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**GARISSA UNIVERSITY**

**UNIVERSITY EXAMINATION 2019/2020 ACADEMIC YEAR ONE**

**SECOND SEMESTER EXAMINATION**

**SCHOOL OF BUSINESS AND ECONOMICS**

**FOR THE DEGREE OF BACHELOR OF BUSINESS MANAGEMENT**

**COURSE CODE: BBM 107/BBM107e**

**COURSE TITLE: BUSINESS LAW I**

**EXAMINATION DURATION: 2 HOURS**

**DATE: 18/12/2020 TIME: 09.00-1100 AM**

**INSTRUCTION TO CANDIDATES**

* **The examination has SIX (6) questions**
* **Question ONE (1) is COMPULSORY**
* **Choose any other THREE (3) questions from the remaining FIVE (5) questions**
* **Use sketch diagrams to illustrate your answer whenever necessary**
* **Do not carry mobile phones or any other written materials in examination room**
* **Do not write on this paper**

**This paper consists of THREE (3) printed pages *please turn over***

**QUESTION ONE (COMPULSORY)**

 (a). Under what law can the Government of Kenya be sued in tort as if it were a private individual?  **[2 Marks]**

(b). Advice Onyango whether or not action can be brought in tort against the Government on the following grievances which he has:

(i). that a magistrate in a certain court made remarks that were defamatory to Onyango when passing sentence on three accused persons while Onyango had nothing to do with the case; **[1 Mark]**

(ii). that officers of the Government trespassed on Onyango’s land without lawful excuse ten years ago; **[1 Mark]**

(iii). That **X**, an independent contractor while constructing a road for the Government, caused nuisance on Onyango’s homestead by keeping stones thereon.  **[1 Mark]**

 (c). How may one make a valid:-

(i). oral will  **[3 Marks]**

(ii). Written will **[3 Marks]**

(d). (i). What is ‘intestacy’ under the Law of Succession Act Cap 160? **[1 Mark]**

(ii). **Mikwi** married **Kanini** in 1970.Both had lived happily with their son John until Mikwi died in a tragic road accident in November 1991.Unfortunately,Mikwi had not made a will in respect of all his free property. Kanini does not know her rights over the property left by her husband. She comes to you for advice. Advise her. Would your advice be different if they had no child? **[4 Marks]**

 (e). **List** and **Explain** the elements of a valid contract **[14 Marks]**

**QUESTION TWO**

(a). Discuss the general defences that are available to a defendant in an action in tort. **[14 Marks]**

(b). (i). What is the meaning of “goods” in the Sale of Goods Act (Cap.31)? **[1 Mark]**

(ii). what are the consequences if a seller delivers to the buyer goods of wrong **(1)** quantity and **(2)** description? **[3 Marks]**

(iii). **B** bought from **P**, the owner of a certain land, the bark of wattle trees growing on the land together with the right to remove it. **P** sold the land to **T** who had knowledge of the sale of wattle bark. **T** resold the land to X without any reference to prior sale of the bark. **X** prevented B from removing the bark.

**Advice B [2 Marks]**

**QUESTION THREE**

1. On what grounds may a marriage be declared null and void by the High Court under the Matrimonial Causes Act(Cap.152)? **[16 Marks]**
2. What are the differences between a registered company and a partnership? **[4 Marks]**

**QUESTION FOUR**

(a).

(i). Distinguish between **executed, executory** and **past consideration [6 Marks]**

(ii). **Kamau** has lent **Osman** Sh.5,000 which is due for repayment on 1st April. Kamau asks Osman on 1st March for immediate repayment because he wants to pay a deposit for a piece of land he is buying in Kariobangi. Osman replies that he has no money. Whereupon Kamau promises that if Osman can give him Sh.4,000 immediately, he would accept the amount in full settlement of the debt. Osman then pays Shs.4,000. Would Kamau be able to sue for the balance of Shs.1,000  **[2 Marks]**

(b). In the law of insurance, what is meant by:-

 (i). Subrogation **[2 Marks]**

 (ii). Double Insurance **[2 Marks]**

 (iii). Indemnity, and **[2 Marks]**

 (iv). Average clause? **[2 Marks]**

(c).

(i). Explain the effect of a provision in an Act of Parliament (1) on an earlier judicial decision with which it is inconsistent:

(2) on a provision in the constitution of Kenya Act 1969 with which it is inconsistent. **[2 Marks]**

 (ii). what is meant by the doctrine of ultra vires in relation to delegated legislation  **[2 Marks]**

**QUESTION FIVE**

1. What is meant by the term “sources of law” **[2 Marks]**
2. Briefly outline the stages through which an Act of Parliament must pass before it becomes law. Is it correct to state that a law so passed expresses the wish of the people? **[12 Marks]**
3. Discuss the extent to which customary law is a source of law in Kenya **[6 Marks]**