

EXAMINATION NO. _____



2017 EXAMINATIONS

KNOWLEDGE LEVEL

PAPER 2 : LEGAL FRAMEWORK

TUESDAY 6 JUNE 2017

**TIME ALLOWED: 3 HOURS
2.00 PM - 5.00 PM**

INSTRUCTIONS

1. You are allowed **15 minutes** reading time **before the examination begins** during which you should read the question paper and, if you wish, make annotations on the question paper. However, you will **not** be allowed, **under any circumstances**, to open the answer book and start writing or use your calculator during this reading time.
2. Number of questions on paper - 7
3. The paper is divided into Sections **A** and **B**. All questions to be answered in Section **A** and **ANY TWO** from Section **B**.
4. Each question carries 20 marks.
5. Your answers should be supported by authorities, where appropriate.
6. This question paper should **not** be removed from the examination hall.
7. **DO NOT OPEN THIS PAPER UNTIL YOU ARE INSTRUCTED BY THE INVIGILATOR**

This question paper contains 4 pages

SECTION A

Answer all questions in this Section

1. (a) Explain the difference between “criminal” and “civil” liability. **10 Marks**
- (b) (i) In the context of the law, explain the meaning of the word “custom”. **2 Marks**
- (ii) Explain any **four** tests which must be satisfied to establish that a customary rule of law which is in issue is valid and is capable of being enforced in a court of law. **8 Marks**

(TOTAL : 20 MARKS)

2. (a) Henry intended to buy a mobile phone from Cellophone Manufacturing Company. He phoned the company and asked the price for Nokia 1300. A salesman in the company told Henry that a Nokia 1300 was sold at a price of K20,000. Henry told the salesman that he agreed to buy the Nokia 1300 at the stated price. The company’s salesman did not reply.

Required:

Advise Henry as to his legal position under these circumstances. **9 Marks**

- (b) Explain the meaning of a counter-offer. **4 Marks**
- (c) The rule is that an offer can be made to a particular group of persons and can even be made to the whole world.

Required:

Explain the truth of this statement. **7 Marks**
(TOTAL : 20 MARKS)

3. (a) A minor has no contractual capacity.

Required:

Discuss this statement. **8 Marks**

- (b) By means of case law, explain the legal effect of a mutual mistake. **4 Marks**
- (c) In relation to agency law, explain how an agency of necessity may be created. **8 Marks**

TOTAL : 20 MARKS)

Continued/.....

SECTION B

Answer ANY TWO questions from this section

4. (a) In relation to contracts for the sale of goods, a seller has a strict duty to deliver the precise quantity of goods to a buyer as stipulated in the contract.

Required:

Explain the law applicable in favour of a buyer if a seller delivers to the buyer an incorrect quantity of goods. **10 Marks**

- (b) Under the Sale of Goods Act, the term “acceptance” of the goods by a buyer is not necessarily used in its literal sense.

Required:

To what extent is this statement true?

10 Marks
(TOTAL : 20 MARKS)

5. (a) Adam bought a shirt which was manufactured by Dizu Textiles Manufacturing Company Ltd from Peter’s shop. When Adam wore the shirt for the first time, rashes developed on his skin. Medical tests revealed that the rashes were due to remains of chemicals which stuck to the shirt after the process of manufacture had been completed.

Required:

Advise Adam as to his legal position.

10 Marks

- (b) Once a plaintiff has established causation, it is also necessary to establish that the damage was not too remote.

Required:

How does this statement agree with the decision in the *Wagon Mound (No.1)* (1961) 1 AC 617? **3 Marks**

- (c) The control test which was developed in the Law of *vicarious liability* as a means of identifying a relationship between an employer and an employee has now become deficient in its application.

Required:

How does this statement agree with the ruling in *Cassidy v Minister of Health* (1951) 2 KB 343? **7 Marks**

(TOTAL : 20 MARKS)

6. (a) Edward was engaged by Dickens to form a company to be known as Dickens Company Ltd whose objective was to manufacture tobacco cigarettes. In the course of his duty, Edward made some secret profits which he did not disclose to anyone. When the company had been duly formed, the first company directors discovered that he had made some secret profit amounting to K3 million.

Required:

Advise the directors on their legal position.

12 Marks

- (b) “The company is at law a different person altogether from the subscribers to the memorandum, and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands receive profits, the company is not in law the agent of the subscribers or a trustee for them. This is the legal status of a company which contracts with that of a partnership or a sole trader” per *Lord McNaughton* in *Salomon v Salomon and Co. (1897) AC 22.*

Required:

Explain the legal significance of the above statement.

8 Marks

(TOTAL : 20 MARKS)

7. (a) The corporate veil of a company may be lifted by courts resulting into an individual member or a company being personally liable.

Required:

Explain the **five** circumstances under which courts may exercise their powers to lift the corporate veil of a company.

10 Marks

- (b) Explain the facts with regard to personal liberty and the decision in *Mhango v Attorney General: Civil Cause No. 980 of 1998.*

10 Marks

(TOTAL : 20 MARKS)

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