

THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

1ST YEAR TERM III EXAMINATION

KENYA SCHOOL OF LAW
TOWN CAMPUS LIBRARY

COMMERCIAL LAW 1 (DPS-110)

2nd April, 2019

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 Marks
- (c) All other questions carry 15 Marks each

PLEASE TURN OVER

Question One

Jaya is a businessman dealing in the production and sale of high quality timber furniture. Kay a businessman as well is involved in the development of a block of exclusive furnished apartment in Parklands. Kay visits Jaya's show room and is extremely impressed with the workmanship with which Jaya's furniture is produced. Kay enters into a contract with Jaya in which Jaya is to supply one sofa set, one coffee table and two beds for each of Kay's 33 apartments. Jaya is only too glad to enter the arrangements especially in view of the difficult economic times that he has been facing. Give advice to Kay based on Kenyan Law under the following circumstances.

- a) Jaya produces the furniture as per the agreement with Kay. On the day prior to transportation of the furniture to the apartments, a fire breaks out at Jaya's workshop. Everything in the workshop, including what was destined for Kay's apartment is burnt to the ground. (8 marks)
- b) Jaya produces the furniture and informs Kay that the furniture is ready. Kay comes to Jaya's workshop and confirms that the furniture is truly as exquisite as promised. Kay makes full payment for the furniture and promises to return the following day to collect the furniture. Due to unforeseen delays Kay is not able to come back as promised and returned two weeks later. To Kay's shock and dismay Kay finds that Jaya has since sold half of the consignment to another customer who has since collected the half. (8 marks)
- c) Jaya produces the furniture and delivers the consignment to Kay's premises. Kay on inspecting the goods finds that they are defective in that the colours used are different and the design is completely different. In addition, of the 33 coffee tables expected, 3 are missing while instead of 33 sofa sets 38 have been delivered. (9 marks)

Question Two

Ruth a standard 8 Pupil, rushes into Dr. Paul's chemist shop and says to Peter, a standard seven Pupil at Elite Academy, who is standing in for Dr. Paul: - "I have a cracking headache. The last time I felt like this, I found Dr. Paul who gave me "Caramé", May I have two tablets of the same please?"

Peter does as requested and sells two tablets of Caramé to Ruth which are actually written on the wrapping: "Caramé Extra" and which Ruth takes immediately and rushes back to their house, which is nearby. Upon entering the house, Ruth who was in the middle of her Primary School exam, falls into deep sleep and when she wakes up, at 12 noon remembers that she was supposed to have gone for her math's paper at 9.00 at her School which is five minutes' walk from their house. On reaching the School at 12.30 p.m. the Head teacher tells Ruth that she missed the paper, and would have to repeat the whole year before she can take the exam the following year. Ruth approaches you, wishing to sue both Peter and Dr. Paul having been given medicine which not only failed to cure her ailment, but also worsened her condition, and all the consequential damages, including failing to take her Primary School examination and having to repeat standard 8 for the whole of the following year.

Advise Ruth indicating to her the defenses likely to be raised by both Peter and Dr. Paul against her arguments. (15 marks)