



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

2023_2 EXAMINATIONS

COURSE CODE: CLL307

COURSE TITLE COMMERCIAL LAW

CREDIT UNITS: 3

- 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.
 - (e) **Total available score is 100%** of which: TMA carries **30%**; Exam carries **70%**

TIME ALLOWED: 3 Hours

QUESTION 1

“English law does not regard bare promise or agreement as legally enforceable but recognises only two kinds of contract, the contract made by deed, and the simple contract. A contract made by deed derives its validity neither from the fact of the agreement nor because it is an exchange but solely from the form in which it is expressed. A simple contract as a general rule need not be made in any special form but requires the presence of consideration which... broadly means that something must be given in exchange for a promise.” From the foregoing statements, answer the following questions:

- (a) State the core elements of a validly constituted contract. (4 marks)
- (b) Davido sent a text message to Mr. Akin, a registered estate surveyor and valuer based in Abuja. In the text message, he wrote, ‘Will you please sell to me “Three Diamonds Villa”? Please text lowest cash price.’ Three Diamonds Villa is a plum and plush estate overlooking the Jabi Lake, Abuja. It has various categories of property options. Mr. Akin replied, ‘Lowest price for Three Diamonds Villa N65 million.’ Davido immediately replied, ‘I agree to buy Three Diamonds Villa for N65 million.’ Mr. Akin did not reply to that. Advise the parties on whether there is a valid contract. (10 marks)
- (c) With the use of appropriate statutory authorities, list five conditions which can be implied in a contract of sale of goods. (5 marks)
- (d) Although the hire purchase system is a unique form of contract, the requires of a valid contract must be present before it can bind the parties. What are the justifications for adopting the system? (6 marks)

QUESTION 2

In *Bristol & West Building Society v Mothew* (1996) 4 All ER 698, the Court said:

The fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.

Does the above statement apply to an agent? Justify your position. (15 marks)

QUESTION 3

The development of hire purchase system is one of the greatest inventions of the lawyers, a very important contribution to the commercial development of the world. The concept of Hire Purchase is an important aspect of commercial transactions developed in the United Kingdom and can now be found in existence all over the world now, including Nigeria. The elements that constitute a valid hire purchase agreement are not mutually exclusive from that obtainable in ordinary contracts. In Nigeria it is subject to stringent controls due to hazy operation of the system under common law. The controls help bind the parties to the hire purchase agreement to their respective obligations.

- (a) With the use of a definition, bring out three characteristics of a hire purchase agreement (5 marks)

- (b) Using a decided case, state the position of Nigerian courts on the obligation of the hirer. (5 marks)
- (c) What is the purpose of section 14(1) of Hire Purchase Act as a control mechanism? (5 marks)

QUESTION 4

Seun agreed to buy 200 hundreds of brown rice from Karima. There were no less than 2500 bags of brown rice in the warehouse. Following this agreement Seun took orders from her customers. To one of her customers, Chief Wike, she contracted to supply 10 bags on delivery of the rice. On taking delivery of the 200 bags, she instructed her workers to display two bags on sale. Two hours later, Mrs. Jimi came to the shop, saw the price, and paid for the two bags. Dame Rose who was on a weekend shopping, came to Seun's shop. After examining and satisfying herself that the rice is original, she paid for one bag. When she got home, her daughter screamed, "Oh mummy, this is not the type of brown rice we love to eat."

- (a) Is there any difference between the contract Seun concluded with Chief Wike and Mrs. Jimi? (7 marks)
- (b) Dame Rose wants to reject the rice and ask for her money back. Would she succeed? (8 marks)

QUESTION 5

Write short notes on the following:

- (a) Remedies of passing off. (5 marks)
- (b) Elements of trade libel (10 marks)

QUESTION 6

Using the case of **Balfour v Balfour (1919) 2 KB 571** discuss "intention to create legal relations" as a fundamental element for the validity of any contract. (15 marks)