



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

Date: 5th August 2020

Time: 3 Hours

Instructions

1. This examination consists of two question 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 a total 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

Mr. Siasa the newly elected governor for Moto County plans to buy the latest luxury car in the market BMW X5. Mr. Siasa went online to look for the advertisements put up by different car dealers and the prices that were offered. In addition, he visited different show rooms to ensure that he gets the best price in the market. When he walked into DT Dobie's Showroom in Nairobi he found a Silver coloured BMW X5 with a price tag of Kshs. 10 million displayed in the Showroom. Before making his big purchase he approaches you to advise him on formalities that are involved in making a legally enforceable Agreement between himself and DT Dobie for the purchase of the BMW X5.

- a) Differentiate between an offer and an invitation to treat. **(3 Marks)**
- b) With the aid of decided cases giving two examples of invitation to treat and two examples of an offer, analysis whether the act of displaying the BMW X5 amounted to an offer or an invitation to treat. **(12 Marks)**

Question Two

Tajiri a renowned entrepreneur in Nairobi ensures that he reads all the daily newspapers in Kenya in addition to the New York Times and Daily Mail from United States and Britain respectively. Tajiri has invested heavily in the real estate industry and owns a fifteen floor five-star hotel in Nairobi CBD. Furthermore, he is a director of many companies including one called Sumu that is partially owned by the government of Kenton. On 23 of August 2016, Tajiri was reading a local newspaper by the name Taa; he was astonished to learn that he is the subject of the headline captioned as: “Tajiri and the rest of the directors of Sumu are illegally disposing off sumu’s assets.” The Taa had a sensational story on the above subject narrating that Tajiri and other directors are stealing from Sumu. Tajiri is annoyed and has vowed to take legal action against Taa newspaper. Advise Tajiri on these legal issues:

- a) Guided by the facts above identify and define the most suitable tort that Tajiri should base his civil action on in court. **(3 Marks)**
- b) The four grounds that Tajiri must prove in court to succeed in his legal action **(12 Marks)**

PART B

Question Three

The International Monetary Fund held a law and financial stability seminar titled promoting financial stability through the rule of law on the 16-18 May 2016 at IMF Headquarters in Washington, D.C. The seminar drew high-level legal experts and policymakers from over 80 member countries to discuss the progress made in strengthening financial regulatory systems since the global financial crisis. The purpose of the seminar was to illustrate the important role that the law plays in contributing to financial stability, at the international, regional, and national levels. You received an invitation to attend the seminar as one of expert policy makers and were requested to comment on the following:

- a) Critically discuss the nature of law on the basis of any two schools of thought noting to mention notable scholars under this school of thought and what their postulate on the nature of law. **(8 Marks)**
- b) Define commercial law and explain in detail two sources of commercial law. **(7 Marks)**

Question Four

The Judicial Service Commission recently nominated persons to be appointed by the president as high court judges. The president appointed fourteen of them to help in dealing with backlog of cases in the commercial division of the high court. In order to bring them up to speed with the commercial litigation that is ongoing the JSC has organized for the newly appointed judges to be given refresher courses on Sale of Goods. You have been invited to make a presentation on the peculiar legal conception which the Sale of Goods Act, Chapter 31 Laws of Kenya call “property in the goods”. In presentation address the following matters as regards contract for the sale of goods:

- a) Define a contract of sale of goods. **(2 Marks)**
- b) What is the meaning of property in goods and its legal implication? **(5 Marks)**
- c) Distinguish between the different types of goods that form the subject matter of a contract of sale of goods. **(8 Marks)**

Question Five

Agency has been defined by Prof. Fridman as ‘The relationship that exists between two persons when one called the agent is considered in law to represent the other called the principal in such a way as to be able to affect the principal’s position in respect to strangers to the relationship by the making of contract or the disposition of property.’ Discuss any three modes of creation of an Agency relationship illustrating your arguments using decided case law.

(15 Marks)

Question Six

A contract comes into existence when an offer by one party is unequivocally accepted by another and both parties have the requisite capacity. Once an offer is accepted, an agreement arises between the parties as there is consensus between them. Offer and acceptance constitutes the foundation of a contractual relationship. They do not constitute a contract as a contract must be characterized by other elements. Some consideration must pass and the parties must have intended their dealings to give rise to a legally binding agreement. The purpose of the agreement must be legal and any necessary formalities must have been complied with. **Anon** However they are certain factors that may interfere with enforceability of contracts. Critically analyse any three vitiating factors that might interfere with enforceability of contract.

(15 Marks)