



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

FIRST YEAR EXAMINATION FOR THE AWARD OF
THE DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2023/2024
(AUGUST-DECEMBER, 2023)

LLBK 113 CONTRACT LAW I

STREAM: Y1 S1

TIME: 2 HOURS

DAY: MONDAY, 12:00 – 2:00 PM

DATE: 11/12/2023

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE (COMPULSORY) and any other TWO questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

Rema and Davido are siblings. On 26th September 2023 Rema tells Davido that he is looking for a new luxury sports car. Davido responds saying he wishes to sell him his Maserati as there is now a new model available and that he is happy to sell it to him on 'business basis'. Davido says he wants about ksh.10,000,000 for it. That evening Rema emails Davido saying 'I accept your offer to sell the car for ksh.10,000,000 and will transfer the money in a few days.' On 27 September 2023 Davido mails Rema saying, 'Don't be a fool, I wouldn't sell the car for that, I want ksh.12,500,000 for it. To avoid any further misunderstanding, do not email me again unless you want the car at this price.' Rema was so annoyed on reading the first sentence of Davido's email that he deleted it without reading further and did not reply. Three weeks later Davido rings Rema and demanded ksh.12,500,000, offering to deliver the car.

- a) Advise Rema on whether he is bound to take the Maserati at Kshs. 12.5 million
(10 marks)

- b) Would your opinion be different if upon reading the email on 27 September, Rema decided to buy the car at Kshs. 12,500,000 but Davido refused to deliver it? **(15 marks)**

QUESTION TWO

Courts will not attempt to re-write a contract for the parties. They will always leave it what the parties intended and expressed in their contract to govern the outcome of the case. However, the courts will not hesitate to be guided by what statutes indicate some terms which may not have been said by the parties.

- a) Discuss the basis for the statutory intervention in fettering freedom to contracts **(5 marks)**
- b) Explain the Court's approach to such terms while discussing the excerpt above **(10 marks)**
- c) With the help of decided cases, analyze how exclusion clauses may be incorporated in a contract **(5 marks)**

QUESTION THREE

"The question is not whether the defendant in any given case honestly believed the representation to be true in the sense assigned to it by the court on an objective of its truth or falsity, but whether he honestly believed the representation to be true in the sense in which he understood it, albeit erroneously when it was made." (Per Lord Jenkins Privy Council).

- a) Using the statement as your point of departure discuss the concept of fraudulent misrepresentation **(10 marks)**
- b) With the aid of case law distinguish between innocent and negligent misrepresentation **(10 marks)**

QUESTION FOUR

Chitty on contracts states "The consideration of a promise must be given in return. If the act of forbearance alleged to constitute the consideration has already been done before and independently of, the giving of the promise, it is said to amount to past consideration and such past consideration do not in law amount to consideration for the promise."

- a) Discuss the rules of Consideration. **(5 marks).**
- b) Analyze the excerpt while explaining why past consideration is not good consideration and the Kenyan Courts approach to the subject. **(15 marks).**

QUESTION FIVE

“Because capacity is at the heart to enforcement of the contractual obligations, the courts of law would be happy to exclude certain persons on the basis that they do not have capacity to contract.”

Discuss the basis for deprivation of capacity bringing to the fore at least four persons the law deems not to have capacity. **(20 marks).**