



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAMME

JANUARY-APRIL 2024

RLB 306: INSOLVENCY/BANKRUPTCY LAW

INSTRUCTOR: MR D. ODHIAMBO

INSTRUCTIONS

1. This is the final examination in Insolvency Law. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THREE QUESTIONS**.
3. This examination has 4 pages, including this one.
4. Time allocated for this examination is **TWO** (2) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination. This means that save for a clean copy of the Constitution of Kenya, which shall be supplied by the Law School, you are not permitted to bring **ANY** hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

Question One

Magaya is a shareholder/director in one of the locally 'big shot' companies that trades in shares and lends financial facilities- Jigambo Limited. He has invited you, his advocates, to an emergency meeting with his corporate legal and accountancy teams together with the other shareholders. The urgent meeting was as a result of the continued delays to settle their suppliers and administrative wages as a corporation. You saw this coming but had nothing to help shield the company against the impending storm. Infact, you have been holding a series of meetings with Mlachake Limited which does similar business to consider a buy out or takeover in a bid to avert the storm. However, stable Mlachake Limited, has not been very keen on working with you or taking up even a single stake in your business. Their primary reason being that they had advanced a facility which was secured over any and all assets worth settling the debt.

Recently, the Lessor served Jigambo Limited with a notice 'escorted' by auctioneers and an order from the Business Premises Tribunal to allow them levy distress to recover rental arrears. Fortunately for you the Advocates managed to set aside the order on the premise that you were never served. The pressure is mounting and Magaya can no longer withstand the loss of his lifetime investment at Jigambo Limited. He categorically tells you that "...whatever happens please do not let Jigambo sink".

Write a legal opinion on the options, if any, that Jigambo Limited has and to what extent Magaya may be affected.

Discuss using provisions of law and case law.

(30 marks)

Question Two

It is the year 2022 and the new year celebrations and go happy-lucky mood is still in the air but not so for Mr. Jacques. January 5, 2022 should be vacation time for him and his two children at some sandy beaches in the Bahamas, Maldives but that is not so this year. He was divorce three years ago and after a prolonged battle in Court, he was directed to pay child maintenance and alimony to his 'model' ex-wife of Kshs. 450,000/= every month. He wasn't too happy with that verdict but upon being granted 50-50 parental custody he agreed to pay.

Around March, 2021 he made travel arrangements to tour the beautiful land of Mauritius with the children for a thirty (30) day long holiday. Everything was booked and he got clearance from Kinyana Ports Authority to use his private jet on the scheduled travel date. You may ask, where does he work or what does he do for a living? Wonder no more: Mr. Jacques is French national resident in Kenya and recently divorced from his Kenyan wife- Ms. Voluptuous Atis. They fought over the possessions that he had acquired until the court decided to grant him full control and pay monthly alimony for his ex-wife. He was one of the major shareholders of RUFU's Limited an airline that plies the Kinyanese-French air and he doubles up as a pilot for the commercial airline. After a messy divorce and battle over his children coupled with threats from his ex-wife, he resolved to self-off his shares last year and invest in his home country-France. So, he did in August, 2020.

December, 2021 just a day before the scheduled vacation, he tried to fuel his jet at a local hanger in vain. He called his banker who told him all his assets have been frozen by the Public Trustee because they could not trace his whereabouts and the rate of disposal and reinvestment as well as expenditure was quite alarming considering that the company, he held share with

was placed under administration on 14th November, 2021. He cancelled the trip and booked an appointment with his lawyers for insight into what was going on.

He has many questions running through his mind but most importantly:

- i. He is not the company and he left the company in August, 2020 yet the dark times of the company are affecting him. Why?
(7 marks)
- ii. What shall be his role in the event that he is sucked into this administrative and insolvency issues?
(6 marks)
- iii. His assets have been frozen and he has a family that depends on him and a stubborn ex-wife. He also has other bills running. Explain to him the extent to which the insolvency practitioner or administrator can affect his financial affairs and obligations?
(7 marks)
- iv. And finally, he notes that the company has had ‘runnings’ with the official receiver for nearly two months now. A week before he learnt of the asset freeze he was told by the company lawyer that the company is now under administration. Explain to him the effects of this directive and possible eventuality they are likely to face as a company. Remember to use case law, derive and apply principles of insolvency as appropriate.
(10 marks)

Discuss using provisions of law and case law.

Question Three

Price Waterhouse Coopers Limited, PWC, is a corporation of foreign decent. It is also a renown auditing firm world over. You were recently hired as in-house-counsel, a position that came on the premise of your demonstrated appreciation of commercial law but particularly company law and insolvency processes. On your second month at work, your boss hand you a file in which he instructs you to write a legal opinion details the options, if any, and most probable cause of action that PWC has against Jamieson Limited one their long-term clients. It turns out that a recent routine audit conducted by your employer, PWC, reveals that, Jamieson Limited owes it approximately Kenya Shillings Fifteen Million (Kshs. 15,000,000/-) as fees for audit services rendered to all its ten branches, in Kenya and South Africa. It is also apparent from your employer’s audit report that the company lack financial capacity or even future potential to settle its debts that spun to billions. However, nothing at least on the part of Jamieson limited indicated foul play or desire to town tools or accept defeat. In fact, your ‘boss’ is almost certain that the public is likely to take to the street considering the number of jobs that may be lost and levels of investment that creditors have ‘pumped’ into Jamieson Ltd, should anything happen to jeopardize their position.

Using relevant legal provisions and precedents as examples, write a detailed opinion to your ‘boss’.
(20marks)