



**Strathmore**  
UNIVERSITY

**STRATHMORE UNIVERSITY BUSINESS SCHOOL**  
**BACHELOR OF SUPPLY CHAIN OPERATIONS AND MANAGEMENT**  
**END OF SEMESTER EXAMINATION**  
**SCM 1105: COMMERCIAL LAW**

**DATE: 19<sup>th</sup> December 2023**

**Time: 08:00-10:00**

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**Instructions:**

1. This Examination has five questions. Question 1 is compulsory
2. Answer question 1 and ANY OTHER TWO questions

**QUESTION ONE COMPULSORY (30 marks)**

**PART A (Multiple Questions) (20 marks)**

1. Which one of the following statements is not correct? **(2 marks)**
  - A. Equity mitigates the rigours of common law
  - B. Judicial precedent from a superior court is binding on a subordinate court
  - C. A bill is a draft law
  - D. International law forms part of the law of Kenya
2. Which one of the following is not a feature of a general partnership? **(2 marks)**
  - A. Partners are agents of each other
  - B. The partnership is an incorporates association
  - C. Partners share profits and losses
  - D. Partners take part in the management of the affairs of the firm
3. Which one of the following statements about torts is false? **(2 marks)**

- A. In the tort of defamation, the plaintiff must proof that the defendant referred to him
  - B. Rylands v Fletcher is not a strict liability tort
  - C. In trespass, intention not a necessary element
  - D. None of the above
4. In relation to the law governing negotiable instruments, which one of the following is not a type of a cheque which can be used in a business transaction. **(2 marks)**
- A. Open cheque
  - B. Crossed cheque
  - C. Order cheque
  - D. Promissory cheque
5. Which of TWO of the following are types of authority exercised by an agent? **(2 marks)**
- A. Ostensible
  - B. Usual
  - C. Crucial
  - D. None of the above
6. Which one of the following is not a negotiable instrument? **(2 marks)**
- A. Bill of exchange
  - B. A bill of lading
  - C. A promissory note
  - D. A cheque
7. Which TWO of the following statements about contracts entered by a minor are true? **(2 marks)**
- A. Minors lack the ability to enter into valid contracts
  - B. A minor can be bound by a contract for the supply of necessaries for the minor
  - C. A minor can repudiate a contract entered into during infancy without incurring any liability
  - D. None of the above
8. For each of the following, state whether it is false or true. **(6 marks)**
- a) The court system in Kenya is adversarial

- b) Mediation is not an alternative method of resolving disputes
- c) Statutory authority is a general defence in a tortious action
- d) Terms of a contract can be implied by a statute
- e) An invitation to treat is a valid offer
- f) Any person can be held vicariously liable for the torts of the tortfeasor

**PART B (Scenario) (10 marks)**

A. Douglas is a male adult of sane mind. He is in the business of importing and selling unique furniture in Kenya. On 4<sup>th</sup> of May 2023, Douglas made a phone call to Regina. In the phone call, Douglas told Regina as follows, ‘*I have imported nice furniture from Turkey. It is brown in colour, seven seater set made of leather. I am willing to sell it to you for Kshs. 250,000.00. Will you be interested? Let me know your response by 4<sup>th</sup> of August 2023*’. In her response, Regina said, ‘*send me pictures of the brown set I have a look at them.*’ Douglas sent the pictures to WhatsApp and Regina received them. However, Regina never responded to Douglas. On 6<sup>th</sup> August 2023, Jane (a female adult of sane mind) was passing by Douglas’ furniture shop and she saw the same brown set. She was attracted to it. Jane inspected the set and when she was satisfied, she bought the set by paying the required Kshs. 250,000. On 9<sup>th</sup> September 2023, Regina sent to Douglas Kshs. 250,000.00 and sent an email to Douglas stating that the Kshs. 250,000.00 was payment for the brown set. Douglas responded to this email and told Regina that the brown set is no longer available for sale and refunded Regina her money. Regina was annoyed and she threatened to sue Douglas for breach of contract. Douglas has been advised that you are an expert in the law of contract. He has come to you for legal advice. Using the law of contract, analyze these facts and advise Douglas if he breached any contract. **(10 marks)**

**QUESTION TWO (OPTIONAL) (20 marks)**

- A. State and explain three types of misrepresentation. **(6 marks)**
- B. Connie hired Eliud to transport Connie’s milk from Isiolo to Nairobi. When Eliud reached Nanyuki the van he was using to transport the milk broke down. Eliud did not have any

alternative method to transport the milk to Nairobi. He tried to use Matatus but he found out that all taxis and the matatus from Nanyuki to Nairobi were on strike. Eliud tried to contact Connie to ask for directions on what to do under the circumstances. However, he was not able to get Connie. Afraid that the milk would go bad, Eliud decided to sell the milk to people in Nanyuki town. He fetched Kshs. 70,000.00 from the sale. Later that evening, Eliud's van was repaired and he travelled to Nairobi. When he reached Nairobi, he explained what had happened and handed Connie the Kshs. 70,000.00. Connie refused to accept the amount and demanded 100,000.00 from Eliud. Connie argued that her milk would have fetched Kshs. 100,000.00 in Nairobi. She is now demanding Eliud to pay the remaining Kshs. 30,000.00. Eliud does not know what his legal position is under these circumstances. Using the law of agency, analyze these facts and advise Eliud. **(14 marks)**

### **QUESTION THREE (OPTIONAL) (20 marks)**

- A. In relation to the law of torts, briefly discuss three types of trespass to goods. **(6 marks)**
- B. State four advantages of case law as a source of law. **(4 marks)**
- C. In relation to the law of contracts, state and explain ways an offer can be terminated. **(10 marks)**

### **QUESTION FOUR (OPTIONAL) (20 marks)**

- A. Briefly describe five types of remedies that may be awarded for breach of contract. **(10 marks)**
- B. Briefly describe five types of bills of exchange. **(10 marks)**

### **QUESTION FIVE(OPTIONAL) (20 marks)**

- A. Briefly discuss five factors that undermine the rule of law in Kenya. **(10 marks)**
- B. Briefly discuss five elements that can vitiate a contract. **(10 marks)**