KENYATTA UNIVERSITY
EXAMINATION FOR THE DEGREE OF BACHELOR OF LAW
LCC 310: COMMERCIAL LAW II

2ND SEMESTER 2020/2021 **TIME: 2 HOURS**

INSTRUCTIONS:

- Answer **ALL** Questions
- Support your answer with relevant illustrations from case law, statutory provisions and any other references
- Your writing must be **NEAT** and **LEGIBLE**
- Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein
- Do not scribble or draft answers on the inner or outer cover pages or your question paper
- Do not write anything except your **REGISTRATION NUMBER** on this question paper
- **All** Kenyatta University Examinations rules apply as if they were contained herein

Question One

Mr. Simiyu entered into a hire purchase agreement with Ms. Gladys on 15th September, 2019. Mr. Simiyu hired a Lexus car from Ms. Gladys on the following terms.

Clause 6 provides for automatic termination of the agreement if there is threat to distain the goods (vehicle) or an act of bankruptcy by the hirer, or an act of distress upon the hirer.

Clause 7 thereof allows termination if there is outstanding payments or if the goods are in jeopardy.

Clause 8.2 provides that upon termination, the hirer is to pay the outstanding sum and cost of repairs to the goods to put them in a condition consistent with the performance of the Hirers' obligations and damages, if any, for prior breach.

Mr. Simiyu later faced financial difficulties and defaulted on the monthly installments. At the time of the default, Mr. Simiyu had paid over Kshs. 793,334/= which was more than 2/3 of the hire purchase price. The hire purchase price was Kshs. 720,000. The hirer, Ms. Gladys,contracted an auctioneer and attached, repossessed and sold the vehicle. Mr. Simiyu has since gone to court claiming that Gladys is in breach of the contract of the Hire Purchase agreement and its terms and seeks judgement for the said sum of Kshs. 793,334/= plus interests at 14% per annum from 2nd February 2021 upto payment in full. Gladys did not serve Mr. Simiyu any notice before the repossession. Mr. Simiyu has therefore urged the court to order refund of the sum of Kshs. 793,334/= plus interests as Gladys repossessed the vehicle and sold the same. Gladys on the other hand argued in her submissions that the Hire purchase Agreement had been terminated in accordance with the "Agreement" due to breaches of the agreement by Simiyu including mortgaging the car and nonpayment of monthly installments. Mr. Simiyu also claimed that the Hire purchase agreement was not registered at the relevant registry as required by the Hire Purchase Act.

i). Citing relevant case laws and statutory provisions, and any other relevant authorities, discuss whether Mr. Simiyu's suit is likely to succeed. **(12 marks)**

ii). Advice Gladys on the procedure applicable in the termination of a hire purchase agreement. **(5 marks)**

iii). Distinguish between Hire purchase and credit sale **(3 marks)**

iv).Prof Ngugi J., **In re James Maina Kabatha (Debtor/Applicant) NKR Insolvency Cause No. 4 of 2019 [2020] eKLR**, stated that '***The twin goals of consumer or individual bankruptcy law are to protect creditors and ensure optimal payment to them where possible; and the provision of shelter and a "fresh start" to individual debtors overburdened by debt.*** Discuss how the Insolvency Act 2015 revolutionized bankruptcy/insolvency regime in Kenya **(10 marks)**

QUESTION 2

Mr. Kioko, a Senior businessman and the Director of Compulinx Limited served Mr. Otto, a prominent politician and the Director of OttoTech Limited with a statutory demand on 10th August 2020 demanding a payment of Kshs. 200,000 that he owed him. On 20th August 2020, Mr. Kioko did not get any response from Mr. Otto. Mr. Otto did not pay the debt, neither did he petition the court to strike out the statutory demand. Mr. Kioko had supplied Mr. Otto with various MacBook laptops on various occasions in the year 2019. Mr. Kioko decided to file a bankruptcy petition on 21st August 2020 at Kiambu High Court against Mr. Otto accompanied by a statement of affidavit showing the indebtedness of the claim totaling kshs. 200,000. Mr. Kioko had attempted to serve the statutory demand upon Mr. Otto on various occasions at the registered offices of his company as evidenced by the CR 12 that he had obtained from the Companies Registry in Nairobi. However, when he visited the physical location as indicated in the CR 12, he found that the office was no longer operational there and the place was now a motor hub. Mr. Kioko proceeded to Muthaiga Golf Club where he found Mr. Otto sipping his favorite drink Glenfiddich. He served him with the statutory demand to pay and left. Mr. Kioko received the statutory demand though under protest.

Mr. Otto however in his affidavit averred that he was not properly served with the statutory notice as Muthaiga was not the registered office of his company as required by the Insolvency Law. He further averred that he did not owe Mr. Kioko Kshs. 200,000 as alleged in the petition but Kshs. 150,000 only. Mr. Kioko has further argued that there is a pending bankruptcy proceeding filed against him by Rafa at Eldoret High Court hence the court should not proceed with the current bankruptcy proceeding against him pending the determination of the earlier petition at Eldoret High Court.

i)**Citing relevant case laws and statutory provisions, and any other references, discuss whether the court should allow Mr. Kioko's bankruptcy petition. (15 marks)**

ii) **Assuming that the Court allows Mr. Kioko's petition and declares Otto bankrupt, explain the consequences to Mr. Otto? (5 marks)**

QUESTION 3

Madam Mkora handed a cheque for Kshs. 1,000,000/- drawn on Jasho Jebamba Bank with a request to open an account in her name, claiming that the drawer therein, Onyalo Biro & Co. Advocates, had acted for her in a sale and transfer of her parcel of Land located in Bondo. The Bank obliged and went ahead to collect the proceeds which it placed in her new account.

Five days later. Madam Mkora withdrew the whole amount and ran away never to be seen again. It later turned out that her husband, Mr. Macho Kavu, who worked as a cashier at Onyalo Biro & Co. Advocates received the cheques drawn by the law firm's sole proprietor and signatory and proceeded to open and endorse the same cheque in favour of his wife.

Onyalo Biro & Co. Advocates now threatens to sue the bank and demands that Jasho Jebamba Bank pays them the amount of the cheque.

a) Advice the bank. **(10 marks)**

b) Name and discuss five (5) commonly used payment instruments in Kenya suggesting reforms that would make them more applicable to Kenya's modern commercial transactions. **(10 marks)**