

## SUPPLEMENTARY EXAM

**COURSE CODE: HPS 2204**

**COURSE TITLE: Business Law I**

**ACADEMIC PROGRAMME: Bachelor of Purchasing and Supplies Management**

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

**Academic Year: 2014/2015**

**Semester: 1<sup>st</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) Ali is an antique dealer and one Saturday in November 2007 he put a vase in the window of his shop with a sign which stated ‘exceptional piece of 19th century pottery – on offer for Ksh. 500’. Ben happened to notice the vase as he walked past the shop and thought he would like to have it. Unfortunately, as he was late for an important meeting, he could not go into the shop to buy it, but as soon as his meeting was finished he wrote to Ali agreeing to buy the vase for the stated price of Ksh. 500. The letter was posted at 11:30 am.

Later on the same day, Kimani visited Ali’s shop and said he would like the vase but was only willing to pay Ksh. 400 for it. Ali replied that he would accept Ksh. 450 for the vase, but Kimani, being a hard bargainer, insisted that he was only willing to pay Ksh. 400 and left the shop. However, on his journey home Kimani realised that Ksh. 450 was actually a very good price for the vase and he immediately wrote to Ali agreeing to buy it for that price. His letter was posted at 12:30 pm.

Just before closing time at 5 pm. Mrembo came into Ali’s shop and she also offered Ksh. 400 for the vase. This time Ali agreed to sell the vase at that price and Mrembo promised to return the following Monday with the money. On the Monday morning Ali received both of the letters from Ben and Kimani before Mrembo could arrive to pay and collect the vase.

#### Required:

Making reference to decided cases (case names, summary of facts and decision of court):

- i) Explain the legal position as to Ali’s display. **(2 Marks)**
  - ii) Explain whether Ali and Ben entered into a valid contract. **(3 marks)**
  - iii) Explain whether Ali and Kimani entered into a valid contract. **(5 Marks)**
  - iv) Explain whether Ali and Mrembo entered into a valid contract. **(2 Marks)**
  - v) Conclusively advice Ali on whom to give the vase. **(1 Mark)**
- (b) 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. **(7 Marks)**.

(c) With the aid of a well labeled diagram, explain the court structure in Kenya. **(10 Marks)**

### **QUESTION TWO**

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

- (i) Islamic Law. **(5 Marks)**
- (ii) African Customary Law. **(5 Marks)**

(b) Mr. Mheshimiwa is a recently elected MP for United Kogelo Constituency in Kisumu. His innovativeness in line with his campaign promises has led him to develop a private Members Bill to provide for County Development Funds along the CDF model. He seeks your advice on the procedures his bill must go through before it becomes law. Advise. **(10 Marks)**

### **QUESTION THREE**

(a) Bifwoli is working for Bunge Ltd, an oil company at their head office in Matuu. He had worked there since August 2007 following his appointment as accountant. His contract contained the following terms:

- He is required to work between 8.30am and 5.30pm Monday to Friday, and be based at Bunge Ltd's head office in Matuu.
- In the event that he is unable to work due to sickness, he could ask one of Bunge Ltd's other accountants to do his work for him, on receipt of written permission from his Head of Department.
- Bifwoli is paid a lump sum amount as salary, without any Tax, NHIF and NSSF deductions.
- Bunge Ltd. shall provide office space and a vehicle for ease of his movement to and from the bank.
- He should always be smart and in official wear. To this end Bunge has imported five expensive suits worth Ksh. 100,000/=
- Bifwoli is on permanent and pensionable terms

Required:

Using the various distinguishing tests between employers and employees, advise Bifwoli on whether he is an employee or independent contractor. **(10 Marks)**

(b) Describe five various ways through which agency is created. **(10 Marks)**

### **QUESTION FOUR**

(a) 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 Km/h 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 matataus 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)**
- The Drivers of the two Nissan Matatus. **(1 Mark)**
- Anyango. **(2 Marks)**

(ii) John wants to sue James' estate, 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. **(5 Marks)**

(b) Discuss the duties of an employer under the Employment Act in Kenya. **(10 Marks)**

**QUESTION FIVE**

Write brief explanatory notes on the following;

- (a) Political Parties Tribunal. **(5 Marks)**
- (b) Differences between Torts and Contracts. **(5 Marks)**
- (c) Performance of existing contractual duty is not good consideration. **(5 Marks)**
- (d) Eiusdem Generis rule. **(5 Marks)**