



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2011/2012

FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LCC 200: SALE OF GOODS, HIRE PURCHASE, & AGENCY

DATE: TUESDAY, 13TH DECEMBER 2011

TIME: 3.00 P.M. – 5.00 P.M.

INSTRUCTIONS

- 1) Answer question ONE and any other TWO questions
- 2) You will be penalised for failing to answer question One
- 3) Support your answer with relevant case law, statutes and any other relevant references
- 4) Write neatly and legibly
- 5) Your answer sheet must bear your student registration number

QUESTION 1 (COMPULSORY) 30 Marks

A, B, and C are *matatu* drivers who, out of frustration with their employers, decided to purchase their own vehicles. Try as they did, none of them was able to raise enough capital to make an outright purchase of a vehicle. They discussed their plight with K., a dealer in motor vehicles, who offered to give them the vehicles on the basis of a hire purchase agreement. Without any hesitation, they accepted K.'s offer and entered into the said agreement, on an individual basis, with him.

After working with his *matatu* for a while, A has decided to exercise his right to terminate the hire purchase agreement between him and K. He has so far paid Ksh. 200,000/-out of the total hire purchase price of Ksh 600,000. K. is insisting that if A. wants to terminate the agreement lawfully, then he should pay an amount of Ksh. 400,000 which was specified in the agreement between them.

B., likewise, has decided to terminate his agreement with K. In exercise of this right, he went to K.'s Nairobi parking yard & office (where he collected the vehicle after signing the agreement) and stated as follows: "Look! Mr. K., I am fed up with you for constantly harassing me whenever I fall behind in the payment of the installments. I regret having entered into this agreement with you. I am by this statement terminating forthwith the agreement between us. You may collect your car from the premises of the "Fig Tree Paradise" Hotel in Ngara where I left it after running out of fuel. Now that I have paid all installments and my total payment comes up to Ksh. 400,000/- out of the total hire purchase price of Ksh. 600,000/-, you can kiss goodbye to the agreement. By the way, here is your vehicle's keys." With that he stormed out of K's office, banging the door after him.

C., on the other hand, is determined to go through with the agreement between him and K. By way of installments, he has paid the sum of Ksh. 450,000/- out of the total hire purchase price of Ksh. 600,000/-. He is however, in default of the agreement by not paying the last three installments. K. has consequently taken possession of the vehicle (which was seized by his enforcers acting upon his instructions) and has informed C. that he should consider the hire purchase agreement between them as dead and buried.

On the basis of these facts, give your legal opinion as to whether:-

- (i) K. has any cause of action against A. and B.; **(5 Marks)**
- (ii) C. has any legal remedy he can enforce by way of court action against K.; **(10 Marks)**
and
- (iii) M. can lawfully recover an amount of Ksh. 150,000/- he paid to K. under a contract of guarantee by which he guaranteed C.'s performance of his obligations under the hire purchase agreement and which K. has categorically refused to pay back on the basis of C.'s default of the agreement by his non-payment three installments. **(10 Marks)**

QUESTION 2 (20 Marks)

- (i) Give the rationale for the ascertainment of the precise time at which the property in goods sold passes from the seller to the buyer in a contract of sale of goods. **(10 Marks)**
- (ii) With the aid of decided cases, analyze the set of rules which the Sale of Goods Act (Cap. 31) provides for determining the intention of parties to a contract of sale of goods (in the absence of an express provision to that effect) as to the time at which property in the goods is to pass from the seller to the buyer. **(10 Marks)**

QUESTION 3 (20 Marks)

Compare and contrast the following:

- (a) A hire purchase agreement, a credit sale agreement and a conditional sale agreement. (10 Marks)
- (b) The implied conditions under the Sale of Goods Act (Cap 31.) and the implied conditions under the Hire Purchase Act (Cap 507). (10 Marks)

QUESTION 4 (20 Marks)

- (a) Distinguish between specific goods, unascertained goods and ascertained goods. (10 Marks)
- (b) Critically analyze the word “goods” as used in both the Sale of Goods Act (Cap.31) and the Hire Purchase Act (Cap 507). (5 Marks)
- (c) Discuss the rights of the buyer under a contract for the sale of goods. (5 Marks)

QUESTION 5 (20 Marks)

Write short notes **on any four** of the following:-

- (a) Agency of necessity (5 Marks)
- (b) When the price in a contract for the sale of goods is ascertained and when such a price is payable (5 Marks)
- (c) Agency by ratification (5 Marks)
- (d) The warranties which an auctioneer gives when she makes an authorized contract between his principal and a third party. (5 Marks)
- (e) Agency by implication (5 Marks)
- (f) The differences & similarities between a sale and an agreement to sell. (5 Marks)
