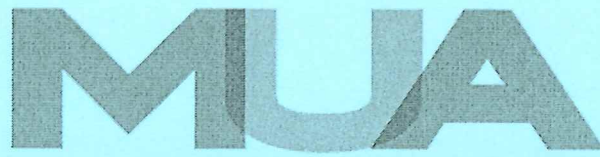


The
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UNDERGRADUATE UNIVERSITY EXAMINATIONS

SCHOOL OF MANAGEMENT AND LEADERSHIP

DEGREE OF BACHELOR OF ARTS IN DEVELOPMENT STUDIES

BDS 102/BDS 324: LEGAL ASPECTS OF DEVELOPMENT

DATE: 18th July 2022

DURATION: 2 HOURS

MAXIMUM MARKS: 70

INSTRUCTIONS:

1. Write your registration number on the answer booklet.
2. **DO NOT** write on this question paper.
3. This paper contains **SIX (6)** questions.
4. Question **ONE** is compulsory.
5. Answer any other **THREE** questions.
6. Question **ONE** carries **25 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:

SUGAR CANE GROWING AND SUPPLY CONTRACT

On 15th August 2015 Benson entered into a sugar cane growing and supply contract with a sugar cane miller in Kenya. The contract was governed by the Sugar Act, 2001 which governed harvesting of the sugar cane.

According to the contract, Benson was contracted to grow and sell to the miller sugarcane at his parcel of land known as plot. No. 786 measuring 0.6 hectares in Gucha subcounty of Kisii County. The contract was for a period of 6 years or until one plant crop and two ratoon crops of the sugarcane were harvested from the farm whichever event occurred first.

Benson discharged his part of the contract until the plant crop was ready for harvesting. One tonne was going for Kshs 1730/= and he estimated that the farm would have produced 135 tonnes per hectare. The plant crop matured at 21 months while the ratoon crops at 18 months.

The miller's representative visited the farm to confirm that Benson had wholly performed his part of the contract. He found that the plant crop was ready but still on the field. Benson was then issued with a job completion certificate but the miller failed and/or refused to harvest it.

The plant crop dried up on the farm and the development of the ratoon crops was compromised. As a result of the failure on the part of the miller, Benson suffered great loss of his expected earnings for all three crop cycles. He has computed his estimated loss as Kshs 285,450/= made up as follows:

- a) plant crop $\text{Kshs } 1730/= \times 100 \text{ tonnes} \times 0.6 \text{ hectares} = \text{Kshs } 103,800/=$
- b) 1st ratoon crop $\text{Kshs } 1730/= \times 90 \text{ tonnes} \times 0.6 \text{ hectares} = \text{Kshs } 93,420/=$
- c) 2nd ratoon crop $\text{Kshs } 1730/= \times 85 \text{ tonnes} \times 0.6 \text{ hectares} = \text{Kshs } 88,230/=$

These estimates were based on the miller's agricultural department and the Ministry of Agriculture optimal production levels. Ben also claims for general damages against the miller for breach of contract.

Required:

Ben has visited your offices and wishes to file a court case against the miller. As a graduate of Legal Aspects of Development, advice Ben on the following:

- (a) Differences between special damages and general damages. (6 marks)
- (b) The stages that the Sugar Act, 2001 had to go through before it became an Act of Parliament of Kenya. (10 marks)
- (c) In reference to remedies for breach of contract, any **three** consequences of a breach of contract. (9 marks)

QUESTION TWO

In the context of Sale of goods Act:

- a) Briefly explain any **four** promises a seller makes to the buyer. (8 marks)
- b) The buyer of a trench coat suffered an allergic reaction due to her particularly sensitive skin. As a student of Legal aspects of Development, advice the seller on whether he is liable to pay the buyer damages. (7 marks)

QUESTION THREE

- a) In relation to the Kenyan Court system, briefly explain any five characteristics of tribunals. (5 marks)

- b) Margaret went into Pamela's curio shop to buy wooden carvings. She handed Kshs 3000/= to a rogue, who was in the shop and appeared to be responsible for transacting business there. Advise Margaret on whether she will be required to pay Pamela for the same goods. (10 marks)

QUESTION FOUR

- a) In reference to interpretation of statutes by the Court, differentiate between the literal rule and the mischief rule. (6 marks)
- b) A son agreed not to nag his father if he wrote a will and in return his father agreed to release him from a debt of Kshs 200,000/=. In reference to the Law of Contract, advise the father on whether he is obligated to perform the contract in favour of the son. (9 marks)

QUESTION FIVE

- a) Briefly explain any **three** ways that an illegal partnership may be created in Kenya. (6 marks)
- b) Differentiate between a public nuisance and a private nuisance. (9 marks)

QUESTION SIX

- a) In relation to the Law of Succession, briefly explain the meaning of the following concepts:
- i) Dependant (5 marks)
 - ii) Personal Representative (5 marks)
- b) In reference to the Sale of Goods Act, briefly explain the effect of an unpaid seller exercising the right to stop goods in transit. (5 marks)