



Strathmore
UNIVERSITY

**STRATHMORE LAW SCHOOL
MASTERS OF LAW (LL.M)
END OF MODULE 3(JULY 2019) SUPPLEMENTARY EXAMINATION
LLM 8305: CONTRACT LAW: DRAFTING, NEGOTIATION AND MANAGEMENT**

DATE: Friday 28th August 2020

Time: 9:00 – 11:30am

Instructions

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

Question 1 (20marks)

- (a) Reword the following clause in clear, simple 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.”

(10marks)

- (b) You are drafting a sale agreement for your client, Simon Mwangi, 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 will exceed 100,000 Kenyan shillings to correct. Simon Mwangi, is outraged that the potential buyer wants to include this wording 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.

(10marks)

Question 2 (20marks)

- (a) You are reviewing a short purchase agreement that covers the purchase of widgets by Brown Ltd from Rose Ltd. Draft a provision to include in the agreement that will allow termination of the agreement by either party if the other party 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 clear, concise plain language.
- (b) Draft a provision establishing an effective date for the purchase agreement to be the date it is signed by all parties.
- (c) Review the following sentence, 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 categories of people; in the other version require both characteristics (physical disability and mental illness) in order to qualify for reduced transportation.

(6marks)

(6marks)

(8marks)

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

Question 3 (20marks)

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

“I will buy the necklace for Ksh300,000, but I can only give you Ksh100,000 right now. I will pay the remainder of Ksh200,000 at the rate of Ksh40,000 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 okay to send to Maria. She tells you she’s only trying to see if she can get a better deal but if Maria won’t agree, she’ll probably just pay cash for the necklace. You explain to her that her note to Maria would be construed as a counteroffer, since the payment term is materially different from what was in the offer. You explain that this means she will be rejecting Maria’s original offer and making a counteroffer which Maria can reject and then sell the necklace to someone else.

Now that you have explained the problem with the note Ann was going to send to Maria, Ann sees that it isn’t a good idea to send the note and she asks you how she can word her note so that she preserves her ability to purchase the necklace on Maria’s original terms if Maria won’t go for her counteroffer. You explain she could do one of two things. First, she could unequivocally accept Maria’s original offer and then propose a modification to the contract, altering the payment terms to the down payment of Ksh100,000 with the rest at Ksh 40,000 per month plus interest as stated above. Alternatively, Ann could, without accepting Maria’s offer yet, propose a modification to the terms of the contract, but at the same time retain her right to accept the offer if Maria refuses to agree to the modifications. Ann is not sure what she wants to do.

Draft two replies to Maria from Ann that accomplish your two proposed alternatives. Keep the language polite and informal – appropriate for a response letter of this type.

(10marks)

(b) Your law firm does quite a bit of work on clients’ contracts. Your managing partner has asked you to draft a set of “standard” boilerplate clauses that can be used by all members of the firm. Your managing partner has asked for clauses in clear, concise plain English for the following:

- i. a severability clause
- ii. a choice of law and dispute settlement clause (use Kenyan law and court)
- iii. a no oral modification clause

- iv. a no waiver clause
- v. a no assignment clause
- vi. an entire agreement clause
- vii. a termination clause
- viii. a confidentially clause
- ix. a force majeure clause
- x. a non-assignment and subcontracting clause

Draft the clauses as instructed

(10marks)