RIARA LAW SCHOOL

FIRST YEAR UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB)
DEGREE

LAW OF CONTRACTS I

RLLB 102

AUGUST 2017

Examiner: Florence Shako

Instructions:

1. Time allowed is 3 hours. Reading time of 15 minutes is permitted
2. This exam comprises of THREE compulsory questions
3. Question One carries 30 marks while Question Two and Three EACH
    carry 20 marks
4. This examination paper carries a total of 70 marks
5. This is a closed book examination. No illicit materials whatsoever
    (books, statutes, copies of the Constitution, students' own short notes,
    computers, mobile phones, etc) are allowed and this list is not
    exhaustive. This rule shall be enforced with strict liability upon you
    and will be recorded as an examination irregularity

QUESTION ONE (30 marks)

Susan opened a bakery where she sells homemade pies and cakes. It has now become a booming business. On May 15th, 2017, Brian telephoned Susan and asked if she could provide baked goods in two weeks' time for a graduation party of 300 students. Brian stated that he would pay a total of Kshs. 10,000 for two cakes and fifty pies. Susan explained that due to rising prices of ingredients, she could only accept Kshs. 15,000. Brian agreed to pay Susan Kshs. 15,000. Susan stated that she would be more than happy to bake the cakes and pies for Brian's party.

Brian then requested Susan to also provide party hats for the party for Kshs. 5,000. Susan replied that she would check a local store for their availability then get back to Brian. She found the party hats in a nearby store and wrote a letter to Brian agreeing to provide the party hats as well. Unfortunately, the letter got lost in the mail and Brian did not receive it.

On May 27th, 2017 Susan left a message on Brian's answering machine stating that the supplies were more expensive than she expected and that she would need a total of Kshs. 20,000. Brian did not call back as he was very upset.

On May 31st, 2017 Susan called to inform Brian that she had begun baking and the pies and cakes would be ready for the party. She also informed him that the party hats were ready for collection. Somewhat surprised, Brian explained that he hired someone else to provide the cakes and pies because Susan had left the voicemail requesting a higher price.

Brian had entered into an agreement with Bakers Limited, to provide the cakes and pies for the original contract price that he and Susan had agreed to, the sum total of Kshs. 15,000. Upset by this, Susan swore that she would sue Brian for the price of the cakes and pies as well as the party hats.

Brian had also requested Bakers Limited to provide the party hats for Kshs. 5,000 as he never heard back from Susan. Bakers Limited had not confirmed the provision of the party hats but Brian assumed that they would definitely

provide them. On graduation day, Bakers Limited brought the cakes and pies but was unable to deliver the party hats. Brian is upset and would like to sue for the price of the party hats.

He approaches you, a contract law advocate, for legal advice regarding the agreement with Susan and with Bakers Limited. Advise Brian   (30 marks)

(TOTAL: 30 marks)

QUESTION TWO (20 marks)

a) "The third party rule can no longer be justified. It creates unfairness and prevents effects being given to the intentions of the contracting parties."-Anon.
   Analyze this view of the doctrine of privity of contract and consider ways in which it can be reformed.   (10 marks)

b) "For a court of law to give effect to or consider the effect of an exemption clause, it must be satisfied that the exemption clause was an integral part of the contract. Since exemption clauses are generally unfair to the weaker party, courts have evolved rules which to some extent ensure that the unfairness is mitigated."-Anonymous
   Critically analyze this statement.   (10 marks)
   (TOTAL: 20 marks)

QUESTION THREE (20 marks)

Kim owns a shop, known as the Beauty shop, which sells cosmetics to women. Her mother, Kris, visited the shop to show support for her daughter. She took body lotion costing Kshs. 2,000 and promised to pay Kim when she saw her later on. The payment never materialized as Kris viewed it as part payment for investing in the success of her daughter's career.

Later in the day, Kim's friend, Jonathan, stopped by to make a quick purchase for his girlfriend. When he stepped into the shop, the entire store was reeking with alcohol. Kim tried to advise her friend to return to the store when he had sobered up. Jonathan did not listen and ended up requesting an invoice to purchase the most expensive makeup case worth Kshs. 100,000. The next day, Jonathan was shocked to see the invoice of the purchase but telephoned Kim and let her know that he thought his girlfriend was worth it. He promised to make the payment soon.

Kim's former employer, Ryan also visited the store. He promised Kim that he would invest a further amount into the store to ensure its success. Kim was so excited that she went out and bought more merchandise to act as stock for the next month. It was way above her budget and she had not planned to make the purchase but she was not worried because of the potential investment that had been promised to her.

Kim's sister, Koko, also stopped by as she had a business idea for Kim. She suggested that Kim should invest in jewellery with Koko as a silent partner and therefore grow her Beauty Brand. Koko had taken the time to draft the contract and gave it to Kim. Kim was so excited that she immediately signed the contract to start a jewellery line with Koko. Unknown to Kim, the contract was actually to sell cocaine and not jewellery.

The Beauty Shop is now struggling and is facing financial difficulty. Kim has never received payment from her mother Kris. Her friend Jonathan has since broken up with his girlfriend and refuses to make the payment as he calls it a 'drunken mistake.' Her former employer, Ryan, has been declared bankrupt and is unable to make the investment. Her sister, Koko, refuses to give her 50% of the contract money as agreed.

Kim comes to you, an advocate well versed in contract law, seeking the institution of claims against each of these parties.

Advise Kim on her probability of success in each case. (20 marks)

(TOTAL: 20 marks)