

SECTION ONE

1. Commercial law is the branch of law that is concerned with rights and duties arising from, amongst others, the supply of goods and services.

(a) Discuss the significance of the following as sources of law on sale of goods and transactions:

- (i) Contract
- (ii) Uncodified custom and usage
- (iii) Codified custom and usage
- (iv) Domestic and international legislation

(9 marks)

(b) Section 55 of the Sale of Goods Act (Cap 31, Laws of Kenya) states that:

“Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.”

Read the facts provided hereunder and answer the question that follows:

The plaintiff and defendant entered into a contract in January 2011 for sale of 15,000 litres of diesel C.I.F Mombasa. There was a clause in the contract which provided that the contract “contains the entire agreement of the parties,.... and there is no other promise, representation, warranty, usage or course of dealing affecting it.” A dispute arose and the defendant wanted to rely on a custom or usage for the retention of samples of oil being tested. The plaintiff contends that the contract does not admit such terms.

In view of the law and the facts provided, prepare a considered judgement on that particular aspect of the case.

(6 marks)

2. Modern Designs and Equipment Limited manufactures industrial filtration systems uses at a Ruiru plant. It uses a semi-refined material (which we will call “stuff”) in its manufacturing process. Stuff contributes about 20% of the manufacturing costs of Modern Designs products. The company requires about 30, 000 Kgs of stuff each month. It has been paying Kshs.200 per Kg of stuff. In 2003 Modern Designs negotiated with Supplier Ltd to supply stuff on a reliable basis. Supplier Ltd proposed to build a small refinery unit right on Modern Designs property at a cost of Kshs.50 million, which would permit it to profitably supply all of Modern Designs stuff needs at a reduced cost of Kshs.150 per Kg of stuff. Supplier Ltd has calculated that the plant would have at least an 8 year lifespan. A contract is signed on 2nd January, 2003 which provides that Supplier Ltd will be the exclusive supplier of stuff for Modern Designs for a period of not less than eight years on terms consistent with its proposal, with a provision for price adjustment and a guaranteed price of at least Kshs.150 per Kg and no more than Kshs.250 per Kg over the period of the contract.

Supplier Ltd constructed the unit and deliveries began. In May 2005 Neon, a competitor of Suppliers Ltd, introduced a new advanced technology for refining stuff, which reduced production time and cost. Neon sells its stuff at Kshs.50 per Kg. Modern Designs asks Supplier Ltd to reduce unit price to Kshs.60 per Kg. Supplier Ltd recognized that it could not afford to do