



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS
FIRST YEAR EXAMINATION FOR THE AWARD OF THE
DIPLOMA IN LAW
SECOND SEMESTER, 2021/2022
(FEBRUARY – JUNE, 2022)

DLAW 0121: ELEMENTS OF CONTRACT II

STREAM: DLAW 1 S2

TIME: 2 HOURS

DAY: TUESDAY, 9:00 – 11:00 A.M.

DATE: 24/05/2022

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

a) With relevant examples, define the following terms:

- | | |
|-----------------------------------|------------------|
| i. Contra proferentem. | [2 Marks] |
| ii. Restraint of Trade. | [2 Marks] |
| iii. Solus Agreement. | [2 Marks] |
| iv. Discharge of Contract. | [2 Marks] |
| v. Breach of Contract. | [2 Marks] |

b) Robi booked a reservation at a Nairobi hotel through their website. When she checked in last night around 1 am, the room had a strong cigarette odour. She called the receptionist so she could be transferred to another room but he (receptionist) said there was no more room available.

Frustrated, she turned on the AC, however, the AC was just blowing out hot air like a heater. She checked the thermostat and waited to make sure that the AC is working. However, it stayed the same, still blowing hot air and after an hour, she again called the receptionist and she recommended just opening the window. She told him that during reservation booking, she booked an air-conditioned room. She attempted to book other rooms from several other hotels within a 50-mile radius but could not take it anymore. It is a very hot season (Summer) and air conditioning is a must. However, all of the other hotels are booked. She decided to leave the hotel an hour later and asked to have her money refunded because she was not taking their room. The receptionist told her to come back tomorrow. She told him she can't. So as an alternative, she asked for another option. He gave her a number to call back in the morning. Called the manager the following morning and the manager told her that he will only reimburse 50% of what she paid refuting that she used their room and that they could have sold it out to another person. She was aggravated because she did not have a choice but drive back home cancelling her day trip to Mombasa and driving for another 2 1/2 hours with heavy eyes just to have a place to sleep. As a respected contract lawyer, Robi has approached you in your office. What would you advise her on what to do in such a situation? **[20 Marks]**

QUESTION TWO

Discharge of contract occurs when a valid contract comes to an end. With reference to decided cases, discuss various ways in which a contract can be discharged. **[20 Marks]**

QUESTION THREE

I have worked for Kisii University for several years. Last week, my employer (Kisii University) asked me to sign a document entitled Covenant Not to Compete. In this agreement, I promised not to compete with him, regarding

accounts that I had serviced, for two years after I leave. However, contractual provisions which attempt to restrict how one of the parties may do business, or earn a living, have at different times been treated by the common law as being prima facie void, or prima facie valid. The current position is derived from the House of Lords' decision in **Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co Ltd.** An Act of Parliament to make lawful certain contracts in restraint of trade [Contracts in Restraint of Trade Act Cap 24], and which commenced on 31st December 1932] was enacted to solve this impulse under the classical contract theory that brought two principles of '**freedom of contract**' and '**free market**' into direct conflict. The courts have thus, in applying this concept, outlined three requirements to be followed, invalidating or validating the contracts in restraint of trade. Using decided cases, discuss the tests that courts look at when faced with cases of Contracts in Restraint of Trade. **[20 Marks]**

QUESTION FOUR

Outline the various types of breaches in contracts, how they occur and how courts respond to them. **[20 Marks]**

QUESTION FIVE

- a) Interpreting contracts is an area of contract law, which concerns itself with how the courts decide what an agreement means. From this understating, describe the process of interpretation of contracts by the courts. **[10 Marks]**
- b) A quasi-contract is a contract that is created by court order, not by an agreement made by the parties to the contract and an example is a Contract of Guarantee where Doris (A) a Creditor, Christine (B) a Principal Debtor, and Ivy (C) Surety for B are into. There is a Contract between (A) & (B) that (A) will advance loan to (B) and (B) will pay the amount with interest at a particular time. This is expressed contract with (C) being a surety for (B) and is a security for (A) for the loan which she has advanced. Now, if (B) makes a default to pay her loan back, (A) has the right to sue (C) to get her money back. Once she gets the money, she (A) is out of the scene. Can (C) claim that money, which she paid to (A),

which had to be paid by (B) from (B) where there was no such express contract between them (C & B)? Advice Ivy (C) on the requirements that she needs to prove for the court to be persuaded to create a quasi-contract between her (C) and Christine (B). **[10 Marks]**