

The Co-operative University of Kenya

END OF SEMESTER EXAMINATION AUGUST -2018

EXAMINATION FOR THE DIPLOMA IN CO-OPERATIVE MANAGEMENT
(YR I SEM I)

UNIT CODE: COCM 1108 / COCM 1105

UNIT TITLE: COMMERCIAL LAW

DATE: 20TH AUGUST, 2018

TIME: 9:00 AM – 11:00 AM

INSTRUCTIONS:

- Answer question **ONE (compulsory)** and any other **TWO** questions

QUESTION ONE

- a) ‘...A contract comes into existence when an offer by one party is unequivocally accepted by another and both parties have the requisite capacity. Some consideration must pass and the parties must have intended their dealings to give rise to a legally binding agreement. The purpose of the agreement must be legal and any necessary formalities must have been complied with...’ – Anonymous.

Using relevant case laws and necessary illustrations, discuss the following elements of a contract:

- Offer (3 Marks)
 - Acceptance (3 Marks)
 - Capacity (3 Marks)
- b) ‘The High Court, Court of Appeal and all Subordinate Courts shall be guided by African Customary Law in civil cases in which one or more of the parties are subject to it or affected by it, so far as it is applicable and it is not repugnant to justice and morality or inconsistent with any written law, and shall decide all such cases according to substantial justice and without undue regard to technicalities of procedure and without undue delay’ (emphasis mine) –*The Judicature Act, Section 3(2), Chapter 8 Laws of Kenya.*

In light of the above statement, discuss the following issues:

- Ms. Jane Doe is a 12 year aged girl born in a pastoral family of eleven. His father, and her only parent, Mr. John Doe, has won a green card to the United States (US) and he does not intend to come back to Kenya. Her uncles have since decided to take her through the ceremony of Female Genital Mutilation (FGM) and immediately thereafter introduce her to a 50 year old man for marriage. The rest of the siblings are in support of that arrangement since it is allowed in their custom. Nevertheless, Ms. Jane Doe is opposed to that and she has come to you for advice. Briefly advise her the way forward. (6 Marks)
- Outline five limitations of African Customary Law as a source of law in Kenya. (5 Marks)
- List any five (5) implied terms of a hire purchase agreement as provided for in Section 8 of the Hire Purchase Act, Cap. 507, Laws of Kenya. (5 Marks)

d) Outline any five (5) functions of law in a society.

(5 Marks)

QUESTION TWO

Nairobi Airlines Limited (NAL) ordered six Dreamliner aeroplanes in 2013 from Bolche Inc., with delivery to be at the Rabunche International Airport in Brazil.

Early last year, NAL informed Bolche Inc. that due to worsening financial situation and reduction in business it no longer wished to take delivery of the airplanes. However, it would wish to acquire only two much smaller aircrafts. Bolche Inc. did not reply to the communication from NAL.

Last week, NAL received a notice from Bolche Inc. advising the former to take delivery of two of the dreamliners ordered at the agreed place of delivery, namely Rabunche International Airport. They have advised, indeed warned, that continued and extended storage/parking of the two aeroplanes will attract charges.

Address the legal issues arising and the relevant remedies to each party, if any. (20 Marks)

QUESTION THREE

‘...When a person contracts as an agent for the principal, the contract is the contract of the principal and not that of the agent; and prima facie, at common law, the only person who may sue is the principal and the only person who may be sued is the principal...’ – *as per Wright J. in the case of Montgomerie vs. United Kingdom Mutual Steamship Association (1891)*.

In light of the above statement:

- i. Outline and briefly explain any five (5) types of agents (5 Marks)
- ii. Briefly discuss any five (5) duties of agents (5 Marks)
- iii. Discuss the agency relationship arising out of Necessity, Cohabitation and Ratification. (10 Marks)

QUESTION FOUR

The court system in Kenya operates in two levels, that is, the Superior Courts and the Subordinate Courts. From the foregoing of this statement, identify any three (3) Superior Courts and two (2) Subordinate Courts, noting to pay attention to their establishment, composition and jurisdiction.

(20 Marks)

QUESTION FIVE

- i. Outline any five (5) differences between criminal law and civil law. (5 Marks)
- ii. Outline and briefly highlight any five (5) ways through which an agency relationship may be terminated. (5 Marks)
- iii. Outline and briefly highlight any five (5) statutory sources of law. (5 Marks)
- iv. Write short notes on the ‘Minimum Payment Clause’ in a Hire Purchase contract. (5 Marks)