

KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES

**ATP 108: COMMERCIAL TRANSACTIONS**

THURSDAY 28<sup>TH</sup> NOVEMBER, 2013

DURATION: 3 HOURS

**Instructions to Candidates**

- (a) Candidates should attempt **FOUR** questions
- (b) Answer **one question from each section** and a **fourth one from any of the three sections**
- (c) All questions carry **15 marks** each
- (d) Marks shall be lost for illegibility

PLEASE TURN OVER

## SECTION ONE

### QUESTION ONE

- a) Aminata agreed to sell to Baraba, at a price, a supply of mangoes, product of neighbouring country. Delivery was agreed to be weekly over two months effective from two weeks after the date of execution of the contract. On five occasions, Baraba took the consignments: but later, when Aminata sought to deliver the subsequent consignments as contracted, Baraba declined to accept the mangoes saying that since the market prices of mangoes had fallen drastically he could not, indeed it would be unfair to expect him to, accept the mangoes at the contract price. He sought to renegotiate the price, a proposal Aminata flatly refused to consider.

Advise both parties as to their rights and remedies, if any.

**(8 marks)**

- b) An auctioneer was instructed by Jeweli Limited to sell certain jewellery at a price of not less than Kshs.250,000/=. On the day of the auction no one seemed to be interested in the jewellery. At about closing time, he received the highest *bona fide* bid of Kshs.190,000/=: an amount which Jeweli has refused to accept.

Advise on:

- i) The validity of the auction; and
- ii) Whether the auctioneer is liable to Jeweli Limited.

**(7 marks)**

### QUESTION TWO

- a) Briefly explain the nature of the relationship of the parties to a hire purchase agreement, with emphasis on the role of the dealer once said to be "in many respects and for many purposes the agent of the finance company," per Lord Denning in *Financing Ltd v. Stimson* (1962) 3 All E.R 386, at p.388
- b) Hosea is persuaded to take a pick-up on hire purchase by Daki of Wakky Motors Limited, who told him that the motor vehicle was "as tough as they come." Consequently Daki, with Hosea's knowledge, facilitated the transfer of ownership of the motor vehicle to Mikopo Gari Finance Limited, which then let the pick-up to Hoses allowing him to pay by monthly equal installments.

Hosea discovered shortly thereafter that the pick-up engine rattled uncontrollably, it lacked power and could not carry the weight indicated. He seeks to sue Daki and Wakky Motors Limited.

Advise Hosea.

**(7 marks)**