



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2011/2012

SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF
LAWS

LCC 304: BANKRUPTCY LAW

DATE: FRIDAY, 20TH APRIL 2012

TIME: 3.00 P.M. – 5.00 P.M.

INSTRUCTIONS:

1. Please answer QUESTION ONE and ANY OTHER TWO questions.
2. Please note that penalties accrue for failure to answer question One.
3. Support your answer with illustrations from relevant case law, statutory provisions, and any other relevant references.
4. Write neatly and legibly.
5. Your answer script must bear student registration number and serial numbers of the question you attempted to answer.

QUESTION ONE

On 1st January 2012, Mr. Kamau, a creditor called on Dr. Mwaniki, his debtor, to ask for payment of Kshs. 5,000/=, owed to him by Dr. Mwaniki, which was lent to Dr. Mwaniki as a friendly loan.

Dr. Mwaniki told Mr. Kamau that he (Dr. Mwaniki) will bring the money to Mr. Kamau's offices in the afternoon. Dr. Mwaniki had hoped to raise the money by borrowing from his friends. Dr. Mwaniki went to the Doctors' Famous Bar, which he and his friends frequented, hoping to appeal to his friend's understanding and sympathy and get the required sum. But all Dr. Mwaniki's friends claimed not having the money due to the financial difficulties they found themselves in because of the poor economic situation prevailing in the country. Later on, on the same day in the afternoon, Mr. Kamau sent his office accountant, to go to Dr. Mwaniki's office in order to demand payment, but since Dr. Mwaniki did not have the money, he promised to call on Mr. Kamau the next day at 10.—am, with the money. Again, Dr. Mwaniki failed to get the money, or to call on Mr. Kamau with an explanation.

Mr. Kamau once again decided to recover the debt owed to him and this time sent his office clerk to Dr. Mwaniki's residence. On 12th of January, 2012, when Mr. Kamau's office clerk visited Dr. Mwaniki's residence, Dr. Mwaniki, upon realizing that Mr. Kamau's clerk came to demand the due payment, withdrew to his study-room and gave his wife, Elizabeth, strict instructions to the effect that should Mr. Kamau or anyone else on Mr. Kamau's behalf call, she should say that he (Dr. Mwaniki) is not home. Sure enough, that same afternoon, Mr. Kamau himself called on Dr. Mwaniki at his residence and was informed that Dr. Mwaniki is away.

On May 16th, 2012, Mr. Kamau files a petition in bankruptcy against Dr. Mwaniki, alleging the foregoing facts and debt and further alleging that Dr. Mwaniki owed him Kshs. 200,000/= - as a result of the following: Dr. Kamau who was Mr. Kamau's surgeon had carelessly sewn up a swab gauze inside the abdomen of Mr. Kamau while performing an abdominal operation thereby occasioning him bodily injury. The operation had been carried out a week prior to the filling of petition.

Dr. Mwaniki admits the facts of the operation but denies negligence and has told Mr. Kamau to go to court on the matter.

What do you think the Bankruptcy court should do after the facts are proved and why.

(30MARKS)

QUESTION TWO

Outline and discuss in detail disabilities of an adjudicated bankrupt and distribution of the Bankrupt's property and estate.

(20MARKS)

QUESTION THREE

Discuss in detail the discharge process and its consequences in Bankruptcy Law.

(20MARKS)

QUESTION FOUR

Discuss in detail and compare bankruptcy offences with acts of bankruptcy and described under the Bankruptcy Act of Kenya Cap 53 of the Laws of Kenya.

(20MARKS)

QUESTION FIVE

Write explanatory notes on any 4 of the following:

a) Bailment

(5 MARKS)

b) Lien

(5 MARKS)

c) Guarantee

(5 MARKS)

d) Indemnity

(5 MARKS)

e) Receiving and adjudication order

(5 MARKS)
