



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SPECIAL 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: Y2 S1

TIME: 2 HOURS

DAY: FRIDAY, 11:30 – 1:30 P.M.

DATE: 22/07/2022

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) Bryam is closing down his electrical wholesale business. Amongst the stock remaining in his warehouse are 400 television sets. He agrees to sell 300 of these television sets to Innocent who pays for them in full by cheque and agrees to collect them the following week. Innocent was busy and didn't collect them the following week. He went to collect them at the end of the following month. Unfortunately, the day before he went to collect them, Bryam's warehouse was broken into and 200 of the television sets were stolen. Bryam cannot obtain any more stock but offers Ian delivery of the remaining 200 televisions.

Advise Innocent on his legal rights.

(10 marks)

- b) Gilbert was Elijah's agent and entered into several contracts on behalf of Elijah with Timothy over a period of years. Elijah later terminated Gilbert's agency but failed to inform Timothy. Gilbert continued to deal with Timothy in his own name and on his own behalf but later became insolvent. As a result of Gilbert's insolvency, Timothy has sustained serious losses and now claims to be entitled to damages by way of compensation from Elijah.

Advice Elijah as to his liability in the matter.

(10 marks)

- c) Omwega is a taxi driver and he is in booming taxi business. He has only one car but has been saving money to buy a second car but he has not been able to raise enough money to from his business to purchase a new car. He has approached Kukopa Limited, a company dealing with hire purchase of motor vehicles in order to purchase a new car on hire purchase terms. The hire purchase price of the car is Kshs 900,000/=. Omwega pays a deposit of kshs 350,000/= and enters into a hire purchase agreement which provides that he will pay monthly instalments of kshs 25,000/= for a period of 22 months. He faithfully pays the said instalments for a period of 12 months but due to a slump in the economy, the taxi business goes down and he is unable to continue paying the agreed instalments. Kukopa Limited repossesses the car after the first month of default. Omwega has come to you for advice.

Discuss the legal principles applicable to his case and advise him on the best course of action to take in the circumstances. (10 marks)

QUESTION TWO

- 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.

(10 marks)

- b) Explain the legal consequences of the non-registration of a hire purchase agreement. (4 marks)
- c) Define an unpaid seller and discuss the rights available to that seller against the goods under the Sale of Goods Act. (6 marks)

QUESTION THREE

- a) Miss Anampiu asked Onyambu, a pharmacist at Keroche pharmacy to sell her some weight reducing tablets. He recommended a new drug dubbed "*Slim fit*" which was said to add vitality and shed off the surplus weight at the same time. Miss Anampiu took the advice gracefully and accordingly purchased the drug and consumed it in the manner prescribed to the letter, since she wanted to shed weight anxiously. To her amazement, after one week of consuming the drugs she found out that she had gained seven Kilograms.

What remedy if any does she have, against Onyambu?

(8 marks)

- b) Explain the rights of an undisclosed principal in an agency relationship.

(6 marks)

- c) Discuss the formalities that must be met for a hire-purchase agreement to be valid. (6 marks)

QUESTION FOUR

- a) The fiduciary and contractual duties implied into the contract of an agent are fair, albeit rather demanding.

Discuss the above statement in relation to the law of agency. (12 marks)

- b) Explain the rights and duties of the hirer of the goods in a hire purchase agreement. (8 marks)

QUESTION FIVE

- a) With the aid of decided cases explain how commercial agency of necessity arises. (5 marks)

- b) Write short notes on any **THREE** of the following.

- (i) Del credere agents; (5 marks)
- (ii) Carriage and Insurance Paid To (CIP); (5 marks)
- (iii) Distinction between sale of goods and supply of services; (5 marks)
- (iv) Difference between hire purchase agreements and credit sales; (5 marks)
- (v) Termination of agency agreements by operation of law. (5 marks)