

MACHAKOS UNIVERSITY

COURSE CODE: BMS 422

COURSE TITLE: CONTRACTS AND LEGAL ASPECTS IN PURCHASING

SUPPLEMENTARY EXAM

ATTEMPT QUESTION ONE AND ANY OTHER TWO

Question One

CASE: BUNGOMA HC PET. NO 57 OF 2007 TOM (NOT REAL NAME)

PETITIONER VS ANDY (NOT REAL NAME)-RESPONDENT

Below is an extract of the above case, use it to answer questions 1a, b, and c: Note that the identity of case number and names of both the petitioner and the respondent are redacted.

Tom (not real name) and Andy (not real name) have been best friends since their Childhood. On 25th of January 2007 at a restaurant located along Mombasa Road, where the two frequented, Tom informed Andy that his birth day would be on the 18th of March of 2007. According to the unwritten covenant which they have religiously practiced over the years, Andy was expected to buy a present for Tom. But this time he decided to make the present lucrative for his friend. He offered him a five days holiday at a five star hotel of his choice in Zanzibar but with a rider; if it rains on Tom's birth day. Fortunately for Tom, it rained terribly the day of his birth day. The following day he met Andy and notified him of the intention to take leave in September and would wish to schedule the holiday trip to Zanzibar during that time. Andy did not object, actually he encouraged him to go ahead. Time came and Tom took his leave but Andy became slippery. Finally when they met on the 10th of September, Tom demanded that Andy keep his words. Andy, none the less, was still not willing to honour the promise he made. On the 2nd of October, 2007, Tom sued Andy for breach of the contract.

Required:

- a) Identify and explain five gaps in the case with the potential of weakening Tom's defence (10 Marks).
- b) Explain Andy's likely five points of defence (10 Marks).
- c) Explain other alternative dispute resolution mechanisms available to Tom apart from the court (10 Marks).

Question Two

- a) Explain five responsibilities of a procurement head according to PPAD, 2015 (10 Marks).
- b) Explain five advantages of using arbitrations over courts in solving commercial disputes (10 Marks).

Question Three

- a) Explain four rights of a seller under the sales of goods Act (8 Marks).
- b) Discuss four cannons of public procurement (8 marks).
- c) Explain the meaning of public procurement in Kenya (2 Marks).

Question Four

- a) Explain five remedies to seller under the Uniform Commercial Code (10 marks).
- b) Discuss five circumstances for termination of a contract which are acceptable in contract law (10 Marks).

Question

- a) Explain five advantages of negotiation between the parties to the contract before the contract is formed (10 Marks).
- b) Explain four unique types of contracts in business (10 Marks).