



UNIVERSITY OF NAIROBI

UNIVERSITY EXAMINATIONS 2016/2017

FIRST YEAR EXAMINATIONS FOR THE DEGREE OF BACHELOR OF LAWS

GPR 112: LAW OF CONTRACT

DATE: JUNE 6, 2017

TIME: 9.00 A.M – 12.00 NOON

INSTRUCTIONS:

Answer question one and any other three questions.

QUESTION ONE

- (a) Odds and Fashion Ltd is a retailer of household furniture in Kenya. On 1st November 2016, it announced a campaign dubbed "accessorize your deal" by placing an advert in the 'Nation and Standard' newspapers. The advertisement read as follows:

*Odds Mega sale
Special offer. Don't miss!
Anyone purchasing an Italian leather three seaters - offer by cash or credit card at the reduced price of Ksh. 175,000/= will receive an Italian leather two-seater sofa priced at Ksh. 150,000/= in the sale absolutely free of charge!*

The advertisement concluded, 'visit our showroom at our various branches. On 5th December 2016, Koko took a copy of the advert with her and called Odds and Fashion to inspect the Italian sofas. She spoke to Bondo, the Sales Manager and told him that she had decided to purchase the sofas subject to first taking this offer with the 'fiancé'. Bondo told Koko that the company only had a limited number of two-seaters and so it was agreed that she should leave Ksh. 20,000/= in return for his agreement to hold the sofas for 48 hours. Bondo told her that he would deduct Ksh. 20,000/= from the purchase price if Koko went ahead with the purchase within that time period.

On 7th December 2016, Koko called at the store to purchase the sofas and spoke to Bondo who was very apologetic but explained that his staff had forgotten to reserve the sofas for her. He explained that in any event, the two seaters were "subject to availability" (as stated in various notices around the store) and the company had now run out of them. Bondo also said that 'obviously, the two-seaters were a free

gift and were subject to availability'. He pointed out that the Italian-three-seater sofa was still available but the price had now gone up to Ksh. 200,000/=.

By reference to the above and the relevant case law:

- (i) Explain the elements of a unilateral offer and how such an offer may be accepted.
- (ii) Explain whether the advert amounts to an offer or an invitation to treat in respect of:
 - (a) The three-seater sofas; and
 - (b) The two-seater sofas
- (iii) Explain with reasons what Koko purchased by paying Ksh. 20,000/= on 5th December 2016.
- (iv) Explain whether those who purchased a three-seater sofa were contractually entitled to receive a two-seater as well or whether Bondo was correct in stating that 'obviously, the two seaters were a free gift!'
- (v) Explain with reasons whether Odds and Fashion has acted in breach of contract despite notices which stated that the two seaters were "subject to availability".

(4 marks)

- (b) Offer, acceptance, consideration and intention to enter into legal relations are fundamental in the formation of a contract insofar as they guarantee freedom of contract. (Anon). To what extent do you agree with this statement? Analyse with the help of relevant case law.

(20 marks)

QUESTION TWO

Donald approached and represented to Philip that he was the rightful owner of the Land comprised Block 2/KJD/KAP-NORTH/ISINYA/5, measuring 100 acres having acquired the land from one Mr. Smith (the registered owner) and he was desirous of selling the land.

Philip showed interest in buying the land and was presented a signed transfer form and an application for consent to transfer signed by the registered owner in his favour dated 15th September 2015 as proof of being owner of the land with the authority to sell/deal with the land.

Philip in honest belief that Donald was the rightful owner of the land on 12th February 2017 bought the land from Donald at a purchase price of Ksh. 200 m.

Philip fulfilled his obligations by paying the entire price sum of Ksh. 200 m. Philip took occupation and possession of the land on which he excavated sand but barely two weeks

after, he was thrown out of the land by Mr. Yasin who came with the title to the land having bought it from Mr. Smith and claimed that he had never sold his land to Donald.

Donald failed to hand over the certificate of title to Philip despite several demands to do so in the sale agreement. Philip has filed a suit against Donald for Ksh. 300 m comprising special damages, general damages, interest and costs of the suit.

Discuss the rights of Philip and Yasin. What remedies if any are they entitled to?
(10 marks)

QUESTION THREE

With the aid of relevant case law, explain how the doctrine of equitable estoppels mitigates the harshness of the common law rule of consideration.
(10 marks)

QUESTION FOUR

Analyse any four ways in which a contract can be discharged.
(10 marks)

QUESTION FIVE

With the help of relevant case law, distinguish unilateral mistake from fraudulent misrepresentation.
(10 marks)