

**COUNCIL OF LEGAL EDUCATION**

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

**APRIL, 2010**

**COMMERCIAL LAW 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
  - (e) Time allowed is **Two (2) Hours**
- 

1. (a) Sarah purchased a fridge worth Kshs.40,000 on Wednesday from Fair Supermarkets Ltd and paid the price in full. The subject fridge was marked as "sold".

Unable to transport it on the day she purchased it, she promised to take delivery of the fridge on Friday. Unfortunately on the night of Thursday a fire broke out in the supermarket and all the property therein was destroyed. Sarah contemplates suing the supermarket.

- (i) Advise Sarah on her probability of success in such a suit. **(5 marks)**

- (ii) Elaborate to Sarah FIVE rules as envisaged under S.20 of the Sale of Goods Act, that are employed to determine when property in goods passes from seller to the buyer. **(10 marks)**

- (b) The concept of transfer of property in goods is a significant one. Highlight the significance of this concept. **(4 marks)**

- (c) The rule at common law was *nemo dat quod non habet*.

- (i) Explain the meaning of this legal maxim. **(2 marks)**

- (ii) Highlight four (4) exceptions to the rule above. **(4 marks)**

2. (a) Explain any FIVE types of agents and elaborate how an agency relationship arises in the different types of agents. (10 marks)
- (b) In the course of pursuing your career, you may find yourself acting as an agent to your principal. Outline five duties which you would be expected to observe. (5 marks)
3. (a) Define hire-purchase agreement. (2 marks)
- (b) Explain the differences between:
- (i) Hire-purchase and Sale (3 marks)
  - (ii) Hire-purchase and Credit (3 marks)
  - (iii) Hire-purchase and Conditional Sale (3 marks)
- (c) Before a hire-purchase agreement is entered into the owner must inform the prospective hirer in the prescribed form, the cash price of the goods he wants to hire.
- Highlight the legal effect of not disclosing that information. (4 marks)
4. (a) Highlight the remedies available to an unpaid seller. (5 marks)
- (b) Explain the meaning of the following contracts particularly in terms of duties of the parties in various contracts:
- (i) FOB Contract (2 marks)
  - (ii) CIF Contract (2 marks)
  - (iii) FAS Contract (2 marks)
  - (iv) Ex-Ship Contract (2 marks)
  - (v) Ex-Works Contract (2 marks)
5. (a) An agency relationship may be terminated in two broad ways, either by act of the parties or by operation of the law.
- Explain any FIVE ways in which an agency relationship may be terminated by operation of the law. (10 marks)

(b) The law of agency cohabitation presumes that a wife is an agent to pledge her husband's credit. Highlight circumstances when the wife's authority to pledge the husband's credit will terminate.

**(5 marks)**

6. (a) The Hire-Purchase Act contemplates that every hire-purchase agreement must be registered. Explain the legal consequences of not registering a hire-purchase agreement.

**(3 marks)**

(b) Highlight any TWO formal requirements of a hire-purchase agreement.

**(2 marks)**

(c) At S.7 of the Hire-Purchase Act, the law makes certain provisions void if they are contained in the hire-purchase agreement.

Outline any FIVE such provisions.

**(10 marks)**

-----



**COUNCIL OF LEGAL EDUCATION**



**DIPLOMA IN LAW (PARA-LEGAL STUDIES)**

**COMMERCIAL LAW I**

**THURSDAY 19<sup>TH</sup> MAY, 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

The following is famous quote taken from the judgement of Lord Denning in the case of Bishopsgate Motor Finance Corporation vs. Transport Brakes Ltd (1949) 1 KB 332, 336-337:

“In the development of our law, two principles have striven for mastery. The first is the protection of property, no one can give a better title than he himself possesses. The second is the protection of commercial transactions; the person who takes in good faith and for value without notice should get a better title”.

- (a) State and explain TWO reasons why Kenya needed a law or laws to regulate commercial transactions. **{4 marks}**
- (b) Explain the meaning of the maxim *nemo dat quad non habet*. **{3 marks}**
- (c) Explain THREE exceptions to the *nemo dat quad non habet* rule: **{9 marks}**
- (d) Kamau agreed to buy Otieno's car, provided Otieno made certain modifications to the car's engine. Otieno agreed to do so and Kamau paid 10% of the purchase price. Otieno proceeded to make the modifications but before he could inform Kamau of the completion of the exercise, the car was destroyed in a fire at Otieno's garage. Otieno was not insured.

Otieno is now demanding that Kamau pays the agreed price for the car. On the other hand, Kamau has refused to pay the balance and it in fact demanding the return of his deposit. He has also threatened to file a suit in court for non-delivery of the car.

- (i) What is the meaning of the expressions 'transfer of property' and 'transfer of risk'? **{2 marks}**
- (ii) Explain the rights and duties of both Otieno and Kamau in the above scenarios, and whether either is entitled to push for their respective positions taken. **{7 marks}**

## QUESTION TWO

CIF contracts have been used by traders for a long time especially in situations where goods are imported or exported to another country.

- (a) Write the acronym 'CIF' in full and explain each of its components. **{2 marks}**
- (b) Explain the basic defining features or characteristics of a CIF contract. **{4 marks}**

- (c) State THREE duties of the buyer under a CIF contract. {3 marks}
- (d) What is a bill of lading? Explain the uses of a bill of lading. {3 marks}
- (e) Distinguish between a CIF contract and an FOB contract in terms of who bears the risk during transportation of the goods. {3 marks}

### QUESTION THREE

- (a) Define the main features of a hire purchase agreement; i.e. how does one tell whether a transaction is or is not a hire purchase transaction? {3 marks}
- (b) State and clearly explain THREE essential elements of a valid hire purchase agreement under the Hire Purchase Act, Cap 507, Laws of Kenya. {6 marks}
- (c) "The Hire Purchase Act, Cap 507, Laws of Kenya was primarily introduced and passed by Parliament in 1968 in order to protect the economically disadvantaged and vulnerable persons in Kenya".

Do you agree with this statement? Explain your answer. {6 marks}

### QUESTION FOUR

In both contract for sale of goods and hire purchase agreement, the parties have remedies available to them in the event of breach of terms of agreement or contract. In both, there are implied conditions and warranties provided by law for the protection of the parties' respective rights.

- (a) Explain the conditions that are implied in all hire purchase agreement as provided under the Hire Purchase Act, Cap 507, Laws of Kenya. {5 marks}
- (b) State and explain TWO remedies that are available to the owner of goods under a hire purchase agreement, where the hirer failed to pay on time or at all, the agreed installments. {4 marks}
- (c) State and explain THREE remedies available to a buyer in a contract for sale of goods. {6 marks}

### QUESTION FIVE

- (a) In principal and agent relationship, the law is necessary in order to recognize and protect certain interests for both the principal and the agent. What are these interests? {2 marks}

- (b) One can become an agent of another person in several ways, apart from by express appointment. Discuss THREE other ways in which agency may arise.

{6 marks}

- (c) X & Co. used to have a business relationship with Y & Co. The relationship was in place for over ten years. Throughout the first seven years, the Personnel Manager of X & Co. used to collect all dues from Y & Co. on behalf of X & Co. The money was duly remitted and no complaint was ever raised by X & Co.

In the 8<sup>th</sup> year, the said Personnel Manager was dismissed from employment by X & Co. but Y & Co. did not know of this development. Nevertheless, the Personnel Manager, after the dismissal, collected from Y & Co. the sum of Kenya Shillings 50,000/- as the outstanding dues from Y & Co. In its defense, Y & Co. denies owing any money.

Explain whether or not the suit will succeed, giving reasons for your answer.

{7 marks}

### QUESTION SIX

Write brief explanatory notes on each of the following:

- (a) Del credere agent
- (b) Rights of an agent against the principal
- (c) Right of stoppage in transitu
- (d) Different methods of terminating an agency relationship
- (e) Distinguish between a hire purchase agreement and a conditional sale

{15 marks}

-----END-----

COUNCIL OF LEGAL EDUCATION



DIPLOMA IN LAW (PARA-LEGAL STUDIES)  
1<sup>ST</sup> YEAR TERM III



COMMERCIAL LAW I

WEDNESDAY 4<sup>TH</sup> APRIL, 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



### QUESTION ONE

- a) Explain any **FIVE** critical elements in a contract for Sale of Goods. (10 marks)
- b) Explain the rules that are applicable in determining when property in goods is transferred from a seller to a buyer. (5 marks)
- c) Explain the significance or importance of the concept of transfer of property in goods under the law of Sale of Goods. (5 marks)
- d) Draw a clear distinction between a condition and a warranty under the law of sale of Goods. (5 marks)

### QUESTION TWO

- a) Discuss any **FIVE** exceptions to the nemo dat rule. (15 marks)

### QUESTION THREE

- Handwritten notes:*  
sale by seller in possession  
sale by buyer in possession  
sale by agent in possession  
sale by finder of goods  
sale by mercantile agent  
sale by estoppel
- a) Explain ~~by~~ the following modes of creation of an agent-principal relationship. (10 marks)
    - i) By agreement
    - ii) By ratification
    - iii) By estoppel
    - iv) By necessity
  - b) Highlight any **FIVE** types of agents. (5 marks)

### QUESTION FOUR

- a) Explain the rights of an agent in an agency relationship. (5 marks)
- b) Highlight any **FIVE** instances when an agency relationship may be terminated by operation of the law. (10 marks)

### QUESTION FIVE

- a) Distinguish Hire-purchase from the following (6 marks)
  - i) Sale
  - ii) Credit sale
  - iii) Conditional sale
- b) Outline the instances when the registrar may decline to register an hire-purchase agreement. (5 marks)
- c) Explain the effects of non-registration of an hire-purchase agreement (4 marks)

### QUESTION SIX

- a) Highlight **FIVE** matters envisaged under Section 7 of the Hire-purchase Act that, if provided for in a hire-purchase agreement, such agreement would be void. (10 marks)
- b) Outline the duties of the hirer in a contract of hire-purchase. (5 marks)

*Handwritten notes:*  
Hirer must pay  
Hirer must not alter  
Hirer must not sublet  
Hirer must not use for other than intended purpose  
Hirer must not do anything to damage the goods

KENYA SCHOOL OF LAW  
TOWN CAMPUS LIBRARY

KENYA SCHOOL OF LAW



*DIPLOMA IN LAW (PARA-LEGAL STUDIES)*  
*2<sup>ND</sup> YEAR TERM III*

COMMERCIAL LAW I

FRIDAY, 12<sup>TH</sup> APRIL 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

PLEASE TURN OVER

## QUESTION ONE

- a) "Commercial law is concerned with rights and duties arising from the supply of goods and services." Do you agree with this statement? Explain. (4 marks)
- b) Read the facts given below and answer questions (i), (ii), and (iii).

Ochieng (a businessman based in Kisumu) and Mworira (a dealer in new and second-hand computers) entered into an agreement for sale of goods on 13<sup>th</sup> January. The main terms agreed upon were as follows:

- Mworira agreed to sell fifteen (15) second-hand desktop computers to Ochieng at Kshs.15,000/= each.
- The computers were lying at Mworira's store along Tom Mboya Street in Nairobi.
- Mworira would repair the computers and ensure they were in working condition by 18<sup>th</sup> January, 2013.
- Ochieng would pay 50% of the purchase price on 17<sup>th</sup> January, 2013 and the balance to be paid on collection of the computers.
- The computers would be collected by Ochieng or his agent on 21<sup>st</sup> January, 2013
- It was understood between the parties that the computers were required for use in Mr. Ochieng's cyber café in Kisumu.

On 16<sup>th</sup> January, 2013, fire broke out at the premises of Mworira due to an electrical fault and destroyed nine (9) out of the fifteen computers. Ochieng was not notified of this new development and he proceeded to pay the 50% of the purchase price on 17<sup>th</sup> January, 2013 as per the agreement.

On 18<sup>th</sup> January, 2013, Mworira repaired the remaining computers in readiness for collection by Ochieng.

On 21<sup>st</sup> January, 2013, Ochieng sent an agent to pay the balance of the price and to collect the fifteen computers. Mworira received the balance but purported to hand over only six computers, which the agent rejected.

A dispute arose as a result. Mworira was insisting that Ochieng must pay for the fifteen computers despite the fact that only six were available. Mworira said that he was not to blame for the loss of nine computers.

- i) Did Mworira have the right to insist that Ochieng must pay for fifteen computers? Explain. (3 marks)
- ii) Explain any **TWO** rights that Ochieng could lawfully exercise against Mworira. (4 marks)
- iii) State **TWO** remedies that are available to Ochieng against Mworira to enforce his rights. (4 marks)

- c) John had been entrusted by Peter (under a contract of agency) with the transportation of Peter's ripe bananas from Kisii to Nairobi's Marikiti market. John was to use a vehicle belonging to Peter. John left Kisii and had a smooth drive but on reaching near Narok, the vehicle developed a serious mechanical problem and could not move further. John's attempt to reach Peter for advice could not succeed. John decided to use the little money he had to repair the vehicle but did not succeed.

Three days later, John had not managed to contact Peter and yet the bananas had over-ripened and had begun to rot. A local old man advised John to sell the bananas in Narok town but the price to be fetched was much lower than the price in Nairobi.

- i) Advise John whether he could lawfully dispose of the bananas as advised by the old man, giving reasons for your advice. (5 marks)
- ii) Suppose John sold the bananas in Narok but Peter refused to reimburse John the expenses he incurred and also refused to pay him his charges, explain what rights John could enforce against Peter. (5 marks)

## QUESTION TWO

- a) Explain the meaning of the maxim *nemo dat quod non habet*. (3 marks)
- b) What is the importance of the *nemo dat quod non habet* in commercial transactions? (3 marks)
- c) Discuss any **TWO** exceptions to the *nemo dat quod non habet* rule. (6 marks)
- d) Explain when an unpaid seller loses the right of *lien*. (3 marks)

## QUESTION THREE

- a) The remedies available to an unpaid seller may be classified into two: real remedies and personal remedies.
- i) Define real remedies. (2 marks)
- ii) What are personal remedies? (2 marks)
- iii) Explain any **THREE** real remedies that are available to an unpaid seller. (9 marks)

## QUESTION FOUR

- a) What is agency? (3 marks)

b) "The Hire Purchase Act, (Chapter 507 of the Laws of Kenya) was primarily introduced and passed by Parliament in 1968 in order to protect the economically disadvantaged and vulnerable persons in Kenya." Do you agree with this statement? Explain your answer. (6 marks)

c) Explain any **THREE** conditions implied in all hire purchase agreements. (6 marks)

### QUESTION FIVE

Write explanatory notes on each of the following ensuring you capture all the important aspects:

a) CIF contracts (3 marks)

b) Unpaid seller's *lien* (3 marks)

c) Meaning of "sources of commercial law" (3 marks)

d) Distinction between a hire purchase agreement and a credit sale agreement (3 marks)

e) Distinction between 'specific goods' and 'unascertained goods' (3 marks)

KENYA SCHOOL OF LAW  
TOWN CAMPUS LIBRARY

KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

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

COMMERCIAL LAW I

THURSDAY 3<sup>RD</sup> APRIL 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

*Notations*  
sec 7

**QUESTION ONE**

- 1. a) "Hire purchase agreements in Kenya are governed by the Hire Purchase Act (Chapter 507 Laws of Kenya). The said Act does not, however, apply to or regulate all agreements for hire purchase. Section 3(i) restricts the application of the Act to a few transactions".

K.I. Laibuta, Principles of Commercial Law, 2nd Edition (2006), at page 204.

List the **FOUR** factors provided in Section 3 of the Hire Purchase Act which restrict the application of the Act, and give the justification of each of them.

*I lodged registration any of time.  
Also registered after 30 days, also write or signed by him.  
Not in English.*

**(12 Marks)**

- b) Kirui, the registered owner of a Toyota Kluger, Registration Number KBP 222Q, took the same to a yard located along Mombasa Road owned by Times Capital Limited in order that the same could be sold on his behalf by the said company at Kshs.1,500,000. Kirui surrendered the logbook of the said vehicle to the company and was given a sum of Kshs.300,000 cash and the balance was to be paid on the vehicle being sold. In the meantime, Konyango has gone to the said yard a day later and has identified the said vehicle, paid the sum of Kshs.1,600,000 to the company for the vehicle, and driven it away though he is to pick the logbook thereof in a week's time. Before Konyango could pick the logbook of the said vehicle, the yard was closed due to mismanagement and this was before Kirui was paid his balance of Ksh.1,200,000. However, it is worth noting that the yard was known to everybody as selling motor vehicles on behalf of registered owners thereof. Kirui as the registered owner of the vehicle is contemplating proceeding to court for a mandatory injunction to enable him repossess the vehicle.

Advise Konyango and Kirui on the arising legal issues and their chances of success. Please remember to highlight the important legal terms by giving definitions thereof.

**(13 Marks)**

**QUESTION TWO**

- 2. a) Define Commercial Law giving **TWO** features thereof.

*Principles subjects -  
features*

**(4 Marks)**

- b) The remedies available to an unpaid seller may be classified into two: Real remedies and Personal remedies. Discuss any **THREE** real remedies that are available to an unpaid seller.

*Re sold.  
- Resale by auction -  
- Resale by private sale -*

**(9 Marks)**

- c) What is agency?

**(2 Marks)**

### QUESTION THREE

3. a) Discuss how agency relationship is brought into existence in the following ways:-

(i) By estoppel. ✓

(3 Marks)

(ii) By Ratification. ✓

(3 Marks)

(iii) Agency of cohabitation.

(3 Marks)

b) Distinguish between:-

(i) Hire purchase and credit sale.

(3 Marks)

(ii) FAS Contract and Ex-Ship contract.

(3 Marks)

### QUESTION FOUR

4. a) Explain any **THREE** obligations of a Hirer, found in a hire purchase agreement.

- Sign  
- make a copy  
- state hire purchase price

(6 Marks)

b) Explain any **THREE** exceptions to the *nemo dat quod non habet* rule.

✓ By estoppel.  
✓ Sale by seller.  
✓ Sale by the Buyer.

(6 Marks)

c) Distinguish between Factors and Del Credere Agents.

(3 Marks)

### QUESTION FIVE

5. Write explanatory notes on each of the following, ensuring you capture all the important aspects thereof:

a) Duties of a Principal.

(3 Marks)

b) Effects of non-registration of a hire-purchase agreement.

(3 Marks)

c) CIF Contracts.

(3 Marks)

d) The justification for the existence of the *nemo dat quod non habet* rule.

(3 Marks)



- e) Distinction between conditions and warranties under the Sale of Goods Act (Cap 31, Laws of Kenya).

**(3 Marks)**

**QUESTION SIX**

6. a) Agency may terminate in the same way as may other contracts, that is to say it may terminate either by the act of the parties or by operation of law. Highlight any **FIVE** ways in which an agency may terminate by operation of the law.

**(5 Marks)**

- b) Section 8 of the Hire-Purchase Act (Cap 507, Laws of Kenya) implies several conditions and warranties in every hire-purchase agreement. Highlight any **FIVE** such conditions/warranties.

**(5 Marks)**

- c) Discuss any **FIVE** remedies available to a Buyer under the Sale of Goods Act.

**(5 Marks)**