

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR AWARD OF DIPLOMA
IN LAW (PARA-LEGAL STUDIES)

NOVEMBER, 2009

LAW OF CONTRACT 2

KENYA SCHOOL OF LAW
LIBRARY

Instructions

- (a) Answer question ONE and any other three (3) questions
- (b) Question 1 is compulsory and carries 25 marks
- (c) All other questions carry 15 marks each
- (d) Marks may be lost for illegibility
- (e) Time allowed is **Two (2) hours**

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1. (a) Kiptun entered into a contract with Rono to purchase a piece of land from Rono measuring five acres. Unknown to Kiptun, the land was situated in a Government forest even though Rono had a title deed to the land that had been acquired irregularly. Kiptun bought the land and was given a title. The government now wants to repossess the land and has declared that it has no intention of compensating anybody for the reason that any titles to the land were acquired illegally.
- Advise Kiptun on the legal position and how he can recover his money. (7 marks)
- (b) Highlight any four distinctions between a contract and a tort. (5 marks)
- (c) Explain the equitable remedies available to a party who is aggrieved by a breach of contract. (5 marks)
- (d) Highlight any two headings under which quasi-contracts may arise noting to explain the meaning of a quasi-contract. (5 marks)
2. (a) Define a contract in restraint of trade. (3 marks)
- (b) Mwala secured employment with a company called Technoglass Ltd situated in Nairobi. The company was involved in manufacturing a unique type of glass known as technoglass. During his employment he was instructed in certain unique procedures of making the glass. In the contract of employment which Mwala signed with the company, there was a clause that provided as follows:

"That upon determination of employment the employee shall not establish or be interested in technoglass making or be involved in the business or manufacture of technoglass or any other business connected with glass making within Nairobi and the country at large for a period of five years."

Mwala feels that this clause encroaches on his freedom to trade and do business to earn a living. He has approached you to advise him on the principles of law that the courts will invoke in deciding whether the clause is valid or invalid.

(12 marks)

3. Certain contracts are forbidden at common and are therefore *prima facie* void and illegal. Highlight the impact of illegality on contracts and cite six types of contracts that are regarded as illegal at common law.

(15 marks)

4. (a) A contract may be discharged in various ways. Explain FIVE ways in which a contract may be discharged.

(10 marks)

- (b) Otongolo had entered into a contract to sell a vehicle to Kamau. The contract was signed and Kamau paid the price of the vehicle by way of depositing the money in Otongolo's bank account. On the day of delivery of the vehicle, which Otongolo had left in a garage in his neighbourhood, he found that the vehicle had been destroyed by a fire that had broken out at the garage that evening. Kamau is threatening to sue Otongolo for breach of contract.

Advise Otongolo on how he may defend himself and the things he will have to prove in court.

(5 marks)

5. (a) Explain the meaning of the following and where/how they are applicable.

- (i) Liquidated damages
- (ii) Unliquidated damages
- (iii) Substantial damages
- (iv) Nominal damages
- (v) Exemplary damages

(10 marks)

- (b) Mwamba rented out a house to Katu at a monthly rent of KShs.6,000/= knowing very well that Katu was going to use it as a brothel. Katu has not paid the rent for ten months now and Mwamba is contemplating taking legal action against Katu for breach of tenancy agreement.

Advise him on the probability of success of such action.

(5 marks)