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# TECHNICAL UNIVERSITY OF MOMBASA

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## SCHOOL OF BUSINESS

### *Department of Management Science*

DEPARTMENT OF BUSINESS STUDIES

END OF SEMESTER EXAMS FOR BACHELOR OF COMMERCE & BACHELOR OF BUSINESS  
ADMINISTRATION

### **BPC 4303: PROCUREMENT LEGAL FRAMEWORK**

**CLASS:** BCOM YEAR THREE SEMESTER TWO

BBA YEAR THREE SEMESTER ONE

AUGUST 2019

**TIME:** 2 HOURS

### **INSTRUCTIONS:**

- Answer question **ONE (Compulsory)** and any other **TWO** questions.
- Marks are allocated and the end of each question

*This paper consists of FIVE printed pages.*

## QUESTION ONE (30 MARKS)

After graduating from a university, Rei was employed by Wonderlink Consulting Ltd, a company that had been in the Enterprise Resource Planning (ERP) software business for over 30 years. Rei had studied business information technology. His role at the Wonderlink was to seek clients, negotiate contracts, and install software for clients, train customers and offer sales services. He also used his knowledge to make simple enhancements on the company's software. The company grew, employed more people and commanded 70% market share in the city where it operated.

After working for Wonderlink Ltd, for five years Rei thought of setting up his own business. He registered a company called Wunderblitz Consulting Ltd, and then presented his resignation notice. His company's vision was to target the low end Enterprise Resource Planning software market by developing solutions that suited their needs but at affordable prices.

The managing director of Wonderlink Consulting Limited accepted Rei's resignation letter but on condition that he would keep any proprietary information confidential. He also put a clause in the resignation letter that Rei should not establish a similar business in the same city for a period of five years from the date of his resignation. Rei did not object to the condition because he wanted to receive his terminal benefits upon resigning.

Rei set up his software business in the same city; he developed his own software and sold them under the Wunderblitz Consulting Ltd Brand. His company grew and had a good market share within 4 years. Wonderlink Consulting Ltd. Sued Rei at the local court. They sought compensation for patent infringement, breach of confidentiality, trademark infringement and breach of terms of dis-engagement.

### Required:

- (a) (i) Discuss if court would find Rei guilty of breach of confidentiality. (6 Marks)
- (ii) Explain the instruments Wonderlink would use to negotiate against Rei for breach of contract. (6 Marks)
- (iii) Rei wishes to patent his software products. Explain whether Wonderlink Consulting Ltd would get an injunction restraining him. (4 Marks)

(b) Define the following terms as used in the procurement legal framework

- (i) Ubirrimae fidei” (2 Marks)
- (ii) Contract under duress (2 Marks)
- (iii) Undue influence (2 Marks)

(c) Mutiso had sold his car to Karanja for Shs.640, 000 and the car was to be delivered within four days. After two days Smith offers Mutiso Shs.960, 000 for the car which Mutiso accepts. Smith makes immediate delivery of the car. Smith was not aware of the previous sale to Karanja. Advise Karanja of his legal rights if any against.

- (i) Mutiso (4 Marks)
- (ii) Smith (4 Marks)

### **QUESTION TWO (20 MARKS)**

(a) Coca-Cola is one of the leading manufacturers of soft drinks. Herbert, one of the directors of the company entered into a contract with Pepsi Ltd, for purchase of computer parts with the intention of assembling computers for sale. He used a letter head that described Coca Cola Limited as a computer manufacturer. The materials were duly delivered but Coca Cola limited refused to pay for them, Pepsi Limited was aware that Coca Cola Limited manufactures soft drinks. Pepsi Limited is aggrieved.

Explain the legal principles applicable (10 Marks)

(b) Explain any FIVE types of mistakes in procurement contract (10 Marks)

### **QUESTION THREE (20 MARKS)**

(a) Explain any FIVE conditions that must be met for a pre-incorporation contract to be binding on an organization upon incorporation for supplies. (10 Marks)

(b) Contract creates relations between the parties and binds them over. Termination of such contractual relations is called Discharge of contract. Identify FOUR different modes of Discharge of termination of contract. (4 Marks)

c) Identify SIX remedies to breach of contract in purchasing and supplies. (6 Marks)

(b) Jones is employed by a multi-national company. He is assigned the duty of acquisition and disposal of properties belonging to the company. What are the procedures required in his duty?

(10 Marks)

#### **QUESTION FOUR (20 MARKS)**

(a) Saida responded to an invitation to tender for environment and consultancy service which had been advertised by State Corporation. The evaluation criteria to be followed were individual consultant selection method. Although she did not have a post graduate degree which was one of the requirements, Saida satisfied all the other selection criteria. The bidders with postgraduate qualifications had less direct experience relevant to the task. After receiving the letter of award, Saida carried out the work successfully and was promptly paid. She later sent Ksh.10, 000 through M-Pesa transfer to the head of procurement of the organization as a gratitude payment. The head of procurement accepted the payment, the bidders who lost got to know about this gratitude payment and two of them lodged a complaint with the ethics and anti-corruption commission.

(i) Is the head of procurement liable for bribery and corruption? Justify (8 marks)

(ii) As an expert, draft ethical code of conduct that may guide the head of procurement unit in handling the situations like this in future. (6 Marks)

(b) Outline four exceptions to “*nemo dat rule*” to a possession from someone who has no ownership right or denies the purchaser ownership of materials. (6 Marks)

## **QUESTION FIVE (20 MARKS)**

- a) Mubarak was a director of the Mkunguni Limited, a mining company. The company intends to procure a plot of land for the purpose of mining. The plot is own by Maimuna Limited in which, unknown to Mkunguni Limited, Mubarak is the beneficiary of all the shares. A board of meeting of Mkunguni Limited acting on an independent report from surveyor decided to buy the plot Mubarak was present at the board meeting but failed to disclose his interest in Maimuna Limited Mkunguni Limited proceeded to buy the plot. Mkunguni Limited has come to realize that Maimuna Limited is 90% owned by Mubarak. The company is aggrieved and intends to institute a legal proceedings against Mubarak. Explain the legal proceeding against Mubarak on such procurement. (10 Marks)
- b) Outline FIVE circumstances under which the veil if incorporation may be lifted by a court of law (5 Marks)
- c) Local National and International legal aspects affect global procurement outline FIVE such legal aspects that can affect a purchaser internationally. (5 Marks)

***“WISHING YOU THE BEST OF LUCK”***