

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR AWARD OF DIPLOMA  
IN LAW (PARA-LEGAL STUDIES)

JULY, 2009

LAW OF CONTRACT 1

Instructions

- (a) Answer QUESTION 1 and ANY OTHER THREE QUESTIONS
  - (b) QUESTION 1 is COMPULSORY and carries 25 marks
  - (c) All other questions carry 15 marks each
  - (d) Marks may be lost for illegibility
  - (d) Time allowed is **Two (2) Hours**
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1. (a) Explain the meaning of contract and briefly highlight the basic elements of a valid contract. (10 marks)
- (b) Outline any FIVE arguments that one may advance to justify the existence of a law governing contractual relationships. (5 marks)
- (c) "Contracts of record are not true contracts strictu sensu" *Anonymous*.  
Briefly discuss the foregoing legal proposition and highlight two examples of contracts of record. (4 marks)
- (d) Explain the meaning of the following contracts:  
(i) void contract  
(ii) voidable contract  
(iii) illegal contract (6 marks)
2. (a) A contract originates from the standpoint of an offer. Highlight any FIVE rules relating to the concept of offer. (10 marks)
- (b) Highlight any FIVE ways in which an offer may be terminated. (5 marks)

3. (a) Lynda received a letter of offer for a job from XY Ltd by way of post on the 15<sup>th</sup> March, 2009. The envelope to the letter indicated that it had been posted on 1<sup>st</sup> March, 2009 although it was dated 29<sup>th</sup> February, 2009. The letter provided that she should signify her acceptance of offer not later than 30<sup>th</sup> March, 2009 and report for her new appointment not later than 30<sup>th</sup> April 2009. She wrote a letter of acceptance of the offer to XY Ltd and posted it on the same day she had received the letter of offer by registered mail. On reporting to work on 30<sup>th</sup> April 2009 she found that her position had been given to someone else on account of having not signified her acceptance of the appointment at all. She is contemplating suing XY Ltd for breach of contract.

Advise her on the possibility of success on the contemplated action.

**(5 marks)**

- (b) "Generally however, consideration will in law be regarded as insufficient where the defendant promises to discharge a duty already imposed on him on account of other reasons." *Anonymous*.

Highlight instances where the aforesaid may arise.

**(10 marks)**

4. (a) Explain the meaning of intention to create legal relations and the approach adopted by the courts in determining whether there was the intention to create legal relations in a contract or not.

**(5 marks)**

- (b) Briefly discuss the concept of contractual capacity in the law of contract.

**(10 marks)**

5. (a) Explain the meaning of misrepresentation and instances when statements made could not amount to misrepresentation in law.

**(7 marks)**

- (b) Highlight any FOUR instances when third parties may enjoy rights or become subject to liabilities arising under a contract.

**(8 marks)**

6. (a) Contracts that offend public policy are illegal at common law. Highlight FIVE such contracts.

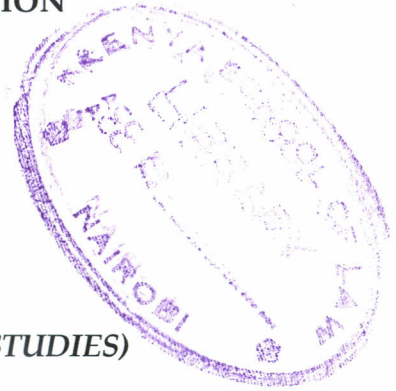
**(5 marks)**

- (b) Explain the meaning of frustration in the law of contract and the things a person may have to prove in court for him to rely on the doctrine of frustration.

**(10 marks)**

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COUNCIL OF LEGAL EDUCATION



*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

**CONTRACT LAW I**

**TUESDAY 12<sup>TH</sup> OCTOBER, 2010**

**DURATION: 2 HOURS**

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

**PLEASE TURN OVER**

### QUESTION ONE

- (a) State and explain **FIVE** essential elements of a valid contract. {10 marks}
- (b) Write brief explanatory notes on each of the following types of contract.
- (i) Standard form contracts
  - (ii) Void and voidable contracts
  - (iii) Contracts uberrimae fidei
  - (iv) Unenforceable contracts
  - (v) Unilateral contracts
- {15 marks}

### QUESTION TWO

The English case of Pharmaceutical Society of Great Britain V. Boots Cash Chemists (1953) 1 All E.R. 482 has been frequently cited in distinguishing an offer from a mere invitation to treat.

- (a) What is the distinction? {7 marks}
- (b) Based on the principle pronounced in the above case, explain the legal effect of each of the following:
- (i) Public auctions
  - (ii) Display of goods in a shop
  - (iii) Tenders
  - (iv) Advertisements
- {8 marks}

### QUESTION THREE

It is now a fairly well-settled principle of the law of contract that a contractual relationship is established for the benefit and enforcement at the instance of the parties to the contract. However, this principle has over time, been found to result into harsh, inconvenient or undesirable consequences, even contrary to the parties' desire. Both statute and equity have been used as tools to mitigate these effects and allow exceptions to this rule of contract.

- (a) Explain the doctrine of privity of contract. **{3 marks}**
- (b) State and explain **FOUR** exceptions that have evolved and which enable strangers to contracts to not only benefit under those contracts, but also to actually, in appropriate cases, enforce rights and obligations created under those contracts.

**{12 marks}**

#### **QUESTION FOUR**

'Mistakes' made by parties in the course of negotiating and entering into contracts are generally not a sufficient ground to vitiate contracts that have truly and voluntarily been entered into by parties. It would lead to undue hardship and injustice if a party to a contract could easily avoid meeting contractual obligations by simply saying 'I made a mistake in entering into the contract.'

- (a) What is the meaning of 'mistake' in the law of contract? **{2 marks}**
- (b) Distinguish between common mistake and mutual mistake. **{4 marks}**
- (c) X is a company based in Nairobi's Industrial Area dealing in the manufacture distribution and sale of water pipes throughout Kenya. On 10<sup>th</sup> June, 2010, the company received a Local Purchase Order from another company, called Komora Ltd, based in Kisumu, requesting supply of 20,000 pieces of 2" pipes. X immediately dispatched the required pipes for delivery at the address indicated (Kisumu).

However, the goods were delivered to a firm known as Komoran Enterprises, also based on same street in Kisumu. The proprietor of Komoran Enterprises, known to X, was a fraudster in town and had defrauded many business persons. Instead of giving the right information, the said proprietor of Komoran Enterprises 'accepted' the goods and immediately sold the pipes to Y, who had no idea about the irregularity in the delivery. When X learnt of these facts, it filed a case against Y in the High Court at Kisumu for recovery of the price of the goods.

- (i) Is there a contract between X and Komoran Enterprises? Explain **{4 marks}**
- (ii) Does X have chances of success against Y for the price of the goods based on the tort of conversion? Explain your answer. **{5 marks}**

### QUESTION FIVE

- (a) Explain the meaning of, and distinguish between express and implied terms of a contract. {6 marks}
- (b) State and explain the **THREE** tests that have been used to determine whether or not statements made by parties during negotiations of terms of contract. {6 marks}
- (c) "A warranty in a contract does not entitle a party to a contract to rescind the contract in the event that the other party breaches it."

Is this statement the correct position of the law? Explain your answer,

{3 marks}

### QUESTION SIX

- (a) "A sane and sober person above the age of 18 years is capable and competent to make a valid contract."

Discuss the capacity and competence of minors and drunkards to conclude contracts.

{6 marks}

- (b) A duly incorporated company is a legal person, separate from its shareholders, and is capable of entering into contracts, enforcing contracts and may be held liable for the obligations assumed under those contracts.

X is a company duly incorporated in Kenya and based in Nairobi. The company's Memorandum of Association shows that it was formed for the purposes of manufacturing different types of apparels. On 4<sup>th</sup> of January, 2010, X entered into an agreement with Y, a non governmental organization, undertaking to drill 20 boreholes in North Eastern Province at a cost of KSh.35 million. The task was to be completed within three months. X was paid Kshs.20 million as deposit but failed to do anything to perform the contract. Y now is contemplating filing a suit in court to compel X to perform the contract.

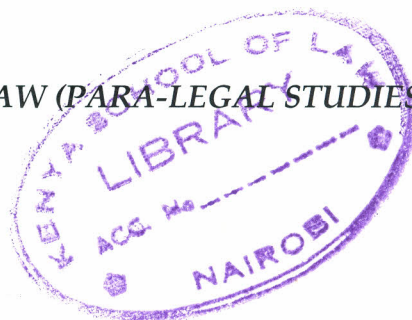
- (i) Explain whether there was a valid contract between X and Y {3 marks}
- (ii) Is Y likely to obtain the orders in court? Explain {6 marks}

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COUNCIL OF LEGAL EDUCATION



DIPLOMA IN LAW (PARA-LEGAL STUDIES)



LAW OF CONTRACT I

TUESDAY 26<sup>TH</sup> JULY, 2011

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 marks
- (c) All other questions carry 15 marks each

PLEASE TURN OVER

### QUESTION ONE

- (a) 'Clearly to me, the law of contract is the cornerstone of all commerce and a comprehensive appreciation and understanding of this law is critical for one to understand the other commercial law disciplines.' *Anonymous*

In line with this legal proposition, highlight the arguments that one would advance to justify the development and existence of the law of contract.

{10 marks}

- (b) Explain the general classes of contract under the law of contract.

{5 marks}

- (c) Explain the meaning of the following types of contracts:

- (i) Void
- (ii) Voidable
- (iii) Unenforceable
- (iv) Executory
- (v) Unilateral

{10 marks}

### QUESTION TWO

- (a) A contract originates from the stand point of an offer. Highlight any FIVE important rules relating to the concept of offer.

{10 marks}

- (b) Explain any FIVE circumstances under which an offer terminates.

{5 marks}

### QUESTION THREE

- (a) Acceptance is an important aspect of a contract. Explain any FIVE rules that inform the validity of an acceptance.

{10 marks}

- (b) Generally however, consideration will be regarded in law as insufficient when the defendant promises to discharge a duty already imposed to him by some other reasons. Explain such reasons.

{5 marks}



#### QUESTION FOUR

- (a) 'It is certainly a hard task for the courts to determine the intention of parties in a contract because intention is a state of mind and what is in a man's mind even the devil does not know.' *Anonymous*

Discuss the approach adopted by the courts in determining whether there was intention to create legal relations in a contract.

{5 marks}

- (b) Explain the meaning of promissory estoppel under the law of contract.

{4 marks}

- (c) Discuss the concept of capacity under the law of contract.

{6 marks}

#### QUESTION FIVE

- (a) Explain the meaning of the following terms in the law of contract:

- (i) Misrepresentation
- (ii) Mistake
- (iii) Undue influence
- (iv) Duress
- (v) Frustration

{15 marks}

#### QUESTION SIX

- (a) Highlight any FIVE forms of agreements that would be regarded as devoid of any legal effect on the grounds that they may offend public policy.

{10 marks}

- (b) Highlight any FIVE exceptions to the doctrine of privity of contract.

{5 marks}

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COUNCIL OF LEGAL EDUCATION



*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

LAW OF CONTRACT I

TUESDAY 7<sup>TH</sup> AUGUST, 2012

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

1.

- a) State and explain two (2) sources of the law of contract in Kenya (4 marks)
- b) i) Explain the meaning of "consideration" as used in the law of contract (2 marks)
- ii) Explain clearly what is meant by the expression 'sufficiency of consideration.' (5 marks)
- c) On 4/4/2012, Peter advertised in the Daily Nation newspaper his intention to sell a certain plot in Kasarani area in Nairobi. The purchase price was indicated as two (2) million shillings. The offer would, according to the advertisement, be open for 14 days.

On 7/4/2012, John wrote to Peter as follows: "kindly but urgently let me know whether the sum of two million shillings must be paid at once or whether I can pay in two equal monthly instalments in May and June 2012. I am seeking financial assistance from National Bank of Kenya." No response was received.

On 12/4/2012, John wrote to Peter as follows: "Further to my letter of 7/4/2012, I now have a cheque for 2,000,000/= which I now enclose herewith. Kindly acknowledge receipt of the cheque and let me know when we can finalize the transfer of the plot in my favour." The letter was delivered to Peter on the same date.

On 14/04/2012, Peter entered into an agreement with another person for the sale of the plot at the quoted price. The other person had delivered the cheque on 13/04/2012. At the same time, Peter wrote to John returning the cheque stating that he had rejected John's offer.

- i) Explain whether John had accepted the offer by Peter and which of the two letters John wrote constitute acceptance. (3 marks)
- ii) Was there a valid contract created between Peter and John? Explain. (4 marks)
- iii) On receiving Peter's letter dated 14/4/2012, John decided to file a suit against Peter for breach of contract. In his response to the case, Peter claims that he rejected the offer by John because John had given a counter-offer by John's letter dated 7/4/2012. Explain the meaning of the expression "counter-offer" and whether indeed there was a counter-offer in the given scenario. (4 marks)
- iv) Explain two circumstances that would lead to the termination of the offer to sell land. (3 marks)

2.

- a) Courts of law have refused to recognize and enforce certain agreements between parties on various grounds. One of such grounds is where the courts find that there was no intention to create legal relations between the parties.

Explain the meaning of the expression "intention to create legal relations" and the circumstances when a court may refuse to enforce agreements for lack of such intention.

(5 marks)

b) Under what circumstances would a sixteen (16) year old child be legally bound under a contract entered into between the child and an adult person?

(5 marks)

c) Z and Company Limited is a company formed for purposes of importing and selling vehicles. However, the company recently entered into contract to process milk.

Explain whether or not the contract entered into is valid, giving reasons for your answer.

(5 marks)

3.

a) Distinguish between 'mutual mistake' and 'common mistake' as applied in the law of contract.

(5 marks)

b) Explain the effect of duress and undue influence exerted by one party to another in entering into a contract.

(5 marks)

c) "Courts of law, as a general rule, do not enforce contracts that are immoral, *contra bonos mores*, or against public policy." Do you agree with this statement? Explain.

(5 marks)

4.

a) Explain each of the following rules regarding acceptance:

i) Communication of acceptance

(3 marks)

ii) Silence by the offeree

(3 marks)

iii) Acceptance by post (postal rule)

(3 marks)



b) What is executed consideration?

(2 marks)

c) State and briefly explain two types of contracts

(4 marks)

5.

a) State and explain three types of contracts that are illegal under the common law.

(6 marks)

b) P entered into contract with T under which P agreed to transfer a house to X upon T paying P the sum of shillings 4,500,000/=. T paid the entire amount to P, but P refused to transfer the house to X as agreed.

Explain whether and why T may or may not succeed in enforcing the contract against P.

(6 marks)

c) Explain the meaning of the expression "promissory estoppel."

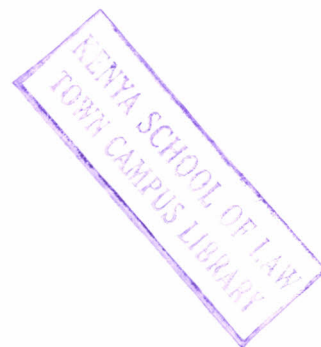
(3 marks)

6. Write short explanatory notes on each of the following:

- a) Standard Form Contracts
- b) Invitation to treat
- c) Offer
- d) Past consideration
- e) The role of law of the contract

(15 marks)

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COUNCIL OF LEGAL EDUCATION



**DIPLOMA IN LAW (PARA-LEGAL STUDIES)**  
(Year I Term I)

**LAW OF CONTRACT I**

TUESDAY 13<sup>TH</sup> AUGUST, 2013

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each
- (d) Marks may be lost for illegibility

PLEASE TURN OVER

## QUESTION ONE

- (a) The law does not prescribe the form any particular contract is to take. Except for a few types of contracts, a contract can take any form that the parties themselves think fit.

Explain the above statement using practical illustrations. **(4 marks)**

- (b) On 10<sup>th</sup> June, 2013, X sent a letter to Y which said as follows: "I have been informed that you have a piece of land in Lang'ata which appears good for development as a commercial residential property. Please let me know if this is the position as I am looking for some land in that neighbourhood." On 13<sup>th</sup> June, 2013, Y replied: "Yes, I confirm that I have several parcels of land in Lang'ata and the prices are categorized in the range of 1.8 million shillings to 5.2 million shillings for any half acre parcel, depending on the nearness to the by-pass." On 14<sup>th</sup> June, 2013, X wrote: "I will be keen to buy one of those parcels that go for about 3 million shillings." The two parties had several other exchange of letters but the last ones were as follows: on 18<sup>th</sup> June, 2013, Y wrote to X as follows: "I am willing to take 3 million cash for plot L.R.No.2356 adjacent to the by-pass and close to Lang'ata Shopping Centre." To this letter, X replied: "I will take the plot (L.R.No.2356) and I have made arrangements to pay the amount in three installments starting in September, 2013 and the transfer of land duly executed in my favour." Y did not reply to this last letter by X.

- (i) Which of the letters constitutes an offer in the above scenario and why? **(2 marks)**

- (ii) Is there a valid contract concluded between X and Y? Explain your answer. **(5 marks)**

- (c) Discuss two ways in which any offer may be terminated. **(4 marks)**
- (d) Discuss any two types of contracts. **(4 marks)**
- (e) Briefly highlight any three justifications for the law of contract. **(6 marks)**

## QUESTION TWO

"A contract influenced by other factors, hence lacking genuineness of consent may be nullified as it lacks a 'consensus ad idem'"

Briefly discuss any five factors that may lead to a contract being vitiated. **(15 marks)**

### QUESTION THREE

- (a) 'Generally however, consideration will in law be regarded as insufficient when the defendant promises to discharge a duty already imposed to him by some other reasons.'

Explain any two such reasons. (15 marks)

- (b) Discuss the concept of intention to create legal relation under the law of contract. (5 marks)

- (c) Explain the following two rules of acceptance:

(i) Acceptance made cannot be revoked. (3 marks)

(ii) The acceptance of offer must be absolute and unqualified. (3 marks)

### QUESTION FOUR

Write explanatory notes on each of the following:

a) Past consideration (3 marks)

b) Counter-offer (3 marks)

c) 'Silence is not acceptance' (3 marks)

d) Common Law illegality (3 marks)

e) Innocent misrepresentation (3 marks)

### QUESTION FIVE

- (a) Using one case law in every instance, briefly distinguish an offer from:

(i) Invitation to treat (3 marks)

(ii) Advertisement (3 marks)

(iii) A declaration of intention (3 marks)

(iv) Mere supply of information (3 marks)

- (b) Explain the meaning of the expression "promissory estoppel" (3 marks)



## QUESTION SIX

- (a) Briefly define the doctrine of privity of contract highlighting the two limbs thereof. (4 marks)
- (b) Highlight any three exceptions to the doctrine of privity of contract. (6 marks)
- (c) Under what circumstances would a fifteen year old child be legally bound under a contract entered into between the child and an adult person. (5 marks)

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

1<sup>ST</sup> YEAR TERM I

LAW OF CONTRACT I

TUESDAY 12<sup>TH</sup> AUGUST, 2014

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question One carries **25 Marks**
- (c) All other questions carry **15 Marks** each

PLEASE TURN OVER

1. a) The Kenya Revenue Authority put up a BMW Motor Vehicle for sale by auction without a reserve price. The price of a new BMW vehicle is Kenya Shillings Two Million (Kshs. 2,000,000/=) only. Achieng' bid Kenya shillings Three Hundred Thousand (Kshs. 300,000/=) for the vehicle while the auctioneer tried and failed to get bids of Kenya Shillings One Million (Kshs. 1,000,000/=) or more for the Vehicle. The BMW auctioneer refused to sell the BMW vehicle to Achieng for such a low price and the vehicle was later sold to a third party for Kenya Shillings Eight Hundred Thousand (Kshs. 800,000/=). Achieng is contemplating a suit for breach of contract.

Using ONE Case Law, advise Achieng on the chances of success of her claim.

(7 Marks)

- b) "The Law of Contract is clearly the cornerstone of the entire Commercial Law." – Anonymous.

In line with this legal assertion, highlight any six arguments that one would advance to justify the existence of the Law of Contract.

(12 Marks)

- b) "Even though the general common law rule is that a person who is not a party to the contract can neither be granted contractual rights by the contract nor be placed under contractual obligations by the contract, there are instances and circumstances when rights and obligations arising under a contract may be transferred to third parties."

Discuss any THREE such instances and circumstances.

(6 Marks)

2. a) Explain the general principles of law relating to the contractual capacity of the following:

- i) Infants
- ii) Insane Persons
- iii) Drunken Persons

(9 Marks)

- b) Using Case Law, discuss the law relating to the concept of intention to create legal relations in brief.

(6 Marks)

3. a) "A contract influenced by other factors, hence lacking genuineness of consent may be vitiated or nullified as it lacks a 'consensus ad idem' – a meeting of the mind."

List and briefly discuss any FIVE factors that may lead to contract being vitiated.

(15 Marks)

4. Make short notes on the following:-

- a) Contracts of record.
- b) Void Contract.
- c) Definition of a Contract.
- d) Unenforceable Contract.
- e) The acceptance of offer must be absolute and unqualified.

(15 Marks)

5. a) Contracts generally do not need to be in any special form as they can be oral, written, partly oral and partly written or they can be implied from the conduct of the parties. However, there are contracts that have to be written otherwise they are void.

Highlight any FIVE such contracts.

(10 Marks)

- b) Explain each of the following rules:-

(i) Silence cannot constitute acceptance.

(2 Marks)

(ii) Revocation of an offer must be communicated to the offeree though not necessarily by the offerer himself.

(3 Marks)

6. a) State and explain any THREE types of contracts that are illegal under common law.

(6 Marks)

- b) Make brief notes on the following in relation to the concept of offer under the Law of Contract. The same should be supported by decided cases.

(i) Invitation to treat.

(ii) A declaration of intention.

(iii) Mere supply of information.

(9 Marks)

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR AWARD OF DIPLOMA  
IN LAW (PARA-LEGAL STUDIES)

NOVEMBER, 2009

LAW OF CONTRACT 2

KENYA SCHOOL OF LAW  
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Instructions

- (a) Answer question **ONE** and any other three (3) questions
- (b) Question 1 is compulsory and carries 25 marks
- (c) All other questions carry 15 marks each
- (d) Marks may be lost for illegibility
- (e) Time allowed is **Two (2) hours**

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1. (a) Kiptun entered into a contract with Rono to purchase a piece of land from Rono measuring five acres. Unknown to Kiptun, the land was situated in a Government forest even though Rono had a title deed to the land that had been acquired irregularly. Kiptun bought the land and was given a title. The government now wants to repossess the land and has declared that it has no intention of compensating anybody for the reason that any tittles to the land were acquired illegally.
- Advise Kiptun on the legal position and how he can recover his money. (7 marks)
- (b) Highlight any four distinctions between a contract and a tort. (8marks)
- (c) Explain the equitable remedies available to a party who is aggrieved by a breach of contract. (5 marks)
- (d) Highlight any two headings under which quasi-contracts may arise noting to explain the meaning of a quasi-contract. (5 marks)
2. (a) Define a contract in restraint of trade. (3marks)
- (b) Mwala secured employment with a company called Technoglass Ltd situated in Nairobi. The company was involved in manufacturing a unique type of glass known as technoglass. During his employment he was instructed in certain unique procedures of making the glass. In the contract of employment which Mwala signed with the company, there was a clause that provided as follows:

"That upon determination of employment the employee shall not establish or be interested in technoglass making or be involved in the business or manufacture of technoglass or any other business connected with glass making within Nairobi and the country at large for a period of five years."

Mwala feels that this clause encroaches on his freedom to trade and do business to earn a living. He has approached you to advise him on the principles of law that the courts will invoke in deciding whether the clause is valid or invalid.

(12 marks)

3. Certain contracts are forbidden at common and are therefore *prima facie* void and illegal. Highlight the impact of illegality on contracts and cite six types of contracts that are regarded as illegal at common law.

(15 marks)

4. (a) A contract may be discharged in various ways. Explain **FIVE** ways in which a contract may be discharged.

(10 marks)

- (b) Otongolo had entered into a contract to sell a vehicle to Kamau. The contract was signed and Kamau paid the price of the vehicle by way of depositing the money in Otongolo's bank account. On the day of delivery of the vehicle, which Otongolo had left in a garage in his neighbourhood, he found that the vehicle had been destroyed by a fire that had broken out at the garage that evening. Kamau is threatening to sue Otongolo for breach of contract.

Advise Otongolo on how he may defend himself and the things he will have to prove in court.

(5 marks)

5. (a) Explain the meaning of the following and where/how they are applicable.

- (i) Liquidated damages
- (ii) Unliquidated damages
- (iii) Substantial damages
- (iv) Nominal damages
- (v) Exemplary damages

(10 marks)

- (b) Mwamba rented out a house to Katu at a monthly rent of KShs.6,000/= knowing very well that Katu was going to use it as a brothel. Katu has not paid the rent for ten months now and Mwamba is contemplating taking legal action against Katu for breach of tenancy agreement.

Advise him on the probability of success of such action.

(5 marks)

6. (a) Highlight Malt and Sake Company is licensed to brew alcohol and make sake but has only been involved in making a concoction called sake. Sheer Brews Ltd, which has been licensed to brew alcohol and has been brewing alcohol, entered into a covenant with High Malt and Sake Company where the latter agreed not to brew alcohol for ten years. Five years down the road, High Malt and Sake Company is considering beer brewing business but are concerned that the covenant may be enforced against them.

With the aid of decided cases, advise High Malt and Sake Company.

(10 marks)

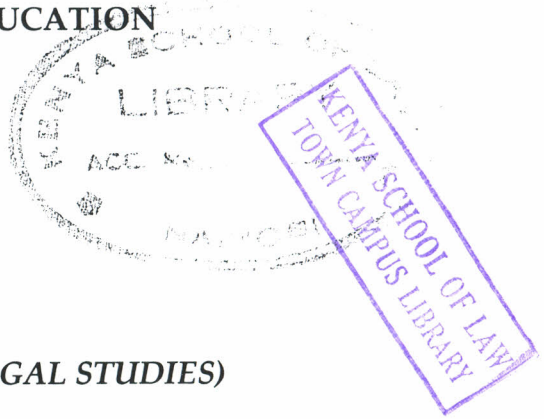
- (b) Hon. Mpendwa, having been a diligent servant of the nation for many years, felt that he Deserved a presidential honour in recognition of his service to the nation, which recognition was not forthcoming. He approached Hon. Mjanja EBS, who alleged that he had substantial access to the powers that be and who told Mpendwa that he should give him KShs.300,000/= in order to secure for him (Mpendwa) the honour in the next awards. Mpendwa gave out the money but he never got honour. He is contemplating suing Mjanja.

With the aid of case law, advise him.

(5 marks)

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*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*

**CONTRACT LAW II**

TUESDAY 8<sup>TH</sup> FEBRUARY, 2011

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 marks
- (c) All other questions carry 15 marks each

PLEASE TURN OVER



## QUESTION ONE

(a) Briefly discuss the basic differences between the law of contract and the law of tort with respect to the following aspects:

- (i) How duties arise in either case;
- (ii) The purpose or aim of paying damages in either case;
- (iii) The doctrine of conflict of laws as applied to either case.

**{6 marks}**

(b) Freedom of contract is one of the fundamental principles under the law of contract. The state may only interfere by prescribing restrictions upon this freedom only if there are sufficient reasons or grounds to do so.

- (i) Briefly discuss FOUR grounds upon which a contract may be declared illegal under the common law on grounds of public policy. **{12 marks}**
- (ii) Information and communication technology (ICT) and the phenomenon of globalization have had considerable impact on the development of the law of contract. The law has largely lagged behind technology and the effect of globalization.

Discuss two aspects of the law of contract that have been affected by ICT and globalization and how countries, including Kenya, have responded to address the emerging challenges. **{7 marks}**

## QUESTION TWO

'A contract in restraint of trade is generally void under common law on grounds of public policy, but it is valid and binding if there is proof that the restriction is justifiable in the circumstances as being reasonable from the point of view of the parties and the public and so long as the protection is no more than necessary to secure the interest of the covenantee' (*anonymous*).

(a) Explain the meaning of the expression 'contract in restraint of trade' and why the law generally dislikes voluntary restraint of trade. **{6 marks}**

(b) Discuss three types of contracts where the doctrine of contract in restraint of trade has been applied. In each case, explain what is restrained or restricted, the basis for the restriction, and the extent of restraint that is permitted. **{9 marks}**

### QUESTION THREE

- (a) Explain the meaning of the expression 'discharge of contract'. {3 marks}
- (b) The following are some of the mechanisms through which a contract may be discharged. In each case, explain how the discharge occurs.
- (i) Discharge by performance.
  - (ii) Discharge by impossibility of performance
  - (iii) Discharge by breach
- {9 marks}
- (c) Novation is one of the methods by which a contract may be discharged by agreement. Explain and illustrate how novation may occur. {3 marks}

### QUESTION FOUR

- (a) Using examples, distinguish between legal remedies and equitable remedies. {4 marks}
- (b) Is an injunction the same as an order of specific performance? Explain your answer. {3 marks}
- (i) Explain the meaning of the expression 'specific performance' and discuss FOUR circumstances when a court of law may refuse to grant or issue an order of specific performance. {8 marks}

### QUESTION FIVE

- (a) X is a partnership consisting of two partners. By a contract of employment, X employed Y as a manager of one of the branches of the firm. The contract was to run for four years. However, barely one year after the employment of Y, the partnership was dissolved when one of the partners retired but the remaining partner was to continue with the business. The remaining partner offered to employ Y in the same position and on the same terms. Y refused the offer. Under the law, the dissolution of the partnership amounted to wrongful termination and hence was a breach of contract. Y decided to file a case in court against X for the salary that he would have been entitled to for the remaining period (3 years). X in its defence, contented that the refusal to take up the new offer of employment was unreasonable.
- (i) Is Y entitled to recover the amount he claims? Explain your answer. {5 marks}
- (ii) Explain the meaning of 'mitigation of damages' as applied in the law of contract. {3 marks}

- (b) 'The law cannot take account of everything that follows a wrongful act; it regards some subsequent matters as outside the scope of its selection, because "it were infinite for the law to judge the cause of causes" or consequences as relevant, not perhaps on ground of pure logic, but simply for practical reasons' – Liesbosch versus Edison SS (1933) A-C 449, 460.
- (i) Explain the meaning of the expression 'remoteness of damage' **{2 marks}**
- (ii) What principles do courts apply in determining what damages should be paid in cases of breach of contract and in determining how far compensation for loss may go? **{5 marks}**

#### QUESTION SIX

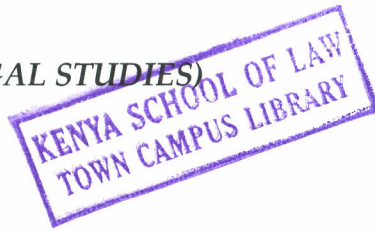
- (a) What is a quasi-contract? **{6 marks}**
- (b) Explain the basis of the doctrine of unjust enrichment and restitution. **{4 marks}**
- (c) Explain how the quasi-contract doctrine has been applied in each of the following circumstances:
- (i) Money paid to a third party by the plaintiff on behalf of the defendant;
- (ii) Money paid under mistake;
- (iii) Money paid under a contract that is lawful but later becomes unlawful;
- (iv) Claim under *quantum meruit*. **{8 marks}**

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COUNCIL OF LEGAL EDUCATION



*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*



**LAW OF CONTRACT II**

TUESDAY 20<sup>TH</sup> NOVEMBER, 2012

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

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## QUESTION ONE

- a) Section 5(1) of the Hire Purchase Act, Chapter 507 of the Laws of Kenya requires that “every hire-purchase agreement shall be delivered for registration to the registrar within thirty days after its execution....” X Ltd, a company registered in Kenya and licensed to carry on hire-purchase business, entered into a hire-purchase agreement with Y, but did not have the contract presented for registration as provided under the above legislation. Nevertheless, X gave the subject goods to Y, who agreed to pay monthly installments over a period of 12 months. Unfortunately, Y only paid the first two installments and defaulted in paying the balance of Kshs.46,000/=.

Explain, giving your reasons, whether or not X would succeed in recovering the sum of Kshs.46,000/= by filing a suit in court against Y.

(3 marks)

- b) An employer may insert clauses in an employment contract which restrain an employee from exercising his or her lawful trade, profession or occupation, especially during the period after the employee leaves employment. State and explain three (3) types of restraints that employers may insert in certain contracts of employment.

(6 marks)

- c) What factors may a court in Kenya take into account in declaring void a contract or clauses of a contract for being in **restraint of trade**?

(6 marks)

- d) On 31<sup>st</sup> July, 2010, Justus, who had been granted a contract by the Government of Kenya to organize entertainment for guests on Moi Day at Nyayo National Stadium, entered into an agreement with Philip by which Philip agreed to perform entertainment activities at the stadium on 10<sup>th</sup> October, 2010 in consideration of Kshs.240,000/=. Under the agreement, Justus was to pay Philip the amount by three installments as follows: Kshs.120,000/= on or before 15<sup>th</sup> August, 2010; Kshs.60,000/= on 31<sup>st</sup> August, 2010; and the balance of Kshs.60,000/= upon performance by Philip. Justus paid the first installment on 15<sup>th</sup> August, 2010.

On 27<sup>th</sup> August, 2010, Kenyans voted for a new constitution under which Moi day was no longer a public holiday. The celebrations set for 10<sup>th</sup> October, 2010 would therefore not proceed. Consequently, Justus declined to pay further installments on the ground that there would be no public holiday. Philip, on the other hand, insisted that he must be paid because he had already signed the agreement.

- i) Explain whether or not Philip would succeed to recover the outstanding balance of Kshs.120,000/= giving reasons for your answer.

(3 marks)

- ii) What argument is Justus likely to rely upon to in refusing to make further payment and in seeking a refund of the sums already paid?

(4 marks)

- iii) What would be the appropriate remedy that the court should make in a case filed by Philip?

(3 marks)

## QUESTION TWO

- a) Highlight any three (3) distinctions between contract and tort. (6 marks)
- b) Outline the three main headings under which a claim in quasi-contract may be made, noting to explain the meaning of quasi contract. (9 marks)

## QUESTION THREE

- a) Distinguish between prohibitory injunction and mandatory injunction. (4 marks)
- b) What is the meaning of the expression 'mitigation of damages'? (3 marks)
- c) Explain the meaning of 'fundamental breach' and give the conditions to be satisfied before it can be said that the breach in a particular situation is fundamental. (6 marks)
- d) State and explain one method by which remedies in contract may be extinguished. (2 marks)

## QUESTION FOUR

Kazungu, the Chief Executive of Platinum Stores Ltd, bought an air ticket from Nairobi Airlines to enable him travel to South Africa on 10<sup>th</sup> May, 2012 for a leading conference on mining which also involved marketing Platinum Stores Ltd and its products in the said country. Unfortunately, on the day of travel, Nairobi Airlines flight to South Africa was cancelled due to a technical problem. Kazungu was therefore booked into the next available Nairobi Airlines flight which was on the 12<sup>th</sup> of May, 2012. Upon arriving in South Africa, Kazungu found that the conference had just ended.

Kazungu and Platinum Stores Ltd now want to file suit against Nairobi Airlines for the loss they suffered as they had expected to make a profit of over Kshs.20 Million during the conference, even though Nairobi Airlines did not have any information on the reason why Kazungu was travelling to South Africa.

- a) Advise Kazungu and Platinum Stores Ltd on the chances of success of their claims for shillings 20 Million in loss of profit against Nairobi Airlines. (6 marks)
- b) Advise Kazungu and Platinum Stores Ltd on the best remedy for the breach on the part of Nairobi Airlines. (3 marks)
- c) Briefly explain the following terms:
- i) Nominal damages (2 marks)
  - ii) Punitive damages (2 marks)
  - iii) Restitution (2 marks)

## QUESTION FIVE

Atieno rented business space from Njoroge in premises in Westlands, Nairobi for a period of five years, to use as a restaurant and pub. One evening Njoroge went into the premises and was shocked to find the same being used as a strip joint for anybody who is interested in attending. Njoroge has given Atieno notice to vacate the premises notwithstanding that the five years are yet to elapse. Atieno has refused to vacate.

- a) Advise Njoroge on the chances of success of such an action, giving reasons for your advice. (5 marks)
- b) Does Atieno have a defence to the suit, in the event that Njoroge goes to court? (2 marks)
- c) Explain any four (4) methods by which a contract may be discharged. (8 marks)

## QUESTION SIX

Write short explanatory notes on each of the following:

- a) Contracts to oust jurisdiction of the court (3 marks)
- b) Accord and satisfaction (3 marks)
- c) Specific performance (3 marks)
- d) Substantial damages (3 marks)
- e) Repudiation of contract (3 marks)

1st Yr 2nd Term

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

**LAW OF CONTRACT II**

MONDAY 2<sup>nd</sup> DECEMBER, 2013

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

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## QUESTION ONE

- i) Wambua entered into an agreement with Kamau for the purchase of a piece of land next to his. The same was to be used by Wambua to expand his business enterprise which was in dire need of extra space for car park and access to the beach which was crucial to his business. Unfortunately, at the very last minute, Kamau changed his mind and refused to transfer the land to Wambua.
- a) Advise Wambua on the remedy available to him giving the relevant definitions, the rules applicable and FIVE impediments to him getting the remedy. **(12 marks)**
- b) Wambua has now realized that Kamau wants to sell the same parcel of land to another party during the existence of the Agreement between them, Wambua and Kamau. Briefly discuss the immediate remedy in law available to Wambua against Kamau. **(3 marks)**
- ii) What is a contract in restraint of trade? **(2 marks)**
- iii) Using one case law in every instance, briefly discuss the question of reasonableness with reference to the following categories of contracts in restraint of trade:
- a) Restraints accepted by an employee. **(4 marks)**
- b) Restraints accepted by the vendor of a business. **(4 marks)**

## QUESTION TWO

- i) Distinguish between:-
- a) A condition and a warranty
- b) Prohibitory injunctions and mandatory injunctions.
- c) Nominal damages and substantial damages. **(9 marks)**
- ii) Highlight any **THREE** distinctions between a contract and a tort. **(6 marks)**

## QUESTION THREE

- i) Using case law in every instance, outline the **THREE** main headings under which a claim in quasi contract may be made, noting to explain the meaning of quasi contract. **(10 marks)**
- ii) Write short explanatory notes on:-
- a) Novation **(3 marks)**
- b) Self-induced frustration **(2 marks)**

#### QUESTION FOUR

Certain contracts are forbidden at common law and are therefore prima facie void and illegal. Highlight the impact of illegality on contracts and cite SIX types of contracts that are regarded as illegal at common law.

(15 marks)

#### QUESTION FIVE

- i) Halima entered into a contract with Hams Limited, a company that is based in the Netherlands to supply 20 tonnes of red roses on the 13<sup>th</sup> February, 2013 a day to the famous Valentine's Day. On getting to Jomo Kenyatta International Airport Nairobi on the 12<sup>th</sup> February, 2013 ready to have the roses air lifted to Hans Limited, Halima found the airport on fire as a result of which all air transport from Kenya to other countries was immediately suspended by the Government of Kenya. Hams Limited has sent a demand letter to Halima seeking for compensation for failure to deliver the roses.

Advise Halima on the legal position and more so how to defend herself.

(6 marks)

- ii) The following are some of the mechanisms through which a contract may be discharged. In each case, explain how the discharge occurs:-
- a) Discharge by agreement.
  - b) Discharge by performance.
  - c) Discharge by lapse of time

(9 marks)

#### QUESTION SIX

Mary, the Managing Director of Blue Seas Chain of Hotels, bought an air ticket from Nairobi Air to enable her travel to Miami on the 1<sup>st</sup> December, 2013 for a leading trade fair on tourism destinations in Kenya. During the said trade fair, Mary was expected to engage on aggressive marketing of Blue Seas Chain of Hotels. Unfortunately, on the day of travel, Nairobi Air Flight to Miami was cancelled due to low passengers availability. The next available Nairobi Air flight to Miami is in the next ten days by which time the trade fair shall have been concluded. Blue Seas Chain of Hotels expects to seal business transactions worth US \$1,000,000/= during Mary's trip in Miami as a result of the trade fair which fact is unknown to Nairobi Air.

Blue Seas Chain of Hotels and Mary are contemplating not travelling to Miami and thereafter sue Nairobi Air for US \$1,000,000/= being lost business opportunity.

- a) Advise Mary and Blue Seas Chain of Hotels on the chances of success of their claim of US \$1,000,000/= in lost business opportunity against Nairobi Air.

(6 marks)

- b) Advise Mary and Blue Seas Chain of Hotels on the best way forward in so far as the business opportunity in Miami is concerned. (3 marks)
- c) Explain the best remedy available to Mary and Blue Seas Chain of Hotels for the breach on the part of Nairobi Air. (3 marks)
- d) Define a quasi-contract noting to highlight the purpose thereof. (3 marks)

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DIPLOMA IN LAW (PARALEGAL STUDIES)

CONTRACT LAW II

8<sup>TH</sup> DECEMBER, 2014

DURATION: 2 HOURS

**Instructions to Candidates**

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions.
- (b) Question **ONE** carries **25 Marks**.
- (c) All other questions carry **15 Marks** each.

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1. Njoroge entered into a contract to purchase a piece of land measuring 10 acres from Wairimu. Unknown to Njoroge, the piece of land was located in the Mau Forest which is the Government of Kenya property even though Wairimu had a title deed to the land which had been acquired irregularly. Njoroge bought the land and was given a title deed. The Government now wants to repossess the land and has declared that it has no intention of compensating anybody for the reason that any titles to the land were acquired illegally.

a) Advise Njoroge on the legal position and how he can recover his money. Use at least **TWO** reported cases in your advise.

(9 marks)

b) Highlight any **FOUR** distinctions between contract and tort.

(8 Marks)

c) Otieno owns a four (4) bedroomed house in Kileleshwa which he has rented out to Wanjiru at kshs.200,000 per month to use as a strip joint. For the last four months, Wanjiru has failed to pay rent as per the lease agreement. Otieno has therefore approached you for legal advise on chances of success of a court action he wants to take against Wanjiru with a view to recovering the rent arrears.

Using case law where applicable, advise Otieno on the legality of the agreement he entered into with Wanjiru together with the consequences thereof.

(8 Marks)

2. a) Define a quasi-contract.

(2 Marks)

b) Using one case law in every instance, briefly discuss the question of reasonableness with reference to the following categories of contracts in restraint of trade:

(i) Restrictions accepted by distributors of merchandise.

(4 Marks)

(ii) Restraints accepted by an employee.

(4 Marks)

c) There are several instances when the court will not grant the remedy of specific performance. List any FIVE such instances.

(5 Marks)

3. Write short notes on:-

a) *Quantum Meruit*

(3 Marks)

- b) Withdrawal from an illegal contract before performance. (3 Marks)
- c) Novation (3 Marks)
- d) Repudiation (3 Marks)
- e) Discharge of a contract by lapse of time and by operation of the law. (3 Marks)

4. "Certain types of contracts are forbidden at common law and are therefore prima facie illegal. These are the contracts which the courts have over the years decided to regard as offending public policy."

**Anonymous.**

Discuss any **FIVE** contracts falling within the above stated category using case law in every instance.

**(15 Marks)**

5. a) Although the remedy of specific performance is discretionary, such discretion can only be exercised in accordance with fixed rules. List and discuss the **THREE** rules.

**(6 Marks)**

- b) Black stars Limited, an events company has entered into a contract with Carnivore Limited for space to enable them hold a music concert to be attended by a celebrated musician, Akon. Unfortunately, two days to the concert, Akon has cancelled his travel arrangements to Kenya for failure to receive his performance fees as agreed. Black Stars Limited has now cancelled the booking with Carnivore Limited on the ground that the contract has been frustrated by Akon's actions.

Carnivore limited has approached for legal advice on the same.

Advice in detail including a discussion on the test for ascertaining whether the contract is frustrated and the three elements thereof.

**(9 Marks)**

6. a) Mercy, the Managing Director of Platinum Limited, bought an air ticket from Law Air to enable her travel to Paris on the 10<sup>th</sup> October, 2014 for a leading investment conference on international trade. During the said conference, Mercy was expected to engage on aggressive marketing for and on behalf of Platinum Limited. Unfortunately, on the day of travel, Law Air to Paris was cancelled due to low passengers' availability. The next available law Air flight to Paris is in the next seven days by which time the conference shall have been concluded. Platinum Limited expects to seal business

transactions worth over US \$800,000 during Mercy's trip in Paris as a result of the conference which fact is known to Law Air.

Platinum Limited and Mercy are contemplating not travelling to Paris and thereafter sue Law Air for US\$800,000 being the lost business opportunity.

- a) Advice Mercy and Platinum Limited on the chances of success of their claim of US\$800,000 in the lost business opportunity against law Air.  
**(6 Marks)**
- b) Advice Mercy and Platinum Limited on the best way forward in so far as the business opportunity in Paris is concerned.  
**(3 Marks)**
- c) Explain the best remedy available to Mercy and Platinum Limited for the breach on the part of Law Air.  
**(3 Marks)**
- d) Define an injunction and give the distinction between a permanent and an interlocutory injunction.  
**(3 Marks)**