Strathmore
UNIVERSITY

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

Date: **Thursday, 18th January 2024** Time: **3 Hours**

Instructions: This is a closed book exam. There are four (4) questions in all. Answer question one, and any other two. Each question is worth 20 marks.

QUESTION ONE

As was established in *Robinson v Harman*,[1] damages in contract law is typically compensatory, and its ultimate aim is to put the injured party in the position they would have been, as far as money can do it, had the contract been performed. To forestall the possibility of awarding undeserved windfalls to an injured promisee on account of compensatory damages, the court in *Hadley v Baxendale*,[2] qualified the compensatory rule with the two-pronged test it developed. Some legal scholars have argued that the notion of compensatory damages encourages efficient breaches and cynical behaviors from insincere parties: a contractual party could willingly breach a contract if they later find out that they could use the same resources to perform and earn a bigger profit in another contract entered in breach, where the expected bigger profit will more than offset the compensatory damages arising from the breached contact.

Until the early 70s, English law did not seem to have a reasonable solution in reconciling the contradiction between the notion of compensatory damages and the principle of *ubi jus, ibi remedium*, say for instance, where a breached restrictive covenant did not necessarily lead to any financial loss against the promisee, but invariably denied the latter the enjoyment of a contractual right. Additionally, courts in the United Kingdom have started to use the gain-based remedy to assess contract damages, and in the United States and Canada, the idea of punitive damages in contract is gaining acceptance. In your opinion, based on the forgoing, do you think that compensatory damages is still an adequate contractual remedy? Discuss this with the help of decided cases.

[1] (1848) 154 ER 363
[2] (1854) All ER Rep 461.

QUESTION TWO

"If detailed and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense it must yield to business common sense." Per Lord Diplock in *Antaios Cia Naviera S.A. v Salen Rederierna AB.*[3] How would you reconcile Lord Diplock's view with the trite principle of contract law that courts lack the power to "rewrite"[4] the language of a contract "merely because its terms seem somewhat unexpected, a little unreasonable, or not commercially very wise."[5]?

QUESTION THREE

"The purpose of an entire agreement clause is to preclude a party to a written agreement from thrashing through the undergrowth and finding in the course of negotiations some (chance) remark or statement (often long forgotten or difficult to recall or explain) on which to found a claim such as the present to the existence of a collateral warranty. The entire agreement clause obviates the occasion for any such search and the peril to the contracting parties posed by the need which may arise in its absence to conduct such a search. For such a clause constitutes a binding agreement between the parties that the full contractual terms are to be found in the document containing the clause and not elsewhere, and that accordingly any promises or assurances made in the course of the negotiations (which in the absence of such a clause might have effect as a collateral warranty) shall have no contractual force, save insofar as they are reflected and given effect in that document. The operation of the clause … is to denude what would otherwise constitute a collateral warranty of legal effect." Per Lightman J, in *Inntrepreneur Pub Company v East Crown Ltd.*[6]

Not minding the hierarchy of courts, compare and contrast the above perspective of Lightman J with Lord Hoffmann's principles of contractual interpretation in *Investors Compensation Scheme Ltd. v West Bromwich Building Society*.[7]

QUESTION FOUR

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 Luchiemi 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

[3] [1985] A.C. 191 (HL), 201.
[4] *Arnold v Britton* [2015] A.C. 1619, at [17], per Lord Neuberger.
[5] *Skanska Rashleigh Weatherfoil Ltd* [2006] EWCA Civ 1732 per Lord Neuberger.
[6] [2000] 2 Lloyd's Rep. 611 Ch D at [7].
[7] [1998] 1 WLR 896 (HL).

counsel of Luchiemi 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).