession of land as provided by law. Therefore, it was not lawful for Bura to impose rules and threats on Sheka's use of the leased land.

(iii) Section 23 (1a) of the Cooperatives Societies Act 2020 provides that the registrar of cooperative societies may in certain circumstances appoint an auditor for a limited period, a person who has previously served as an assistant registrar of a cooperative society.
In the instant case, Sheka was appointed by the registrar of cooperative societies as a temporary auditor for Bifuna cooperative society, when the society's auditor died at a time when urgent audit information was required by the registrar's office. Sheka had previously served as assistant registrar for a cooperative society in his home village and it was within the law to appoint him as the society auditor on temporary terms. Therefore, it was lawful for the registrar to appoint Sheka as auditor of Bifuna cooperative society.

(iv) Section 3 (e) of the Trustees Act 2000 provides that a trustee may invest any trust funds in his or her hands, in immovable property in Uganda held for a mailo estate in respect of which a certificate of title under the Registration of Titles Act has been issued or held on a leasehold estate for a term of years of which not less than thirty years is unexpired and which is not subject to any condition of re-entry, except for non-payment of rent.
In this case, Fele who is a trustee of the estate of Tigu's father, invested some of the trust funds in Pahim's piece of titled mailo land, for which he had a 35 years' lease. The lease period had so far run for only one year, remaining with 34 years and for which Pahim faithfully pays all the due rent. However, Tigu and other beneficiaries think the deal was outside the acceptable investments that Fele could make. The beneficiaries' fears were baseless because what Fele did was within the law. Therefore, Fele's investment of trust funds in a titled mailo land leased by Pahim was lawful.

(v) Remedies available to the aggrieved parties:
- Sheka and Tigu may apply for registration of the land as tenants in common.
- Sheka may seek for a court order for permanent injunction against Baru's interference.
- Sheka may seek for an administrative order from the registrar, declaring him lawfully appointed.
- Fele may seek for a court order declaring the investment of trust funds in a titled mailo land lawful.

Solution 4

Issues:
(i) Whether Vavi had a cause of action against Shunks Ltd.
(ii) Whether the Community by-laws made by the LC I committee were lawful.
(iii) Whether Shunks Ltd was justified to take Ndaba's plumbing materials back to its stores.
(iv) Whether Kiki enterprises was justified not to return the tiles to Shunks Ltd.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) Public nuisance is an act which interferes with enjoyment of a right, which all members of the community are entitled to and where a person suffers some special loss, that person is entitled to recover damages if he/she suffers more than the community as a whole *(Campbell v Paddington Borough Council, 1911; Soltau v De Held, 1851).*
In this case, Vavi who is neighbouring the office premises of Shunks Ltd has been undergoing what he calls nuisance by the company, occasioned to him and to the community at large, as a result of the company creditors and debt collectors banging the company gate and making noise to access its premises. Vavi's family is also often bothered by creditors who mistake their house for the company offices. Neighbours are also often blocked from accessing road, by the many cars

parked near the company premises. Vavi's family and neighbours are denied quiet enjoyment of their homes and access to their homes by the company. Therefore, Vavi had a cause of action against Shunks Ltd.

(ii) Article 79 of the Constitution of the republic of Uganda 1995 provides that except as provided in the Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.

In the instant case, the area LCI committee met and made Community by-laws with rules for all office premises in the community and management of daily operations, in order to be in harmony with the residents of the area. The LC committee intends to distribute the by-laws and to put up as notices for intending newcomers in the community. This was not in line with the law, outside the delegated authority of Parliament. Therefore, the Community by-laws made by the LC I committee were not lawful.

(iii) Section 55 of the Sale of Goods and Supply of Services Act 2018 provides that when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit and resuming possession of the goods as long as they are in the course of transit and may retain them until payment of the price.

In the instant case, Shunks Ltd had sold 20 boxes of plumbing materials on credit to Ndaba and agreed on full payment in two months' time. Ndaba's driver collected the materials from Shunks Ltd.'s stores but a few minutes later, the company's marketing manager ordered the store manager to get them back immediately. The store manager rushed and took back the materials to the company stores. This was because the marketing manager had heard about Ndaba's declaration as a bankrupt. This was in line with the rights of an unpaid seller. Therefore, Shunks Ltd was justified to take Ndaba's plumbing materials back to its stores.

(iv) Section 44 of the Sale of goods and Supply of Services Act 2018 provides that unless otherwise agreed, where goods are delivered to the buyer, and the buyer refuses to accept them, having the right to do so, the buyer is not bound to return them to the seller, and it is sufficient if the buyer intimates to the seller that he or she refuses to accept them.

In the instant case, Shunks Ltd delivered floor tiles to Kiki enterprises and Kiki enterprises made full payment thereof. However, when Kiki enterprises unpacked one of the boxes of tiles, some tiles were found cracked while others were broken. It rejected all the delivered tiles, communicated its rejection to Shunks Ltd.'s marketing manager, but refused to return the tiles. This was in line with the law. Therefore, Kiki enterprises was justified not to return the tiles to Shunks Ltd.

(v) Remedies available to the aggrieved parties:

- Vavi may seek for a court order for an injunction against nuisance by Shunks Ltd.
- Office owners may seek for a court order to declare the Community by-laws unlawful.

- Shunks Ltd may seek for a court order declaring its right to take Ndaba's plumbing materials.
- Kiki enterprises may seek for a court order declaring its right not to return tiles to Shunks Ltd.

Solution 5

Issues:

(i) Whether Jalu-Opts' sale of filing cabinets to Kwakosi enterprises was lawful.
(ii) Whether Bingu was liable to pay Chaka traders for goods delivered by Tema.
(iii) Whether Bingu was liable to pay Tema for extra transportation costs.
(iv) Whether the arbitrator was justified to discourage challenging the exorbitant arbitration fees.
(v) Whether there are any remedies available to the aggrieved parties.

Resolution of issues:

(i) S. 8 of the Contracts Act 2010 provides that the performance of the conditions of an acceptance, is an acceptance of the offer.
Furthermore, section 4(2)(a) of the Contracts Act 2010 provides that communication of an acceptance is complete as against the offeror, when it is put in a course of transmission to him or her so as to be out of the power of the acceptor. This is the postal rule, that when parties choose the post as a medium for contracting, acceptance is considered complete when the letter of acceptance is posted, even if it is lost in the post and never arrives *(Adams v Lindsell 1818).*
In the instant case, Jalu-Opts offered to sell its old filing cabinets to Muwe on an understanding that Muwe had to post signed documents of purchase by close of business on Friday. Muwe posted the documents on Tuesday evening but by the time he went to get the cabinets from |Jalu-Opts on Thursday evening, he was informed that Kwakosi enterprises had bought, paid for and taken the cabinets on Wednesday afternoon. Muwe and Jalu-Opts had a conditional agreement and Muwe had fulfilled the agreed conditions. Muwe also had evidence confirming postage on Tuesday and indicating his acceptance of the offer. Jalu-Opts breached the agreement when it sold the cabinets to Kwakosi enterprises. Therefore, Jalu-Opts' sale of filing cabinets to Kwakosi enterprises was not lawful.
(ii) Section 122 (2) of the Contracts Act 2010 provides that the authority of an agent is implied where it is to be inferred from the circumstances of a case.
In the instant case, Bingu and Tema had long been dealing together in business, whereby Tema would get supplies from wholesale stores and delivers them to Bingu, a fact that was well known by most wholesale traders. Bingu at one time refused to pay for supplies that Tema got on credit from Chaka traders, and when Chaka traders demanded for payment, Bingu informed Chaka traders that the demand should be directed to Tema whom it had dealt with. There was an inferred agency relationship between Bingu and Tema, which was well known by all wholesale stores. His refusal to pay was contrary to the provision of law. Therefore, Bingu was liable to pay Chaka traders for goods delivered by Tema.

(iii) According to S.156 (1) of the Contracts Act 2010, a principal shall indemnify an agent against the consequences of all lawful acts done by the agent in exercise of the authority conferred upon that agent.
In the instant case, Tema delivered 10 boxes of sanitizer to Bingu, at extra transportation costs, which Bingu readily received and paid for. At around the same time, Tema terminated his dealing with Bingu and informed him accordingly. However, when Tema requested for payment of the extra transportation costs, Bingu claimed that their normal arrangements had stopped. This was contrary to law, since Tema was an implied agent who had to be indemnified for the extra costs incurred. Therefore, Bingu was liable to pay Tema for extra transportation costs.

(iv) S.12 (3) of the Arbitration and Conciliation Act 2008 provides that a party may challenge an arbitrator appointed by him or her, or in whose appointment that party has participated, only for reasons of which he or she becomes aware after the appointment.
In this case, Bingu and owners of wholesale stores decided to settle their matters amicably and agreed upon an arbitrator to preside over their matters. The arbitrator was willing to handle the matters but set an exorbitant amount of fees to be paid, which Bingu was suspicious about. Bingu would be within the law to challenge the arbitrator's action, if he desired to do so. Therefore, the arbitrator was not justified to discourage challenging the exorbitant arbitration fees.

(v) Remedies available to the aggrieved parties:

- Muwe may seek for a court order for compensation from Jalu-opts' breach of agreement.
- Chaka traders may seek for a court order to compel Bingu to pay for the goods.
- Tema may seek for a court order to compel Bingu to indemnify him for extra costs.
- Bingu may seek for the appointing authority's order, declaring the arbitration fees exorbitant.

TEST PAPER 9 SOLUTIONS
CTA 2 - MAY 2024

Solution 1

Issues:

(i) Whether Pipi was liable to pay Nene Ltd from his commission.
(ii) Whether Faya was liable for the bill he signed on behalf of Jogo company.
(iii) Whether Jogo company's refusal to make another cheque was justified.
(iv) Whether the proposed law by Kuna municipality council was lawful.
(v) Whether there are any remedies available for the aggrieved parties.

Resolution of issues:

(i) Section 145 (2) of the Contracts Act 2010 is to the effect that where an agent conducts business contrary to the directions of his/her principal and any loss is suffered, the agent shall make good the loss to the principal.

In the instant case, Pipi committed Nene Ltd to an agreement for a credit purchase of cleaning materials worth UGX 2 million from Goya Enterprises, to be paid in a month's time. He ignored the Credit policy whereby credit purchases by agents were not to exceed UGX 1 million. The Finance manager told Pipi that the amount used for payment of Goya Enterprises would be deducted from his commission. This was within the provision of law, following Pipi's failure to conduct business in accordance with the given directions. Therefore, Pipi was liable to pay Nene Ltd from his commission.

(ii) Section 25(1) of the Bills of Exchange Act 2000 provides that where a person signs a bill as a drawer and adds words to his or her signature indicating that he or she signs for or on behalf of a principal or in a representative character, he or she is not personally liable thereon.

In the instant case, Nene Ltd provided services for Jogo company, where payment was to be made afterwards. The next day, Nene Ltd received a negotiable instrument signed by Faya who was Jogo company's agent, on which he had indicated "signed for Jogo company" against his signature. However, when the bill was presented to the bank for payment, it was not accepted, for justifiable reasons, so Nene Ltd sent a demand note to Faya for payment, but Faya refused to pay the money that was due. This was within the provision of law, relating to a person signing as an agent or representative. Therefore, Faya was not liable for the bill he signed on behalf of Jogo company.

(iii) Section 68 (1) & (2) of the Bills of Exchange Act 2000 provides where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him or her another bill of the same tenor, giving security to the drawer, if required, to indemnify him or her against all persons in case the bill alleged to have been lost shall be found again. If the drawer on request as aforesaid refuses to give such duplicate bill, he or she may be compelled to do so.

In this case, Jogo company had paid Nene Ltd using a cheque, which was to mature in one month. Unfortunately, the cheque got lost when it had five days to mature. Nene Ltd requested Jogo company for another cheque as a duplicate bill for the same amount, and was ready to commit to indemnify Jogo company against any person if the first cheque was found after another one was signed. However, Jogo company declined to do so. Jogo company's decline to make another cheque was contrary to the provision of law. Therefore, Jogo company's refusal to make another cheque was not justified.

(iv) Article 2(1) & (2) of the Constitution of the republic of Uganda 1995 provides that the constitution is the supreme law of Uganda; if any other law or any custom is inconsistent with any of the provisions of the constitution, the constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.

In this case, Kuna municipality council proposed to pass a law for the business community, whereby all profitable businesses would have a 5% cut off their profits, to be used in setting up smaller businesses in the municipality. The council expected the law to become a custom or super law commercial activities, and that all other commercial laws in Uganda would be rendered redundant or ineffective. The council ignored concerns about the apparent overhaul of foundational commercial laws in the supreme law of the country.

The proposed law was a clear attempt to oust existing commercial laws legislated within the provisions of the constitution. It was an outright departure from the supreme law of Uganda. Therefore, the proposed law by Kuna municipality council was not lawful.

(v) Remedies available to the aggrieved parties:

- Nene Ltd may seek for a court order compelling Pipi to pay for the loss incurred.
- Faya may seek for a court order to declare his lack of liability for the bill he signed.
- Nene Ltd may seek for a court order to compel Jogo company to make another cheque.
- The business community may seek for a court order to declare the proposed law void.

Solution 2

Issues**:**

(i) Whether the denial of Lukebe's annual leave by Ttunga Ltd was lawful.
(ii) Whether Pata's wife was justified not to sign transfer papers for Cuku.
(iii) Whether members were justified to dispute the number of shares to be owned by Pata.
(iv) Whether members were justified to demand for a change of the auditor.

(v) Whether there are any remedies to the aggrieved parties.

Resolution of issues**:**

(i) Section 54(3) of the Employment Act 2006 provides that any agreement to relinquish the minimum holiday as prescribed or to forgo such a holiday, for compensation or otherwise, shall be null and void. Furthermore, section 54(4)(a) provides that this applies to employees who performed continuous service for their employers for a minimum of 6 months.

In this case, Ttunga Ltd renewed contracts of employees including Lukebe, who had worked for the last 2 years. Lukebe's application for leave was denied basing on the new contractual provisions which provided for compensation to forego annual leave, at a rate to be determined by the company. This provision was against the law. Therefore, the denial of Lukebe's annual leave by Ttunga Ltd was not lawful.

(ii) Section 39 (1) (a) of the Land Act 1998 provides that no person shall sell any family land except with the prior consent of his or her spouse.

In the instant case, Pata sold to Cuku a piece of land used by his family to grow foodstuffs, for which Cuku made part-payment and thereafter started demanding for transfer papers. When Pata requested his wife to sign the transfer papers, she refused to sign. Pata had not sought for prior consent from his wife, as required by law. Therefore, Pata's wife was justified not to sign transfer papers for Cuku.

(iii) Section 14 of the Cooperatives Societies Act 2020 (as amended), provides that no member, other than a registered society, shall hold more than one-third of the paid-up share capital of any cooperative society.

In the instant case, Pata on persuasion by Cuku, joined Yowa cooperative society. He paid for subscription and advanced a big amount of money which would pay for more than one third of the total paid-up shares. When other members got information about it, they disputed the possibility of Pata owning all those shares. The law clearly restricts any society member from owning more than one third of the total paid-up shares of a cooperative society. Therefore, members were justified to dispute the number of shares to be owned by Pata.

(iv) Section 22 (1) (a) of the Cooperatives Societies Act 2020 (as amended), provides that no auditor chosen by a registered society to audit its books shall perform that function for more than three annual audits in succession unless authorised by the registrar;

In this case, Mihungi firm has been the auditor of Yowa cooperative society for the past three years and the directors want the firm to continue for one or two more years. However, members want a change, after Ndhidi told them that it was not right for the firm to continue as the society's auditor. The directors considered members' demands for change to be unnecessary. A society continuing to use the same auditor for more than 3 years would be contrary to the provision of law. Therefore, members were justified to demand for a change of the auditor.

(v) Remedies available to the aggrieved parties:
- Lukebe may complain to the Labour Officer to order Ttunga Ltd to grant him leave.
- Pata's wife may seek for a court order declaring Pata's sale of family land unlawful.
- Members may seek for a court order to declare owning one third of shares unlawful.
- Members may seek for a court order compelling a change of the society's auditor.

Solution 3

Issues:

(i) Whether there was a valid contract between Prime Consult and Zihomu.
(ii) Whether Prime Consult was justified to disallow Kamal's arbitration of the matter.
(iii) Whether Pasha Investments is justified to have Mugi's mandate terminated.
(iv) Whether Prime Consult was justified to register a complaint with the PPDA tribunal.
(v) Whether there are any remedies for the aggrieved parties.

Resolution of issues**:**

(i) Section 12(1) of the Contracts Act 2010 provides that a person is said to be of sound mind for purposes of contracting if, at the time of entering into the contract, that person is capable of understanding the contract and its effects on his/her interests.
In the instant case, Prime Consult through Chapa contracted with Zihomu, whereby Zihomu was supplied with items on credit, worth UGX 2 million, to be paid after one month. Chapa was not aware of the fact that Zihomu often depended on medication for mental stability but found out when went to demand for payment at Zihomu's office after five weeks had passed without any payment. Chapa found Zihomu in an unstable mental condition and was advised to forget about any agreement made with him. At the time of contracting, Zihomu was mentally stable. Therefore, there was a valid agreement between Prime Consult and Zihomu.

(ii) Section 11 (1) of the Arbitration and Conciliation Act 2017 provides that no one shall be precluded by reason of that person's nationality, from acting as an arbitrator, unless otherwise agreed by the parties.
In this case, Prime Consult had challenges in a matter with one of its big clients, involving Pasha Investments. The two companies agreed to use arbitration to resolve their dispute. Pasha Investments suggested Mr. Kamal, who had vast experience in Alternative Dispute Resolution but Prime Consult was not okay with the suggestion, especially because Kamal's origin was of foreign nationality. Prime Consult's ground for not agreeing to use Kamal as the arbitrator was not based on competence but on Kamal's nationality, and this was against the law.

Therefore, Prime Consult was not justified to disallow Kamal's arbitration of the matter.

(iii) Section 14 (1)(a) of the Arbitration and Conciliation Act 2017 provides that the mandate of an arbitrator shall terminate if he or she according to the parties, is unable to perform the functions of his or her office, or for any reason fails to act without delay.

In this case, Pasha Investments had an arbitration matter with Ndemye, who used to be its partner in business. The matter was set to be handled by a Ugandan arbitrator called Mugi, but after a long lapse of time, no hearing date has been given to date. Ndemye seems not to mind the delay, but Pasha Investments wants to take appropriate action to change the situation, even if it will mean terminating Mugi's mandate. It was not right for the arbitrator to delay hearing the arbitration matter. Therefore, Pasha Investments is justified to have Mugi's mandate terminated.

(iv) Section 91 I (2) of the Public Procurement and Disposal of Public Assets Act 2003 provides that a bidder who alleges that the Authority has a conflict of interest in respect of a matter before the Authority and who believes that the matter cannot be handled impartially by the Authority, may apply to the Tribunal for a determination of the allegation and where necessary, of the matter that was before the Authority.
In the instant case, Pasha Investments and Prime Consult bid for a two-year supply of office materials to a government body. The bidding process concluded in favour of Prime Consult to supply the materials. Pasha Investments disagreed with the result and applied to the Public Procurement for review. Prime Consult thereafter got information that the Authority was headed by a good friend of Pasha Investment's Chief Executive Officer, and suspected that the final decision was likely to be swayed in favour of Pasha Investment.
Therefore, Prime Consult was justified to register a complaint with the PPDA tribunal.

(v) Remedies to the aggrieved parties:

- Prime Consult may seek for a court order declaring validity of agreement with Zihomu.
- Pasha Investments may seek for a declaratory court order that Kamal arbitrates the matter.
- Pasha Investments may seek for a declaratory court order to terminate Mugi's mandate.
- Prime Consult may apply to the PPDA tribunal for determination of the matter.

Solution 4

Issues:

(i) Whether Kasobeza's relatives had a cause of action against Tingu Ltd for the sustained injuries.
(ii) Whether Vumba Authority was liable for Kabindo's loss.
(iii) Whether Wetuli firm was liable to replace or pay the money worth of Zuno's equipment.
(iv) Whether the partners can avoid liability by converting into a limited liability partnership.
(v) Whether there are any remedies for the aggrieved parties.

Resolution of issues:

(i) A breach of duty in torts occurs if the defendant caused an injury or loss to another person, which he could have avoided by using reasonable care. The occurrence of an injury to the plaintiff is in itself evidence of negligence, sufficient to entitle a finding for the plaintiff, in the absence of an explanation by the defendant *(Byrne v Boadle, 1863).*

In this case, Kasobeza was hit by ceramic tiles that fell as he passed by the floor below the premises of Tingu Ltd, injuring his neck and back. Tingu Ltd had a duty of care to avoid such occurrences. Therefore, Kasobeza's relatives had a cause of action against Tingu Ltd for the sustained injuries.

(ii) In torts, the defense of necessity is founded on the maxim *"Salus populi suprema Lex",* which means that the welfare of the people is the supreme law. Such a defense is valid when the defendant's act is motivated by necessity *(Dewey v White, 1827).*

In the instant case, a fire broke out in Senyi slum area, affecting many properties and businesses. In order to prevent further damage and loss, Vumba Authority officers broke down many neighboring shack houses and poorly constructed business structures, so that the Fire Brigade vehicles could access the area to stop the raging fire. The authority wrote an official letter to the public that it did not expect any claims from owners of broken structures, because they were illegally built and they had to be broken as an emergency, to stop further damage. Kabindo who owned one of the broken structures furiously stormed into the Authority office to claim for compensation.

Vumba Authority broke the illegal structures in order to avoid more damage and for the people's welfare. Therefore, Vumba Authority was not liable for Kabindo's loss.

(iii) Section 14 (b) of the Partnerships Act, 2010 provides that a firm is liable to make good the loss where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm.

In the instant case, Wetuli firm stored Zuno's agricultural equipment in its store for safe custody during the time when Zuno had travelled. When Zuno returned two weeks later and went to get his equipment, it was not in the store but later, the partners got to know that one partners had taken the equipment, expecting to get a fee from its use by some farmers. Zuno wants the firm to either replace it or pay its money's worth.

The removal of Zuno's equipment from the store to be used by farmers was a clear misapplication of property which was in the firm's custody. Therefore, Wetuli firm was liable to replace or pay the money worth of Zuno's equipment.

(iv) Section 56 (4) of the Partnerships Act, 2010 provides that a general partnership may, subject to the provisions of this Act, convert to a limited liability partnership under this Act by delivering to the Registrar a statement containing the particulars specified in section 51. Furthermore, section 57 of the Partnerships Act provides that conversion from one form of partnership to another under this Act shall not affect any action or proceedings pending in court for or against the converting partnership; and the action or proceedings may be continued as if the conversion did not take place.

In this case, Wetuli which traded as a general partnership wanted to convert to a limited liability partnership, in order to avoid personal liability of each partner in case of future challenges. This move suggested by Gezi was welcomed by the others because the firm had other issues like pending court cases.

The move by Wetuli firm to convert into a limited liability partnership was allowed by law, but the objective of avoiding liability was not possible, as per the provision of law. Therefore, the partners cannot avoid liability by converting into a limited liability partnership.

(v) Remedies available to the aggrieved parties:

- Kasobeza's relatives may seek for a court order against Tingu Ltd for compensation.
- Vumba Authority may seek for a court order to declare non-liability for Kabindo's loss.
- Zuno may seek for a court order for payment or replacement of equipment by the firm.
- Partners may process documents to convert the firm into a limited liability partnership.

Solution 5

Issues:

(i) Whether Kibaate was justified to dispute resolutions of the company meeting.
(ii) Whether the directors were justified to restrict inspection of the register to one hour.
(iii) Whether Festa Products was liable for the value of Kyotera Ltd.'s goods.
(iv) Whether Mingi was liable to compensate Onga for the loss of his property.
(v) Whether there are any remedies for the aggrieved parties.

Resolution of issues:

(i) Section 141(c) of the Companies Act 2012 provides that where Articles of a company do not make other provisions in the case of a private company, two members personally present, shall form a quorum.

In the facts of this case, a general meeting of Tingu Ltd was called but most members had unresolved grievances, so they decided to boycott the meeting. When the meeting was called to order, Kibaate who was one of the three members in attendance, requested that the meeting be postponed due to the low number of members present. His request was ignored and he furiously walked out, threatening to dispute resolutions made. The law clearly provides for quorum where at least two members are personally present. There were two other members present, apart from kibaate. Therefore, Kibaate was not justified to dispute resolutions of the company meeting.

(ii) Section 228(8) of the Companies Act 2012 provides that a company may impose reasonable restrictions on inspection of the register for Directors and Secretaries, but the restriction shall not be such as to reduce the period of inspection to less than two hours in each day.

In the instant case, Kibaate requested to inspect the register of Directors and Secretaries but was told by the Secretary that he could only inspect the register for one hour, as per the directors' decision. The one-hour restriction made by the directors was against the law. Therefore, the directors were not justified to restrict inspection of the register to one hour.

(iii) Section 40 (1) of the Sale of Goods and Supply of Services Act 2017 provides that where under a contract of sale, the seller is required to send the goods to the buyer, delivery of the goods to a carrier whether named by the buyer or not, for the purpose of transmission to the buyer, is prima facie taken to be a delivery of the goods to the buyer.

In the instant case, Kyotera Ltd bought goods from Festa Products, whereby Kyotera Ltd would get the goods from Spedrite Co. after one month. Festa Products informed Kyotera Ltd that the goods were delivered to Spedrite Co. for onward shipping two months earlier but Kyotera Ltd was yet to receive the them and threatened to sue Festa Products.

According to law, the goods were considered delivered when received by Spedrite Co. Therefore, Festa Products was not liable for the value of Tingu Ltd.'s goods.

(iv) Section 23 (2) of the Trustees Act 2000 provides that trustees may appoint any person to act as their agent for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating or otherwise administering any property, real or personal, movable or immovable, subject to the trust or forming part of the estate, in any place outside Uganda or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit,

including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising by it.

In the instant case, Mingi who was a trustee, appointed Funa to assist with management of estate properties in Kenya, and whatever was necessary for proper administration. When Funa also became busy, he appointed a colleague as his substitute in any emergency relating to the properties. However, when warehouse needed urgent repair to stop leakage, no repairs were done despite reminders made, and Onga's property was damaged during the rainy season.

The law provides for non-liability of a trustee for any loss as a result of appointing a person/agent to act in his/her place, even where such person/ agent appoints a substitute to carry out the tasks. Therefore, Mingi was not liable to compensate Onga for the loss of his property.

(v) Remedies available to the aggrieved parties:

- Tingu Ltd may seek for an order of court to declare the meeting's quorum lawful.
- Kibaate may seek for a court order to declare the one-hour register inspection unlawful.
- Festa Products may seek for a court order to declare its non-liability for Kyotera Ltd.'s goods.
- Mingi may seek for a declaratory order of court that he was not liable for Onga's loss.

TEST PAPER 10 SOLUTIONS
CTA 2 - DECEMBER 2024

Solution 1

Issues:

(i) Whether Reko was justified to block access to Mulodo's land with a wall fence.
(ii) Whether Sana was justified to sue Reko and Zono in the Chief Magistrates court.
(iii) Whether Ovia was justified to sell Lumba's vehicle, to recover the rent arrears.
(iv) Whether the registrar's refusal to transfer Gamwenge's land to Ovia was lawful.
(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) No easement is implied for right of way, if there is another way to access the land, however impractical *(McLernon v Connor, 1907).*

In the instant case, Mulodo's family occupies land neighbouring Reko's land and have been using an access road through Reko's land for 30 years. When Reko constructed a wall fence which blocked the access route, Mulodo claimed that his family was denied access and right of way, but Reko insisted that it was an unjustified claim, since the family could access their land from the main road. It was true that the family had an alternative route. Therefore, Reko was justified to block access to Mulodo's land with a wall fence.

(ii) Section 207(1)(a) of the Magistrates' Courts Act 1971 provides that a chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings.
In this case, Reko bought a kibanja worth UGX 60 million from Sana, and sold it to Zono at UGX 70 million. The purchase prices in both sales were way above the pecuniary jurisdiction of the chief magistrate's court. Therefore, Sana was not justified to sue Reko and Zono in the Chief Magistrates court.

(iii) An agreement for a lease capable of enforcement by specific performance, creates a lease. *(Walsh v Londale, 1882).*
Furthermore, in equity, failure to follow legal formalities to create a lease does not necessarily render the lease void, since equity treats as done what ought to be done. In the instant case, Therefore, Ovia was justified to sell Mulumba's motor vehicle to recover her rent arrears.

In this case, Ovia and Lumba entered into a lease agreement for a term of 10 years but did not sign a formal lease agreement. Lumba defaulted in rent payment for 5 years, despite several demand notes from Ovia. Ovia thereafter took Lumba's vehicle and sold it, to recover her rent arrears. The agreement between Lumba and Ovia was effective to bring into existence an equitable lease and in the eyes of equity, they were land lord and tenant, subject to the same terms and conditions as if it was a written lease agreement. Therefore, Ovia was justified to sell Lumba's vehicle, to recover the rent arrears.

(iv) Section 4 (1)(a) of the Stamp Duty Act 2014 provides that where in the case of a sale, an instrument is employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in the Act.
In the instant case, Ovia purchased land from Gamwenge but when she presented all documents for the transfer into her name, the Registrar of Titles refused to do so, insisting that Ovia had not paid stamp duty. This was in line with the law. Therefore, the registrar's refusal to transfer Gamwenge's land to Ovia was lawful.

(v) Remedies available to the aggrieved parties:
- Reko may seek for a declaration from court that he lawfully fenced off his land.
- Reko and Zono may by preliminary objection in court, seek for dismissal of Sana's case.
- Ovia may seek for a court order declaring the sale of Lumba's vehicle justified.
- The Registrar may seek for a court order declaring the refusal to transfer lawful.

SOLUTION 2

Issues:

(i) Whether the dismissal of Rwabuka from Tino Ltd was lawful.
(ii) Whether Alimedi's dismissal was lawful.
(iii) Whether the non-payment of Ozi's wages was lawful.
(iv) Whether Dicky has a cause of action against Fara.
(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 66 (2) of the Employment Act 2006 provides that an employer shall, before reaching any decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct, may make.
Furthermore, section 66 (5) of the Employment Act 2006 provides that a complaint alleging a failure on the part of the employer to comply with this section may be joined with any complaint alleging unjustified summary dismissal or unfair dismissal, and may be made to a labour officer by an employee who has been dismissed.

In the instant case, it was alleged that Rwabuka was involved in vandalism of street-light conductors and that he had constructed illegal electricity lines. He appeared for a disciplinary hearing but later alleged that no opportunity was given to him to be heard. He was thereafter summarily dismissed on the ground that he operated a mill in Peto Amusu's name. Rwabuka alleged that this ground of dismissal was never brought to his attention during the disciplinary hearing. According to Tino Ltd, Rwabuka fundamentally breached contractual obligations.

Tino Ltd did not hear Rwabuka's side of the story, and what was contained in his dismissal letter was different from what he was told in the disciplinary hearing. This was against the provision of law. Therefore, the dismissal of Rwabuka from Tino Ltd was not lawful.

(ii) Section 6(3) of the Employment Act 2006 provides that discrimination in employment shall be unlawful and discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, HIV status or disability, which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service.

In this case, Tino Ltd dismissed Alimedi when he did not start in time, due to the fact that he was still praying. Alimedi was harassed and taunted at work by his born-again manager, because he belonged to the moslem religion and his appearance with a long beard. The manager informed Alimedi that he was fired because the manager could not tolerant moslems. This was clearly against the law. Therefore, Alimedi's dismissal was not lawful.

(iii) Section 55 (1)(a) of the Employment Act 2006 provides that an employee who has completed not less than one month's continuous service with an employer and who is incapable of work because of sickness or injury is entitled to sick pay, and for the first month's absence from work, he or she is entitled to full wages and every other benefit whether for his or her family or himself or herself stipulated in the contract of service.

In this case, Ozi was electrocuted and was hospitalised for two months but on discharge, he found that no payment was given to him for the two months when he was in hospital. On inquiry, he was told that he had not been paid because he did not work for the two months. This was not in line with the law. Therefore, the non-payment of Ozi's wages was not lawful.

(iv) A person must take reasonable care to avoid acts or omissions which one can reasonably foresee would be likely to injure one's neighbour. Such liability occurs where a reasonable man would have foreseen and could have avoided the consequences of his/her act or omission (*Donoghue v Stevenson, 1932)*
Furthermore, in negligence cases, the standard of care required by law for all drivers is the standard of a competent and experienced driver *(Nettleship v Weston, 1971).*

In the instant case, Lavina took her son, Jojo, to a playground, where she got distracted while talking with Dicky. Dicky then saw Jojo walking towards the road and rushed after him, thereby saved him from being run over by Fara. Fara was driving safely within the required speed limit but she knocked Dicky when she skidded off the road and finally crashed into some playground equipment. Dicky wants to sue Fara but Fara was not negligent because she exercised the

necessary standard of care of a competent driver, driving at a safe speed that was within the required speed limit. Therefore, Dicky has no cause of action against Fara.

(v) Remedies are available to the aggrieved parties:

- Rwabuka may complain to the labour officer for orders of re-instatement and damages.
- Alimedi may complain to the labour officer for orders of re-instatement and damages.
- Ozi may complain to the labour officer for an order to compel payment of his full wages.
- Fara may seek for a court order to declare that there was no cause of action against her.

SOLUTION 3

Issues:

(i) Whether Pora was justified to demand for a share of profits from the new partnership.
(ii) Whether Mushari Bank is liable to refund Kandi's money.
(iii) Whether Tery was justified to sue Grow investment bank for honoring Buza's cheque.
(iv) Whether Guma was justified to sue Tery for recovery of his money.
(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 44 (1)(a) of the Partnerships Act 2010 is to the effect that where a partner has ceased to be a partner and the continuing partners carry on the business of the firm with the firm's capital or assets without any final settlement of accounts as between the firm and the outgoing partner then, in the absence of any agreement to the contrary the outgoing partner is entitled, at the partner's option to a share of the profits made since the dissolution as the court may find to be attributable to the use of his or her share of the partnership assets.
In the instant case, Ganzi and Pora were partners but Ganzi opted to notify Pora about dissolution of the partnership and he executed another agreement and started another business, trading under his name. He also continued carrying on business using the former partnership premises, capital and good will. There was no agreement made with Pora for Ganzi to continue using assets of the former partnership. Therefore, Pora was justified to demand for a share of profits from the new partnership.

(ii) Section 79 of the Bills of exchange Act is to the effect that where the banker on whom a crossed cheque is drawn, in good faith and without negligence, pays it, if crossed generally, the banker paying the cheque shall be entitled to the same

rights and be placed in the same position as if payment of the cheque had been made to the true owner of the cheque.

In the instant case, Akayi drew a cheque on Mushari Bank, in favour of Kandi, who, on its receipt, crossed it generally. Thereafter, Twesi stole the cheque and deposited it on an account in Villa Bank, which she had opened in Kandi's name. Villa Bank presented the cheque to Mushari Bank, which confirmed it requested for the due diligence pay. Kandi then sought for recovery of her money from Mushari Bank.
Mushari Bank Ltd made payment after verification and all necessary due diligence. Therefore, Mushari Bank is not liable to refund Kandi's money.

(iii) Section 63 (1) of the Bills of Exchange Act 2000 provides that where a bill is materially altered without the assent of all parties liable on the bill, the bill is avoided, except that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, the holder may avail himself or herself of the bill as if it had not been altered and may enforce payment of it according to its original tenor.

In this case, Buza advanced a loan of UGX 6 million to Tery, and Tery issued an undated cheque which was completed in all aspects, to Buza, as security for the loan. Without Tery's consent, Buza inserted a date on the cheque, presented it for payment at Grow Investment Bank, and it was honored. Tery now wants to sue the bank, which he thinks should not have honoured the cheque due to the different handwriting and ink on it.
Insertion of a date by Buza on the bill was not an apparent alteration and furthermore, Buza was the holder in due course, who presented the bill for payment. Therefore, Tery was not justified to sue Grow investment bank for honoring Buza's cheque.

(iv) Section 73 (a) of the Bills of Exchange Act 2000 provides that where a cheque is not presented for payment within a reasonable time of its issue, and the drawer on whose account it is drawn had the right at the time of the presentment as between him/her and the banker to have the cheque paid and suffers actual damage through the delay, he/she is discharged to the extent of the damage, that is to say, to the extent to which such drawer is a creditor of the banker to a larger amount than he/she would have been, had the cheque been paid.

In this case, Tery issued a cheque in favour of Guma, at a time when he had sufficient funds on his account with Pere Bank. However, Guma presented the cheque after two years from the date of issue, and at a time when Pere Bank in an advanced stage of winding up. Two years was an unreasonable time for Guma to present the cheque for payment. Therefore, Guma was not justified to sue Tery for recovery of his money.

(v) Remedies available to the aggrieved parties:

- Pora may seek for a court order to compel Ganzi to pay profits due to him.

- Mushari Bank may seek for a court order declaring non-liability to refund the money.
- Grow investment bank may seek for an order of court declaring non-liability to pay Tery.
- Tery may seek for a court order to declare his non-liability to Guma.

SOLUTION 4

Issues:

(i) Whether Banza is justified to claim ownership of the 10 cattle.
(ii) Whether Mutu and his wife's claim under the secret trust is justified.
(iii) Whether Zora was justified to seek for protection in the management of Amora Ltd.
(iv) Whether Kosa and Pata's actions towards the internal audit function were lawful.
(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) The subject matter is a part of a homogeneous matter, so that specific identity is of little importance. To create a trust, it must be possible to ascertain with certainty not only what the interest of the beneficiary is to be but also to what property it is to attach *(Re London Wine Company, 1986)*.

In the instant case, Banza who owned Kihungu Farmers, had 4000 cattle and 100 goats. He one time told his son Doni that 10 of the cows were his to profit from in future. When anthrax killed the cows with the exception of only 10, Doni wanted to sell them as his but Banza said that he still owned the 10 cows. Banza had just declared that 10 cows belonged to Doni but never pointed out with certainty the exact animals, and did not create an interest in the property. Therefore, Banza is justified to claim ownership of the 10 cattle.

(ii) The three requirements of a secret trust are an intention to create the trust, communication of the trust to the trustee and acceptance of the trust by the trustee. If property is given to the primary donee on the understanding that he/she will dispose by will of such assets left in favour of the secondary donee, a valid trust is created in favour of the secondary donee, which is in suspense during the lifetime of the primary donee but attaches to the estate of the primary donee at the moment of his/her death. Such secret trust need not be set out in writing (*Ottaway v Norman,* 1972).
In the instant case, Lefu left his farm to his brother Gumi for use during his life time but requested him by secret trust to bequeath the house to his (Lefu's) son Mutu and his wife, in the event that Gumi dies. However, when Gumi died, he had by Will left the farm to his (Gumi's) son Ndanye. Lefu's intention that Gumi should leave the property by will to Muntu and his wife was clearly communicated, Gumi accepted to dispose of the farm as per secret will. Therefore, Mutu and his wife's claim under the secret trust is justified.

(iii) Section 247 (1) & (2) of the Companies Act 2012 is to the effect that a member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members including himself/herself may make a complaint to the registrar by petition for an order and where the registrar is of the opinion that the company's affairs are being conducted in such way, the registrar may, with a view to bringing to an end the matters complained of, make such order as he or she thinks fit.

In this case, the majority shareholders of Amora Ltd (Lulisa and Mara) held 90 of the 100 shares while Zora held the 10 shares. There were company challenges in management of affairs, where company land was transferred to the majority shareholders' ownership, payment of rent or premises which were owned by the company and Zora being forced to sell his shares at a very low rate. All this was against the law and was oppression to Zora, the minority shareholder. Therefore, Zora was justified to seek for protection in the management of Amora Ltd.

(iv) Section 170 (3) of the Companies Act 2012 provides that every auditor of a company has a right of access at all times the books and accounts and vouchers of the company and is entitled to require from the officers of the company such information and explanation as he or she thinks necessary for the performance of the duties of the auditors.
In this case, the majority shareholders of Dew Ltd (Kosa and Pata) decided to handle company matters including custody of all cheque books and related accounting records, after suspecting underhand activities by some company officers and staff. Meso was informed that the internal auditor was unable to comply with report making requirements, due to difficulty in accessing the company records. This was not in line with the law. Therefore, Kosa and Pata's actions towards the internal audit function were not lawful.

(v) Remedies available to the aggrieved parties:
- Banza may seek for a court order declaring his ownership of the 10 cattle.
- Mutu and wife may seek for a court order to declare their secret trust claim justified.
- Zora may seek for an order from the registrar for protection in the affairs of Amora Ltd.
- Meso may seek for a court order to declare Kosa and Pata's actions on audits unlawful.

SOLUTION 5

Issues:

(i) Whether the registrar was justified to refuse registration of Twezimbe society.
(ii) Whether it was lawful to re-appoint Rukora Associates as the society auditors.
(iii) Whether Sawa was liable to refund the money Racha paid for the watch.
(iv) Whether WB Ltd was liable to fulfill the contract made with City Wines Ltd.

(v) Whether there are remedies available to the aggrieved parties.

Resolution of issues:

(i) Section 4(1)(a) of the Corporative Societies Act 2020 provides that no society shall be registered under this Act unless it consists of at least thirty persons all of whom are qualified for membership of the society.

In this case, Moda and his 23 University friends wanted to register a cooperative society using the name Twezimbe Society, for which they drafted proposed byelaws, proposed the executive committee and all the necessary paperwork. However, Moda who was tasked to handle the registration process of the society informed the others that the registrar had refused to register the society on the ground that they had not fulfilled all requirements as provided by law. Therefore, the registrar was justified to refuse registration of Twezimbe society.

(ii) Section 22 (1) (a) of the Corporative Societies Act, 2020 is to the effect that every registered society shall cause its accounts to be audited at least once in every year by an auditor appointed by the annual general meeting and no auditor chosen by a registered society to audit its books shall perform that function for more than three annual audits in succession unless authorised by the registrar.

In the instant case, Ggaga Corporative Society's majority members proposed and re-appointed Rukora Associates as the society auditors. However, Rukora Associates had been the society auditor for the last three years, and a few members were not happy with the re-appointment. Rukora Associates' re-appointment was contrary to law. Furthermore, the re-appointment was not sanctioned by registrar. Therefore, it was not lawful to re-appoint Rukora Associates as the society auditors.

(iii) Section 14(1) of the Sale of Goods and Supply of Services Act 2018 provides that where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description.

In this case, Racha bought a second hand wrist watch from Sawa's shop, after specifically informing Sawa that she wanted a good 'waterproof' watch. Sawa showed her a watch with a tag 'waterproof' and the leaflet advertising it claimed that it excellently kept time, upon which she relied to buy the watch. However, two weeks later, she realised that the watch was not waterproof and it lost more than one in minute in time, every week. She returned the watch to Sawa and demanded for a refund. The word "waterproof" was an implied condition and a substantial ingredient before buying the watch. Therefore, Sawa was liable to refund the money Racha paid for the watch.

(iv) Section 26(c) of the Sale of Goods and Supply of Services Act 2018 provides that where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until that act or thing is done, and the buyer has notice of it.

In this case, City Wines Ltd agreed with Tailo, the managing director of WB Ltd, to buy 600 bottles which were available for sale despite the fact that they were all of different sizes and an agreement was signed. City Wines Ltd also agreed that confirmation of the price would depend on the number and sizes of the bottles, which had to be measured and confirmed after one week. However, an earthquake struck and all WB Ltd.'s bottles were destroyed but City Wines Ltd still insisted that WB Ltd should fulfill its obligations. It was clear that no property in the bottles had passed from WB Ltd to City Wines Ltd, as the agreement was frustrated when the earthquake destroyed the bottles. Therefore, WB Ltd was not liable to fulfill the agreement made with City Wines Ltd.

(v) Remedies are available to the aggrieved parties:

- Members may interest more people to form the society as per required number.
- Members may seek for the registrar's order annulling the auditor's re-appointment.
- Racha may seek for a court order to compel Sawa's refund of the money.
- WB Ltd may seek for a court order to declare non-liability to fulfill the agreement.