



MURANGA UNIVERSITY COLLEGE

(A CONSTITUENT COLLEGE OF JOMO KENYATTA UNIVERSITY OF AGRICULTURE & TECHNOLOGY)

MAIN EXAM

COURSE CODE: HPS 2204

COURSE TITLE: Business Law I

ACADEMIC PROGRAMME: Bachelor of Purchasing and Supply Management

YEAR OF STUDY: 2ND YEAR

ACADEMIC YEAR: 2015/2016

SEMESTER: 1ST SEMESTER

CAMPUS TO BE ADMINISTERED: MAIN CAMPUS

DATE: 11TH DECEMBER, 2015

DURATION: 2 HRS

INSTRUCTIONS TO CANDIDATES

- 1. Answer question ONE (compulsory) and any other TWO questions**
- 3. Time allowed is TWO (2) Hours**
- 4. Statutory provisions and cases must be adequately referred to where appropriate.**

QUESTION ONE

- (a) On Wednesday Frederick, the Murang'a University Students Organization (MUSO) chairperson, advertised his Nikon D800E digital camera in 'MU Daily,' a student newspaper for Ksh. 20,000. George, on seeing the advertisement, called at Frederick's room at Nyayo hostels on the same day to see the camera. After discussion, Frederick offered to sell the camera to George for Ksh. 15,000. George stated that he would need some time to think it over but that Frederick should assume if he heard nothing from George by Thursday evening, that George had bought it. Frederick replied that this arrangement was fine by him.

At 3pm Hari telephoned Frederick and offered to buy Frederick's camera for Ksh. 19,000. Frederick immediately accepted Hari's offer and e-mailed George revoking his offer. Unknown to Frederick and George, there was a problem with Yahoo servers and the message to George was never directed to him. Although Frederick did not know this, he was worried about the matter and tried to telephone George again at 6pm. Frederick spoke to Isabel, George's girlfriend, and told her that the camera had been sold. Isabel said that she expected to see George later in the evening at 7.30pm and would pass the message on

to him then. However, George had already decided to buy the camera and had faxed his acceptance to Frederick's MUSO office at 5.15pm. Frederick did not read George's acceptance until 6.30pm. George met the girlfriend at 7.15pm and Isabel then gave him the message from Frederick. George is furious and is threatening to sue Frederick.

REQUIRED

Advise Frederick on the threats, noting to examine the legal position of the various communications between the parties. **(10 Marks)**

- (b) Kamau has taught at Jamu High School for the last fifteen years under the supervision of the Headmaster. He earns a monthly salary of sh. 25,000. The school is private and provides Kamau with teaching resources that he requires. He is required to attend class as per the timetable and provide teaching plans to indicate his teaching methods. Kamau is also provided with office space. However, he is required to be in a suit and a tie always, and has incurred costs to comply with the dress code. He has also bought his own whiteboard markers so as to avoid the effects of the dusty chalk.

Further, he asked last month to be designated as self employed so that he reduces his tax obligations, to which the principal agreed, but there was no change in job description or salary. Since last month, the school has since stopped NHIF and NSSF deductions from his salary.

REQUIRED

Using the various distinguishing tests, advise Kamau as to whether he is an employee under a contract of service, or an independent contractor under a contract for services. **(10 Marks)**

- (c) The courts have developed tests to establish whether one person owed another a duty of care. Discuss. **(10 Marks)**

QUESTION TWO

- (a) With the aid of a well labeled diagram, describe the court structure in Kenya, capturing the establishment, composition, jurisdiction, and appellate right for each court. **(10 Marks)**
- (b) With the aid of TWO decided cases for each rule, explain the following rules of statutory interpretation:
- (i) Literal Rule. **(5 Marks)**
 - (ii) Eiusdem Generis Rule. **(5 Marks)**

QUESTION THREE

- (a) Explain how an agency relationship may be created in the following ways;
- i) By implication. **(3 Marks)**
 - ii) By ratification **(4 Marks)**
 - iii) By estoppel. **(3 Marks)**
- (b) With aid of case law, describe SIX rules that have been developed to determine whether acceptance in contracts is valid or not. **(6 Marks)**

- (c) State the conditions that an employer must meet before declaring an employee redundant. **(4 Marks)**

QUESTION FOUR

(a) Following a takeover, the new owners of a hotel, Hip Hotels Ltd, have continued to employ the hotel's previous owner, Ms Harvey, as its manager. However, they have expressly forbidden her from buying alcohol from anyone other than Drink Ltd. Last month, in breach of this restriction, she bought some alcohol from Booze Ltd who have now sued the hotel for payment as Ms Harvey's principal.

Advise Booze Ltd as to whether their action is likely to succeed. **(5 marks)**

(b) Peter deposited several bales of cloth in a warehouse. Jude, the owner of the warehouse, moved these bales of cloth, based on a reasonable belief that they were at risk of being damaged when a local river flooded. Jude claims that she was an agent of necessity.

Advise Jude as to whether an agency of necessity has been created in respect of these bales of cloth. **(5 marks)**

(c) Several factors make the distinction between an employee and an independent contractor it important. Discuss five of them. **(5 Marks)**

(d) Explain the differences between law of torts and law of contracts. **(5 Marks)**

QUESTION FIVE

With reference to case law and statutory provisions where relevant, write brief explanatory notes on the following;

(a) Common law duties of employers. **(5 Marks)**

(b) Islamic Law as source of law in Kenya. **(5 Marks)**

(c) Remoteness in the law of Torts. **(5 Marks)**

(d) Past consideration in the law of Contracts. **(5 Marks)**