

QUESTION ONE

Read the following facts and then answer the questions that follow:

Prior to her second marriage to Ramesh, Lisona obtained maintenance orders which among others were that she should be paid a total of USD16,000 per month for 7 years (starting 18th March, 2005). She also got to retain 100% shares from the company that she had started with her former husband, Mr. Roja in 1992.

This company is called Roja and Coolers Co. Ltd. It is a limited liability company which specializes in the manufacture of fridges, coldrooms and portable cooling boxes for soft drinks. The company is incorporated under the Laws of Kenya.

The absence of Roja in her life and the trauma of divorce left her with no time to devote to Roja & Coolers Co. Ltd.

Limo Singh Co. Ltd, a competitor company which also specializes in the cooling business and whose owner had always felt that Roja had stolen Lisona from his arms, decided that it was time to take what was his. Ramesh was no competition for Limo Singh at least according to himself. Limo Singh also set out to buy Roja & Coolers from Lisona and she had no objection. She however felt that it was safer to capture the deal in an appropriate legal document. Limo would pay Lisona an agreed amount for the company and he would retain all the assets and the business of Roja & Coolers as a going concern. Lisona was however categorical that she could retain the cash assets of the company which were held in a certain bank account in the name of the company.

As both companies were incorporated under the Laws of Kenya, there was no challenge of choice of law. It was however agreed that in case of any other complex matters that may touch on regional and international agreements the parties to the contract would revert to the general principles of international law.

In a meeting held between them in the presence of a lawyer, the following issues were agreed upon:

- (i) The price to be paid was Kes 16 million;
 - (ii) The payment would be made through an electronic bank transfer to an account to be specified by Lisona;
 - (iii) Being a shrewd businessman, Limo asked Lisona to ensure that she had the requisite authority to make the deal.
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- (a) What is the most appropriate title for a contract that you would draft as an Advocate acting for either of the parties? (1 mark)
 - (b) Identify and explain at least five (5) contents of a contract. (10 marks)
 - (c) From the facts provided, draft three (3) clauses from among the ones that you have identified in (b). (9 marks)

Note to give the appropriate name to each of the clauses discussed.