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, 11th July 2024** Time: 3 Hours

**Instructions: This is a closed book exam. There are five (5) questions in all. Answer question one, and any other two. Each question is worth 20 marks.**

## QUESTION ONE

With the aid of decided cases, discuss the three major tools that are often used by (English) courts to interpret commercial contracts: your discourse should elicit, albeit concisely, the tools' methodological differences, and ascertain the veracity or otherwise of Lord Hobhouse's assertion in *Shogun Finance Ltd v Hudson* [2003] UKHL 62, para 49, that English law and its dispute resolution mechanism are remarkably settled and predictable unlike those of "laxer systems."

## QUESTION TWO

Clauses A and Z below respectively represent the introductory and signature clauses of a particular contract. Identify two major defects (**7 marks each**) in Clause A, and one major defect (**6 marks**) in Clause Z (i.e., three defects altogether, wherein "Clause Z" includes Za and Zb), and briefly discuss them. Based on the trite principles of contract law, what likely effect(s) will the defects have on the parties' agreement in the context of dispute and adjudication?

A. This equipment purchase agreement is made on this 9th day of November 2010, between Slowan Ltd, including its agents, subsidiaries and successors in title ("Party A"); and Boldan Ltd, including its agents, subsidiaries and successors in title ("Party B").

Z. IN WITNESS WHEREOF the undersigned have executed this equipment purchase agreement.

Signed, 10/11/10
Za) Mr. Christopher Miriti
Managing Director of the Slowan Party

Zb) Signed, 11/10/10
Ms Catherine Maliki
Managing Director of the Boldan Party.

## QUESTION THREE

Traditionally, the rules that govern the assessment of damages in contract were those established in *Robinson v Harman* (1848) 154 ER 363, and later on qualified in *Hadley v Baxendale* (1854) 9 Exch 341. Together, both rules used to constitute the English legal framework on compensatory damages until sometime in the 70s. In *Robinson,* it was held that "the rule of the common law is, that where a party sustains loss by reason of a breach of contract, he is, so far as money can do it to be placed in the same situation, with respect to damages, as if the contract had been performed."

Six years afterwards, it was held in *Hadley* (1854) 9 Exch 341, 354, that "where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it." In the contemporary era, it has been fairly settled that the forgoing rules on compensatory damages do not offer an adequate remedy to an injured contractual party especially where the contract breaker was motivated by the theory of efficient breach.

In light of the forgoing, discuss the *Robinson* and *Hadley* compensatory damages and their convergence with the newer types of contractual damages as were established in *Wrotham Park Estate Co Ltd v Parkside Homes Ltd* [1974] 1 WLR 798 (Ch.) and *AG v Blake* [2001] 1 AC 268 (HL).

## QUESTION FOUR

In *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, para 25, Lord Hoffmann opined that "[t]here is not, so to speak, a limit to the amount of red ink or verbal rearrangement or correction which the court is allowed. All that is required is that it should be clear that something has gone wrong with the language and that it should be clear what a reasonable person would have understood the parties to have meant."

Meanwhile, Lord Neuberger in *Arnold v Britton & Ors* [2015] UKSC 36, para 26, warned that "[t]he purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed… it is by no means unknown for people to enter into arrangements which are ill-advised … and it is not the function of a court when interpreting an agreement to

relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract, a judge should avoid re-writing it in an attempt to assist an unwise party or to penalize an astute party."

Although many judges try their possible best to separate interpretation from rectification, both concepts still appear conjoined like Siamese twins, and functionally intertwined. Discuss both concepts with close references to Lords Hoffmann's and Neuberger's conflicting perspectives, and propose a reasonable settlement.

## QUESTION FIVE

a) Briefly discuss Lord Sumption's three justifications for the use and enforcement of No Oral Modification (NOM) clauses in *Rock Advertising Ltd v MWB Business Exchange Centres Ltd* [2018] UKSC 24. **(10 marks).**

b) On the 10th of April 2024, Mr Geoffrey and Ms Susan (together referred to as the "parties") entered into a contract for which Mr Geoffrey will supply to Ms Susan 600 bags (of a specified type and weight) of cement from Mombasa to Nairobi. Each bag of cement was agreed to be supplied at the price of 500ksh. The 600 bags are to be delivered on the 30th of April 2024. The contract contains a NOM clause worded as follows: *"All variations to this agreement must be agreed, set out in writing and signed on behalf of the parties before they take effect."*

However, Ms Susan was put under pressure by her client who wanted a particular construction project she was overseeing to be concluded faster than was scheduled. On the 15th of April 2024, Ms Susan called Mr Geoffrey on phone and offered to pay 700ksh per bag of cement instead of 500ksh (i.e., 200ksh higher than the sum agreed in the April 10$^{th}$ contract), if Geoffrey could supply the 600 bags of cement on the 20th of April 2024. Mr Geoffrey agreed, and Ms Susan transferred the entire contract sum to his account as full payment. However, Geoffrey did not supply the cements on the 20th of April 2024. Ms Susan suffered losses, and on the 22$^{nd}$ of April 2024, she sued for a breach of contract in which she sought restitution and damages. Mr Geoffrey refers to the NOM clause and argues that owing to its inclusion in the contract of April 10th, the oral contract made on the 15th of April which purportedly modified the contract made on the 10th of April was invalid and unenforceable because of the Supreme Court decision in *Rock Advertising Ltd*, and that the payment will consequently be forfeited because loss will remain where it has fallen. **(10 marks).**

Advise the parties.