



Strathmore
UNIVERSITY

**STRATHMORE LAW SCHOOL
MASTER OF LAW (LL.M)
END OF MODULE MAIN EXAMINATION
LLM 8305: CONTRACT LAW: DRAFTING, NEGOTIATION AND MANAGEMENT**

Date: **Thursday 7, January 2021**

Time: 3 Hours

Instructions

1. This examination consists of **THREE** questions.
2. Answer **ALL** questions
3. This is an open-book examination. You may consult any written material you like in preparing to answer the questions. The exam mode for this exam is **OPEN**.
4. You should spend a fair amount of time organizing your thoughts before starting to write.
5. Careful organization and clarity will be highly valued.
6. Please start each question on a new page.

QUESTION ONE (20 MARKS)

- (a) Reword the following clause in a clearer and simpler contract language:
“During the terms of this Agreement the Executive shall be deemed to have a permanent disability if he is unable to perform his duties for the Company because of his illness or incapacity whether such illness or incapacity is physical or mental and such illness or incapacity continues for 26 consecutive weeks or thirty-nine weeks whether or not consecutive or where a doctor who shall have been chosen by a majority of the Company’s directors shall have delivered a written opinion to the directors that the disability is permanent.”
- (b) You are drafting a sale agreement for your client, Andrew Ritho, for the sale of his house in Mombasa. The potential buyer wants a clause inserted into the agreement that allows the buyer to walk away from the deal if the home inspection report that the buyer receives from his appointed expert, reveals any structural, mechanical, or electrical defects, the total cost of which exceeds 100,000 Kenyan shillings to correct. Andrew Ritho

is outraged that the potential buyer wants to include that language as it might let the potential buyer out of the deal. As a compromise position, draft a short clause that states that if the Buyer receives an inspection report that reveals structural, mechanical, or electrical defects that would cost more than 100,000KES to correct then the Seller has the option to correct the defects or negotiate with the Buyer the cost of correcting the defects or the Seller can declare that the agreement is void and return the Buyer's deposit. You may assume that "Seller," "Buyer," and "Agreement" are defined terms and you may use them in your draft of the clause.

QUESTION TWO (20 MARKS)

- (a) You are reviewing a short purchase agreement that covers the purchase of widgets by Mildred Ltd from Chrispine Ltd. Draft a provision to include in the Agreement that will allow its termination by either party if any of them materially breaches the Agreement. Allow the party that breached 30 days to cure the breach before the other party can terminate. Include a heading for the provision and be careful to use a clear, concise and plain language.
- (b) Draft a provision establishing an effective date for the purchase agreement to be the date it is signed by all parties. Assuming the Effective Date is the date in the introductory clause of the contract, state at least one problematic issue that might arise.
- (c) Review the quoted sentence below, which can be interpreted in two different ways, and redraft it into two separate versions. In one version, allow eligibility for reduced transportation rates for two different types of people and in the other version, require both characteristics (physical disability and mental illness) as preconditions for qualifying for a reduced transportation rate.

"Persons who are physically disabled and mentally ill are eligible for reduced transportation rates."

QUESTION THREE(20 MARKS)

(a) Daisy Ndwiga has offered to sell Joan Kerubo a golden necklace for 300,000kes cash. Joan wants to buy the necklace and considers 300k a fair price. However, she doesn't want to use so much of her "emergency cash fund" to pay for the necklace if she can avoid it. She has written a reply to Daisy that says:

"I will buy the necklace for 300,000kes, but I can only give you 100,000kes right now. I will pay the remainder of 200,000kes at the rate of 40,000kes per month until the balance is paid off and you can charge me 7% interest. Is that satisfactory?"

She shows you what she has written and wants to know if it is OK to send to Daisy. She tells you she's only trying to see if she can get a better deal but if Daisy wouldn't agree, she'll probably just pay cash for the necklace. You explain that her note to Daisy would likely be a defective acceptance. Joan is not exactly sure on how you want her to draft the type of acceptance you have proposed. First, explain to Joan why her acceptance note above is likely to be characterized as defective by a Kenyan court. Second, draft a reply to Daisy from Joan that accomplishes your proposed type of acceptance, which also meets Joan's concerns.

(b) Your law firm reviews a lot of commercial agreements for clients. Your managing partner has asked you to draft a set of "standard" boilerplate clauses that can generally be used by all members of the firm. Your managing partner has asked for clauses in clear, concise and plain English for the ten clauses below. Also add a couple of sentences on the importance of each clause you have drafted.

- a severability clause
- a choice of law and dispute settlement clause (use Kenyan law and court)
- a no oral modification clause
- a no waiver clause
- a no assignment clause
- an entire agreement clause
- a termination clause
- a confidentially clause
- a force majeure clause
- a non-assignment and subcontracting clause

