

BUSINESS LAW EXAM

HCOB 2110

1. (a) Muthoni and Kipyegon intend to start a business in Kaptagat. They have approached you to enable them to agree on the way forward. Using relevant cases, discuss the various legal requirements that Muthoni and Kipyegon will have to satisfy in order to have a valid contract (15 marks)

(b) Six months after starting the business, Muthoni started keeping the profits of the business to herself. Once Kipyegon discovered this, he decided to terminate the contract and venture out on his own. Discuss the various methods in which a contract can be discharged. (10 marks)

(c) State and explain the FIVE classes of agents (5 marks)
2. (a) Discuss the conditions and warranties in a sale of goods contract (14 marks)

(b) Mukoma has been working for Dishteq Technology Company for the past five years. He has delegated several of his duties to Moraa as his agent. Discuss how an agency relationship can be formed. (6 marks)
3. A **tort** is an **act** or omission that gives rise to injury or harm to another and amounts to a civil wrong. Discuss the various general defences in tort law (20 marks)
4. (a) A vitiating factor is an element of contract that makes it void. Discuss the various vitiating factors in the law of contract (10 marks)

(b) Discuss ways in which an agency relationship can be terminated (10 marks)
5. A group of 18 friends have been discussing several ways in which they can run an agricultural business of selling farm produce. They have approached you to assist them in forming a partnership. Advise them on what a partnership is, how it may be formed and the various rights and duties of partners. (20 marks)

Marking Scheme

1.(a)Consideration ;Capacity; Consent; Legal Intent to create legal relationship; Lawful Object ; Agreement **Cases *Balfour v Balfour, Edwards v Skyways, Jones v Vernon, Carlill v Carbolic Smoke Ball Company***

(b) Breach; Performance; Destruction of subject matter; Non-occurrence of events; Government intervention; Illegality; Death or incapacitation

(c)(universal, factor, broker, specific, general)

2. (a) Sellers right to sell; Merchantable quality; Sale by sample; Fitness for particular purpose; Correspondence with description; Free from encumbrance; Quiet possession

(b) Agreement (express or implied); Necessity (it wasn't possible to reach or communicate with the principal, it was done in good faith and for the benefit of the principal); Ratification (approve endorse or sanction a transaction otherwise done without full authority)

3.Volenti nin fit injuria (had the knowledge of the potential danger involved, assumed it voluntarily, appreciated it in all respects), private defence (proportionate to the harm or threat, established by necessity), necessity (the welfare of the people is the supreme law), inevitable accident (human agency- must prove that the accident could not have been prevented by ordinary care or diligence, Natural – defence must prove that the act was not connected with human factor), statutory authority (must prove that the employee was doing an act which he is legally obliged to perform under act or by-law), Mistake (mistake of fact if arises from reasonable suspicion)

4. (a) Mistake (common, unilateral, mutual); Duress; Undue Influence; Misrepresentation

(b)Mutual consent; Renunciation by the agent; Revocation by the principal; Performance; Expiry; Death of the parties; Nonexistence of the subject matter; Bankruptcy of one of the parties

5. **Rights**; Be indemnified by the firm if any loss occurs to him/her in the course of doing the firm's duties and work; Participate in the decision-making; Participate in the share of profits made by the business in accordance with the agreed ratios; Inspect the books of account and vouchers of the business; Be notified in the event of admission or retirement of a partner, and if one of them opposes then there is no admission of any partner. **Duties**; to attend to the business obligations and commitments; to apply utmost good faith in the management of the business. Any profits made must disclosed to business; not to compete with the firm; to render true accounts.