



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 332

COURSE TITLE LAW OF COMMERCIAL TRANSACTIONS – II

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

With a fleet of over fifty motor vehicles used for interstate travels, Mr. Akintayo Obi Ahmed is a successful businessman. While the Wuhan coronavirus (COVID-19) pandemic was ravaging the Chinese city of Wuhan in January 2020, little did he know that it would escalate to deal a blow to his business interests. When the Federal Government relaxed the lockdown restrictions after three months, virtually all his vehicles had grounded. He visited the showroom of Albarka Motors Ltd, a dealership outlet, where he saw different models and brands of motor vehicles with mouthwatering price tags on each model and brand. Sadly, he could not afford to take delivery on cash and carry basis. Luckily, the dealers agreed to support him acquire 15 units on an arrangement whereby he makes immediate payment for a proportionate part with the remaining spread over a six-year period. They approached you to proffer solution to the following issues:

- (a) Mr. Ahmed claimed he was not aware of the cash price before the agreement was signed, but Albarka Motors disagreed and insisted he was duly notified. Clarify the position to the parties. (5 marks)
- (b) Assuming Mr. Ahmed was right, what would be the effect of such non-compliance to the hire purchase agreement? (10 marks)
- (c) List five contents of a note or memorandum under the Hire Purchase Act. (5 marks)
- (d) A covenant in the agreement states that “*Mr. Ahmed hereby agrees and undertakes to maintain a premium cover with Zenith Prudential Plc with the interest of Albarka Motors Ltd noted.*” (5 marks)

Question 2

Messrs Joe Allen Ltd, a foremost finance company, has had a successful business relationship with City Taxi Services Ltd. The lockdown restrictions following the COVID-19 pandemic has thrown spanners in the business of City Taxi Services. The records of Taxi Services Ltd showed that they had paid a total sum of 12.750 million NGN out of the total hire purchase price of 16.500 million NGN of the hire purchase agreement with Messrs. Joe Allen Ltd. In order to survive the pandemic, they are contemplating determining the agreement with Messrs Joe Allen Ltd. They have sought your legal advice to avoid or limit liabilities especially regarding some contentious provisions of the agreement:

- (a) Clause 3.2 of the agreement provides that “*the hirer shall not do anything, directly or indirectly, willfully or inadvertently, to determine, or precipitate the determination of, this agreement.*” (5 marks)
- (b) Clause 3.5 states that “*without prejudice to the foregoing provisions, the hirer may nevertheless terminate or walk out of this agreement at any time before the due date of the final payment: Provided that the hirer shall forfeit all payments previously made and without fail deliver possession of the vehicle to the owners not later than forty eight hours following the termination.*” (10 marks)

Question 3

When the rights and liabilities under a contract made by an agent are in issue, the first thing to look out for is whether the agent acted for a disclosed or undisclosed principal. A disclosed principal is “one of whose existence the third party is aware at the time of going into the contract with the agent.” On the other hand, the principal is undisclosed if the third party does not have knowledge of the principal’s existence at the time of making or entering the contract.

- (a) State the general rule governing disclosed agency. (3 marks)
- (b) State cases where an undisclosed principal can be excluded from asserting rights in a contract. (4 marks)
- (c) What is the effect of the principal and agent being “jointly and severally” liable on a contract? (3 marks)
- (d) List three conditions and two warranties implied by the Hire Purchase Act.

Question 4

A disagreement arose between Alhaji Okoro Musa Debo (as hirer) and Hyra Motors & Finance Co Ltd (as owners) over the delivery of a note or memorandum pursuant to the Hire Purchase Agreement between the parties. Desirous of resolving the matter amicably, they needed clarification on the questions:

- (a) What is the time period within which such a note or memorandum must be delivered? 3 marks
- (b) In order to undertake the pilgrimage to the Holy Land, Alhaji Debo, asked his agent to sign the note or memorandum on his behalf, but the owners objected. 2 marks
- (c) If Alhaji Okoro engaged an agent for this transaction, guide him on how he could reasonably and fairly determine the quantum of remuneration to be paid to his agent. 7 marks
- (d) Assuming the parties entered a hire purchase agreement and Alhaji Okoro has paid up to eighty per cent of the hire purchase price, do you agree that Hyra Motors & Finance Co Ltd can still repossess the vehicle on default by the hirer?

Question 5

- (a) A leasing company that offers hire purchase transactions intends to place advertisement for disposal of 100 units of tricycles it recently imported from India. In order to avoid abuse, the advertisement will not be featuring any details as the payments. The company has asked for your advice on the minimum details such an advertisement must contain. (5 marks)
- (b) As a debt recovery agent, you entered an agreement with a client to pursue and collect debts. Five days later, the client discovered that it has actually engaged a firm of attorneys to proceed against the same debtors and recover the debts by action. It immediately terminated the contract with you. You asked the court to compel your client to pay the commission according the contract. (5 marks)
- (c) State any three remedies the law allows the principal afflicted by the agent’s misconduct. (3 marks)

Question 6

Exhaustively discuss reimbursement and indemnity as a right of the agent (15 marks)