



**JARAMOGI OGINGA ODINGA UNIVERSITY OF SCIENCE
AND TECHNOLOGY UNIVERSITY EXAMINATION 2018/19 2nd YEAR 1ST
SEMESTER EXAMINATION FOR THE DEGREE OF MASTER OF BUSINESS
ADMINISTRATION**

KISII CAMPUS

COURSE CODE: MBA 816

TITLE: COMMERCIAL LAW

DATE:

TIME:.....

DURATION: 3 HOURS

INSTRUCTION

1. This paper contains **SIX (6)** questions
2. Answer any **FOUR (4)** questions
3. Write all answers in the booklet provided

QUESTION ONE (15mks)

a. Kisirani General Insurance Co. Ltd. Issued a motor insurance policy to John. The policy stipulated that the insurer would indemnify the insured and any authorized driver against any liability arising from a motor accident involving the insured motor vehicle. John lends his insured vehicle to his wife Nyambura for TRIP TO Kisumu over a weekend. On her way Nyambura knocks a pedestrian and breaks his legs. After undergoing treatment in a hospital the pedestrian claims Sh. 50,000 as damages from Nyambura which she pays. Advise Nyambura whether she can successfully sue kisirani General Insurance Co. Ltd. And recover indemnity; give reasons for your answer. (5mks)

b. The defendants were manufacturers of medicine known as “the (carbolic Smoke Ball” they advertised a reward of £300 to anyone who contracted influenza after using their smoke Ball in accordance with presentation, adding that £ 200 had been deposited with their links “to show their sincerity”. The plaintiff used the Smoke Ball according to the defendant’s instructions, but still contracted influenza she claimed the reward of £300 from the defendants.

What was the Judgment of the Court and the Legal Principles Developed as Per the Case?

(4mks)

c. Explain the doctrine of privity of contract. (3mks)

d. What is consideration? Past consideration is NO consideration, Discuss. (3mks)

QUESTION TWO (15MKS) (15mks)

a. In relation to negotiable" instruments describe the requirements that valid Bill of Exchange must comply with. (8mks)

b. Discuss the functions of bankruptcy law in Kenya (7mks)

QUESTION THREE (15mks)

a. Explain the Meaning and exceptions of the term “NEMO DAT QUOD NON HABET”

(6 mks)

b. Explain the Concept of Legal Personality (4mks)

c. Describe the Practical consequences of incorporation (5mks)

QUESTION FOUR (15mks)

a. Discuss the instances in which an agent is presumed to be personally liable unless the contract to the contrary exists. (6mks)

b. Discuss the general defenses available to defendant in case of break of a tort. (5mks)

c. Explain the Essentials of A Bill of Exchange

(4mks)

QUESTION FIVE (15mks)

- a. Discuss the Essence of a Contract of Insurance and Main Principles upon Which Such Contracts are premised. (10mks)
- b. Kioko Engineering Works Ltd. Employed a garage hand, part of whose duty was to remove cars parked in the company's garage. He was expressly forbidden to drive the cars. In breach of this prohibition and in order to make room for other vehicles, the garage hand negligently drove a van onto the highway causing a collision with Patel's van. Patel wishes to know his right, if any, against Kioko Engineering Works Ltd. Advise him. (5mks)

QUESTION SIX (15mks)

- a. Explain and Distinguish Between Civil And Criminal Law Providing Suitable Examples of Each Category. (4mks)
- b. Juma's car broke down on his way to Kisumu where he had an important appointment. Shah, who was passing in his car offered to help. Juma said to him 'Take me to Kisumu and I shall be most grateful.' Shah took him to Kisumu and then Juma said to him 'I am so happy. When I got back to my office in Nairobi I will send you a cheque for Shs. 200'. He has not done so, and Shah wishes to know if he can enforce the promise. Advice Shah. (3mks)
- c. A contract is formed by an offer by one person and the acceptance of this offer by another person. The intention of both parties must be to create a legal relationship and they must have the legal capacity to make such a contract between the two parties. Therefore, on the basis of the above information, briefly explain the essential factors which are required for the formation of a contract. (4mks)
- d. Define Law and Outline the Sources of Kenyan Law (4mks)