

CHUKA



UNIVERSITY

**UNIVERSITY EXAMINATIONS**

**EXAMINATION FOR THE AWARD OF MASTER  
OF SCIENCE IN PROCUREMENT AND LOGISTICS MANAGEMENT**

**MPLM 814: PROCUREMENT LAW**

**STREAMS: MPLM**

**TIME: 3 HOURS**

**DAY/DATE: WEDNESDAY 07/04/2021**

**8.30 A.M. – 11.30 A.M.**

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**INSTRUCTIONS: Answer question ONE (Compulsory) and any other TWO questions**

**QUESTION ONE**

**Case Study of Kenya-Somalia Maritime Dispute**

A narrow triangle off the coast of Africa, in the Indian Ocean, about 100,000 square kilometers (62,000 square miles), is the bone of contention between neighboring Kenya and Somalia. Both countries want the area because it supposedly has a large deposit of oil and gas, but it's not clear to which country it belongs.

“The position of the boundary is a gray area”, said Timothy Walter, a maritime border conflict researcher at the Institute of Security Studies (ISS) in South Africa.

For Kenya, however, the boundary is quite clear. It lies line parallel to the line of latitude. That gives Kenya the larger share of the maritime area and it has already sold mining licenses to international companies. But Somalia disagrees.

The Somalis want boundary to extend to the southern as an extension of the land border. Somalia brought its case to the International Court of Justice at The Hague in 2014, but the hearing has been delayed. It is now scheduled for June 2021. Kenya has opposed the process in the Hague, but Somalia, which is a far weaker geopolitical position due to its weak political institutions and long-running security challenges, has hung its hopes on the International Court of Justice as its best avenue for justice. The coronavirus pandemic, however, threatens to push the hearing date back even further.

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### Required:

- (a) Analyze the type of law that will be applied by the International Court of Justice in giving a verdict on the border dispute between the two countries. [4 marks]
- (b) If the two countries opt for out of court settlement, examine the alternative dispute resolution mechanism they can adopt and the benefits of the same. [8 marks]
- (c) Supposing the International Court of Justice was to adopt the doctrine of equity as the main source of law in delivering the verdict, outline the maxims of Equity that would inform the judgment. [4 marks]
- (d) This dispute has affected the trading relationship between the two countries leading to destruction of Kenyan goods as well as vessels used to deliver them to Somali. In order to mitigate against losses, suggest the type of insurance policies Kenyan traders can procure as a proactive move towards safeguarding their interest in Somali. [8 marks]
- (e) Kenya and Somali trade practices are slowly evolving to e-commerce platforms that are more practical and versatile in the current times. Discuss three types of businesses where e-commerce regulation is necessary. [6 marks]

### QUESTION TWO

- (a) Critically examine the interface that exists between procurement and law while highlighting the elements of complementarity between the two disciplines. [8 marks]
- (b) Kenya has lost rights over a huge number of inventions and technologies that were developed locally leading to loss of huge amounts revenues. Suggest how intellectual property law can remedy this trend. [7 marks]

### QUESTION THREE

- (a) Identify and analyze the requisites necessary to form a legally binding contract between procurement department to Chuka University and a supplier of university bus. [8 marks]
- (b) Public procurement and Asset Disposal Act OF 2015 provides for a number of procurement methods that have legal implications in public system. Analyze these methods while highlighting the circumstances under which each is applicable. [7 marks]

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**QUESTION FOUR**

(a) Agency law provides for various classes of agents who can be employed to execute specific procurement and commercial valid contracts. Analyze these agents and the role they play. [8 marks]

(b) Examine the circumstance under which a valid title can be given by a person who is not the owner of the goods as provided for under the contract of sale of goods. [7 marks]

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