



RIARA LAW SCHOOL
UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE
AND
PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM
AUGUST 2023
UNIT CODE: RLB 301 COMMERCIAL LAW
INSTRUCTOR: CHEGE WAITARA

INSTRUCTIONS

1. This is the final examination in Commercial Law. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THE THREE QUESTIONS.**
3. The examination has 3 pages, including this one.
4. Time allocated for this examination is **TWO HRS** (2) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in you answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination. This means you are not permitted to bring ANY hard or soft materials to the examination room. You re also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

QUESTIONS

1. Question One

- a. “Despite developments in recent times, the law of sale of goods is still permeated with the principle that the buyer alone is responsible for checking the quality and suitability of goods before a purchase is made.”

With reference to statutory and case law, discuss the extent to which this statement is true. (10 marks)

- b. Betpesa plc recently bought two used cars, each six months old, for its executives to drive. Adrian, managing director of Betpesa plc, first saw the two cars at Fred’s Garage a month ago when he noticed that one, a Volvo, had an engine oil leak and the other, a Mercedes, had a water leak in the boot. He did not, however, look in the boot of the Volvo. Fred assured him: ‘They are excellent vehicles; you can rely upon them.’ After test-driving both cars, Adrian, on behalf of Betpesa plc, signed two contracts of purchase, one for each car. Adrian left the Volvo with Fred to have the oil leak repaired and drove away in the Mercedes. Two weeks later, he returned the Mercedes for its boot leak to be repaired and collected the Volvo.

The next day, he discovered: firstly, that the Volvo had a water leak in its boot; secondly, that the engine oil leak had not been repaired and was irreparable (meaning that a new engine was necessary); and, thirdly, that soon after delivery to its original buyer, the Mercedes had been in an accident and subsequently treated by its owner’s insurance company as a ‘write-off’. Upon learning these facts, Adrian informed Fred’s Garage that he was rejecting the cars and he demanded the return of the purchase price to Betpesa plc.

With reference to statutory and case law, advise Adrian. (20marks)

2. Question two.

- a. Samuel enters into a contract for the sale to Herbert of 600 sacks of kidney beans out of the 800 sacks of Samuel’s kidney beans currently stored in Peter’s warehouse.

On receiving a cheque for the purchase price, Samuel gives Herbert the invoice and written delivery authority. A month later, when Herbert goes to collect the kidney beans, it is discovered that, since the contract was made, 400 sacks have been stolen. Herbert is offered delivery of the remaining 400 sacks and seeks your advice.

With reference to statutory and case law advise Herbert. (10 marks)

- b. 'The duties owed by agents to their principals may or may not be dictated by the express terms of the contracts between them.'

With reference to statutory and case law analyse the duties of an agent in the context of this statement. (10 marks)

3. Just over five months ago, John traded in his old car for a new car which he acquired from XYZ Finance under a hire purchase agreement. The hire purchase agreement contained the following provisions:

- a cash price of Kshs.410,000;
- a total hire purchase price of Kshs.500,000;
- An amount Kshs.150,000 to be credited to John for his old car that was traded in.

Under the agreement, John agreed to make an initial cash payment of Kshs.200,000 and 20 monthly instalment payments of Kshs. 15,000.

Upon trading in his old car and taking delivery of the new one, John paid the initial payment of Kshs.200,000 and has since paid the first three of the Kshs.15,000 monthly instalments. However, he is now two months in arrears with his instalments and a week ago wrote to XYZ Finance, informing it that he was temporarily out of work and unable to keep up his payments.

Advise John as to his legal position now that he has received a default notice which states that unless he pays off his outstanding arrears within seven days, XYZ Finance will regard the agreement as terminated.

(20 marks)