



**MASINDE MULIRO UNIVERSITY OF SCIENCE AND  
TECHNOLOGY  
(MMUST)**

**MAIN CAMPUS**

**UNIVERSITY EXAMINATIONS  
2022/2023 ACADEMIC YEAR**

**FOURTH YEAR SECOND SEMESTER EXAMINATIONS**

**FOR THE DEGREE  
OF  
BACHELOR OF TECHNOLOGY IN BUILDING  
CONSTRUCTION**

**COURSE CODE: BTB 462**

**COURSE TITLE: CONSTRUCTION LAW**

**DATE: 26<sup>TH</sup> APRIL 2023**

**TIME: 8 – 10 A.M**

**INSTRUCTIONS:**

1. This paper contains FOUR questions
2. **Question ONE (1) is Compulsory**
3. **Attempt a total of THREE questions in this booklet.**
4. Marks for each question are indicated in the parenthesis.
5. Examination duration is **2 Hours**

MMUST observes ZERO tolerance to examination cheating

This Paper Consists of 3 Printed Pages. Please Turn Over.

**Question 1****COMPULSORY****(30 marks)**

- a) Differentiate between conditions and warranties as used in contract law  
(5 Marks)
- b) Briefly discuss the general rules governing consideration as an element of a contract  
(5 Marks)
- c) Briefly describe any FIVE objectives of the law of tort  
(5 Marks)
- d) Discuss in details any TWO types of offers in the formation of a contract  
(5 Marks)
- e) Colin owns a number of shops in Kisumu. One of them is in need of complete refurbishing and re- equipping. Colin is approached by Austin, a local builder. Austin is aware that Colin is carrying on an affair with Monica, Colin's secretary. Austin makes it clear to Colin that unless he gives Austin the contract for the refurbishment of the shop, Austin will tell Colin's wife, Sarah, about the affair. Colin reluctantly agrees that he will give Austin the contract, with work to start in three months' time. Advise Colin, as to whether he is bound to his contract with Austin  
(7 Marks)
- f) Lutubula, a contractor lost his concrete mixer from the construction site. He puts an advertisement in the local paper advertising a reward of Kshs 50,000 to anyone who finds it. Mickdad, who has not seen the advertisement, discovers the concrete mixer abandoned on some wasteland, and takes it home. His sister, on seeing the mixer, recognizes it as the one for which the reward has been offered, and shows Mickdad the advertisement in the newspaper. Mickdad returns the mixer to Lutubula, but he refuses to pay the Kshs 50,000 saying that the offer has been withdrawn. Advise Mickdad.  
(8 Marks)

**Question 2****(20 marks)**

- a) Distinguish between the following types of contracts; (5 Marks)
- Written contracts and Contracts requiring written documents
  - Bilateral and unilateral contracts
- b) Discuss any two disputes resolution techniques used in settling construction disputes  
(5 Marks)
- c) The two concepts of 'duress' and 'undue influence' together constitute a law against unconscionable contracts. Discuss.  
(10 Marks)

**Question 3****(20 marks)**

- a) Differentiate between an injunction and *quantum meruit* giving example in each case (5 Marks)
- b) Using suitable examples, explain how damages can be mitigated (5 Marks)
- c) Immaculate is converting an old hardware into a tea shop and private residence. Obonyo has agreed to do the conversion for the price of Kshs 1,000,000 payable on completion. Obonyo does not complete the work on the private residence but has walked off site as he has a more lucrative contract elsewhere. He claims Immaculate owes him Kshs 400,000 for the work done on the residential part of the project. Immaculate engages Japheth to complete the work on the tea shop at a price of Kshs 400,000. Japheth completes the work. Immaculate refuses to pay as she claims the work is shoddy; the doors to the kitchen open inwards instead of outwards; and the shop counter slopes. The cost to remedy the defects is Kshs 50,000. Advise Immaculate as to any contractual liability she may have to Obonyo and Japheth. (10 Marks)

**Question 4****(20 marks)**

- a) Discuss how the following people's contractual capacity is limited by the law (5 Marks)
- i. Persons of unsound mind
  - ii. Persons with drunkenness
- b) Meshik hardware contracts to supply Gatebe a contractor with 100 bags of cement per month for 24 months for his various projects, for a fixed sum of Kshs 70,000, payable in advance. After six months, the market price of cement unexpectedly doubles, due to the outbreak of war between Russia and Ukraine (led to increase in cost of fuel). Gatebe, hearing that as a result of this Meshik hardware has started to cancel similar contracts, suggests to Meshik hardware that he will be prepared to take 70 bags per month in satisfaction of their contract. Meshik agrees, and delivers 70 bags per month for the next five months. The war finally ends and the market price of cement collapses. Gatebe now demands: (a) the 150 shortfall in cement deliveries in relation to the past five months; and (b) 100 bags of cement per month for the rest of the contract. Advise Meshik hardware. (15 Marks)

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