



NATIONAL OPEN UNIVERSITY OF NIGERIA
FACULTY OF LAW, DEPARTMENT OF COMMERCIAL LAW
Plot 91, Cadastral Zone, Nnamdi Azikiwe Express Way, Jabi – Abuja
2020_1 EXAMINATION

COURSE CODE: CLL 331

COURSE TITLE LAW OF COMMERCIAL TRANSACTIONS – I

CREDIT UNITS: 4

INSTRUCTIONS: (a) Indicate your Matriculation Number clearly
(b) Attempt Question one (1) and any other three (3) questions
(c) Question one (1) is compulsory and carries 25 marks; while the other questions carry 15 marks each.
(d) Using appropriate statutory and judicial authorities, present all your points in a straightforward, coherent and orderly manner.

TIME 3 Hours

ALLOWED:

Question 1

- (a) Innoson Vehicle Manufacturing Company (IVMC) is an international motor vehicle manufacturing outlet with international office at Jabi Industrial Layout. In order to promote local content, the management of the Dangote Refinery Company visited the office of IVMC. After inspecting the factory and the stock of already manufactured vehicles, the Dangote team expressed interest in the products of IVMC. Consequently, the parties reached an agreement and entered into contract for sale of 100 units of SuperG model of SUVs out of the fleet of vehicles the Dangote team inspected. As a show of its commitment, Dangote paid 10% of the entire cost, with agreement to pay the balance when the entire fleet is ready. As a student of commercial law, provide answers to the following questions on the deal:
- i. Assuming it is an agreement to sell, what would be the nature of the contract? (2 marks)
 - ii. If IVMC fails to deliver per the contract, what option avails Dangote? (2 marks)
 - iii. If Dangote refuses to take delivery, is there any protection for IVMC? (2 marks)
 - iv. If the vehicles are yet to be manufactured, when will property in them pass? (4 marks)
- (b) As much as possible with aid of statutory and judicial authorities, discuss the applicability of the general rule of *res perit domino* in the context of the contract for sale of goods. (5 marks)
- (c) State not less five situations in which acceptance can take place in a sale of goods transaction. (10 marks)

Question 2

“Sections 6 and 7 of the Sale of Goods Act are two sides of the same coin”. Complementing your responses with the use of decided cases discuss the foregoing statement. (15 marks)

Question 3

Madam Eastworth who has been living in the United Kingdom returned to Nigeria. She took a chartered flight to Port Harcourt International Airport, where she was picked up by the Shuttle Service of Hotel Presidential Port Harcourt. At the hotel counter, she filled out the necessary papers, and was checked into Room 658 of the Third Floor. Hanging on the door of the room was a laminated paper that read: "All items of value including cash must be deposited with the management for safe custody. Otherwise the hotel, its management and staff shall not be liable for any lost or stolen article not handed to the Reception". Madam Eastworth saw the message, ignored and left in her room the sum of USD15,000 and left for family visit. On her return she went for her money and found that the money was less by USD10,000. Based on the following facts, resolve the following legal issues:

- (a) The manager of the hotel contended that Madam Eastworth must blame herself for not heeding the notice of exclusion of liability conspicuously pasted in her room. (5 marks)
- (b) In the guest form completed by Madam Eastworth and the receipt issued by the hotel were the following words: "in the event that the hotel could not afford to provide room for the numbers paid, the guest agrees that the total liability of the hotel to the guest is the full refund of the amount unutilized". What would be your position if the hotel failed to provide one night to Madam Eastworth? (5 marks)
- (c) Businessmen have always done everything in their power to escape liability through the mechanics of exemption or limiting clause. What is the response of the courts to check their sophistry? (5 marks)

Question 4

- (a) To ensure that the rule as to fundamental breach is not taken too far, the court in Charter House Credit Ltd v Tolly clarified that a fundamental breach does not mean that the fundamental obligation has been broken but that the breach strikes at the root of the contract. This led to other developments. State the new principles governing exemption clauses as regards a fundamental term? (8 marks)
- (b) Cite at least one of the authorities in which the principles were developed? (2 marks)
- (c) Mai Gona is a tomatoes farmer in Kebbi State. He sent a truck load of tomatoes to Lagos State through the newly launched rail transport network across the country. He gave the names of five of his customers to the Railway Manager and told him to appropriate three measures to Customer A, and one measure each to the remaining four customers. The train was delayed by two days. Before appropriation to each customer, the tomatoes had begun to spoil. Mai Gona refused to return the money paid, insisting that it was not his making. Advise his customers. (5 marks)

Question 5

With the aid of decided cases attempt a reconciliation of section 10 of the Sale of Goods Act that deems the time of payment not to be of the essence as against section 28 of the same enactment which provides that delivery of the goods and payment of the price are concurrent conditions. (15 marks)

Question 6

Using the authoritative precedent established in the case of Brass v Maitland (1856) 26 IJQ 846, discuss the implied terms usually found in a charter party as a type of contract of affreightment. (15 marks)