



UNIVERSITY OF NAIROBI

SPECIAL/SUPPLEMENTARY EXAMINATIONS 2011/2012

SECOND YEAR EXAMINATIONS FOR THE DEGREE OF BACHELOR OF LAWS

GPR 205 : SALE OF GOODS AND AGENCY

DATE: AUGUST 31, 2012

TIME: 2.00 P.M. – 4.00 P.M.

INSTRUCTIONS

Answer Question 1 and any other THREE Questions.

1. John, a shopkeeper, enters into a contract with Peter, under which Peter agrees to be selling John's goods in a store located 100 meters from John's main shop. On the material date, Peter separated the goods on the shelves, putting on one shelf those whose date had expired, and those whose expiry date had not past, on another shelf. The idea was to return the expired goods to John for replacement.

While talking to Owen, a Form Two student at the nearby Secondary school, who was at the counter at that time, Peter received a call that his eight-year old son, at City Primary School, had fallen down, broke his front upper teeth, and needs to be taken to the Hospital.

In the confusion, Peter asked Owen to take charge while he rushes to attend to his child. During the brief absence of Peter, Andrew comes to the store and buys milk from Owen, but unknown to Owen, he gives Andrew the expired milk, and soon after drinking the milk, Andrew suffers severe food poisoning.

Andrew sues John for the damage arguing that the goods were not fit for the purpose and since they were sold by John's agent, he, John, was liable for the harm.

- (a) Using relevant authorities, advise the parties on their respective rights and defences.
(b) If you were the judge before whom the suit is heard, how would you dispose of the case? (40 marks)
2. If the sale of Goods Act, Cap 31, Laws of Kenya, was meant to protect the consumer, how effective has it been, and what are the weaknesses in that legislation, given recent developments in technology? (20 marks)

3. With the help of relevant authorities, illustrate the differences between:

- (a) Transfer and passing of property in the goods;
(b) A contract for supply of labour/skills and a sale of goods contract;
(c) Future goods and specific goods.

(20 marks)

4. Under NEMO DAT QUAD NON HABET, it is clear that one cannot give what one does not have.

How would you justify (rationalize) the many exceptions to the Nemo Dat Rule?
(20 marks)

5. "The definition of a sale of goods contract, under S. 3(1), of Cap 31, Laws of Kenya, spelt the death of inter-communities business and trade, as existed prior to the advent of colonial rule in Kenya." How true is the above statement? (20 marks)

6. Chapter 31, Laws of Kenya, is long overdue for total overhaul for effective and comprehensive protection of today's consumer and market. Discuss. (20 marks)