



Strathmore
UNIVERSITY

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

Date: Monday, 15th May 2023

Time: 3 Hours

Instruction: There are 3 questions in all, and each question is worth 20 marks. Answer all the questions.

Question 1

Comment briefly (not more than 150 words) on each of the following scenarios:

- a. Ezra commissions Edward Property Ltd to build him a 3-bedroom flat ('the house') in the downtown Nairobi for his (Ezra's) personal use. Per the agreement, Edward Pty Ltd ought to paint the house with a yellow color, i.e., both inside and outside of it. However, the house was painted with a green color, even though this will not necessarily affect the commercial value of the house. Ezra is unhappy and is certain that the contract has been breached, but he is not sure about the nature and extent of his damages.
(8 marks)
- b. On February 2, 2021, Julie agreed to buy Ezra's 3-bedroom flat for 10 million Ksh, for which she made an initial part payment of 5 million Ksh to Ezra, on the agreement to pay the outstanding sum on or before February 28, 2021. On February 15, 2021, Ezra found another buyer who agreed to pay 20 million Ksh for the same property, and she immediately sold it in breach of the sale agreement with Julie. Once the payment of 20 million ksh was received, Ezra wrote Julie saying *"Hi Julie, I'm sorry to break the news that I found a more serious buyer for the property. Please find enclosed a cheque of 6 million Ksh: 5 million is for reimbursement of the deposit you paid, while 1 million is for any inconveniences this might cause you."* Last year, Julie attended a free webinar where she was taught that damages in contract is always compensatory, and aims to put the innocent party (as much as money can do it), to the position s/he would have been had the contract been performed. Julie is heartbroken and has consulted you to know if Ezra is in

breach, and if so, the nature of her remedies, including the quantum of her damages in respect of the breach. **(8 marks)**.

- c. A client who has retained you, calls you while you are at a business meeting and urgently wants to know how compensatory damages in contract differs from Wrotham Park damages? **(4 marks)**.

Question 2

Comment briefly (not more than 100 words) on each of the following scenarios:

- (a) Edwin and Sylvia negotiate terms of a contract in which they agree that Edwin is to supply and Sylvia is to buy 100 bags of a type of cashew nuts for a price to be agreed in the future. Later on that year, Edwin contracted with someone else to supply the nuts; Sylvia is unhappy and believes that Edwin breached their agreement. **(4 marks)**.
- (b) Judith enters into a contract to supply three 50kg bags of cashew nuts weekly to Yuchiemi Supermarket and there is a liquidated damages sum of 100 million Kenyan shillings which Judith will pay in the event of breach. The price of each bag is 5000 shillings. The in-house counsel of Yuchiemi had briefed the boss that the reason he inserted 100m shillings was to scare Judith and cause her to always perform. **(4 marks)**.
- (c) Grace & Co., has hired a new staff, Sharleen, and a term of the employment contract requires Sharleen not to seek any other employment in the same or related industry for 5 years after resignation of employment. Also she will not divulge any information she came across to any person whomsoever while working for Grace & Co, to any person whatsoever. Sharleen is married. **(4 marks)**.
- (d) A bus ticket issued to your client after he had made purchase indicates that in the event of breach of contract he is limited to 2,000 Kenyan shillings. However, during the journey the bus collided against a pole because the driver of the bus was tipsy, and your client broke his legs as a result. What are the possible causes of actions and remedies? **(4 marks)**.
- (e) In September 2020, Joanne LP, Nairobi, offers a job to Rogers after a series of interviews. Rogers resides in Mombasa. Before a written contract can be signed, Rogers moved his family to Nairobi at a great expense; he needed to enroll his son in a school in Nairobi before the school's stipulated deadline. When Rogers resumed the new job, Joanne LP revoked the job offer. How would your answer differ if before Rogers moved to Nairobi, he had:
1. before acceptance, written to Joanne LP expressing that it would be nice if they include a moderate accommodation as part of his employment package to enable him settle faster and focus more in the job?
 2. after acceptance, written to Joanne LP expressing that it would be nice if they include a moderate accommodation as part of his employment package to enable him settle faster and focus more in the job? **(4 marks)**.

Question 3

Draft an introductory clause and a forum selection/applicable law clause based on the following set of facts: An agreement that will be between Kelvin Mbogo, doing business as Mbogo Electronics, 50 Ole Sangale Road, Nairobi, and Rose Computer Services, Ltd., a Kenyan company, located at 60 Langata Road, Nairobi under which Rose will provide certain computer services in exchange for a payment of 2 million Kenyan shillings, to be made after the services are rendered. The parties want the agreement to be effective on the last date either one of them signs the agreement, and if there is any breach arising from the agreement, the parties will resolve it by arbitration, in which case, English law will apply and the London Court of International Arbitration will be the forum. **(10 marks)**.

- (b) Draft a provision that requires the losing party in the above contract to pay the party who prevails, in whole or in part, the prevailing party's attorney's fees. **(5 marks)**.
- (c) Draft a clause that prohibits either party to the contract, during the term of the contract and also for a period of 1 year after the termination of the contract, from soliciting the other party's employees for employment. Make an exception in the case of employees who respond to general advertisements that are placed (help wanted ads) by a party and aimed at the general public. Limit this prohibition to employees who have been involved in the performance of the contract. **(5 marks)**.