

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 104: TRIAL ADVOCACY

FRIDAY 16TH NOVEMBER, 2012

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should attempt **FOUR** questions
- (b) Answer **questions one and two** and **any other two questions**
- (c) All questions carry 15 marks each
- (d) Marks may be lost for illegibility

PLEASE TURN OVER

1. During the absence on leave of its Managing Director, White Horse Corporation (WHC), a state corporation, ordered three Toyota Landcruiser Lexus 4WD 4500cc petrol at Shs.9 million each; two Range Rover HSE 4WD 4000cc petrol at Shs.12 million each and one Mercedes Benz 350 at Kshs.15 million, for its new Directors. The LPO was signed by one Peter Pesa, the Finance Manager at WHC.

The vehicles were duly delivered by Dee Dee Motors Ltd, on the date stated in the LPO, against a 5% deposit. Dee Dee agreed to the delivery upon Peter Pesa having ordered, in the letter acknowledging receipt of the vehicles, another fifteen 1300cc saloons each at Shs.2 million, *“to be effected immediately the MD is back”*.

Dee Dee’s delivery/invoice note, signed by Peter Pesa, read:

*“Goods once sold not returnable except as with regard to the one year guarantee conditions.
Interest charge: 14% per annum on payments made after 21 days
Terms and conditions apply against signature of recipient.
E&OE.”*

After the MD’s return the audit department queried the transaction and caused its cancellation. The MD was transferred to another state agency.

Dee Dee now demand payment of Kshs.54.15Million plus interest at 14% p.a and reject return of the cars, except as re-sale items. They argue that the internal weaknesses of WHC are none of its business, and seek *“general damages for breach of contract, plus another Shs.30Million for lost sales in the second contract”*.

The WHC Company Secretary declines to pay, and seeks refund of the 5% deposit, stating that the sale was illegal and invalid, and pointing out that at the back of the LPO were the words: *“Not valid unless signed under a vote head confirming availability of funds by the Director.”*

The statute establishing WHC provides as follows at sections 2 and 10 of the Act:

“2. The Board shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued....

10. (1) all deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the Board if-

- a) Sealed with the common seal of the Board and signed by two members thereof; or*
- b) Executed on behalf of the Board by one member of the Board appointed by the Board for that purpose and the Director appointed under this Act...*

(2) A deed, instrument, contract or other document executed in accordance with sub-section (1) shall, subject to any exception that may be taken thereto on any ground other than the competence of the party executing the same on behalf of the Board, be effectual in law and bind the Board and its successors.....”

The dispute has now gone to court and the suit is ready for trial.

- a) You are the lawyer for Dee Dee Motors Ltd. (the plaintiff). Prepare your opening statement based on the above narrative. **(7 marks)**