



KENYATTA UNIVERSITY

CITY AND MAIN CAMPUS

UNIVERSITY EXAMINATIONS 2017/2018

FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF COMMERCE (PROCUREMENT)

BMS 422: PROCUREMENT AND SUPPLY LAW

DATE: MONDAY 12TH FEBRUARY 2018

TIME: 2.00 P.M. - 4.00 P.M.

INSTRUCTIONS:

*Answer question **ONE** and any other **TWO** questions.*

QUESTION ONE

Hexton University (HU) is based in an attractive location in England and offers a range of higher education courses. In order to supplement its income, it rents out its accommodation and facilities in the summer months, once its own students have vacated their accommodation. Due to its geographical position, HU's campus has proven popular with European schools seeking summer accommodation for students enrolled on their courses.

Lisbon normally only offers English language courses from its bases in Portugal. In 2004, it decided to expand its provision by offering English language courses during the summer months in England. It approached HU to discuss the possibility of it providing living accommodation and teaching facilities. It estimated the likely demand at 300 students per week.

From the outset, Lisbon sought to establish a long-term relationship, but HU was unwilling to commit itself for more than a year at a time. Between 2005 and 2008 the parties entered into a formal written contract each year for the provision of the services, based on 300 beds per week, are required by Lisbon. Each contract contained an express recognition of the parties' intention to continue their collaboration in the year up to, and including 2008. The contract for 2008 contained no similar expression of intent in respect of future years.

Each of the contracts contained detailed conditions of contract, which included *force majeure* and arbitration clauses and terms of reference dealing with the details of the living accommodation to be provided as well as teaching facilities. A separate section dealt with administrative matters and another with the financial arrangements.

In May 2008, HU sent the following e-mail to Lisbon:

'... It looks at the moment that there will only be 200 beds per week available in 2009 for you. As ever with these things, these figures are not certain, but I am informing you in advance that the reduction in bed numbers is likely to happen, allowing you to plan accordingly. We will continue to keep you informed of any additional changes which may affect your summer 2009 requirements with us. Please let me know if you have any queries.'

In June 2008 Lisbon replied by e-mail:

'... we are not happy with this reduction but are prepared to consider a reduction to 250 beds per week...'

During a number of verbal discussions, Lisbon indicated it may consider a reduction to 200 but only if this was the best that could be achieved. Nothing was ever formally agreed but a few weeks after these discussions, HU sent another e-mail to Lisbon:

'Despite our previous discussions we are only going to have 100 beds per week available during the summer of 2009. If, on reflection you consider this number no longer viable, please let me know as soon as you can...'

This e-mail provoked a response from Lisbon. It replied as follows:

'The reduction to 100 beds per week, which you mentioned in your e-mail,, is not acceptable and not in line with our contractual situation. We have designed and agreed the contract in the spirit of a long-term commitment, which allows both sides to plan accordingly. The annual renewal is a formality.'

Lisbon has alleged breach of contract by HU in refusing to make 200 beds per week available during the summer of 2009 and has threatened litigation. HU claims there is no formal or informal contract in place for 2009.

- a) Assess whether a contract exists between HU and Lisbon in relation to 2009. (10 marks)
- b) Assuming a contract exists, explain the main ways of terminating the contract. (10 marks)
- c) Assess the advantages of using Litigation as a means of resolving Contractual disputes. (10 marks)

QUESTION TWO

- a) Describe the following in relation too termination of an offer:
 - i) Counter offer (5 marks)
 - ii) Revocation (5 marks)
- b) Explain the purpose of the following:
 - i) A liquidated damages clause (5 marks)
 - ii) An Indemnity clause (5 marks)

QUESTION THREE

- a) Outline the objectives that the Public Procurement and Asset Disposal Act (2015) seeks to achieve. (10 marks)
- b) Explain the various ways in which Battle of the forms can be avoided. (10 marks)

QUESTION FOUR

- a) Explain the main Implied terms that are contained in the Supply of Goods and Services Act. (10 marks)
- b) Describe the factors that should be considered when drafting contract clauses dealing with,
 - i) Dispute Resolution (5 marks)
 - ii) Intellectual Property Rights (IPR) (5 marks)