



BACHELOR OF COMMERCE
END OF SEMESTER EXAMINATION
BFS 1205: BUSINESS LAW AND INSTITUTIONAL GOVERNANCE

Date: Monday, 25th January 2020

Time: 2 Hours

Instructions:

1. This examination consists of FIVE questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions.

Question One

- a) The Companies Act 2015 has been lauded for removing the bottlenecks of registering a company in Kenya. This is expected to spur economic growth in the country. Identify and explain any eight fundamental features of a corporation that makes it an attractive vehicle for running business and entrepreneurship undertakings. **(16 Marks)**

- b) Defamation occurs when there is publication to a third party of words or matters containing an untrue imputation against the reputation of individuals, companies or firms which serve to undermine such reputation in the eyes of right thinking members of society generally, by exposing the victim to hatred, contempt or ridicule. The tort of defamation acts to redress unjustified injury to the claimant's reputation and can be divided into two areas, slander and libel. **Ben Evans of Blake and Morgan.** Clearly explain three differences between slander and libel. **(6 Marks)**

- c) Briefly explain the four elements of a contract that makes it's a legally enforceable agreement. **(8 Marks)**

Question Two

The Judicial Service Commission recently nominated persons to be appointed by the president as high court judges. The president appointed fourteen of them to help in dealing with backlog of cases in the commercial division of the high court. In order to bring them up to speed with the commercial litigation that is ongoing the JSC has organized for the newly appointed judges to be given refresher courses on Sale of Goods. You have been invited to make a presentation on the peculiar legal conception which the Sale of Goods Act, Chapter 31 Laws of Kenya call “property in the goods”. In presentation address the following matters as regards contract for the sale of goods:

- a) Define a contract of sale of goods. **(2 Marks)**
- b) What is the meaning of property in goods and its legal implication? **(5 Mark)**
- c) Distinguish between the different types of goods that form the subject matter of a contract of sale of goods. **(8 Marks)**
- d) Give two distinctions between a condition and a warranty. **(5 Marks)**

Question Three

Agency has been defined by Prof. Fridman as ‘The relationship that exists between two persons when one called the agent is considered in law to represent the other called the principal in such a way as to be able to affect the principal’s position in respect to strangers to the relationship by the making of contract or the disposition of property’ Discuss any four modes of creation of an Agency relationship illustrating your arguments using decided case law. **(20 Marks)**

Question Four

A contract comes into existence when an offer by one party is unequivocally accepted by another and both parties have the requisite capacity. Once an offer is accepted, an agreement arises between the parties as there is consensus between them. Offer and acceptance constitutes the foundation of a contractual relationship. They do not constitute a contract as a contract must be characterized by other elements. Some consideration must pass and the parties must have intended their dealings to give rise to a legally binding agreement. The purpose of the agreement must be legal and any necessary formalities must have been complied with. **Anon** However they are certain factors that

may interfere with enforceability of contracts. Critically analyse any four vitiating factors that might interfere with enforceability of contract. **(20 Marks)**

Question Five

Determine and explain the appropriate form of the trespass of person that is applicable in the facts described below:

- a) Steve is walking down a crowded street and accidentally bumps into Joe. Steve mumbles an apology and starts to walk by, but Joe yells at him, "Get back here so I can punch you for shoving me." Joe never touches Steve, however. **(4 Marks)**
- b) Steve is walking down the street and bumps into Joe accidentally. Joe gives Steve a shove without saying a word. Steve is surprised but not injured. **(4 Marks)**
- c) Joe locks Steve in a room curtailing his freedom of liberty for twelve hours before realising him with a warning not to cross his part again **(4 Marks)**
- d) Identify and explain any two other forms of trespass apart from trespass to person disclosed in the facts given a, b and c. **(8 Marks)**