

COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

PBR 002 - LAW OF CONTRACT

WEDNESDAY 26TH SEPTEMBER, 2012

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. Kamau wanted to buy a piece of land from Mzee Oloo situated in Ugenya location, at a price of Kshs.200,000/-. The agreement was put in writing by the two parties, signed and witnessed. However, there was no payment that was done on the day of signing as Kamau promised Oloo that in two (2) weeks he would be bringing a deposit of Kshs.100,000/-. Upon return after two (2) weeks, Mzee Oloo informed him that he had sold the piece of land to another person at a cash price of Kshs.250,000/-. Mr. Kamau has now come to you for advice on what he can do to acquire the piece of land that he believes was very ideal for the kind of business that he intended to carry on.
- (a) Explain to Kamau on the kind of contract that ought to have been entered into in view of his intention. **(8 marks)**
- (b) Advise Kamau, in view of his wish, on the kind of remedy that is available and the requirements that ought to be satisfied for the remedy to be granted by the court. **(7 marks)**
- (c) Advise Kamau on the probability of success if he went to court. **(5 marks)**
- (d) Explain any FIVE ways in which an offer in a contract terminates. **(5 marks)**
2. (a) Explain the meaning of the following concepts under the Law of Contract:
- (i) Misrepresentation
 - (ii) Mistake
 - (iii) Frustration
 - (iv) Undue influence
 - (v) Duress **(15 marks)**
- (b) Discuss any FIVE types of contracts that are forbidden by common law. **(10 marks)**
3. Alan, an established businessman mainly involved in international business transactions entered a contract for sale of Motor vehicle with Odek. Because Alan, the buyer of the vehicle, was travelling out of the country instructed the wife in writing and the wife confirmed in writing to Odek to pay the purchase price to Odek upon Odek signing the necessary transfer document and passing the motor vehicle to Allan's wife. Upon Odek signing the necessary documents and transferring possession, Alan's wife refused to transfer the purchase price to Odek.
- (a) In line with the above case study, explain FIVE circumstances when persons who are not parties to a contract may become subject to liabilities arising under a contract in defect of privity of contract rule. **(15 marks)**

- (b) Explain any FIVE ways in which a contract may be discharged. **(10 marks)**
4. With the aid of decided cases, discuss in detail the remedies available for breach of contract. **(25 marks)**
5. (a) Highlight the fundamental differences between contract and tort. **(10 marks)**
(b) Discuss the circumstances when quasi-contracts may arise in common law. **(15 marks)**
6. Contracts in restraint of trade are considered in law to be contrary to public policy. Discuss the instances when they may be acceptable in law. **(25 marks)**
