



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

JAN-APRIL 2024

RLB 102: LAW OF CONTRACT 1

EXAMINER: Augustus Mutemi Mbila

INSTRUCTIONS

1. This is the final examination in Law of Contract 1. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Answer **ALL THREE QUESTIONS**.
3. This examination has 3 pages, including this one.
4. Time allocated for this examination is **TWO** (2) hours.
5. This is a **CLOSED-BOOK** examination. This means that you are not allowed to refer to any material, whether in soft or hard copy.
6. This examination is governed by the **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the course instructor any incidences of academic dishonesty compromising the integrity of this examination.
7. Indicate your registration Number and the Title of the Exam on the cover page of the answer booklet. DO NOT indicate your name on the answer script.
8. You must stop writing when the time is called.
9. It is in your best interest that you write legibly.
10. Marks will be earned for close interaction with the questions, use of relevant authorities, and providing relevant solutions to the problems. Marks will be lost for irrelevance

QUESTION ONE (25 Marks)

Duncan and Daniel are brothers. Duncan works in Mombasa as an electrical engineer while Daniel is a businessman dealing with car imports. For all intents and purposes, the two brothers are living a good life, although Daniel has just recently secured employment with a Mombasa-based electrical engineering firm. Duncan, on the other hand, has been in his car import business for a long time now. Daniel, though recently employed, is contemplating buying a car, as that has been his long-term dream. He considers himself lucky, because Duncan, his brother, is in the business of selling imported cars. Duncan's business is based in Nairobi. On September 23rd, 2020, Daniel decided to send his brother Duncan a text message, worded as follows:

What's up bro? I need a car man! Could you kindly get me the latest version of Subaru Forester? I will gladly appreciate. Can't wait to hear from you!

Duncan responds almost immediately as follows:

No worries bro, I will get you a good car for your class. But ensure that cash is ready. Coz this is business. Si mambo ya brotherhood hapa! (This is not about being brothers)

The car that Daniel wants is currently priced at Kshs 2 Million and has assured Duncan that the price does not matter. He just wants a car that can be both an SUV and an off-road. He does not want those cars that will give him trouble when driving in the countryside. He intends to travel home immediately the car is imported.

On October 1st, Duncan signals Daniel that the car is now ready for picking and Daniel responds that he is ready. He, however, requests Duncan to allow him to "test-drive" it for a week, which Duncan does not have a problem with. On October 8th, Daniel has driven the car for a week and has even travelled to the countryside with it. He has already confirmed that the car fits the bill. He is, however, not ready to pay the price. He tells Duncan that he has worked for him for many years without pay and that the work he has been doing for him is worth more than the Kshs 2 million for the car. He therefore proposes that they offset the price of the car with the money that he would have paid him for working for him. After all, he "is a brother and would help him in a different situation in the future".

Duncan is not interested in a protracted legal battle with his brother, as this would paint the family in bad light. However, he would have to go that route, if it is the only way to recover his money. He has therefore approached you for legal advice.

Required:

- a) Determine whether the agreement satisfies all the elements of an enforceable agreement **(15 marks)**
- b) Advise him as to whether the contract between him and Daniel is binding and therefore enforceable. Make use of relevant legal authorities. **(10 marks)**

QUESTION TWO (25 Marks)

Otieno is a medical intern at Kenyatta Hospital. His boss Dr. Kitheka is a consultant physician. One day, Dr. Kitheka suffers a heart attack while on duty. Otieno, a bright and decisive student, saves his boss's life. Exhibiting remarkable composure under pressure for one so young, he quickly diagnoses the problem and administers emergency medical relief, in a dramatic scene resembling one of the medical series' regularly seen on Kenyan television. Overwhelmed with gratitude, Dr. Kitheka promises Otieno Kshs. 10, 000/- per month for the rest of his life. As often happens in life, Dr. Kitheka sadly does not live up to his promise once the initial wave of gratitude has passed and normal life has resumed. Otieno does not seem to mind and continues with his work as usual. Five years pass. In an unfortunate turn of events, Otieno's mother is suddenly diagnosed with acute kidney failure, requiring expensive dialysis treatment. Otieno is suddenly in need of large sums of money to cover his mother's treatment. He writes to Dr. Kitheka asking for payment of the monthly sum promised, as well as payment arrears going back 5 years. Dr. Kitheka writes back, refusing to pay.

- a) Advise Otieno on his legal rights in the Law of Contract **(10 marks)**
- b) Does the doctrine of promissory estoppel have any bearing on this case? **(7 marks)**
- c) Would it make any difference if Otieno's mother rather than Otieno tried to recover the money from Dr. Kitheka? **(8 marks)**

QUESTION THREE (20 marks)

Philip wants to sell his house and advertises it in the local newspaper for Kshs 5,000,000/=-, while leaving his number for contact. Jim sees the advertisement and rings Philip and makes an appointment to see the house. Jim likes the house but cannot agree on the price with Philip, his highest offer being Kshs 3, 500,000/=-, while Philip insists on Kshs 5,000,000/=-. On the following day, Jim receives a letter from Philip offering him the house for Kshs 4, 500,000/=- and saying that Jim can have until noon on Friday to think about it. on Wednesday evening, Jim meets his brother Cornelius in their local joint. Cornelius tells him that Philip's son-in-law bought the house earlier that day for Kshs 4,000,000/=-. Jim goes straight home and writes a letter to Philip, accepting his offer of Kshs 4, 500,000/=-. He posts the letter immediately and Philip receives it on Thursday morning, but replies back, saying that: *"You are too late, I have sold the house to my son-in-law."*

Required:

- a) Is there a valid contract between Philip and Jim? **(10 Marks)**
- b) Advise Jim as to his rights (if any) in this contract. **(10 Marks)**