



MASENO UNIVERSITY
UNIVERSITY EXAMINATIONS 2016/2017

**THIRD YEAR FIRST SEMESTER EXAMINATIONS FOR THE
DEGREE OF BACHELOR OF BUSINESS ADMINISTRATION WITH
INFORMATION TECHNOLOGY**

CITY CAMPUS

ABA 338: PROCUREMENT LEGAL FRAMEWORK

Date: 16th June, 2017

Time: 5.30 - 8.30 pm

INSTRUCTIONS:

- Answer question ONE and any other THREE questions.
- Question ONE carries 25 marks and the rest 15 marks each.

QUESTION ONE (25 Marks) - Compulsory

After graduating from a university, Omollo was employed by Wonderlink Consulting Ltd., a company that had been in the Enterprise Resource Planning (ERP) software business for over 30 years. Omollo had studied business information technology. His role at the wonderlink was to seek clients, negotiate contracts, and install software for clients, train customers and offer sales services. He also used his knowledge to make simple enhancements on the company's software. The company grew, employed more people and commanded 70% market share in the city where it operated.

After working for Wonderlink Ltd., for five years Omollo thought of setting up his own business. He registered a company called Wunderblitz Consulting Ltd., and then presented his resignation notice. His company's vision was to target the low end Enterprise Resource Planning software market by developing solutions that suited their needs but at affordable prices.

The managing director of Wonderlink Consulting Limited accepted Omollo's resignation letter but on condition that he would keep any proprietary information confidential. He also put a clause in the resignation letter that Omollo should not establish a similar business in the same city for a period of five years from the date of his resignation. Omollo did not object to the condition because he wanted to receive his terminal benefits upon resigning.

Omollo set up his software business in the same city; he developed his own software and sold them under the Wunderblitz Consulting Ltd. Brand. His company grew and had a good market share within 4 years. Wonderlink Consulting Ltd. Sued Omollo at the local court. They sought compensation for patent infringement, breach of confidentiality, trademark infringement and breach of terms of dis-engagement.

Required:

- (a) (i) Discuss if court would find Omollo guilty of breach of Confidentiality. (6marks)
(ii) Explain the instruments Wonderlink would use to negotiate against Omollo for breach of contract (6marks)
(iii) Omollo wishes to patent his software products. Explain whether Wonderlink Consulting Ltd. would get an injunction restraining him (4marks)
- (b) Define the following terms as used in the procurement legal framework
- | | | |
|-------|-----------------------|---------|
| (i) | "Uberrimae fidei" | (1mark) |
| (ii) | Contract under duress | (1mark) |
| (iii) | Undue influence | (1mark) |

- (c) Mutiso had sold his car to Karanja for Sh. 640,000 and the car was to be delivered within four days. After two days Smith offers Mutiso Sh. 960,000 for the car which Mutiso accepts. Smith takes immediate delivery of the car. Smith was not aware of the previous sale to Karanja. Advise Karanja of his legal if any against
- (i) Mutiso (3marks)
 - (ii) Smith (3marks)

QUESTION TWO (15marks)

- (a) Mako is one of the leading manufacturers of soft drinks. Haron, one of the directors of the company, entered into a contract with Lalo Ltd., for purchase of computer parts with the intention of assembling computers for sale. He used a letter head that described Mako Limited as a computer manufacturer. The materials were duly delivered but Mako limited refused to pay for them, Lalo Limited was aware that Mako Limited manufactures soft drinks. Lalo Ltd. is aggrieved. Explain the legal principles applicable (9marks)
- (b) Explain **three** types of mistakes in procurement contract (6marks)

QUESTION THREE (15 marks)

- (a) Explain **three** conditions that must be met for a pre-incorporation contract to be binding on an organization upon incorporation for supplies. (6marks)
- (b) Contract creates relation between the parties and binds them over. Termination of such contractual relations is called Discharge of Contract. Identify **four** different modes of Discharge or Termination of Contract. (4marks)
- (c) Identify **five** remedies to breach of Contract in purchasing and supplies (5marks)

QUESTION FOUR (15 marks)

- (a) Rosebellah responded to an invitation to tender for environment audit consultancy service which had been advertised by State Corporation. The evaluation criteria to be followed were individual consultant selection method. Although she did not have a post graduate degree which was one of the requirements, Rosebellah satisfied all the other selection criteria. The bidders with postgraduate qualifications had less direct experience relevant to the task. After receiving the letter of award, Rosebellah carried the work successfully and was promptly paid. She later sent Ksh. 10,000 through M-pesa transfer to the head of procurement of the organization as a gratitude payment. The head of procurement accepted the payment, bidders who lost got to know about this gratitude payment and two of them lodged a complaint with the ethics and anti- corruption commission
- (i) Is the head of procurement liable for bribery and corruption? Justify (6marks)
- (ii) As an expert, draft ethical code of conduct that may guide the Head of procurement unit in handling the situations like this in future (5marks)
- (b) Outline **four** exceptions to “*nemo dat rule*” to a possession from someone who has no ownership right or denies the purchaser ownership of materials (4marks)

QUESTION FIVE (15 marks)

- (a) Mbararu was a director of the Muthrwa limited, a mining company. The company intends to procure a plot of land for the purpose of mining. The plot is owned by Rai Limited in which, unknown to Muthrwa limited, Mbararu is the beneficiary of all the shares. A board of meeting of Muthrwa limited acting on an independent report from a surveyor decided to buy the plot. Mbararu was present at the board meeting but failed to disclose his interest in Rai limited. Muthrwa limited proceeded to buy the plot. Muthrwa limited has coe to realize that Rai Limited is 90% owned by Mbararu. The company is aggrieved and intends to institute a legal proceedings aainst Mbararu. Explain the legal proceeding against Mbararu on such procurement (8marks)
- (b) Outline **four** circumstances under which the veil of incorporation may be lifted by a court of law (4 marks)
- (c) “Local, National, and International legal aspects affect global procurement.” Outline **three** such legal aspects that can affect a purchaser’s internationally. (3marks)

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