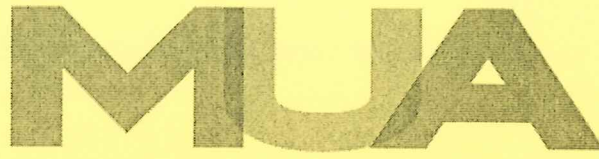


The
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POSTGRADUATE UNIVERSITY EXAMINATIONS
SCHOOL OF MANAGEMENT AND LEADERSHIP
DEGREE OF MASTER OF MANAGEMENT AND LEADERSHIP

MML 5107: LEGAL ISSUES IN MANAGEMENT AND LEADERSHIP

DATE: 5th APRIL 2022

DURATION: 3 HOURS

MAXIMUM MARKS: 60

INSTRUCTIONS:

1. Write your registration number on the answer booklet.
2. **DO NOT** write on this question paper.
3. This paper contains **FOUR (4)** questions.
4. Question **ONE** is compulsory.
5. Answer any other **TWO** questions.
6. Question **ONE** carries **30 MARKS** and the rest carry **15 MARKS** each.
7. **Write all your answers in the Examination answer booklet provided.**

QUESTION ONE

Read the Case Study below carefully and answer the questions that follow:

Bronco II

Eunice Martin was severely injured when the Ford Bronco II that she was driving rolled over after ramping into a stationary truck. The accident occurred when Eunice slammed on her brakes in an effort to avoid a sheep that had walked directly into her motor vehicle's path. Eunice and her husband brought an action against the vehicle manufacturer, asserting a claim for, among other things, breach of the implied warranty of merchantability.

The evidence at the trial centered on the particular characteristics of utility vehicles, which are generally made for off-road use on unpaved and often rugged terrain. Such use often necessitates climbing over obstacles such as fallen logs and rocks. While utility vehicles are traditionally considerably larger than passenger cars, some manufacturers have created a category of down-sized 'small' utility vehicles, which are designed to be lighter, to achieve better fuel economy, and to appeal to a wider consumer market. The Bronco II in which Eunice was injured falls into this category.

Eunice produced evidence that small utility vehicles in general, and the Bronco II in particular, present a significantly higher risk of rollover accidents than do ordinary passenger automobiles. She showed that the Bronco II had a low stability index attributable to its high center of gravity and relatively narrow track width. The vehicle's shorter wheel base and suspension system were additional factors contributing to its instability. The manufacturer had made minor design changes in an effort to achieve higher stability index, but none of the changes produced a significant improvement in the vehicle's stability.

The Manufacturer argued at the trial that the design features of which Eunice complained were necessary to the vehicle's off-road capabilities. According to the manufacturer, the vehicle has been intended to be used as an off-road vehicle and

had not been designed to be sold as a conventional passenger automobile. The manufacturer's own engineer stated that he would not recommend the Bronco II to someone whose primary interest was to use it as a passenger car, because the features of a four-wheel drive utility vehicle were not helpful for that purpose and the vehicle's design made it inherently less stable.

According to the marketing manual, the sales presentation should take into account the vehicle's 'suitability for commuting and for suburban and city driving'. Additionally, the vehicle's ability to switch between two-wheel and four-wheel drive would be particularly appealing to women who may be concerned about driving in snow and ice with their children'. The Martins testified that the perceived safety benefits of its four-wheel drive capacity were what attracted them to the Bronco II and that they were not at all interested in its off-road use.

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Required:

- a) The above excerpt, discuss whether the manufacturer was in breach of the implied warranty of merchantability when it sold Bronco II for use as an on-road vehicle when it had a propensity to roll over in such use. **(8 marks)**

- b) In the event that a civil case was filed by the owner of the stationary truck, discuss the defense of contributory negligence in law against such claim. **(8 marks)**

- c) Describe **three** remedies available to the Martins against the manufacturer for breach of implied warranty of merchantability. **(6 marks)**

- d) With the use of relevant examples, differentiate between 'express' terms and 'implied' terms in Contract. **(8 marks)**

QUESTION TWO

- a) Brian was an employee of the Defendant at a salary of Kshs 275,000/= and entertainment allowance of Kshs 30,000/= per month. Both parties knew that the actual entertainment allowance was Kshs 5,000/= per month. The agreement was a mere device intended to evade income tax of Kshs 25,000/=. Brian's employment was terminated without notice or salary in lieu of notice. Advise Brian on whether he can bring an action for breach of employment contract against his former employer. **(5 marks)**
- b) Clare, the Director of Clare Manufacturing, fires his agent named Peter. The reason is that Peter has been receiving kickbacks from suppliers, and is guilty of diverting business to another. Identify, if any, **four** duties that Peter owes to Clare Manufacturing that he has breached. **(10 marks)**

QUESTION THREE

- a) In relation to the Law of Contract, briefly explain **five** circumstances that might lead to frustration of an enforceable contract. **(10 marks)**
- b) Distinguish between 'common' law and statute' law. **(5 marks)**

QUESTION FOUR

- a) Discuss **four** writs which the High Court may issue when exercising its supervisory jurisdiction over the subordinate courts, and over administrative authorities exercising judicial or quasi-judicial function. **(8 marks)**
- b) In relation to a registered Company,
- i. Briefly explain any **three** ways through which a person might cease to become a member of a Company. **(3 marks)**

- ii. Discuss any **four** duties that a Directors must observe under the provisions of the Kenya Companies Act. **(4 marks)**

