

Mount Kenya University



SUBMIT TO akhayumbi@mku.ac.ke
BAF2105 BUSINESS LAW
CAT ONE

ATTEMPT ANY SEVEN QUESTIONS.

(Allocation of marks indicates how much is expected of the question)

QUESTION ONE

- (a) Describe the advantages of carrying on business as a partnership as opposed to a limited liability company. (10 marks)
- (b) You have been asked to draft a partnership deed for a small retail firm of five partners. State the matters, if any, that you will omit from the partnership deed on the basis that they are implied by the Partnership Act (Cap 29) Laws of Kenya. (10 marks)
- (Total: 20 marks)**

QUESTION TWO

- (a) When parties enter into a contract it is virtually impossible for them to include express terms to cover every eventuality. Explain the circumstances under which:
- (i) The courts
- (ii) The statutes
- Will imply terms into the contract. (10 marks)

- (b) Kamau advertised the sale of his farm. He was approached by Keter who wanted to buy the farm. In the course of negotiating the price. Keter asked Kamau how many sheep could be reared on the farm and Kamau replied, "I have not used the farm for sheep rearing but I think it could support 2000 sheep."

Keter bought the farm and immediately purchased 2000 sheep to rear on it. However, the farm is unable to accommodate the 2000 sheep and Keter is aggrieved and intends to sue Kamau for misrepresentation.

Advise Kamau. (10 marks)

(Total: 20 marks)

QUESTION THREE

- (a) Explain the rules that govern the measure of damages in the law of contract. (10 marks)
- (b) Discuss the various equitable remedies which may be available to an injured party who is suing for breach of contract. (10 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) Explain the meaning of the rule "*Nemo dat quod non habet*" as stipulated in the Sale of Goods Act. (6 marks)
- (b) Discuss the main exceptions to the rule. (14 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) In relation to the law governing Negotiable Instruments, explain four types of endorsements that may be made on a Bill of Exchange. (8 marks)
- (b) Akili Mingi owns a house at Muthaiga in Nairobi valued at Sh. 20 million. He insured it against fire with Linda Mali Insurance Co. Ltd and Pokea Insurance Co. Ltd for Sh. 15 million and Sh. 10 million respectively. He also insured his household goods against burglary with Lipa Insurance Co. Ltd. for Sh. 5 million. One night while he was away, burglars broke into the house, stole all household goods and set the house on fire completely destroying it.

Akili Mingi claims the sum assured from the three insurance companies. Advise them. (12 marks)

(Total: 20 marks)

QUESTION SIX

- (a) Distinguish the following:
- (i) Law and Morality, (2 marks)
 - (ii) Public and Private Law (2 marks)
 - (iii) Common Law and Equity (2 marks)
 - (iv) Substantive Law and Procedural Law (2 marks)
 - (v) Ratio Decidendi and Obiter Dicta (2 marks)
- (b) Explain the following types of precedent:
- (i) Declaratory Precedent; (2 marks)
 - (ii) Original Precedent; (2 marks)
 - (iii) Distinguishing Precedent. (6 marks)

(Total: 20 marks)

QUESTION SEVEN

- (a) Define the term law in the strict sense of the word. (4 marks)
- (b) Explain eight sources of law in Kenya or your country. (16 marks)

(Total: 20 marks)

QUESTION EIGHT

- (a) Explain the remedies available to an unpaid seller against:
- (i) The goods; (6 marks)

- (ii) The buyer under the Sale of Goods Act. (4 marks)
- (b) In relation to the Sale of Goods Act, explain the circumstances when:
- (i) A buyer may reject the goods and repudiate the contract (6 marks)
- (ii) The buyer may lose the right to reject the goods. (4 marks)

(Total: 20 marks)

QUESTION NINE

- (a) How true is it to say that in order for a contract to be discharged by performance, the performance must be precise and exact? (10 marks)
- (b) Annan agreed to paint Angela's house at an agreed price. When Annan had finished the work. Angela discovered that although most of the painting was satisfactory, Annan had forgotten to apply a coat of gloss paint on one of the doors. Annan fell ill and could not complete the work. Angela refused to pay Annan the contractual price, claiming that the contract had not been fully executed and that therefore he was entitled to be paid only a reasonable sum for the work he had actually undertaken. This, Annan claimed, was much less than the contract price.

Advise Annan.

(10 marks)

(Total: 20 marks)

QUESTION TEN

- (a) Sauti Cleaners Ltd. offered to clean two garments for the price of one. A notice was displayed in the shop to this effect but with the addition in smaller print of a statement that the customer must agree in return to accept full responsibility if anything should happen to the garments.
- A similar statement was printed on the back of the tickets which were handed to customers when they disposed the garments. Nabayi bought two garments for cleaning. Because of poor eye sight. She was unable to read the small print on the notice and she put the ticket in her pocket without reading.

Some days later when Nabayi went to collect the garments, she saw that one garment had been badly torn. After wearing the other garment, she contracted a skin disease caused by a chemical which the cleaners had used.

Advise Nabayi.

(10 marks)

- (b) Many contractual clauses in a contract purport to exclude liability for injury, loss or damage. Explain the general rules which will determine the effectiveness of such clauses. (10 marks)

(Total: 20 marks)



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CAT TWO

ATTEMPT ANY FIVE QUESTIONS

(Allocation of marks indicates how much is expected of the question)

QUESTION ONE

- (a) (i) Explain the legal principal in the Rule in *Rylands Vs. Fletcher*. (4 marks)
(ii) Explain the defences available to a person sued in an action brought against him under this rule. (6 marks)
- (b) Jambazi sneaked into Cassman Green's compound with the intention of breaking into his car and stealing a radio cassette. As he was walking towards the car park, he fell into a pit which Green had dug to construct a water reservoir. As a result Jambazi was seriously injured.

Jambazi now seeks your legal advice as to whether he can successfully sue Green.

State the legal principles applicable to the above facts and advise Jambazi. (10 marks)
(Total: 20 marks)

QUESTION TWO

- (a) State and explain the duties of a bailee in a bailment contract. (6 marks)
(b) What are the circumstances under which a principal may be estopped from revoking an agent's authority? (4 marks)
(c) Mrs. Mutua employed Emmah as her sales agent. For several years Emmah sold goods to Mrs Cool, the proprietor of Ever Smart Boutique. Subsequently, Mrs. Mutua dismissed Emmah but did not inform Mrs. Cool of Emmah's dismissal.

After her dismissal, Emmah collected Sh. 50,000 from Mrs. Cool on behalf of Mrs. Mutua. Mrs. Mutua has demanded the Sh. 50,000 from Mrs Cool who has refused to pay as she had already paid Emmah. Mrs Mutua intends to sue Mrs Cool.
Advise Mrs. Mutua. (10 marks)

(Total: 20 marks)

QUESTION THREE

In relation to the Law of Contract

- (a) Explain five essentials of a valid contract. (10 marks)
- (b) Jackson entered into a contract with Jacinta whereby Jackson was to introduce Jacinta to Tajiri with a view of Tajiri marrying Jacinta. Jackson asked Jacinta to give him Sh. 10,000 which she did. Jackson then introduced Jacinta to Tajiri and Tajiri promised to marry Jacinta in case his wife who was by then very ill in hospital passed away.

However, Tajiri's wife Juliana underwent a successful surgery and fully recovered from the illness. Tajiri has now refused to marry Jacinta.

Jacinta is aggrieved and wishes to sue Jackson and Tajiri. Advise her. (10 marks)

(Total: 20 marks)

QUESTION FOUR

- (a) In relation to the Law of Contract, explain six ways in which a contract may be discharged. (12 marks)
- (b) Janet and Mary entered into a contract in which Janet was to sell a car to Mary, for Sh. 250,000. Unknown to the parties, the car which had been parked at John's garage had been burnt down that morning following a fire outbreak at the garage. Mary had paid Janet Sh. 100,000 as deposit. She now intends to sue Janet for breach of contract

Advise Janet.

(8 marks)

(Total: 20 marks)

QUESTION FIVE

- (a) Citing examples, write brief notes on the following:
- (i) Contracts which must be under seal. (4 marks)
 - (ii) Contracts which must be in writing. (4 marks)
 - (iii) Contracts which must be evidenced in writing. (4 marks)
- (b) Explain the contents of the memorandum required as evidence of a contract. (8 marks)

QUESTION SIX

- (a) In relation to the law of tort, explain what is meant by the following:
- (i) Private nuisance. (3 marks)
 - (ii) Public nuisance. (3 marks)
 - (iii) Giving examples, outline the circumstances when a private individual may sue on his own behalf for public nuisance. (4 marks)
- (b) Namweya and Nabayi are both tenants and neighbours at a residential estate. Namweya runs a posho mill business on the premises adjoining the house of her neighbour Nabayi. The posho mill is diesel propelled and when in use causes a lot of vibrations.

Recently, as a result of the vibrations from the posho mill, a beam fell from the roof of the adjoining house occupied by Nabayi and injured her. Nabayi claims that the vibrations of the posho mill have been a nuisance and has as a result sued Namweya for damages.

Explain the legal principles applicable in this case and advise both Namweya and Nabayi.

(10 marks)

QUESTION SEVEN

Mr. A, a car dealer sells second hand cars. On Thursday last week, he placed an advertisement in a daily newspaper which stated the following:

“Once in a lifetime, opportunity to own a one year old Nissan Caravan, low mileage, Kshs. 500,000 cash. The offer is valid for only one day and the car will go to the first person who accepts it.”

When Mr. B saw the advertisement, he immediately posted a letter of acceptance of Mr. A’s offer.

Mrs. C also saw the advertisement and came to inspect the car after which Mrs. C offered Mr. A a cheque of Kshs. 500,000. However, Mr. A refused to accept the cheque stating that another potential buyer had already offered to buy the car.

Later in the day Ms D, another interested buyer telephoned Mr. A informing him that she was willing to buy the car but asked Mr. A if he would keep the offer open until she could go to her bank to obtain a loan. Mr. A accepted the request. However later, in the day, Mr. E, another potential buyer said that he would pay Sh. 600,000 in cash for the car. Mr. A agreed to sell the car to Mr. E.

On Monday morning, Mr. A received Mr. B’s letter of acceptance. At the same time, Mr. E returned to complete the transaction. However, in the afternoon Mr. E telephoned Mr. A to say that he had second thoughts and he no longer wished to purchase the car.

Citing relevant decided cases where applicable, explain the legal principles in the case in relation to:

- | | |
|------------|-----------|
| (a) Mr. A | (4 marks) |
| (b) Mr. B | (4 marks) |
| (c) Mrs. C | (4 marks) |
| (d) Ms. D | (4 marks) |
| (e) Mr. E | (4 marks) |

(Total: 20 marks)

QUESTION EIGHT

- (a) Mwangi has stolen some goods from Simiyu. The police prosecute Mwangi for theft and Simiyu sues him for the return of the goods.
- (i) Explain under what law the action by the police will be based. (2 marks)
 - (ii) In this action by the police, state what Mwangi will be called. (2 marks)
 - (iii) Under what law would the action brought by Simiyu be and what would Simiyu be called? (2 marks)

(b)

In relation to law of property:

- (i) Distinguish between ownership and possession. (4 marks)
- (ii) Explain the ways in which ownership can be acquired. (6 marks)
- (iii) Under what circumstances may a person who is a citizen under naturalization or registration is deprived of citizenship? (4 marks)