



# UNIVERSITY OF NAIROBI

MODULE II DEGREE PROGRAMME 2010/2011

## SECOND YEAR EXAMINATIONS FOR THE DEGREE OF BACHELOR OF LAWS

GPR 205: SALE OF GOODS AND AGENCY

DATE: 2 MARCH, 2011

TIME: 5.30 P.M. → 8.30 P.M

### INSTRUCTIONS

1. Answer ANY THREE questions.
2. All questions carry equal marks
3. Credit will be granted for clear expression.

### QUESTION ONE

"There can be such serious difference between "Title" and "Property" as the Sale of Goods Act, Chapter 31, Laws of Kenya, would seem to suggest." As per an agitated Second Year Law Student. Discuss.

### QUESTION TWO

Ibrahim is a big general merchant owning business in Moi Avenue in Nairobi. He has a big shop which is laid-out as a Supermarket. Ibrahim buys goods from among others, a local manufacturer by the name Chandaria Industries Co. Ltd. This company manufactures Kimbo, Blue Band, Soaps and Detergents. In a contract of sale of goods between Ibrahim and the company, Ibrahim agrees to stock part of his shop always with goods manufactured by the company. He also agrees to display a big poster on that part of his shop to the effect that the stock is owned by the Company until he has paid for it. Ibrahim sells his stock to retailers on Moi Avenue, among them his brother, Uchumi. This brother knows of the poster having seen it on many occasions when he has bought goods from that part of the shop. Ibrahim's friend, Suleiman, does not like the poster when he helps himself to goods from the part of the shop where it is displayed. Ibrahim immediately pulls down the poster before the shop closes. The next day all stock from that part of the shop is bought by Uchumi who does not even notice that the poster is missing. Later the company finds out about the sale and since part of the stock was not paid for it demands through it's lawyers for the return of the stock unpaid for or its value. Uchumi, had raised a loan from Continental Corporation does not take this kindly. He refuses to comply with the demand. Chandaria Industries Co. Ltd. sues Uchumi. Discuss and decide this suit.

### QUESTION THREE

On 4<sup>th</sup> January 2010, one Spika drove his RVR Mitsubishi with his wife and son, to Tilo's home and informed Tilo that he wanted a good car "Like the one I have come in" for use by his wife to perform such duties as picking up children from school.

Tilo, Spika's friend, is a Nairobi businessman with no known business premises, but who deals in all sorts of things – from roasted groundnuts to gentlemen's suits – but had never sold a car though he unsuccessfully tried once. He now replied to Spika thus; "I will get you a car that will give you real comfort and sufficient pleasure". He then told Spika to wait for a while.

Within one hour, Tilo returned with a silver grey Toyota Wish which he told Spika "should be as good as new". Spika walked round and round the car, touched the windscreen, tried the steering wheel, and said "This is it." At least we have another good car." He then paid shs.600,000/= and signed a document which he was told embodied the terms of the sale, and left.

Three of the clauses therein read:

- "4. All terms, implied by Common Law, usages or statute, or express, as to condition, fitness, quality or any other purpose, and whether fundamental or not, are hereby excluded."
- "5. For the avoidance of any doubt Tilo does not undertake that Spika shall have good title"
- "6. Goods once sold cannot be returned for any reason or defect whatsoever.

Immediately after the payment, Spika's wife and their son drove off in the newly acquired Toyota Wish. But just as the car took off, Mrs Spika heard the son, Video, who was in the back seat crying in pain. She then stopped and checked on Video whom she found had been injured by broken glass pieces in the seat.

Asked about the broken glass, Tilo, who was in the vicinity said he had not seen any of the pieces when he was bringing the car, but was, all the same very sorry for "the young man, where upon Mrs. Spika replied that she would definitely take very drastic action against him. She then drove the son to hospital.

Two days later, the car started overheating and also developed trouble in the acceleration mechanism such that it could not go further than 40 kilometres per hour. This made her driving very unpleasant, and mechanical experts advised her that this was a major fault requiring serious and careful work on the engine.

Meanwhile, on the third day, she was stopped and harassed by police who informed her that the car she was driving had been stolen from one Mumia of Nakuru. They then took the car away. Tilo, when approached, said he had not known that this was a stolen car;