



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A

P.O. Box 62157

00200 Nairobi - KENYA

SPECIAL/SUPPLEMENTARY EXAMINATION

Telephone: 891601-6

MAY – AUGUST 2021

Ext 1022/23/25

FACULTY OF LAW

REGULAR PROGRAMME

CLS 226: COMMERCIAL LAW

Date: AUGUST 2021

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any other TWO Questions

QUESTION 1.

1.a) As a legal intern in the firm of Tetea & Associates, you have been tasked to draft a partnership deed for a small retail firm of five partners. Discuss the matters, if any, that you will omit from the deed on the basis that they are implied by the Partnership Act.

(20

Marks)

b) Ndambiri attended an auction conducted by Inua Auctioneers Ltd. The auction goods were displayed in four different lots. However, Ndambiri's bid for the goods under a mistaken belief that he was bidding for all the goods. Eventually, when he went to collect the goods, he found only one lot reserved for him. Ndambiri is aggrieved and seeks your legal advise. With the aid of relevant case law, advise him on the legal principles applicable & the legal remedies available in his circumstances. **(10 Marks)**

2. Ratification is the legal term denoting the agency that arises when a person adopts a transaction which someone had concluded for him as his agent but without his express authority. Agency by ratification may however only arise under certain circumstances.

With the aid of relevant case law, discuss the conditions which must be fulfilled for ratification to be effective. **(20 Marks)**

3. The relationship between the banker and its customer is that of 'debtor and creditor'. Discuss the duties of the banker and the customer which may arise pursuant to this relationship. **(20 Marks)**

4. Siboi took a Smart Tv from Duka Enterprises for Ksh. 60,000. He has paid Ksh. 40,000 towards the purchase. He lost his job two months ago and is now unable to complete the transaction. One Morning, Duka Enterprises instructed Kifua, its agent to repossess the Tv. From Siboi. Apparently, due to financial challenges, Siboi had sold the Tv to Ndibo who was to pick it from his house in a weeks' time. With reference to the Hire-Purchase Act and relevant case law;

a) Advise Siboi on the validity of the sale of the TV to Ndibo. **(4 Marks)**

b) Advise Duka on the validity of the remedy of possession **(4 Marks)**

c) What rights are available to Siboi after the said possession. **(6 Marks)**

d) Which rules should have been applied in 'completion' or 'termination' of the agreement? **(6 Marks)**

5. Write short Notes on EACH of the following:

a) Dissolution of partnership. **(5 Marks)**

b) Unpaid seller. **(5 Marks)**

c) Liability of an agent. **(5 Marks)**

d) Promissory notes. **(5 Marks)**

END