



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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

JANUARY – APRIL 2019 TRIMESTER

FACULTY OF LAW REGULAR PROGRAMME

CLS 226: COMMERCIAL LAW

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Date: APRIL 2019

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

- Q1. a) Tom and Mary have for the last five years carried on business in the name of Style of Town Enterprises. Their business form of choice has been the General Partnership. So far, both of them have been actively engaged in the running of the business. Mary has, however, recently had a baby. She would want to dedicate more time to raising the baby. As such, she will not be able to dedicate as much time to the running of the business as she previously had. She however desires to remain an investor in the business and further to be available for consultation regarding broad and long-term strategic type decisions or matters affecting the business. Tom and Mary have therefore decided to put their arrangement clear by way of a 'Partnership Deed'. You have been retained by the firm to facilitate this.
- i. Draft the relevant Partnership Deed. **(10 Marks)**
 - ii. Describe the steps which they would follow if they were to convert their partnership from a 'general partnership' to a 'limited partnership'. **(4 Marks)**
- b) Your cousin Joan has heard that there are good deals on the 'OLX' Website. She wants to upgrade her phone to a sleeker smartphone model. She has visited the site constantly in the past week and has identified three potential phones posted on the site. She has contacted their owners over the phone. She now seeks your advice before she concludes the deal.
- i) Advise her on at least four legal issues that arise out of the transactions concluded from the 'OLX' site. **(8 Marks)**

ii) Attend to legal liabilities and rights of the parties. (8 Marks)

Q2. Chebet, appoints Waswa as her agent to buy furniture and to sell it to her trade customers. She informs her suppliers and customers of Waswa's appointment. Chebet instructs Waswa not to buy any red sofa sets in the belief that they would not sell. Unknown to Chebet, Waswa recently served a term of imprisonment for dishonesty. Waswa visits Kariokor Furnitures, one of the suppliers and agrees to purchase 20 (20) red sofa sets for kshs.1, 200,000. The following day, Waswa enters into an agreement to sell the sofa sets to Wambui for Kshs.1, 800,000 without telling Wambui that he is Chebet's agent. Shortly afterwards, Kariokor Furnitures finds out what Waswa was upto and tells Chebet that they will not honour the agreement to sell the red sofas. Fearing a loss of business, Chebet purports to ratify the purchase with Kariokor Furnitures as well as the sale to Wambui.

With the aid of relevant legal authorities & provisions of law, advise them on their legal position and any remedies, if any, which EACH of them may seek.

(20 Marks)

Q3. Timothy bought a hamburger from a restaurant known as 'Kings Kitchen' which is located in Nairobi, upon taking his first few bites, he felt something extremely hard striking his tooth causing him excruciating pain. He immediately stopped chewing, removed the food from his mouth and upon inspection, he discovered some bone like piece which had broken when he bit into it. There was undoubtedly a piece of bone in his patty (meat). He reported this to the manager who immediately apologized, threw the uneaten burger away and offered to make him another burger. The manager announced that the 'new' burger would be 'on the house'. Timothy declined the offer because he was in so much pain. Upon an immediate visit to his dentist, it was discovered that he had not only broken his molar, but, that, he had an extensive tear on the gum around the said molar. Timothy has not retained the firm of Wakili & Associates of which you are an associate.

- i) Advise him on the legal issues involved in his case
- ii) Were he to approach the courts, what would be the nature of his claim?

Q4. The banker is duty-bound to honor cheque drawn on him by a customer. However, this duty is not without limits. With the aid of relevant case law, discuss this statement. (20 Marks)

Q5. Write short notes on EACH of the following; (20 Marks)

- i) *Caveat venditor*
- ii) Presentment of a bill of exchange
- iii) *Delegatus non potest delegare*
- iv) Termination of a hire purchase agreement.
- v) 'Partnership property'

END