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## JOMO KENYATTA UNIVERSITY

**OF**

**AGRICULTURE AND TECHNOLOGY**

# University Examinations 2012/2013

**FIRST YEAR FIRST SEMESTER EXAMINATION FOR THE DEGREE OF MASTER OF CONSTRUCTION PROJECT MANAGEMENT**

**ABC 3105 :** **CONSTRUCTION LAW**

**DATE: AUGUST 2012 TIME: 3 HOURS**

**INSTRUCTIONS: ANSWER QUESTION ONE (COMPULSORY) AND**

**ANY OTHER TWO QUESTIONS.**

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**QUESTION ONE (30 MARKS)**

“Traditionally, the building and construction industry has been one of the key drivers of the growth of the Kenyan economy…. Over the past 10 years, it has registered a steady growth rate of over 400 per cent… Despite the growth, the sector has over the years experienced various challenges… However, it is the establishment of the National Construction Authority that is being launched today that promises to radically change the sector..” *Daily Nation* newspaper, Wednesday, July 4, 2012, page 35.

**Discuss:**

(a) Five (5) challenges in the Kenyan construction sector, which may have necessitated the enactment of the National Construction Authority Act No. 41 of 2011 and the establishment of the National Construction Authority. [10 marks]

(b) Five (5) functions and powers of the National Construction Authority. [10 marks]

(c) The composition, appointment and term in office of members of the Board of the National Construction Authority. [10 marks]

**QUESTION TWO (20 MARKS)**

Ms. Njoki contracted Oloo Contractors Limited to construct 50 houses within two years at a cost of Kshs 20 million. However, due to shortage of labour and escalation in costs of construction, the company failed to complete the construction within the contracted period.

It was a term of the contract that ‘time was of the essence’. This was because Ms. Njoki informed the company that she had already received monies from proposed tenants of those 50 houses. According to the terms of the leases between Ms. Njoki and her proposed tenants, she was liable to pay a 20 per cent penalty to the proposed tenants of those houses if the houses were not ready within two years.

Ms. Njoki plans to sue Oloo Contractors Limited for breach of contract and will seek to recover damages against the company. However, the company claims that shortage of labour and costs escalation terminated the contract under the doctrine of frustration, and so the company did not breach the contract.

Advise Ms. Njoki and the company on the following matters:

(a) Whether the company breached its contract with Ms. Njoki or the company was discharged from its obligations under the contract due to frustration of the contract. [10 marks]

(b) Assuming the company was in breach of its contract with Ms. Njoki, whether Ms. Njoki can recover from the company the 20 per cent penalty that Ms. Njoki will pay to her proposed tenants as a result of her failure to deliver the subject houses within two years.

[10 marks]

**QUESTION THREE (20 MARKS)**

Mr. Makori earns a living by selling food at construction sites. One day, while selling lunch at the construction site of Gachiri Construction and Engineering Limited, a stone fell from a crane at the site and hit him on the head, injuring him seriously. Mr. Mbote, the crane operator, was also having Mr. Makori’s lunch when the accident occurred.

Gachiri Construction and Engineering Limited had placed the following notice at the construction site: “Beware of falling stones! Wear helmet at all times!” Mr. Makori was at the site following an express invitation by the construction project manager. Mr. Makori believes that Mr. Mbote was negligent by leaving a loaded crane unattended. Therefore, he intends to sue Mr. Mbote on the tort of negligence. He has approached you for legal advice.

Advise Mr. Makori on the following matters:

(a) The ingredients of the tort of negligence that he will have to prove for his suit to succeed. [15 marks]

(b) Two (2) defenses that Mr. Mbote may raise against Mr. Mokori’s suit. [5 marks]

**QUESTION FOUR (20 MARKS)**

Absalom is an electrical engineer. Reuben plans to hire Absalom to carry out electrical works in his newly constructed residence. While they were negotiating the terms of their contract, they disagreed over the forum where they should refer any dispute under the proposed contract that may arise between them. Reuben prefers civil carts, which Absalom detests for many reasons. Therefore, they have sought your legal advice.

Advice them on the following matters:

(a) Meaning and types of Alternative Dispute Resolution mechanisms.

[10 marks]

(b) Five (5) advantages that Alternative Dispute Resolution mechanisms have over civil litigation. [10 marks]

**QUESTION FIVE (20 MARKS)**

Mr. Were is a civil engineer. He was five months late in completing construction of the proposed five-storey Kihara Plaza. Mr. Kihara, the developer, piled pressure on Mr. Were to hurry up completion of the construction since potential tenants of the premises were also applying pressure on Mr. Kihara, who had already accepted their rent deposits.

Mr. Were then speeded up the construction, but two floors collapsed soon thereafter, killing four construction workers. Due to public and media outcry, the police arrested Mr. Were and Mr. Kihara over the deaths ahead of being charged in court with the offence of murder. They have never appeared in a criminal court before. Therefore, they have sought your legal advice on the overview of proceedings in a criminal case from start to finish.

Advise them accordingly. [20 marks]