



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

2023\_1 POP EXAMINATION

COURSE CODE: CLL 332

COURSE TITLE LAW OF COMMERCIAL TRANSACTIONS – II

CREDIT UNITS: 4

- INSTRUCTIONS:
- Indicate your Matriculation Number clearly
  - Attempt Question one (1) and any other three (3) questions
  - Question one (1) is compulsory and carries 25 marks; while the other questions carry 15 marks each.
  - Using appropriate statutory and judicial authorities, present all your points in a straightforward, coherent and orderly manner.
  - Total available score is 100% of which: TMA carries 30%; Exam carries 70%**

TIME ALLOWED: 3 Hours

QUESTION 1

- By the contents of a note, Kado agreed with Hasken Duniya Dealers Ltd to hire with the option of purchase a tricycle also called “Mai Kudi” in local parlance. Kado made sure that he did not fail in the remittance of rental payments as they fall due. This he did at the cost of his children’s school fees. When Russia invaded Ukraine, Nigeria felt that this provided a sufficient for her to reclaim her lost soil from Cameroun. To shock of the world, Nigeria invaded Cameroun and occupied the whole of the territory bordering both countries. This would affect Kado, who lives and carries on business in the Mamfe town. Due to the outbreak of hostilities between the two countries, Kado could not continue in business. He kept custody of Mai Kudi and had to use it for domestic purposes only while the hostilities lasted. Following the intervention of the United Nations Security Council, both countries agreed to a ceasefire and to settle all issues between both countries through negotiation. Hasken Duniya Dealers Ltd sought to recover six months’ arrears of rentals from Kado. What are the chances of the owners? (15 marks)
- The authority of the agent can be express, in which case it could be by agreement or by conduct of the parties. On the other hand, the authority could arise by implication of the law. In what ways can the agent’s implied authority? (6 marks)
- As much as the agent owes certain duties to the principal, there are correlative rights he enjoys too. They include right to indemnity or reimbursement. However, the right can be limited in certain cases. Mention at least four of those instances. (4 marks)

QUESTION 2

Aliko chartered executed a carriage of goods contract with Dansa. On this occasion, Dansa was loaded to frozen fish from Tin Can Island Port of Lagos State to Marafa in Zamfara State. When Dansa go tto Lokoja, he learnt that he could not move further. This is because the government of Kogi State had ordered a clamp on all forms of banditry and criminality in the State. The network providers were

similarly ordered to disconnect services in the entire length and breadth of Kogi State. The operation would last for ten days. This means also that Dansa would not be able to move, leaving him with the inevitable consequences of perishing of the consignment. Dansa became agitated and desired to do something tangible to protect the interests of Aliko. He made up his mind to sell off the fish and remit the proceeds to Aliko. He received two offers. Emeka offered to buy the fish at N250,000. Musiliu was ready to pay N200,000.00 for the same consignment of fish. Musiliu is a distant relation of Dansa. When Dansa returned to Lagos. Unknown to him, Emeka had reported what transpired to Aliko. When he tendered N200,000 as the best price he could get from the sale of the fish, Aliko rejected and asked for the full price.

Advise Dansa on how to manage the situation from getting out of hand. (15 marks)

### QUESTION 3

Although the evolution and development of hire purchase system is inextricably linked to the locus classicus of *Helby v Matthews (1895) AC 471*, the place of the legislature in the scheme of things cannot be overlooked as far as the development of hire purchase as a form of commercial transaction in Nigeria is concerned. Discuss. (15 marks)

### QUESTION 4

In *China-Pacific SA v Food Corporation of India, The Winson (1982) AC 939* Lord Diplock remarked that "a mere stranger cannot compel an owner of goods to pay for a benefit bestowed upon him against his will." Earlier, *Scrutton LJ* had, *Jebara v Ottoman Bank (1927) 2 KB 254*, cautioned that the doctrine of agency of necessity should only be applied where there was a subsisting principal-agent relationship at the time of the act in question. Yet without meeting his condition, the doctrine has been extended to apply in what has come to be known as agency of a deserted wife. Attempt to reconcile the inconsistency, if any. 15 marks

### QUESTION 5

The case of *Bentworth Finance (Nig) Ltd v De Bank Transport Ltd (1968) 3 ALR Comm 52* represented judicial approval of the common law mischief where the hirer is denied the right to redeem the hired goods after default in his instalment payment, even if he has paid previous ones without a break. To what extent did you think section 9(1) of Hire Purchase Act 2004 cured this mischief? (15 marks)

### QUESTION 6

Fakapa has been working as casual worker in Indomie Pasteries Limited. Desirous of impacting on his immediate and extended family lines, Lady Frances who is based in Ukraine, told Fakapa to look for a motor vehicles dealer so she could buy one for him. The next day Fakapa was at the office of Skymight Motors Limited. He saw and inspected a used model of "Onye-Ije Venturer," manufactured by Innoson Vehicle Manufacturing Ltd. She told the car dealers that she needed for the brother's interstate transport business, and she was assured of the durability of Onye-Ije Venturer for the task. Frances struck a deal with Skymight Motors under which the bus is to be on a hire purchase. Two months later, Fakapa threw a party to celebrate the delivery of Onye-Ije Venturer. It was only at this point that he realised the vehicle was incapable of movement and acceleration was near impossible the gear system was removed. Beyond this, the vehicle belonged to the director of Skymight Motors, and he did know that the vehicle was the subject of a hire purchase agreement with Frances.

- (a) From the state of the vehicle, can the dealers insist upon the agreement with Frances? (5 marks)
- (b) What sections, if any, of the Hire Purchase Act are implicated here? (5 marks)
- (c) Since France was express about the purpose of vehicle, is there any statutory shield she can rely upon to void the contract? (5 marks)