



BACHELOR OF SUPPLY CHAIN MANAGEMENT
END OF SEMESTER EXAMINATION
SCM 1104: COMMERCIAL LAW

Date: Friday, 11th November, 2020

Time: 2 Hours

Instructions:

1. This examination consists of two questions in **Part A**; and four questions in **Part B**.
2. All the questions in Part A are compulsory (this is question one and two) and they have weight of 30 Marks.
3. All the Questions in **Part B** are elective and you are required to answer any TWO Questions in Part B.

PART A

QUESTION ONE

In a conference on Commercial Law one of the points of deliberations was the simple yet complex question of what is commercial law. In 1997 Justice Roger Giles addressed the annual general meeting of the Commercial Law Association in Sydney with a paper titled “Commercial Law – What is it?” Justice Giles arrived at the following conclusion:

“So what is commercial law? It’s almost anything. It goes much beyond the regulation of the relationships between merchants and traders, and it goes beyond those parts of the law most commonly associated with business activities in that all major and fundamental areas of law are now commonly associated with business activities.”

One of the fundamental areas of commercial law is the sale of goods commercial transactions, which is regulated by the Sale of Goods Act Chapter 31 Laws. The Act only applies to the sale of goods contract. In the light of the above statement address the following questions:-

- a) Define a contract for the sale of goods. **(3 Marks)**
- b) Distinguish between a Sale and an Agreement to Sale (give three clear distinctions). **(6 Marks)**
- c) The subject matter of a sale of goods contract must always be goods. Under section 7 of the Sale of Goods Act, the goods can either be existing or future goods. Critically

discuss two categories of existing goods and their implication on passage of property in the goods. **(6 Marks)**

QUESTION TWO

Jane is shopping in the supermarket. She turns the corner of the aisle and slips on some milk that has been spilled on the floor by a customer. A customer had reported the spill to an employee 30 minutes earlier, but the manager had decided he needed all his staff on the checkout lines and hadn't gotten around to assigning anyone to clean it up. The split milk caused Jane to fall and sprain her ankle. Jane is annoyed at the management of the supermarket and has taken a decision to sue. Advise her on:

- i) An appropriate tort to base her legal action in court noting to clearly define the tort. **(3 Marks)**
- ii) What are the essential elements or grounds that Jane must prove in court in order to be successful for her claim above. **(12 Marks)**

PART B

QUESTION THREE

John, a homeowner, answers the telephone and listens to a solicitor make a five-minute sales pitch for Weed Gardening Services. John responds, "No, thank you," and hangs up. Two days later, John returns home from work to find a crew gardening in his yard and a bill for Kshs. 20,000 sitting on the steps to the front door. When John tells the Weed representative that he never asked for this service, Weed responds by saying, "It looks much better, doesn't it? You got the service, now pay for it." John agrees that the work was of good quality, but refuses to pay for it. John is later served with a summons to appear in the magistrate's court because of this dispute. As John prepares to appear in court advise him on the following:

Discuss whether there is a valid contract between John and the Weeding Gardening Services. **(15 Marks)**

QUESTION FOUR

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**

- i) Clearly explain three differences between slander and libel **(7 Marks)**
- ii) Critically analyse the four exceptions where slander is actionable without proof of special damage (actionable *per se*) under the Defamation Act Chapter 36 Laws of Kenya. **(8 Marks)**

QUESTION FIVE

The relationship between a principal and an agent is fundamental in the modern commercial law. According to Robert Lowe. 'it lies at the very heart of the subject and without it modern commerce would not exist.' It is believed that modern commercial transactions would come to standstill without agents. The importance of an agent can be examined in a real estate transaction. In this instance, a land owner employs the services of an agent who helps in getting a tenant or a buyer to occupy the premises. This tenant or buyer as the case may be is the third party in the transaction. Once the transaction has being concluded the agent steps out of the transaction because legal relation has being created between the land owner and the tenant. Mwerevu is keen to utilize agents to grow her recently established business and she seek your legal advice on the following:

- a) Define an agency relationship. **(2 marks)**
- b) Explain any two modes of creating an agency relationship. **(8 marks)**
- c) What is the scope of an agency relationship and why is it relevant. **(5 marks)**

QUESTION SIX

The Judicature Act section 3(1) provides that the jurisdiction of the High Court, the Court of Appeal and of all subordinate courts shall be exercised in conformity with— (a) the Constitution; (b) subject thereto, all other written laws (c) a number of unwritten sources. State and elaborately analyse any four unwritten sources of law in Kenya. **(15 marks)**