

COUNCIL OF LEGAL EDUCATION



*PRE-BAR EXAMINATION*

**PRB 006 COMMERCIAL LAW**

**FRIDAY, 28<sup>th</sup> SEPTEMBER, 2012**

**DURATION: 3 HOURS**

**Instructions to Candidates**

- (a) Answer Question **ONE** and **any other three** Questions
- (b) ALL Questions carry **25 marks each**
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Mr. Long is a shrewed businessman. He entered into an agreement with Mr. Wright to purchase 30 bags of chicken feed. Since they are very good friends, the agreement, although written out, did not include the price. However, the parties agreed on the immediate delivery of the feeds but payment to be within one month of delivery of the feeds.

After one month Mr. Wright asked Mr. Long to pay him for the bags of feed at the current rate of Kshs.3,000/- per bag. Mr. Long being the shrewed businessman decides that he will pay only Kshs.200 per bag.

- (a) The parties have been referred to you as a lawyer to advise them on factors to be taken into account in fixing the price.

**(15 marks)**

- (b) What is the implied term as to the place of delivery of the goods?

**(10 marks)**

2. Anua, your friend, is in dire need of money. He has come up with a plan on how to obtain instant cash. However, before he implements it he has decided to pass by your house to hear your opinion about it.

He intends to get a LED TV from Meko Co. Ltd (a hire-purchase firm) and immediately sell the same to his neighbour Zuse. He will ensure that Zuse draws an agreement with him for payment of half the money upfront and the rest by monthly instalments. However before he does this, he intends to remove an essential component from the LED TV and insert it in his old TV to make it as good as new. He is sure that by the time Zuse finds out, Zuse will have used the TV for about 3 months by which time Anua will not be responsible for it.

- (a) What advice would you give Anua about his intended action?

**(15 marks)**

- (b) What are the basic rules concerning the passing of risk in sale of goods?

**(10 marks)**

3. Makali bought a car from Rehima Motors at an agreed price of Kshs.550,000/-. According to the agreement he was to pay a deposit of Kshs.350,000/- and the balance by equal monthly instalments of Kshs.15,000/- until payment in full. In the meantime he would drive away the car but leave the logbook with the company to be collected upon completion of payment.

Makali immediately sells the motor vehicle to Mash for the sum of Kshs.700,000/- and promises to give him the logbook within 3 months. He fails to pay Rehima Motors the next two instalments and they repossess the motor vehicle from Mash's premises.

Mash was not aware of the agreement between Rehima and Makali.

(a) Mash has come to you for advice as regards the status of the motor vehicle. **(15 marks)**

(b) What is a promissory note? **(10 marks)**

4. Sikuta entered into a written agreement with Mary for the supply of a lorry load of green bananas every 30 days for one year. Sikuta was supposed to pay for the same by two instalments for each delivery, with the first payment on the 7<sup>th</sup> day and the second on the 14<sup>th</sup> day after delivery.

On the day the first delivery was to take place, Mary called Sikuta saying that the harvest was not good and as such she got only half a lorry load and could therefore not deliver. Sikuta later learnt that as much as it was true that Mary harvested only a half lorry load she had got a better offer and that is why she did not deliver.

(a) What remedies does Sikuta have as against Mary? **(15 marks)**

(b) Customs and usages are at times used as part of the law guiding contracts. Discuss the necessary elements that the courts would use to determine whether or not a custom would be used in a particular case. **(10 marks)**

5. Elema Ltd is a company registered in Ulima, a neighbouring country. It used to trade all over the world but has recently been adversely affected after being associated with terrorist groups. Your country's defence forces have recently invaded Ulima to try and stamp out the terrorist threats. Elema Ltd has approached you to act on their behalf to negotiate a contract with SG Company Ltd. to supply oil in Kenya.

(a) What issues would you need to take into account before taking up the assignment? **(15 marks)**

(b) Write short notes on when apparent authority of an agent can be said to be binding on the principal. **(10 marks)**

6. Mtenja was declared bankrupt on 16<sup>th</sup> February, 2012. This was after he failed to pay child support in the sum of Kshs.700,000/-, a debt of Kshs.1.5 million secured by a piece of unproductive land to Solid Bank and a friendly loan from Cydia, his co-worker. Before the order was issued he had been processing a loan from Nowall Bank which went through on 17<sup>th</sup> February, 2012 and he promptly collected the money the same day.

He had been jobless for a long time and on 20<sup>th</sup> March 2012, he got a job which is paying a net sum of Kshs.20000/- per month. On 25<sup>th</sup> April, 2012 he travelled to New York to attend his daughter's wedding. Upon his return a week later he registered a company in his son's name and proceeded to run a business of clearing and forwarding.

(a) What are Mtenja's responsibilities as a bankrupt and what breaches has he committed?

**(10 marks)**

(b) What property (if any) is protected by the law with regard to bankruptcy proceedings?

**(10 marks)**

(c) What remedies are available to his creditors?

**(5 marks)**

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