



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A

P.O. Box 62157
00200 Nairobi - KENYA
Telephone: 891601-6
Fax: 254-20-891084
E-mail: academics@cuea.edu

MAIN EXAMINATION

JANUARY – APRIL 2015 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 108: CONTRACT II

Date: April 2015	Duration: 2 Hours
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INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions
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- Q1. a) Simon a shepherd, has decided to retire. His working sheepdog, Toby is only three years old and so he places an advertisement in the local newspaper, which states: “Lovely pet sheepdog. Likes children. Local pet and pure breed. Only Ksh.20,000. If interested, come and visit me at Uphill farm. Una has three young children and read the advertisement. She travels to Uphill farm to see Simon and the dog. Simon tells her that Toby likes children and that he would, in his view, be a good family pet. Una is unsure. Toby growls at her and hides behind Simon but Simon reassures her that he is simply shy. Una is attracted by his colouring and hopes that she will be able to use him for breeding and pay Ksh.20,000 for Toby. Toby is eventually persuaded to travel home with Una. Toby is friendly with children, but herds them together and will not let them out of the house without growling at them, terrifying her younger son, Victor. Toby is also destructive and destroys Una’s furniture causing Ksh. 100,000 worth of damage. Una later discovers that she is unable to breed from Toby as he is actually a cross breed and therefore worthless.

Advise Una of any remedies she may have against Simon **(20 marks)**

- b) Using illustrative case law, discuss the qualifications that must be met for the remedy of rectification to be given by the courts. **(10 marks)**

- Q2. a) Discuss the general rule about recovery of money or property transferred under an illegal contract. **(13 marks)**
- b) What are the exceptions? **(7 marks)**

Q3. It is well settled that the governing purpose of damage is to put the party whose rights have been violated in the same position, so far as money can do, as his rights had been observedThis purpose, if relentlessly pursued, would provide him with a complete indemnity for all loss de facto resulting from a particular breach however, improbable however unpredictable. This, in contract at least, is recognized as too harsh a rule.

(As LJ is Victoria Laundry (Windsor) Ltd vs Newman Industries (194a)

Critically evaluate this statement. **(20 marks)**

Q4. The County of Kilifi, decided sometime ago, to celebrate its long history with a parade and pageant through the street of the town on May day. The Parade was to include a rather scantily dressed Lady Godira on carmel back as well as characters from the Malindi's recent history.

Salim, a local businessman, thought it would be a good idea to celebrate his wife Amina's birthday in style, so he booked a suite of rooms in Watamu Beach Resort for the party, overlooking the routes which the parade was expected to tax. It was agreed that the Hotel would pack food and drink for the party. He paid Kshs. 50,000 making it clear that he wanted a room to see the procession.

There had been a fair bit of agitation against the procession in the city particularly from a group calling itself "Women Against Exploitation who regarded the parade as outrageously, sexist and called for it to be banned. Two days, before it was due to take place. Kilifi county bowed to pressure and called the entire event off.

When Salim heard this he called Watamu Beach Resort and said that he was no longer interested in hiring the room. The hotel replied that as far as they were concerned the booking still stood and they would go ahead and parade the catering for Salim's wife's birthday as agreed.

Salim and his guests did not attend on the day in question. Nevertheless the hotel sent him a bill. He counter claimed for the return of his deposit. Miss Rukia who was employed for the day to play of Lady Godira, is suing the Kilifi county for breach of contract.

Advise Salim and the Kilifi County Council.

(20 marks)

Q5. Using illustrative case law, make short notes on:

- a) Anticipatory breach **(5 marks)**
- b) Injunction **(5 marks)**
- c) Doctrine of Non Est factum **(5 marks)**
- d) Quasi contract **(5 marks)**

END