



KENYATTA UNIVERSITY
UNIVERSITY EXAMINATIONS 2007/2008
INSTITUTE OF OPEN LEARNING
FIRST SEMESTER EXAMINATION FOR THE DEGREE OF MASTER OF SCIENCE
(HOSPITALITY & TOURISM MANAGEMENT)

HIM 506: LEGAL ASPECTS OF HOSPITALITY AND TOURISM

DATE: Tuesday 8th January 2008

TIME: 2.00 – 5.00 p.m.

INSTRUCTIONS:

Question one is compulsory

Answer question one and any other two .

1. Answer all parts of this question
 - a. Clearly explain the difference between an offer and 'invitation to treat' (4 marks)
 - b. Why is the distinction important? You may refer to any case to illustrate this importance (2 marks)
 - c. Does every offer have to be preceded by an invitation to treat? (4 marks)
 - d. One evening when sifting through her junk mail, Mary comes across an advertisement in a brochure of a local travel agent about a 7-day tour of the Rift Valley and Mount Kenya for Kshs.35, 000 per person . the next day she walks to the travel agent to book the package with the full amount only to be told that the price on the brochure was wrong. And that you can have it for Kshs.135, 000,the actual price. What are her rights in this situation?(10 marks)
2. Osumba and Makanga , who live in Nairobi, booked seats on a KQX flight from Nairobi to Mombasa to watch the start of the World Cross Country at 1400hrs.They told the travel agent that they had to be in Mombasa no later than 1300hrs. Accordingly she booked them 1200hrs flight. Unfortunately when they go to the airport their flight was full and that the next available flight would not be leaving until 1330hrs. they were extremely upset and angry but the airline staff pointed to a clause on the Conditions of Contract which read:

“Carrier undertakes to use its best endeavours to carry the passenger and luggage with reasonable dispatch. Times shown on the timetables and elsewhere are not guaranteed and form no part of this contract. Carrier may without notice substitute alternate carriers or aircraft and may alter or omit stopping places shown on the ticket in cases of necessity. Schedules are subject to change without notice. Carrier accepts no responsibility for making connections.”

By the time they caught a taxi from the airport to the starting point of the World Cross Country the race had already taken off!

Deeply disappointed, they decided to catch a harbour cruise at Kilindini thinking this might cheer them up. While on the ferry, thieves stole Makanga's mobile phone worth Kshs30, 000. Other passengers told them that thieves were always on the ferry and that management didn't seem to care because of the exemption sign. “Which exemption sign ?” they asked. They were shown a sign on the inside wall of the ferry that stated: “Neither the owner nor crew accept any responsibility whatsoever for the safety of passengers or their luggage or valuables”

Discuss potential claims and remedies (20 marks).

3. What is unconscionable conduct? What effect does unconscionable conduct have upon a contract which results from such a conduct? Use any case to explain this. (20 marks)
4. What is meant by the elements of negligence? Why is *Donoghue v Stevenson* so famous? Outline the facts and the court's decision. To whom was the duty of care owed? Give a further example of a situation which may give rise to a claim in negligence in a hospitality or tourism situation (20 marks)
5. Clearly explain the sources of law in Kenya. The Doctrine of precedence is entrenched in the English and Kenyan legal systems. Explain how precedence works in practice. Summarise the perceived advantages and disadvantages of this doctrine (20 marks)