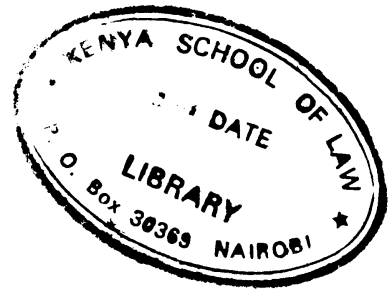


COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

LAW OF CONTRACT

MONDAY 19TH SEPTEMBER, 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **any other three** Questions
- (b) ALL Questions carry **25 marks each**
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. (a) 'It cannot be gainsaid that indeed, the law of contract is the cornerstone of all commerce. A clear understanding of this law is therefore critical in order for one to understand and appreciate all other commercial law disciplines' *Anonymous*.

In line with the above proposition discuss FIVE arguments that one can advance to justify the development and existence of the law of contract.

(10 marks)

- (b) Explain the meaning of the following terms as used in the law of contract:

- (i) Void Contract
- (ii) Voidable contract
- (iii) Unenforceable contract
- (iv) Executory contract
- (v) Unilateral contract

(10 marks)

- (c) A contract need not be in any special form as it can be oral, in writing, partly oral and partly written or it can even be implied from the conduct of the parties.

However, over time statutory developments have prescribed that certain contracts have to be in writing for them to be valid.

Outline FIVE types of contracts that have to be written for them to be valid.

(5 marks)

2. (a) Kabibi was working as an administrative assistant at the Multi-Face Corporation Ltd. An advertisement for a position that suited her was placed in the dailies in one of her dream companies. She applied for a job and was invited for an interview. Two weeks after the interview, she got a letter by post offering her the position.

The letter indicated that she ought to indicate her acceptance or rejection within two weeks and if she accepted, she ought to indicate when she intended to report but in any event not later than two months from the date of the letter.

Excited, she sent an acceptance by registered post on the same day she had received the offer letter and indicated she would report on the last date envisaged in the offer letter.

She proceeded to resign from Multi-Face Corporation. On the day of reporting to the new company she was informed that the corporation had not received the acceptance within the time prescribed or at all, and had given the position to someone else.

Explain to Kabibi the law relating to the validity or otherwise of the contract or otherwise.

(10 marks)

(b) Explain the meaning of the concept of 'privity of contract' and the exceptions thereto.

(15 marks)

3. (a) 'A misrepresentation is a false statement of fact made by one party to a contract to another with a view to induce the latter, to enter into the contract.'

Explain any instances when statements made may not amount into misrepresentations under the law of contract.

(10 marks)

(b) Capacity is the legally recognized right of a person to enter into a legally binding agreement. Discuss the concept of capacity under the law of contract.

(15 marks)

4. Msonko has been in the business of supplying raw material for manufacturing perfumes. He has been exporting a special tree back that is used to make very expensive designer colognes. The said tree back is harvested from some indigenous forest in the semi-arid region of Kapelo.

The Government, worried that the tree is endangered and faces extinction declared the exportation of the tree back illegal through Legal Notice No.239 of 2011 published on 20th May 2011.

On 20th June 2011 Msonko, who was unaware of the Government action, entered into a written contract with Mjanja, who was well aware of the ban on the exportation, to supply him (Msonko) with 2,000 kilos of the back. Msonko paid to Mjanja a deposit of Kshs.400,000 and the balance of Kshs.200,000 was to be paid on delivery which was to be in one week's time.

One week later, Msonko tried to call Mjanja with a view to paying the balance and collecting the tree back. Mjanja has however refused to talk to Msonko and it is now clear to Msonko that Mjanja has no intention of supplying the tree back.

(a) Highlight any FIVE types of contracts that are regarded as illegal at common law.

(15 marks)

(b) Msonko has come to you for advice. What areas of law of contract would you explore to protect his interests and what arguments would you advance in a court of law in pursuit of his interests?

(10 marks)

5. (a) You have been hired on one of the best law firms in the country which has clients drawn from Kenya, the East African Region and the world over. One of the conditions in the contract of employment stipulated as follows:

'The employee shall not engage in practice of law within the Republic of Kenya, in the East African Region or anywhere in the world for a period of twenty (20) years following the termination of employment by either party.'

Five years after employment you now feel that you can manage a private law practice of your own. You are however wary that if you start your private practice your employer may sue you.

(a) (i) Explain the meaning and effect of a contract in restraint of trade.

(5 marks)

(ii) In view of the above condition, and in the event that you go ahead and start a private practice and are sued, what arguments would you advance to defend yourself?

(10 marks)

(b) Explain the meaning of the following forms of remedies under the law of contract.

- (i) 'Restitution'
- (ii) 'Quantum Meruit'
- (iii) Damages
- (iv) Injunction
- (v) Specific Performance

(10 marks)

6. (a) Discuss the various types of mistakes under the Law of Contract and indicate the consequences of each.

(15 marks)

(b) Explain the concepts of 'duress' and 'undue influence' under the Law of Contract.

(10 marks)
