



LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LL.B.) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM

AUGUST, 2016

RLLB 301: COMMERCIAL LAW

Examiner: TOM NGERI

Instructions:

1. Time allowed is 3 hours.
2. This is a closed book examination.
3. This paper consists of three questions.
4. Answer questions **ONE** and **TWO** and any other two questions.
5. Where applicable, support your answer with case law and statutory provisions.

QUESTION ONE

Angela, a cattle farmer at Ole Kasasi and Samia, a butcher at Kenyatta Market, agree that Samia will send her lorry to Angela's ranch to pick ten (10) good-grade cattle for slaughter, and the price to be as per the obtaining rates per kilogram of cattle of that grade. There had not been any previous dealing between the parties.

Samia sends her son Josiah, a Form Four student on half-term, to Angela's ranch. Upon arrival, Angela loads ten cattle which despite their apparent bulky sizes, weigh an average of 30 kg each and look sickly even by cursory observation. That notwithstanding, Josiah who drove the lorry, raises no objection and delivers the animals to Samia.

Samia declines to accept delivery of the cattle ordering Josiah to return the goods to Angela and demand a refund of transport costs.

While on his way back but within Angela's ranch, Josiah gets involved in an accident in which four animals die instantly while the rest suffer broken limbs.

Angela sues Samia for the price of the goods arguing that delivery had been effected through Josiah as an agent of Samia. Samia counter claims for breach of contract in that the goods were not of the right quality.

Advise the parties on their rights and obligations

(20 Marks)

QUESTION TWO

The morning before she travelled to Mombasa, Emma went to the nearby chemist shop to buy *Hedex* since she was having headache. She found Dr. Robert's son, Amici (20 years old) at the shop and asked for one tablet of *Hedex* since the last time she experienced headache, Dr. Robert had given her the same drug and her recovery was swift.

Amici handed *Hedex Extra* to Emma who proceeded to take it without confirming the writing thereon. Thereafter, she fell into a deep sleep till late in the night which resulted into her missing her bus to Nairobi.

She tells you that she wants to sue Dr. Robert and his son due to the fact that she was given a wrong drug which she alleges had caused her long sleep and thereby failing to travel to Mombasa as she had planned.

Please proceed to give your advice on the issues arising out of the facts above and whether Emma's case, if filed, can succeed.

(20 Marks)

QUESTION THREE

“It may be relevant to note that the Law Commission in its 20th report noticed the abuses and evils in relation to hire purchase agreements and adverse effects on the hirer, who is generally a weaker party to the transaction.” (*Tarun Bhargava - v – State of HarHaryana & Anor (2002), per Goel, J*).

Analyze the above statement in light of the Hire Purchase Act Cap 507 Laws of Kenya and demonstrate how, if at all, it protects the hirer. **(15 marks)**

QUESTION FOUR

When Faiza went to Muthurwa Market, she picked 1 kg of potatoes; 1 kg of oranges; and 1 kg of onions from Chimwani’s stall and after putting them in a bag, left them with Chimwani on the promise that she would pick a few other items from Natasha in the vicinity. On coming back, she found Barbara leaving with the bag and the goods therein after Chimwani sold them to her. A serious argument ensued with Faiza claiming that Chimwani and Barbara had conspired to steal her goods while the Barbara maintained that she had paid for the goods and therefore was the rightful owner of the goods. On her part, Chimwani said he did not see any problem since Faiza was still free to pick other items from his stall.

How would you advise the three parties on their respective rights and obligations? **(15 Marks)**

QUESTION FIVE

One of the new Members of Parliament wants to introduce a Bill in the National Assembly which will lead to fundamental changes of the Sale of Goods Act (Cap 31). If you were to share your thoughts with the Honorable MP, what aspects of that statute would you address and what changes would you introduce in the new Sale of Goods Act for this country? **(15 Marks)**

GOOD LUCK!