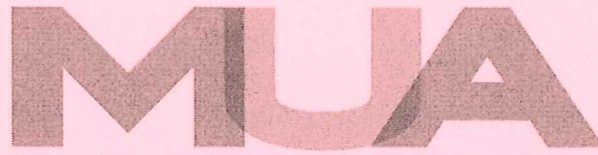


The
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UNDERGRADUATE UNIVERSITY EXAMINATIONS

SCHOOL OF MANAGEMENT AND LEADERSHIP

**DEGREE OF BACHELOR OF MANAGEMENT AND LEADERSHIP/
BACHELOR OF COMMERCE/ BACHELOR OF EDUCATION ARTS**

BML 101/ BCM 212/ BUS 301: BUSINESS LAW/BUSINESS LAW II

DATE: 4TH APRIL 2025

DURATION: 2 HOURS

MAXIMUM MARKS: 70

INSTRUCTIONS:

1. Write your registration number on the answer booklet.
2. **DO NOT** write on this question paper.
3. This paper contains **SIX (6)** questions.
4. Question **ONE** is compulsory.
5. Answer any other **THREE** questions.
6. Question **ONE** carries **25 MARKS** and the rest carry **15 MARKS** each.
7. Write all your answers in the Examination answer booklet provided.

QUESTION ONE

Read the Case Study below carefully and answer the questions that follow:

ROAD ACCIDENT ALONG LAMU-MALINDI ROAD

Mumbua, a 9-year-old minor and a class 2 student at George Town Primary School in Lamu, boarded a tuktuk on June 25, 2023, to travel home from school. When the tuktuk, which was being driven at an unsafe high speed, reached the Wema region along the Lamu-Malindi route, it began to move in a zigzag pattern and toppled, injuring the woman. She was treated as an outpatient at Gongoni Health Centre after suffering blunt object injuries to her head, neck, limbs, thorax, and abdomen. Dama, a neighbor, contacted Mumbua's mother to let her know about the road accident.

Mumbua's mother reported the accident to the Marereni Police Station two weeks later, at which point she was given a police abstract and a P3 form. Mumbua was later examined by Dr. Ahmed, who charged Kshs. 2,000 for the preparation of a medical report. According to the P3 form and Dr. Ajoni Adede's medical report, the minor sustained blunt object injuries to the head, neck, limbs, chest, and belly, which are considered mild soft tissue injuries.

Through her mother and next friend, Mumbua filed a lawsuit in August 2023 at the Chief Magistrates' Court in Malindi against the Defendant, requesting both general and special damages. Mumbua's mother claimed in court documents that her daughter was lawfully riding as a passenger in Hamza's tuk-tuk, which was being driven by him or one of his authorized drivers, agents, servants, or employees. As a result, the tuk-tuk overturned, causing multiple cuts to Mumbua's scalp and bruises to her right upper limb (chest area). She was also happy that she had paid Kshs. 2,550.00 in special damages, of which Kshs. 2,000.00 were paid for the medical report and Kshs. 550.00 for the search of the motor vehicle.

Mumbua's mother stated in court on March 20, 2024, that she had given the lawyer instructions to request an official search of the car (tuktuk) for Kshs. 550.00. It was established via the search that the defendant was the vehicle's registered owner. She asked for recompense on behalf of the youngster and held the motorist accountable for the collision. In addition to marking the necessary police abstract as PMFI-2 and the P3 form as PMFI-3, she also presented the treatment notes as PEX1, the medical

report as PMFI-4(a), and the receipt for the Kshs. 2,000.00/-paid for the medical report as PMFI-4(b). She also supplied PEX5, a demand letter dated January 21, 2019. She verified that the youngster had recovered by presenting a copy of the PEX6 data.

The trial court decided on September 6, 2024, that the Plaintiff had proved that the accident had indeed happened. The Plaintiff further convinced the trial court that the motor vehicle search evidence showed that the vehicle did, in fact, belong to the defendant.

Regarding general damages, the trial court declared that the youngster had only sustained soft tissue injuries based on the facts presented to it. In contrast to the instant case, where the injuries were blunt objects, the trial court claimed to have read the precedents cited by the plaintiff and found that they included nearly identical injuries to the plaintiff. However, the proposal of Kshs. 200,000.00/-was on the higher side given that the injuries were no longer visible. Additionally, the injuries sustained in the authority submitted by the plaintiff were more serious in nature, resulting in the cut being stitched, swelling to the neck, and tenderness to the back.

The Trial Court delivered judgment in favor of the Appellant against the Respondents at 100% liability. The magistrate awarded the Plaintiff Kshs.60,000.00/= as general damages and Kshs.2, 550.00/= as special damages as well as costs and interests from the date of filing suit until judgment. Mumbua's mum is dissatisfied with the judgement for failing to adhere to the doctrine of stare decisis and wants to file an appeal at the High Court of Kenya.

Required:

- (a) From the excerpt, explain to Mumbua's mother the application of the precedents in court (5 marks)
- (b) Elaborate on the **four** elements of negligence that were considered by the trial Court. (8 marks)
- (c) Explain to Mumbua the difference between special damages and general damages. (5 marks)

- (d) Explain the orders that may be granted by the High Court of Kenya in the intended appeal. (7 marks)

QUESTION TWO

- a) In relation to the Kenya Constitution, 2010, explain any five fundamental rights and freedoms guaranteed by the Bill of Rights. (10 marks)
- b) In reference to the Kenya Legal System, discuss the responsibilities of the trial courts versus appellate courts. (5 marks)

QUESTION THREE

- a) "All contracts are agreements but not all agreements are contracts." Explain (5 marks)
- b) With the use of appropriate examples, articulate the legal requirement of capacity to enter into a contract. (10 marks)

QUESTION FOUR

- a) In reference to the Sale of Goods Act, outline five classifications of goods. (5 marks)
- b) Martin and Samuel are both being considered for a promotion to Senior Manager of the Sales Department. Martin starts a false rumour that Samuel doctored the financial books to make his account look better than they actually are. Because of the investigation, and the need to fill the position urgently, Samuel is dropped from consideration and Martin gets the promotion. Advise Samuel on whether he has a claim against Martin. (5 marks)
- c) Elaborate on five advantages of a hire purchase facility. (5 marks)

QUESTION FIVE

- a) Describe any **five** fundamental aspects that are **unique** to a contract of insurance. (10 marks)
- b) In relation to agency, briefly explain the term 'revocation of agency'. (5 marks)

QUESTION SIX

- a) Discuss **three** elements that one must prove to establish a cause of action in a bailment case. (5 marks)
- b) Discuss **five** ownership interests that determine the type of property that will be purchased by business owners and managers. (5 marks)
- c) Describe **five** ways a person can be removed from acting as a Director of a Company. (5 marks)

