



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A MAIN EXAMINATION

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MAY – JULY 2018 TRIMESTER

FACULTY OF LAW

SPECIAL / SUPPLEMENTARY EXAMINATION

CLS 123: CONTRACT II

Date: JULY 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

- Q1. a) 'The first fact to appreciate in this somewhat elusive branch of law is that the word 'mistake' bears more restricted meaning in professional than in popular speech.' – Cheshire, Fifoot and Furmston.
With the aid of relevant case law, discuss the statement above.
(20 Marks)
- b) Ntimau Cleaners Ltd. offered to clean two garments for the price of one. A notice was displayed in the shop to this effect but with the addition in smaller print of a statement that the customer must agree in return to accept full responsibility if anything should happen to the garments. A similar statement was printed on the back of the tickets which were handed to customers when they disposed the garments. Msafi brought two garments for cleaning. Because of poor eye sight. She was unable to read the small print on the notice and she put the ticket in her pocket without reading.
- Some days later when Msafi went to collect the garments, she saw that one garment had been badly torn. After wearing the other garment, she contracted a skin disease caused by a chemical which the cleaners had used.
With the aid of relevant case law, discuss the legal principles involved in the case and advise Msafi.
(10 marks)
- Q2. 'Only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract. Such a right may be conferred by way of property....but it cannot be conferred on a stranger to a

contract as a right to enforce the contract in personam' - Lord Haldane in Dunlop Pneumatic Tyre Co. Ltd v. Selfridge & Co. Ltd
With the aid of relevant case law, discuss the rule above and its exceptions.

(20 Marks)

Q3. 'Without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract'- Lord Radcliffe.

With the aid of relevant case law, Identify and discuss the principle of law which is derived from the statement above bringing out events which may lead to its application. In addition, discuss its limitations and legal effects. **(20 Marks)**

Q4. With the aid of relevant case law, discuss the illegality and unenforceability of contracts. **(20 Marks)**

Q5. Write Short notes on EACH of the following:

- a) Equitable remedies **(5 Marks)**
- b) Limits to Specific performance **(5 Marks)**
- c) Presumption of undue influence **(5 Marks)**
- d) Privity of contract **(5 Marks)**

END