



BACHELOR OF SUPPLY CHAIN OPERATIONS AND MANAGEMENT
END OF SEMESTER EXAMINATION
SCM 1105: COMMERCIAL LAW

Date: Tuesday, 9th November 2021

Time: 2 Hours

Instructions:

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

Question 1 COMPULSORY (30 marks)

A. For each of the following statements, indicate whether the statement is true or false

(10 marks)

- i. All legal rules are moral
- ii. A contract can be discharged by agreement
- iii. A negotiable instrument is negotiable by delivery only
- iv. In strict liability torts, the plaintiff must prove that it is the defendant's action/inaction that caused the injury sustained
- v. In agency law, an agent does not have any obligation to seek instructions from the principal
- vi. A cheque is one type of negotiable instrument
- vii. An invitation to treat is a valid offer
- viii. Any person can be held vicariously liable for the torts of the tortfeasor
- ix. For a custom to be relied by the courts in a given case, it must have immemorial antiquity
- x. Treaties ratified by Kenya form part of the laws of Kenya

B. Mutiso is a male adult of sane mind. He is in the business of importing and selling cars in Kenya. On 3rd January 2021, Mutiso sent an email to Karanja saying, *'I will sell the Toyota car to you for Kshs. 1,000,000.00. Let me know your response by 10th January, 2021'*. Karanja received this email on 4th January 2021. At 2pm, Karanja wrote an email to Mutiso saying, *'I accept to buy your car but for Kshs. 800,000.00'*. Mutiso received this email on 4th January 2021 at 8p.m but he never responded. On 6th January, Ndiari (a male adult of sane mind) was passing by Mutiso's car yard and he saw that same car. He liked it, took it for a road test drive and entered into a sale agreement with Mutiso. He drove away with the car after making the agreed payment. On 9th January 2021, Karanja went to Mutiso's car yard to see the car. Mutiso informed him that he had sold the car. Karanja was annoyed and he threatened to sue Mutiso for breach of contract. Mr Mutiso has been advised that you are an expert in the law of contract. He has come to you for advice. Using the law of contract, analyze these facts and advise Mr Mutiso if he breached any contract (10 marks).

C. Briefly explain five sources of law in Kenya (10 marks)

Question 2 (20 marks)

A. Briefly summarize four factors that undermine the rule of law in your country (8 marks)

B. Connie was having lunch with Leah. Together with them was Nala. During this lunch meeting, Leah sought to know from Connie the secret behind the success of Connie's boutique business. Connie informed Leah that her business was doing well because Nala is her sales Manager. This was not true because Nala has never been employed by Connie. However, Leah left that meeting knowing that Nala is a sales manager at Connie's boutique. Later that week, Leah entered into a contract with Nala for the sale of two dresses. She paid for the dresses and Leah promised to deliver them the following day. Nala did not remit this money to Connie nor did she deliver the dresses to Leah. Two days later Leah called Connie to ask what happened to her dresses. Connie told Leah that Nala was not her employee. Leah feels aggrieved. Using the law of agency, analyze these facts and advise Leah on who is liable for her loss. (12 marks)

Question 3 (20 marks)

- A. Raju appointed Kariuki to transport fresh fish from Mombasa to Nairobi. As Kariuki was preparing to leave Mombasa, it rained heavily and the Thange River Bridge collapsed. There was no other route to use. Kariuki tried contacting Raju for instructions but never succeeded. Since it was impossible to reach Raju, Kariuki decided to charter a flight to Nairobi to deliver the fish since he feared that the fish would go bad. However, upon arrival in Nairobi Raju refused to reimburse Kariuki charges for the flight. Kariuki intends to sue Raju. Using the law of agency, analyze the legal principles applicable and advise Raju (10 marks)
- B. Briefly discuss five elements that can vitiate a contract (10 marks)

Question 4 (20marks)

- A. Briefly summarize five characteristics of limited liability companies (10 marks)
- B. Ollin is a manufacturer of a soft drink called Oly's orange. The drink is packaged in an opaque bottle. One day, Mary went to Ollin's shop and bought one bottle of Oly's orange. She sat outside the shop to take her drink. She opened the bottle seal and poured part of the orange to a glass and drank it. She poured the remaining drink from the bottle to her glass. As she poured the drink, a rotten snail came out of the bottle together with the drink. Mary was shocked. She vomited and was rushed to hospital where she was treated and discharged after two days. She feels aggrieved. However, she does not know what her legal position is. Using the law of torts, analyze the facts in this scenario and advise Mary. (10 marks)

Question 5 (20 marks)

- A. Briefly describes four duties of a banker to a customer (8 marks)
- B. Highlight three general defenses in the law of torts (6 marks)
- C. Outline three types of judicial precedent (6 marks)