

## SUPPLIMENTARY EXAM

**COURSE CODE: HBT 2203**

**COURSE TITLE: Commercial Law**

**ACADEMIC PROGRAMME: Bachelor of Business Information Technology**

**Year of study: 2<sup>nd</sup> Year**

**Academic Year: 2014/2015**

**Semester: 2<sup>nd</sup> Semester**

**Campuse(s) to be administered: Main**

**Duration: 2 hrs**

### Instructions to Candidates

1. Answer question ONE (compulsory) and any other TWO questions
2. Time allowed is TWO (2) Hours
3. Statutory provisions and case law must be extensively used in your answer where appropriate

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### QUESTION ONE

(a) Amukanga lives alone now that his wife has died. His niece, Atieno, offers to move in and look after him, but warns him that her husband, Mungatana, is worried that by so doing, they will later be unable to afford a house in the rising property market. Amukanga reassures them that, although his house is mortgaged, if she and Mungatana pay the mortgage installments, they will own the house on his death. On this basis, Atieno and Mungatana move in.

Atieno, at her own expense, redesigns the living room at a cost of Ksh. 3,000. Amukanga is delighted and tells her that he will pay her Ksh. 5,000 for her excellent work. Amukanga also visits Ofwamba, to whom Mungatana owes Ksh. 4,000, and offers him half the amount to waive the debt. Ofwamba agrees and Amukanga pays him Ksh. 2,000 in cash. Amukanga also asks Mungatana, who is a builder, to construct a new garden wall for Ksh. 5,000. Mungatana agrees, but after a day tells Amukanga that, due to the cost of the special bricks he has specified, Mungatana cannot continue unless Amukanga pays him an extra Ksh. 1,000 for the additional cost of materials. Amukanga agrees.

Amukanga has recently visited his financial advisor, Kimani, who warns him that Atieno and Mungatana are taking advantage of his generosity. Horrified, Amukanga asks Atieno and Mungatana to leave and tells them that they will not receive a penny of his money. To add to their woes, Ofwamba is now demanding the remaining Ksh. 2,000 from Mungatana.

With reference to decided cases;

- i) Discuss Amukanga's promise to Atieno and Mungatana on ownership of the house. **(3 Marks)**
- ii) Explain whether Amukanga's promise to Atieno on redesigning the house is valid. **(3 Marks)**

- iii) Explain whether Ofwamba's demand for remaining Ksh. 2,000 is valid. **(3 Marks)**  
iv) Explain whether Amukanga's agreement to pay extra 1,000 to Mungatana is valid. **(3 Marks)**

(b) Discuss the various sources of law in Kenya. **(10 Marks)**

(c) Atieno and Nafula are neighbours in Kijiji Bandi village. Last year, Atieno quarreled with Nafula's employee, Nafula's employee collected stinking rubbish from a compost heap in Nafula's compound and threw it into Atieno's compound. Atieno is aggrieved by this action and in retaliation, she forcefully gains entrance to Nafula's land, waving a panga at Nafula. They engage in a heated argument which soon degenerates into a fist fight with Atieno slapping and raining a few blows on Nafula by the time they are separated. Analyse the above scenario, pointing out the various torts committed and who is liable for each tort. **(8 Marks)**.

## QUESTION TWO

(a) Explain the following courts of law in Kenya;

(i) Industrial Court. **(5 Marks)**

(ii) Land and Environment Court. **(5 Marks)**

(b) James and John were transporting sugar from Mumias Sugar Company to Kisumu. They both passed by Jamindaz Bar where they took a few bottles of whisky, 'for the road,' to the level that they were quite tipsy. James drove the Lorry, 'masaa,' at 140 Kmph as they wanted to catch up with the Pilsner Mfalme party at Kisumu before it ended. Due to the high speed, the lorry lost control along a steep slope after Majengo. They realised that there was a police road block and started hooting at distance to alert the police to remove the spikes. Tumbo and Hungry, the two officers manning the roadblock had ordered two Nissan matatus to stop clearly on the middle of the road as they negotiated with the conductor for some bribes. They refused to remove the spikes on the road arguing that the lorry must be carrying some high level cocaine and other contraband. As a result, the lorry with its tyres having been deflated by the spikes, lost control and rammed into the two Nissan matatus killing all the passengers on impact. James escaped unhurt and John only had both arms broken, which was miraculous considering the impact. John was rushed to the accident and emergency department at Russia General Hospital. Due to the doctor's strike, he was examined by Anyango, a junior casualty nurse, who assumed him dead and placed him on a freezer at the mortuary. He gained consciousness soon and the mortuary attendant alerted the nurses who took him to a hospital bed. Due to the freezing temperatures however, his hands were damaged beyond repair and have to be amputated.

Required

(i) Assess possible liability in tort of the following

- James. **(2 Marks)**
- Tumbo and Hungry. **(2 Marks)**
- Anyango. **(2 Marks)**
- The Drivers of the two Nissan Matatus. **(1 Mark)**

(ii) John wants to sue James, Tumbo, Hungry and also Anyango in the tort of negligence for his amputated hands. Advise him on the proper parties to sue, chances of success against each defendant and also what the courts may do in light of many defendants. **(3 Marks)**

### QUESTION THREE

(a) Describe essential requirements for a valid cheque. **(10 Marks)**

(b) For a person to be successful in a claim for negligence, he must prove that the defendant owed him/her a duty of care. The courts have developed rules and tests to ascertain whether a duty of care exists or not. With extensive reference to case law, trace the developments of the law relating to the duty of care. **(10 Marks)**

### QUESTION FOUR

(a) Mr. Karanja signed blank cheques and left them with his wife to draw cash while he was away attending to business affairs. Mrs Karanja instructed Hatari, a clerk in the firm of Karanja and Karanja Associates to fill in the cheques. Hatari filled in the amount leaving a gap after the words "Sh." and wrote the amount in words from the middle of the line without using a capital letter. Hatari showed the cheques to Mrs Karanja written "Sh. 50,000" and ..... fifty thousand only." He was authorized to encash the cheque. However before presenting the cheque for payment Hatari added figure "3" to the amount in figures and "three hundred and" in the words. He then cashed the cheque for Sh. 350,000. He then gave Mrs. Karanja Sh. 50,000 only. These facts have come to light after Hatari's resignation and Mr. Karanja intends to sue his bankers. Advise the bank. **(10 Marks)**

(b) Discuss the various remedies for breach of contract. **(10 Marks)**

### QUESTION FIVE

Write brief explanatory notes on the following:

(a) Presumptions of statutory interpretation. **(5 Marks)**

(b) Dishonor of a bill of exchange. **(5 Marks)**

(c) Bouncing cheques in Kenya. **(5 Marks)**

(d) Essentials of a valid ratification. **(5 Marks)**