

freedom of speech. Someone who believes that his free speech rights have been prohibited by the government may pursue a remedy by bringing a case in the courts.

Explain the jurisdiction of the High Court of Kenya(10 mks)

The Court is clothed with inherent jurisdiction to:

- Determine all Criminal and Civil Matters;
- Determine cases concerning the violation and or infringement of the bill of rights;
- Hear appeals from subordinate courts and tribunals;
- Interpret the constitution;
- Exercise supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function.
- Any other jurisdiction original or appellate conferred to it by an act parliament.

Question Four

Discuss five sources of law in our country(10 mks)

In Kenya, the laws have been derived from the Kenya National Constitution, the legislation i.e. parliamentary acts, subsidiary legislation, the substance of common law and the African customary law.

The Constitution of Kenya

This Law is the supreme law of Kenya and binds all persons and State organs at both levels of government. It elucidates the national values and principles.

Legislation

This is divided between direct and indirect legislation. Direct is by the parliament whereas indirect is by other bodies into which law making process is delegated.

Judicial Precedents

These are also known as judge – made law or case law. Refers to decisions made by superior courts. It is binding to all lower courts.

The Substance of Common Law

Common law is a body of unwritten laws based on legal precedents established by the court in England. Although Common Law originally was unwritten, the crimes defined in it were incorporated in Kenyan law with the advent of colonialization of Kenya, thus making Common law a source of Kenyan Law.

Customs and the African Customary Law

This is applicable in civil cases in which one or more of the parties is subjected to it or affected by it. So far as is applicable and is not repugnant to justice and morality or inconsistent with any written law

Kadhi Court

This is the court which is responsible for hearing civil and criminal matters which are related to Islamic law. This court is headed by a chief Kadhi

Courts Martial

This is the military court of Kenya which mostly hears or settles those cases which are related to the Kenya Defense Forces. Appeals that move on from this court are heard by the High court.

Mr. Haraka was PS.V. Driver who drove too fast causing an accident in which a passenger James had a punctured arm.

Required

Discuss the legal liabilities of Mr. Haraka towards his passengers and particularly towards Mr. James.(10mks)

The legal term “**negligence**” refers to a failure to exercise reasonable care, with that failure resulting in the damage or injury of another person. Negligence is based on a person’s failure to take reasonable precautions, as opposed to a person’s direct actions. An example of this would be a driver of a speeding car causing an accident. In such a case, the driver would likely be found negligent because they failed to exercise the same care as that of a driver obeying the speed limit.

A lawsuit involving negligence in a car accident is based on the legal theory that the injured party can recover their losses. In fact, most car accident lawsuits are based on negligence.

The remedies for negligence in a car accident generally include the negligent party paying the other party monetary damages for their injury. This could include any resulting economic losses. Damages usually include costs such as hospital bills,

Question Three

There is a serious dispute between Mrs. Atenyi (seller) and Mr. Sharad Rao (a buyer) one whether the sale of a tractor was a credit sale or a hire purchase sale. They have approached you to resolve this dispute. Discuss the essential information things in the transaction that would enable you to resolve this dispute appropriately. (20mks)

Credit sales refer to a sale in which the amount owed will be paid at a later date. In other words, credit sales are purchases made by customers who do not render payment in full, in cash, at the time of purchase.

Features of Negotiable Instruments

Easily Transferable: A negotiable instrument is easily and freely transferable. There are no formalities or much paperwork involved in such a transfer. The ownership of an instrument can transfer simply by delivery or by a valid endorsement.

Must be in Writing: All negotiable instruments must be in writing. This includes handwritten notes, printed, engraved, typed, etc.

Time of Payment must be Certain: If the order is to pay when convenient then such an order is not a negotiable instrument. Here the time period has to be certain even if it is not a specific date. For example, it is acceptable if the time of payment is linked with the death of a specific individual. As death is a certain event.

Payee also must be certain: The person to whom the payment is to be made must be a specific person or persons. Also, there can be more than one payee for a negotiable instrument. And "person" includes artificial persons as well, like body corporates, trade unions, chairman, secretary etc.

"Without the law of contract there is no business law." Explain how the law of contract facilitates business transactions noting to give appropriate examples in support of your answer. (10 Marks)

1. Contracts provide a written document that outlines the full understanding of the business relationship and scope of the work so that no one can claim any misunderstandings later down the road.
2. They specify exactly what rights are being purchased and what rights you're retaining.
3. They're binding and legally enforceable.
4. They protect both you and the client.
5. They stipulate how and when you get paid, what needs to trigger that payment, and what recourses you have if the client stiffes you.
6. They minimize risk.

"The constitution of Kenya 2010 is not only the supreme law of the land but also the supreme source of the Kenya law." Explain this statement noting to support your answer with at least four other main sources of law in Kenya. (10 Marks)

- (1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.
- (2) No person may claim or exercise State authority except as authorized under this Constitution.
- (3) The validity or legality of this Constitution is not subject to challenge by or before any court or other State organ.
- (4) Any law, including customary law that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.
- (5) The general rules of international law shall form part of the law of Kenya.

Identify and explain four types of goods in the law of sale of goods noting to use appropriate examples in support of your answer.(10 Marks)

1. Existing Goods

The goods that are referred to in the contract of sale are termed as existing goods if they are present (in existence) at the time of the contract. In sec 6 of the Act, the existing goods are those goods which are in the legal possession or are owned by the seller at the time of the formulation of the contract of sale. The existing goods are further of the following types:

A) Specific Goods

According to the sec 2(14) of the Act, these are those goods that are “identified and agreed upon” when the contract of sale is formed. For example, you want to sell your mobile phone online. You put an advertisement with its picture and information. A buyer agrees to the sale and a contract is formed. The mobile, in this case, is specific good.

B) Ascertained Goods:

This is a type not defined by the law but by the judicial interpretation. This term is used for specific goods which have been selected from a larger set of goods. For example, you have 500 apples. Out of these 500 apples, you decide to sell 200 apples. To sell these 200 apples, you will need to separate them from the 500 (larger set). Thus you specify 200 apples from a larger group of unspecified apples. These 200 apples are now the ascertained goods.

C) Unascertained Goods:

These are the goods that have not been specifically identified but have rather been left to be selected from a larger group. For example, from your 500 apples, you decide to sell 200 apples but you don't specify which ones you want to sell. A seller will have the liberty to choose any 200 apples from the lot. These are thus the unascertained goods.

2. Future Goods

In sec 2(6) of the Act, future goods have been defined as the goods that will either be manufactured or produced or acquired by the seller at the time the contract of sale is made. The contract for the sale of future goods will never have the actual sale in it, it will always be an agreement to sell.

For example, you have an apple orchard with apples in it. You agree to sell 1000 apples to a buyer after the apples ripe. This is a sale that has to occur in the future but the goods have been identified already and the agreement made. Such goods are known as future goods.

3. Contingent Goods

Contingent goods are actually a subtype of future goods in the sense that in contingent goods the actual sale is to be done in the future. These goods are part of a sale contract that has some contingency clause in it. For example, if you sell your apples from your orchard when the trees are yet to produce apples, the apples are a contingent good. This sale is dependent on the condition that the trees are able to produce apples, which may not happen.

Explain five exceptions to the rule of caveat emptor in the sale of goods law.(5 Marks)

1. Where the seller makes a misrepresentation and the buyer relies on it.
2. Where the seller makes a false representation amounting to fraud or where he conceals a defect of the goods.
3. Where the buyer makes it known to the seller the purpose of which he require the goods then the seller should ensure that the goods serve that purpose
4. Where the goods are purchased by description the doctrine doesn't apply
5. The doctrine doesn't apply where the goods does not correspond with the sample earlier given.
6. Where the seller deviates from any of the implied conditions and warranties

Explain five key essential elements in a partnership relationship. (5 Marks)

- (1) There must be a contract;
- (2) Between two or more persons;
- (3) Who agree to carry on a business;
- (4) With the object of sharing profits and
- (5) The business must be carried on by all or any of them acting for all.

What are the duties of the hirer in a hire purchase transaction?(5 Marks)

Acceptance of Delivery: It is an obligation on the hirer to accept the goods when they are delivered by the owner. If doesn't he can be sued for non acceptance.

Duty of care: The hirer has a duty to use the goods in ways that would not occasion damage to the goods.

Payment of instalments: This is one of the main functions of the hirer. He has to pay instalments for the hirer purchase as and when due. Redelivery of the Goods: If the hirer purchase agreement falls through, it is the duty of the hirer to redeliver the goods to the owner.

Duty not to sell the Goods: The hirer has a duty not to sell the goods until the last instalment has been paid.

Duty not to act Inconsistent to Owner's Right: The hirer also has a duty not to act in relation with the goods in a manner that is inconsistent with the right of the owner. He can only do this when the goods have been completely purchased.

Question Two

Describe the liability of the principal and the agent in an agency contract.(10 Marks)