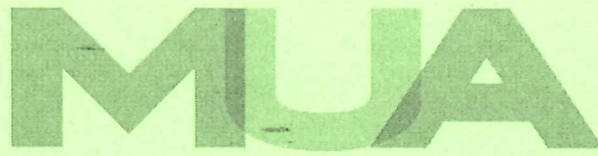


The  
Management  
University  
of Africa



Sponsored by the Kenya Institute of Management

---

**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 11**

**DATE: 29<sup>TH</sup> JULY 2024**

**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:

**CONTRACT OF GUARANTEE**

A Contract of Guarantee is covered and regulated under the Law of Contract Act Cap 23, Laws of Kenya. A contract of Guarantee is a written promise by the Guarantor to answer for the debt of the Principal Debtor made to a person lender. Under the Section 3(1) of the Principal Act, the guarantee must be in writing or there must be a memorandum of it in writing signed by the Guarantor. The main function of a contract of guarantee is to secure the payment of the debt taken by the principal debtor. If no such debt exists then there is nothing left for the surety to secure. Hence in cases when the debt is time-barred or void, no liability of the surety arises. In most cases where financial institution give credit to companies, they will require that the Principal Borrower furnishes security *inter-alia* a Guarantee by the Directors of the Company. This is common among financial institutions who seek to protect themselves against loss on advances made to Principal Borrower.

In *Ebony Development Company Ltd vs Standard Chartered Bank Ltd* (2008) eKLR, the High Court stated the following regarding the obligation of a guarantor:

*"The obligation of a guarantor is clear. It (sic) becomes liable upon default by principal debt....It is not guarantor to see to it that the borrower complies with his contractual obligation but to pay on demand the guaranteed sum."*

Further, Halsbury's Laws of England 4th Edition Vol 20 Paragraph 194 puts the obligation of a Guarantor clearly and succinctly as follows:

*"On the default of the principal debtor causing loss to the creditor, the guarantor is, apart from special stipulation, immediately liable to the full extent to his obligation, without being entitled to require either notice of the default or previous recourse against the principal..."*

In *P.J. Rajappan v Associated Industries*, the guarantor, having not signed the contract of guarantee, wanted to wriggle out of the situation. He said that he did not stand as a surety for the performance of the contract. Evidence showed the involvement of the guarantor in the deal and had promised to sign the contract later.

The Kerala High Court held that a contract of guarantee is a tripartite agreement, involving the principal debtor, surety, and the creditor. In a case where there is evidence of the involvement of the guarantor, the mere failure on his part in not signing the agreement is not sufficient to demolish otherwise acceptable evidence of his involvement in the transaction leading to the conclusion that he guaranteed the due performance of the contract by the principal debtor. When a court has to decide whether a person has guaranteed the due performance of the contract by the principal debtor all the circumstances concerning the transactions will have to be necessarily considered.

In *State Bank of India vs. Nagesh Hariyappa Nayak and Ors.*, against the advancement of a loan to a company, the guarantee deed was executed by its directors, and subsequently, a letter acknowledging the loan was issued by the same directors on behalf of the company. It was held that the letter did not have the effect of extending the period of limitation. Recovery proceedings instituted after three years from the date of the deed of guarantee were liable to be quashed.

**Required:**

- a) Discuss any **five** ways a guarantor's obligations can be discharged. **(10 marks)**
- b) Discuss the composition and jurisdiction of the High Court in Kenya. **(9 marks)**
- c) Describe any **two** types of contracts of guarantee in Kenya. **(6 marks)**

**QUESTION TWO**

- a) In reference to the Law of Contract, briefly explain the term 'invitation to treat'.  
Cite relevant examples. **(5 marks)**
- b) Wilberforce bought designer watches from an online shop. The terms and conditions issued by the shop included a caveat emptor clause. Advise Wilberforce of its legal implication. **(5 marks)**
- c) Agnes delivered a book to Jacob to be bound. Jacob promised to return the bound book within seven days but he failed to do so. Agnes learnt that her book was burnt by a fire at Jacob's printing press. Advise Agnes on the liability of Jacob under the law of bailment. **(5 marks)**

**QUESTION THREE**

- a) 'African customs are generally local in nature. Not every customary norm or value is relied upon by a Court of law in the settlement of disputes.' Explain  
(5 marks)
- b) Critically analyse any **five** essentials of an insurance contract issued in Kenya.  
(10 marks)

**QUESTION FOUR**

- a) Briefly explain the defense of contributory negligence. (5 marks)
- b) In relation to business organization, discuss any **five** characteristics of a company registered in Kenya. (10 marks)

**QUESTION FIVE**

- a) In the year 2020, Waridi entered into a five-year tenancy agreement with Mambo Real Estate Agents. She has decided to close her shop, and relocated from the area. Recommend any **three** ways Waridi can terminate the tenancy agreement with Mambo Real Estate Agents. (6 marks)
- b) In relation to the Hire Purchase Act, briefly explain any **four** duties of an owner under a hire purchase agreement. (9 marks)

**QUESTION SIX**

- a) Martin is not satisfied with an arbitral award filed in court for execution. He has approached you for advice on instances when a court of law can set aside an arbitral award. Advice (5 marks)
- b) Describe any **five** ways an agency relationship between a principal and an agency may be created. (10 marks)