



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

COURSE CODE: CLL 331

COURSE TITLE LAW OF COMMERCIAL TRANSACTIONS – I

CREDIT UNITS: 4

- 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.

TIME ALLOWED: 3 Hours

Question 1

- (a) Hajj Chief Olochuba of Western Industrial Corporation Limited was in the Wuhan City China in December 2019 for an exploratory business. While in the city of Wuhan, he visited Wuhan Merchandisers Ltd. Motivated by the discovery of remarkable products he believed would not only fetch him good cash in return but create opportunities for the teeming Nigerian youth to be engaged, he concluded contracts with them. When the Wuhan coronavirus (COVID-19) pandemic broke out, he truncated his business visit and returned to Nigeria. Put together, 100 units of 40ft standard containers are required to ship the goods to Nigeria. The Chinese sellers assured Hajj Chief Olochuba of best services, in terms of packing, handling and shipment. On the facts, attempt the following questions.
- i. In order to take a decision, the Chinese producers have asked you to talk to them on the difference between demise charter, time charter and voyage charter. (9 marks)
 - ii. The Brussels Convention of 1924 and the Brussels Protocol of 1968 (Hague-Visby Rules) would apply to this transaction. Why do you think so? (3 marks)
 - iii. As a strict f.o.b. contract, who is the “consignor” as against the “shipper”? (3 marks)
 - iv. What will be the implication if the contract is “c.i.f. contract Onne Port”? (3 marks)
- (b) A contract of sale of goods has been defined as “a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.” Identify and state the two contractual situations envisioned by this definition. (6 marks)

Question 2

Gosheny Worldwide Limited is a logistics and haulage company based in Lagos. Dangote Woodworks Ltd entered into contract with the company for carriage of its timber from the forests of Niger Delta to a factory in Sambisa Forest, Maiduguri. The factory belongs to North East Merchants Limited. One of the clauses in the contract states that “the carrier shall not be liable for any loss of the goods arising from the wrongful packing, mislabeling or improper identification of the goods: Provided that the carrier shall, in the case of negligence of the driver, be liable to the extent of 25% of the total value of the goods in line with the limit set by the Nigerian Logistics and Haulage Association.” From the foregoing facts, your help has been enlisted to resolve the following issues:

- (a) What is the nature of the contract between the parties? (2 marks)
- (b) The driver, Mallam Busari, in a haste to catch up with a quick business he arranged, mistakenly delivered the timber to a wrong factory. North East Merchants Limited now sought to sue Gosheny Worldwide Limited. What are their chances of success? (3 marks)
- (c) The vehicle which was proved to be poorly maintained developed fault on the way. This caused the vehicle to sleep overnight on the way. Due to this, Boko Haram fighters carted away with significant quantities of the timber. Dangote Woodworks Ltd sought to recover to the full value of loss, which is more than the set limit. Their ground is that the loss was due to the fault of the carrier and that the clause limiting liability was ineffective. What do you advise? (5 marks)

- (d) The carrier, Gosheny Worldwide Ltd, refused to carry three logs out of the timber. On enquiry the Manager stated that his decision was final. Dangote has asked you take out action against the carrier for breach of contract. (3 marks)
- (e) In not more than two sentences, explain the relationship between the Carriage of Goods by Sea Act Cap C2 Laws of the Federation of Nigeria 2004 and the Hague Rules. (2 marks)

Question 3

Messrs Dangote Sugar Industries Plc is contemplating entering an international contract of carriage of goods by sea covered by bill of lading with Panalpina World Transport Limited. Your services have been retained as the legal adviser to the contract. The following questions called for your quick resolution:

- What is the content of the duties of the carrier as to the condition of the vessel? (5 marks)
- Who issues the bill of lading and list the three main functions of the bill of lading? (5 marks)
- State at least any two contractual situations or arrangements which are outside the definition of a contract of sale of goods as provided in section 2(1) Sale of Goods Act 1893. (5 marks)

Question 4

- State the object of appropriation in a contract of sale of goods? (2 marks)
- Distinguish between conditional or unconditional appropriation. (3 marks)
- Briefly discuss section 13 Sale of Goods Act 1893 (10 marks)

Question 5

Write short notes on the following:

- The doctrine of strict compliance under a letter of credit (8 marks)
- Passing of property and risk under c.i.f. contracts (7 marks)

Question 6

Per Erle CJ in Eicholz v Banestster (1864):

... in almost all the transactions of sale in common life, the seller by the very act of selling holds out to the buyer that he is the owner of the article he offers for sale. The sale of a chattel is the strongest act of dominion that is incidental to ownership. A purchaser under ordinary circumstances would naturally be led to the conclusion that, by offering an article for sale, the seller affirms that he has a title to sell, and that the buyer may enjoy that for which he parts with his money.

Guided by the above statement, identify the elements of undertaking as to title in a contract of sale of goods and discuss any one of them. (15 marks)