



**RIARA LAW SCHOOL**  
**UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE**  
**AND**  
**PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM**  
**28<sup>TH</sup> AUGUST 2024**  
**RLB 301: COMMERCIAL LAW**  
**INSTRUCTOR: MR DANIEL ODHIAMBO**  
**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.

## QUESTION ONE

- a) Brown has entered into a contract with Produce Limited to supply Brown with two different sets of assorted merchandise in two separate contracts and both were to be delivered on different days, delivery day and time being “deemed to be of essence” to both contracts. Delivery was deemed to be effected “through physical delivery by the supplier to the premises of the buyer Mr. Brown at the stated address herein” Time of delivery was stated to be “as stated in the contract without further reference to the supplier” Contract 1 was to be delivered on 19<sup>th</sup> November 2022 “latest 9am” and Contract 2 was to be delivered on 20<sup>th</sup> November 2022 “by latest 2pm” at Mr Browns business premises “at the attached address.” By the end of day on 19<sup>th</sup> November 2022 the supplier had not delivered on Contract1 and on 20<sup>th</sup> at exactly 1.50pm the supplier arrived with both lots of merchandise as described in contract 1 and contract 2. Mr, brown is of the view that he does not have to accept either or both delivery. The supplier is of the view that Mr Brown is legally bound to accept both.

Advise each of them on the legal position regarding the issues raised.

**(15 marks)**

- b) A contract was made between Company A and company B, where company A was to sell to Company B all merchantable timber as defined in the contract description as “all trunks and branches of trees but not seedlings and young trees of less than six inches in diameter at the height of four feet from the ground” The buyers, company B, were to have 15 years to cut the timber. Shortly thereafter, the Government nationalized the forest where the timber stood. Company A’s argument is that the timber belongs to Company B and therefore Company B should pay the entire contract amount as the consequences of nationalization fall on Company B

With the aid of appropriate statutory provisions and case law, advise the parties on the legal position

**(15 Marks)**

## QUESTION TWO

- a) Ms Peaceful bought a set of expensive luxury sofa on hire purchase at a cost of kes 1.2 million to be paid in equally installments over a period of two years (24 months) in January 2020. She was relying on her restaurant business to cater for the payment. She has been paying the installment faithfully and has so far paid up kes 800,000. Unfortunately, her business has not been doing well, and she has been unable to complete the balance. The Hire Purchase Company is quite upset that she has missed two payments to date. They sent her a letter on Monday informing her to that they will be send their agent to repossess the sofa on Thursday at 9am and she should avail herself. They have also indicated in the letter that she will have to refund the cost of collection and any repairs to be done on the sofa. She called and tried to explain to the company that she has been paying up and that she is trying to look for alternative means of payment but the company is not interested in her explanation and insist on the money or the sofa. She has only 3 days to come up with the money and is sure that she will not be in a position to pay up before Thursday

She is very desperate and has come to you for legal advice on the law relating to her situation as well as if the company has a right to repossess the sofa. She also wants you to take immediate action to ensure that as the matter is being resolved her sofa is not repossessed, if possible.

Advise her

**(12 Marks)**

- b) The Hire Purchase Act provides that hirer may terminate the agreement (Sec 12) and Hirer may complete the agreement (Sec 13) following the laid down provisions

Discuss

**(8 Marks)**

### **QUESTION THREE**

- a) Kennedy and Harris formed a company in 2022 to purchase and resell mechanical equipment and resell at a profit. Kennedy and Harris and two other nominees were the directors of the company. The articles of association of the company contained a power to appoint a managing director but none was appointed. However, to the knowledge and the agreement of the board, Kennedy acted as de facto managing director and entered into contracts on the company's behalf. On one occasion, Kennedy employed a firm of mechanical engineers to inspect and repair the equipment in stock if necessary. Kennedy had no actual authority to do this, and when the mechanical firm claimed their fees for work done as agreed with Kennedy, the other directors were of the view that Kennedy had no authority to bind them, and that he should personally bear the cost  
Kennedy holds a different view, and has suggested that you, their legal advisor interrogate the scenario and advice on the legal position before them during a special meeting called to discuss this matter

Advice the company

**(12 Marks)**

- b) Discuss Termination of Agency relationship

**(8 Marks)**