



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

FIRST YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
SECOND SEMESTER, 2023/2024
(JANUARY-APRIL, 2024)

LLBK 125: CONTRACT LAW II

STREAM: Y1 S2

TIME: 2 HOURS

DAY: THURSDAY, 9:00 – 11:00 A.M.

DATE: 11/04/2024

INSTRUCTIONS

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

QUESTION ONE

Numaan entered into a contract with Doshi Motors Ltd (Doshi) for the sale of a peanut making machine for Kshs. 165,000. In the said agreement, Doshi paid Kshs. 100,000 as a down payment of Ksh. 100,000 to facilitate sourcing the machine from the dealer in Nairobi. The said machine was successfully purchased from the dealer and Doshi actually sent a representative to view and inspect the merchantability of the machine and it was satisfied that the same was fit for the intended purpose. Doshi then requested Numaan to keep the machine in safe custody in the store for a few days to enable them make transport arrangements for the machine from Nairobi to Nyamira. During the time the machine remained under Numaan, the covid pandemic kicked in and consequently the machine was not transported. Numaan now claims full payment of the agreed price whereas Doshi demands a refund of the downpayment he made and damages for breach of contract.

- a) Discuss with the aid of Kenyan case laws, the doctrine of frustration present in this contract and highlight the judicial test for frustration to arise. (15 marks)
- b) Discuss the legal consequences on either party in the event frustration of contract arises and consequently advise both Numaan and Doshi of their legal entitlements. (15 marks)

QUESTION TWO

Discuss the judicial approaches to interpretation and grant of remedies if applicable in instances of complete performance, partial performance and substantive performance. (20 marks)

QUESTION THREE

Expound the following contractual principles:

- a) The Rule in Pinnel's case (5 marks)
- b) Contra Preferentum Rule (5 marks)
- c) Parole evidence Rule (5 marks)
- d) Anticipatory breach of contract. (5 marks)

QUESTION FOUR

Discuss any two equitable remedies available to an aggrieved party in cases of breach of contract setting out clearly the factors that the courts would consider in granting the identified equitable remedies. (20 marks).

QUESTION FIVE

In the case of Bell v Lever Brothers Ltd (1931), Lord Atkin held as follows:

"...In order for the contract to be void by common mistake the mistake must involve the actual subject matter of the agreement and must be of such a "fundamental character as to constitute an underlying assumption without which the parties would not have entered into the agreements."

- a) Premised on the excerpt above critically examine the Kenyan judicial approaches to mistake as a vitiating factor in contracts. (15 marks).
- b) The general rule is that mistake as to documents mistakenly signed can be avoided by the plea of non-est factum which means 'It is not my deed'. Discuss the requirements that have to be met for the defense of non-est factum to suffice as established by Lord Reid in the case of Gallie v Lee (1971). (5 marks).