



**SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2022/2023
(SEPTEMBER-DECEMBER, 2022)**

**LLBK 217: COMMERCIAL LAW (SALE OF GOODS, HIRE PURCHASE &
AGENCY)**

STREAM: LLBK Y2 S1

TIME: 2 HOURS

DAY: MONDAY, 9:00 – 11:00 A.M.

DATE: 19/12/2022

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

Zubeda visited Kisii Market where she selected 1 kg of carrots, 1 kg of potatoes and 1 kg of onions from Halima's stall. After placing these groceries in a bag, she left the bag with Halima on the promise that she would pick a few other grocery items from Aisha's stall in the vicinity. Upon returning to Halima's stall, Zubeda found Mwende leaving with the bag and the groceries therein, which had been sold to her by Halima. A serious argument ensued with Zubeda claiming that Halima and Mwende had conspired to steal her groceries while Mwende maintained that she had duly paid for the groceries and was therefore the rightful owner. On her part, Halima contended that she did not see any problem since Zubeda was at liberty to select other grocery items from her stall.

- a) Relying on the provisions of the Sale of Goods Act, how would you advise the three parties regarding their respective rights and obligations? [20 marks]
- b) 'Although *nemo dat quod non habet* remains an important rule in Commercial Law, the exceptions to it have become so numerous as to remove the strictness of the rule.' Discuss. [10 marks]

QUESTION TWO

Mwabonje entered into a hire purchase agreement with Jaribu Capital in August 2020, in respect of a Toyota Hilux pick-up. The cash price indicated for the pick-up was Kshs. 3,500,000.00. The hire purchase agreement was validly entered into and fulfilled all the requirements of the law. Sometime in June 2022, after Mwabonje had paid hire purchase instalments amounting to Kshs. 2,900,000.00, Jaribu Capital proceeded to repossess the pick-up from Mwabonje owing to the fact that various cheques issued by Mwabonje for payment of the monthly instalments had been dishonoured upon presentation to the bank. Further, Jaribu Capital claim that they caught wind of the fact that Mwabonje was planning to sell off the pick-up to a third party without their knowledge or approval. They therefore sought to safeguard their interests by repossessing the pick-up from Mwabonje and selling it off to a third party. They do not dispute the fact that Mwabonje had paid them more than two-thirds of the hire purchase price. Mwabonje feels aggrieved by the actions of Jaribu Capital and files suit in court seeking recovery of all the sums of money paid to the latter together with interest thereon, on the grounds that Jaribu Capital was in breach of the hire purchase agreement and the law. On their part, Jaribu Capital deny any wrongdoing and in turn file a counter-claim against Mwabonje, seeking damages in the sum of Kshs. 600,000.00. It is their contention that Mwabonje was the one in breach of the hire purchase agreement between them, by failing to honour his instalment payment obligations and attempting to deal with the hired goods in a manner that is inconsistent with Jaribu Capital's proprietary interests. The judge handling

this case has requested you, being the legal researcher assigned to his court, to prepare a draft judgment for his review and consideration.

- a) Using the relevant laws applicable in this case, prepare a concise brief setting out your decision. [15 marks]
- b) Explain the duties owed by the hirer in a hire-purchase agreement. [5 marks]

QUESTION THREE

One of your law firm's corporate clients is considering an expansion of the company's activities by appointing a network of agents to assist the company penetrate the technology market in Kenya. The Managing Partner of your law firm has instructed you to do a detailed legal opinion on the following aspects:

- a) The different ways in which an agent's authority can be classified. [5 marks]
- b) The requirements that must be fulfilled before a principal can be bound by an agent's apparent authority. [5 marks]
- c) The conditions that must be met for a principal to ratify an agent's actions [5 marks]
- d) At common law, a person who is entrusted with perishable goods of another is entitled, in certain circumstances, to do certain things in relation to the goods as if he had been expressly authorized to do so by the owner. Identify this type of agency and the circumstances in which it would arise. [5 marks]

QUESTION FOUR

- a) Section 16 of the Sale of Goods Act, Cap 31 provides that there are no implied conditions or warranties as to the quality of goods. Nevertheless, sections 14 and 16 of Cap 31 expressly imply into every contract for sale of goods specific conditions and warranties in addition to those expressly agreed by or implied from the conduct of the parties. Discuss these

implied conditions and warranties, while noting to demonstrate how the exceptions to the rule of caveat emptor serve to mitigate an otherwise onerous rule that threatens the buyer's interests. [15marks]

- b) The property in goods passes in accordance with the intention of the parties, express or implied. As an expert in commercial law advising a buyer in a contract of sale of goods, what rules would you rely on to determine when property in goods passes? [5marks]

QUESTION FIVE

Critically analyse the provisions of the Hire Purchase Act, Cap 507 of the Laws of Kenya which are aimed at protecting the interests of a hirer under a hire purchase agreement. Comment on whether you consider those provisions to be warranted and whether the same are adequate or inadequate, giving your reasons why [20 marks]