



**Strathmore**  
UNIVERSITY

**STRATHMORE LAW SCHOOL**  
**MASTERS OF LAW (LL.M)**  
**END OF MODULE 3(JULY) EXAMINATION**  
**LLM 8305: CONTRACT LAW: DRAFTING, NEGOTIATION AND MANAGEMENT**

DATE: Monday 7<sup>th</sup> October

Time: 9:00 – 11:30am

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**Instructions**

1. This examination consists of **THREE** questions.
2. Answer **ALL QUESTIONS**
3. **WRITE LEGIBLY**

**Question 1 (20marks)**

- a) Draft an introduction for the following (DO NOT draft any other part of the contract – just an introduction). An agreement that will be between Shikuku, doing business as Shikuku’s Electronics, 50 Ole Sangale Road, Nairobi, and Rhoda Computer Services, Ltd., a Kenyan company, located at 60 Langata Road, Nairobi under which Rhoda will provide certain computer services in exchange for a payment of two million Kenya shillings made after the services are complete. 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. (8marks)
- 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. (6marks)
- 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 (6marks)

### **Question 2 (20marks)**

Identify and comment briefly on the contractual principles embodied in paragraphs (a) and (b) below and their rationale in commercial practice.

(a) This agreement constitutes the complete agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to this subject matter. If at any time, it is found out that any part of the agreement is invalid, the parties agree that the invalid part will not affect the remaining part of the agreement. And, no third party shall be allowed to take over the rights and obligations of a party to this agreement unless mutually agreed. (10marks)

b) All sums referred to herein shall be calculated by reference to and payable in the lawful currency of the Federal Republic of Wakanda. This Note, and any other documents executed in connection with this Note have been reviewed and negotiated by Borrower and Lender at arm's length with the benefit of or opportunity to seek the assistance of legal counsel and shall not be construed against either party, regardless of who drafted such documents. The titles and captions in this Note are inserted for convenience only and in no way define, limit, extend, or modify the scope of intent of this Note. Time is of the essence of this Note and of each and every provision hereof. For the avoidance of doubt, the failure of a party to insist upon strict adherence to any term of this Agreement shall not be construed against that party. (10marks)

### **Question 3 (20marks)**

Comment on the legal position(s) disclosed by the following scenarios:

- (a) Eric and Lynda negotiate terms of a contract in which they agree that Eric is to supply and Lynda is to buy bags of cashew nuts for a species, quality, quantity, and price, to be agreed in the future. Later in the year, Eric contracted with someone else to supply the nuts; Lynda is unhappy and believes that Eric breached their agreement. (2marks)
- (b) Ann 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 Ann 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 Ann and cause her to always perform. (4marks)
- (c) Martin & Co., has hired a new staff, Sussie, and a term of the employment contract requires Sussie 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 while working for Martin & Co, to any person whatsoever. Ann is married. (4marks)
- (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 Wakandan 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? (4marks)

- (e) In September 2018, Annette LP, Nairobi, offers a job to Silas, who resides in Mombasa. Before a written contract can be signed, Silas moved his family across the city at a great expense; he needed to enroll his son in a school in Nairobi before the school's stipulated deadline. When Silas resumed the new job, Annette LP revoked the job offer. How would your answer differ if before Silas moved to Nairobi, he had:
- i. before acceptance, written to Annette 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?
  - ii. after acceptance, written to Annette 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?

(4marks)

