



# MASENO UNIVERSITY

## UNIVERSITY EXAMINATIONS 2012/2013

FIRST YEAR SECOND SEMESTER EXAMINATIONS FOR  
THE DIPLOMA IN BUSINESS ADMINISTRATION  
(CITY CAMPUS - DAY/EVENING)

### **ADB 0106: BUSINESS LAW**

*Date: 23<sup>rd</sup> July, 2013*

*Time: 2.00 – 4.00 p.m.*

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#### INSTRUCTIONS

- ◆ Answer Question ONE and any other TWO questions.



## SECTION A (COMPULSORY)

### QUESTION ONE

- (a) How may a contract that has been validly concluded be otherwise declared unenforceable? (8 marks)
- (b) A agreed with B that B would buy from a ten tones of sugar. The sugar was described to be stored in a go down in Nyeri. Subsequent to the agreement, the following facts have come to light:
- i) That when the agreement was being concluded, B held a gun in his hands and A could see the gun.
  - ii) That the goods were destroyed by fire a day after the contract was concluded.
  - iii) That B was in fact a minor.

Discuss the legal position (6 marks)

- (c) Explain the nature and advantages of commercial arbitration as a means of settling disputes. (8 marks)
- (d) Explain five implied conditions and warranties in a hire purchase agreement (10 marks)

## SECTION B(ANSWER ANY TWO)

### QUESTION TWO

- (a) What is meant by the term Vicarious liability. (4 marks)
- (b) Describe the nature of the tortious liability. (8 marks)
- (c) A builds a factory for the manufacture of chemical called synoyd. After the factory is completed and becomes operation, it turns out that it emits a lot of fumes which in themselves are a nuisance to A's neighbours. What is worse, it has also transpired that when it rains, the fumes after mixing with the rain-water produce a substance that is destroying fish in the nearby lake. As neighbour are unhappy and wish to sue him. Advise them. (8 marks)

### QUESTION THREE

- (a) Discuss the essential elements of a bill of exchange as per section 3(1) of the Bill of Exchange Act (cap 27). (10 marks)
- (b) Examine the salient obligations of the banker and customer in a banker and customer relationship. (10 marks)

### QUESTION FOUR

- (a) In relation to the Law of Agency, explain five circumstances under which an agent may be held personally liable to third parties. (10 marks)
- (b) Peter appointed James to transport fresh fish from Mombasa to Nairobi. As James was preparing to leave Mombasa to Nairobi, it rained heavily and the Thange River Bridge was swept off. As a result, James chartered a flight to Nairobi to deliver the fish as he feared the fish would go 'bad' and he was unable to immediately contact Peter. However, upon arrival in Nairobi and delivery of fish, Peter refused to reimburse James charges for the flight. James intends to sue Peter. Advise him. (10 marks)

### QUESTION FIVE

- (a) With reference to a contract of sale of goods, explain the implied conditions on the part of the seller. (6 marks)
- (b) Explain the exceptions to the "*nemo dat*" rule. (6 marks)
- (c) A contract of sale of goods by sample between Ben and Sally provided that payment of the goods was to be made on arrival against the shipping documents. Ben, who is the buyer, paid for the goods before he had the opportunity to examine the goods. Later, on examinations, Ben found that the bulk of the goods did not correspond with the sample. Explain in detail whether Ben can reject the goods. (8 marks)