

**CHUKA UNIVERSITY**

**MAIN CAMPUS**

**ACADEMIC YEAR 2022/2023**

**EXAMINATION FOR THE BACHELORS DEGREE IN BACHELOR OF LAWS**

**CONTRACTS II**

**DATE: MAY**

**INSTRUCTIONS:**

**ANSWER THREE QUESTIONS**

**QUESTION 1 IS MANDATORY**

**QUESTION 1:**

- 1.** Mwani, an elderly farmer, owns a 100 acre farm. He and his son, Paul, are long-time customers of Pesa Bank. Paul also owns a company, CMC Limited, whose account is at the same bank. As CMC Limited conducted business, the company required additional sources of financing and Paul sought to acquire an overdraft to help finance company operations. Pesa Bank guaranteed the company's overdraft of Kshs. 100 million and charged the 100 acre farm as security.

Subsequently, Paul sought to increase the overdraft by borrowing an additional Kshs. 50 million. As the overdraft increased, Pesa Bank needed more security which Paul assured the bank that Mwani could provide. Mwani and Paul went to Pesa Bank where an assistant manager, leaving the documents with Mwani for consideration, advised Mwani to sign a further guarantee and execute a further charge on his farm.

Mwani was reluctant to sign but sought further clarification from the assistant manager at the bank and he was advised that he could also support his son, Paul, with approximately half the value of his assets that is, his home. Mwani then signed the guarantee and charge and a further loan was released in favor of CMC Limited using his home as security.

CMC Limited's business continued on its downward trend and business was terrible. Paul went to Mwani at his home with an assistant manager from Pesa Bank with a further guarantee and charge, for even higher sums than before. The company needed an extra Kshs. 200 million to stay afloat. Mwani, in a state of desperation and trying to help his son, signed these deeds as well as a second charge on his home.

CMC Limited has now ceased to trade and Pesa Bank would like to sell Mwani's house and farm to recover the total loan amounts, including the overdraft, extended.

a. Advise Pesa Bank on whether they can recover their loan through selling Mwani's house

**(8 marks)**

b. Paul's friend, John, has advised him that he can avoid the contract on the grounds of misrepresentation. Advise Paul on whether this is a true assertion

**(8 marks)**

c. Paul's friend, Mary, has advised him that he can avoid the contract on the grounds of duress. Advise Paul on the veracity of this statement

**(8 marks)**

d. Advise Paul on the remedies which would be available in all the circumstances noted in parts a, b and c above

**(6 marks)**

**(TOTAL: 30**

**marks)**

## **Question 2:**

Kasani wishes to sell a rather valuable violin, so she advertises it for sale. Sarah visits her explaining that she would like to buy the violin. They agree on a price of Kshs. 300,000. Sarah produces a cheque book, but Kasani hesitates, saying that she would prefer cash. Sarah then replies, "Look you can see who I am," and produces an identity card, bearing the same surname as a famous musician. Kasani is embarrassed and agrees to take the cheque immediately. She hands over the violin to Sarah.

A few days later, Kasani is contacted by her bank manager, who informs her that the cheque has been dishonored and that Sarah cannot be traced.

Kasani is very upset at this and is surprised when she sees the same violin for sale in the window of a musical instrument supplier, Mobisa Ltd. She tries to recover the violin from Mobisa Ltd but is unsuccessful. They claim that they paid a good price for it from someone who was travelling abroad, and would certainly not be prepared to hand it over to Kasani.

With the aid of case law where appropriate, advise Kasani on whether she has any legal right to claim the return of the violin to her. (20 Marks)

### Question 3

- a. "The fundamental effect of the circumstances that cause frustration of a contract is that the foundation of the contract is destroyed and that gains and losses remain where they have fallen."-Anonymous Critically analyze this statement. (10 marks)
- b. With the use of case law, explain what constitutes the different types of contractual mistakes and the appropriate remedies for each. (10 Marks)

### Question 4

- a) *On the principles of English law laid down in Cutter v Powell, the plaintiffs, having contracted to do an entire work for a specific sum, can recover nothing unless the work be done, or it can be shown that it was the defendant's fault that the work was incomplete, or that there is something to justify the conclusion that the parties have entered into a fresh contract."*- Blackburn J. in Appleby v Myers [1867] LR 2 CP 651 (20 Marks)

### Question 5:

The appropriate remedy depends on the terms of the contract, the nature of the breach, and the specific circumstances of the case. Write short notes on:

- a.) General Damages (4Marks)
- b.) Specific Performance (4Marks)
- c.) Punitive Damages (4Marks)
- d.) Injunction (4Marks)
- e.) Rescission (4 Marks)