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(University of Choice)
**MASINDE MULIRO UNIVERSITY OF SCIENCE AND
TECHNOLOGY (MMUST)**

MAIN CAMPUS

UNIVERSITY EXAMINATIONS

2022/2023 ACADEMIC YEAR

MAIN EXAMINATIONS

FOR THE DEGREE

**OF
MASTERS IN BUSINESS ADMINISTRATION**

COURSE CODE: MBA 812

COURSE TITLE; BUSINESS LAW

DATE: THURSDAY, 20TH APRIL 2023 TIME: 2:00 – 5:00PM

INSTRUCTIONS TO CANDIDATES

- 1. ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS**
- 2. DO NOT WRITE ANYTHING ON THE QUESTION PAPER**

TIME: 3 HOURS

MMUST observes ZERO tolerance to examination cheating

This Paper Consists of 2 Printed Pages. Please Turn Over.

QUESTION ONE

a. Supercabs limited which operates a fleet of taxis, engages Don as a driver. The company provides and maintains the taxi and pays for the petrol. Don promises to work only for the company. However, Don does not receive a wage but instead is paid a commission on the earnings he collects. The journeys he makes and the hours he works are left entirely to his discretion.

i. Discuss whether Don is in a contract of service or in a contract for service and distinguish between the two. (2 marks)

ii. Describe tests used to determine whether one is an employee or an independent contractor. (6 marks)

b. Distinguish between a bill of exchange and a promissory note. (3 marks)

c. The general rule is that judges should follow decisions made by higher courts. But at times the courts advocates for flexibility while deciding cases. Highlight cases when a lower court may depart from an earlier decision made by a superior court. (5 marks)

d. Argue the case for arbitration as a dispute resolution mechanism. (10 marks)

e. Copyright law is meant to protect literary works. Explain the remedies available to an aggrieved party in case of copyright infringement. (10 marks)

f. Custom is the oldest source of law. Explain the criteria which must be satisfied before a custom can be applicable as a law. (4marks)

QUESTION TWO

a. Describe the rights of an agent . (12 marks)

b. Philip instructs Steven to sell his house and agrees to pay him £200 commission on completion. Steven sells the house and on completion is paid his commission by Philip. Philip subsequently discovers that Steven has also been paid a commission of £100 by the purchaser.

Advise Philip (3 marks)

c. Explain the grounds for discharging a guarantor from a contract of guarantee (5 marks)

QUESTION THREE

a. There is a simple contractual relationship between the banker and customer. It's a debtor-creditors relationship which imposes upon parties certain legally binding obligations. Explain the duties of the banker. (5 marks)

b. Hill and Jon met for a business lunch at a restaurant in town. They were later joined by Jack, who is Jon's friend. During the discussion, Jon informed Jack that he was Hill's agent to which Hill did not object. A week later, Jon obtained goods on credit from Jack on behalf of Hill. Jon has since disappeared and Jack is claiming payment for the goods from Hill. Explain the legal principles applicable in this case and advise Jack. (5 marks)

c. Assess factors that may invalidate consent and lead to a void or voidable contract with the aid of illustrations. (10 marks)

QUESTION FOUR

a. "In the development of our sale of goods laws, two principles have striven for mastery. The first is for the protection of property, no one can give a better title than he himself possesses. The second is for the protection of commercial transactions; the person who buys goods in good faith and for value without notice of any defective title should get a good title."

(Justice Nyangumi in *Nakumatt limited v. Bedi Investments limited* NK HCCC 20 of 2005)

Discuss. (10 marks)

b. Yang and Ying entered into an agreement whereby Yang was to lease three rooms in the second floor of Exchel building for the purposes of carrying out consultancy services. Formulate a lease agreement between Yang and Ying using the information provided and any other hypothetical information. (6 marks)

c. Martha and Gath entered into a contract in which Martha was to sell a car to Gath for sh 300,000. Unknown to the parties, the car which had been parked at Kama's garage had been burnt down that morning following a fire outbreak at the garage. Gath had paid Martha sh 150,000 as deposit. She now intends to sue Martha for breach of contract. Advise Martha. (4 marks)

QUESTION FIVE

a. Explain the legal principles applicable in each of the following case:

i. Adil posted a poster on Deng's wall advertising a disco dance competition meant for raising funds for a local charity. (2marks)

ii. Freeman cut down the branches of a mango tree belonging to Goliath his neighbour which had extended to his land. He picked the ripe mangoes from the fallen branches and gave all of them to the children in his vicinity. (4 marks)

b. Explain four salient features of a limited partnership. (4 marks)

c. A partnership may be dissolved either with or without court intervention. Discuss the grounds for dissolution without a court order. (10 marks)