



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS SECOND YEAR EXAMINATION FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS FIRST SEMESTER, 2021/2022 (FEBRUARY - JUNE, 2022)

LLBK 217: COMMERCIAL LAW

STREAM: LLBK 2 S1

TIME: 2 HOURS

DAY: MONDAY, 12:00 – 2:00 P.M.

DATE: 30/06/2022

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) Discuss the effectiveness of the Sale of Goods Act, cap 31 of the Laws of Kenya in the protection of the consumer; with the use of case laws highlight its weaknesses given the recent developments in technology.

[20 marks]

- (b) Joseph is in a booming taxi business and operates with one car. He has been saving some money to buy an additional car, but has been unable to raise enough money within his business plan period to purchase the new car. Joseph approached XY Kukopesa Ltd, a firm dealing with hire purchase in order to purchase the car through hire purchase terms. The hire purchase price was sh. 1,800,000. Joseph agreed to pay a deposit of sh. 700,000. The balance was payable in monthly installments of sh. 50,000 for 22 months. After paying installments for 12 months, the performance of Joseph's tax business declined and he was unable to continue remitting the

monthly payments to XY Kukopesha Ltd. Immediately after Joseph's default in payment, XY Kukopesha Ltd reposed the car. Discuss the legal principles applicable in this case and advise Joseph. **[10 marks]**

QUESTION TWO

- (a) Explain the meaning of the rule "nemo dat quod non habet". **[4 marks]**
- (b) Discuss four exceptions to the rule in (a) above. **[8 marks]**
- (c) Smith employed Hamilton as his agent in business of selling cooking gas. For many years Hamilton sold cooking gas to Havana wholesalers. Arising from a dispute in the workplace, Smith dismissed Hamilton. Smith did not inform the proprietor of Havana wholesalers about Hamilton's dismissal. After the dismissal, Hamilton proceeded to Havana wholesalers and collected cash amounting to sh. 200,000 being balance of payment due to Smith for cooking gas which had been delivered earlier. Hamilton did not remit the money to Smith. Consequently Smith has demanded payment of a balance of sh. 200,000 from proprietor of Havana wholesalers who has refused to pay on ground that he has already paid the money to Hamilton, the agent of Smith. Analyze the legal principles applicable in this case and advise Smith. **[8 marks]**

QUESTION THREE

- a) Although the seller is under a duty to deliver the goods, this obligation might not be as straightforward as it might first appear. Critically evaluate the seller's duty to deliver the goods. **[8 marks]**
- b) Highlight five conditions which must be fulfilled for a principal to effectively ratify the acts of an agent. **[5 marks]**
- c) Hosea and Jeremiah met for a business lunch at a restaurant in town. They were later joined by Joshua, Jeremiah's friend. During the discussion, Jeremiah obtained goods on credit from Joshua on behalf of Hosea. Jeremiah has since disappeared and Joshua is claiming payment for the goods from Hosea. Explain the legal principles applicable in this case and advise Joshua. **[7 marks]**

QUESTION FOUR

- (a) Highlight on five terms implied under section 4 of the Sale of Goods Acts (Cap. 31) **[5 marks]**
- (b) State five duties an agent owe to the principal. **[5 marks]**
- (c) Distinguish between “hire-purchase sale” and “credit sale”. **[4 marks]**
- (d) In relation to the Sale of Goods Act, explain the circumstances when a buyer may reject the goods and repudiate the contract. **[6 marks]**

QUESTION FIVE

- (a) George enters into a written agreement with Herbert under which George promises to deliver certain goods to Herbert on 16 April 2021. The contract contains a term providing that liquidated damages of sh. 300,000 will be payable by George to Herbert in the event of any of the following breaches:

- (i) If the goods are not of stipulated quality;
- (ii) If less than the stipulated quantity is delivered.

George delivers the goods of the right quality and the right quantity, but on 17th April 2021. Herbert accepts the goods. But he intends to bring an action against George for breach of contract. Advise Herbert as to whether he can claim sh. 300,000 as liquidated damages. Assume that the breach caused Herbert a loss of sh. 40,000. **[10 marks]**

- (b) Discuss the rules that relates to the passage of property in goods and risk therein. **[5 marks]**
- (c) Explain at rights of a seller and buyer in a hire purchase agreement **[5 marks]**