

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA

SOLUTIONS TO BUSINESS LAW 2ND

SECTION A : MULTIPLE-CHOICE QUESTIONS (20 Marks)

1. B
2. A
3. C
4. B
5. C
6. D
7. A
8. C
9. B
10. B
11. D
12. B
13. A
14. A
15. A
16. C
17. D
18. B
19. A
20. E

## SECTION B : SOLUTIONS.

### Question 1.

1(a) i. Equity was developed to introduce the principle of natural justice and fairness in the dispensation and administration of justice. Equity aims to make amendment and provide remedy where the common law is harsh or deficient.

ii. The differences between common law and equity are as explained below :

- Common law is a complete system of law which is rigid in application, while equity is made up of isolated principles as to how and when certain equitable remedies would be granted.
- Common law applies statute-barred principle and limitation of time in general form, while unreasonable and unnecessary delay defeats a claim in equity.
- Common law remedies are available and applied as a matter of course in law, while equitable remedies are granted at the discretion of the judge.

(2<sup>1/2</sup> Marks each for any 2 = 5 Marks)

1(b) (i) Documentary Evidence:

This involves tendering of documents to prove existence of customary law, such as books, manuscripts, or research findings of people and experts knowledgeable in customs intended to be proved.

(ii) Direct Oral Evidence:

This involves calling witnesses, such as native indigenes, chiefs, elders and native custodians of customs to prove the existence of certain customary laws.

(iii) Judicial Notice:

This is when a person simply asks the court to accept the custom as existing, because a higher or coordinate court had in previous proceedings repeatedly accepted the custom as existing.

(3 Marks each for any 2 = 6 Marks)

1(c) The legal issue relate to illegality under law of contract. (1 Mark)

Any contract to carry out an illegal act or an act which is prohibited by law or is contrary to public policy, is null and void *ab initio*, and of no legal effect.

(2 Marks)

The case involves importation of contraband and banned items into the country, which makes the joint venture contract between Ade and Mausi an illegal contract, thus null and void, *ab initio* and of no legal effect.

(3 Marks).

The contract is unenforceable, and Ade is thus advised not sue Mausi, as the suit will not succeed in court.

(2 Marks).

(Total = 20 Marks)

10

## Question 2

2(a) i. Tort is classified under civil law. Tort can be defined as civil wrongs, other than breaches of contracts, committed against a person or party. The aggrieved party is only entitled to compensation. Tort arises by law, the desires of the parties notwithstanding. (3 Marks).

ii. The common rules applicable to tort are as follows:

- The defendant will not be liable unless the plaintiff had suffered actual damages.
- The defendant must have been at fault i.e, either intentionally or negligently.
- Liability depends on the duty imposed on the defendant by the rule of law.
- Some torts are actionable *per se* without the proof of physical damage.
- Tort can be either breach of legal duty or resultant loss.

(1 Mark each for 3 points = 3 Marks).

2(b) (i) **Insurable interest.**

Under insurance law, insurable interest is something that the insured stands to gain or lose in the preservation or damage of the subject matter, which must be existing and enforceable at the time of contract.

(3marks).

(ii) **Disclosure of material fact.**

Material fact is necessary information that must be disclosed, which would influence the insurer to determine whether to accept the risk, and the terms, as well as the amount of premium to be paid by the insured.

(3 Marks).

2(c) (i) Duties of the employer include the following:

- \* Duty to pay the employee's remuneration;
- \* Duty to assign work and duties to the employee;
- \* Duty to provide conducive work environment;

- \* Duty to ensure safe system of work; and
- \* Duty to indemnify the employee for expenses incurred in the course of his duties

(1 Mark each for any 4 = 4 Marks)

(ii) Duties of the employee include the following:

- \* Duty of care in discharge of his duties
- \* Duty of loyalty in service to the employer
- \* Duty to render personal service to the employer
- \* Duty of exercise professed professional skill and diligence
- \* Duty to obey lawful instructions of the employer
- \* Duty of secrecy of the employer's confidential business information.

(1 Mark each for any 4 = 4 Marks)

**(Total = 20 Marks)**

3.(a) Under the Criminal Code, categories of things that are capable of being stolen are **moveable inanimate things** which are non-life objects that can be moved from one point to another. Every movable inanimate thing whatever, which is the property of any person is capable of being stolen.

(3 Marks)

Examples of materials that can be stolen include, telephone handset, electronics, negotiable instruments, vehicles, apparels and cash.

(3 Marks)

3(b)i Implied authority of partners in a partnership are terms which are presumed that partners may exercise either by operation of law, trade, custom or generally accepted practice in the course of normal business of the firm.

(3 Marks)

ii. Implied authority of partners include the following :

- Buying and selling of goods normally traded in by the firm;
- Receiving of monies for debts or sales on behalf of the firm;
- Issuing valid official receipts in the name of the firm;
- Employment and dismissal of servants of the firm;
- Obtaining of loans for the firm's business operations;
- Pledging the firm's assets as security for loans obtained; and
- Engaging of solicitors to recover debts owed the firm.

(1 mark each for any 5 = 5 Marks)

3(c)i. A discount house is a financial institution carrying on banking business by trading

in and holding commercial bills of exchange and other financial instruments as may be approved by the Central Bank of Nigeria (CBN).

(3 Marks)

- ii. The instruments traded by discount houses include: **treasury bills, debenture stocks, shares, bonds and other securities** as approved by the CBN.

(1 Mark each for any 3 points = 3 Marks)

**(Total = 20 Marks).**

- 4(a) i. The legal issue in the case is on names prohibited or restricted by law. Under the Companies and Allied Matters Act, (CAMA) 2004 (as amended), the Registrar of companies is empowered to refuse to register any name classified under the list of prohibited or restricted names. (2 Marks)

The business name proposed by Abu includes the word "Federal" , which is in the list of prohibited names, hence the rejection by the Registrar of Companies.

(2 Marks).

- ii. A business name proposed for registration shall not include the following:

- **Prohibited names** include " National, Government, Municipal, State, or Federal"
- **Restricted names** include " Cooperative, Chamber of Commerce, Building Society, Guarantee, Trustee, Investment, Bank, Insurance", except the businesses are dully registered for such businesses.

(1 mark each for any 4 = 4 Marks).

- 4(b) The legal issue is on veil of incorporation, which presumes that a company assumes legal personality as a separate legal entity, distinct from its owners.

(1 Mark)

The veil of incorporation may however be lifted by the court so as to know the person(s) behind a company that tries to avoid contractual liabilities, or when crime is involved.

(2 Marks).

In this case, Okon is liable for breach of contract which he is trying to avoid. Thus, the veil of incorporation may be lifted by the court and Okon will be liable for breach of contract. Ade is therefore advised to sue Okon for breach of contract.

(3 Marks).

- 4(c) Essential elements that must be present to qualify for arbitration procedure under

Alternative Dispute Resolution (ADR) are as follows:

- i. There must be a dispute between the parties concerning some disagreements over a point of law or fact;
- ii. The dispute or difference must be justiceable;
- iii. The parties must voluntarily agree to settle the dispute through third party mediation;
- iv. The agreement to submit to arbitration must not be illegal;
- v. The parties must have a clause in the said agreement, mandating them to submit to arbitration in the present or future;
- vi. There must be a formal reference of the dispute to the decision of the party;
- vii. That the third party must expressly or impliedly be required to decide according to law;
- viii. It must be a term of that contract that the award shall be final and binding and that the parties must act in good faith.

(1 mark each for any 6 points = 6 Marks)

**(Total = 20 Marks)**

5(a) Under Insolvency law, the powers of an appointed Receiver/Manager include

- i. Taking possession of properties of the company and collecting proceeds from the properties.
- ii. Selling or disposal of the company's properties by public auction.
- iii. Borrowing money and granting security over the company's properties.
- iv. Appointing professionally qualified persons to assist him in his duties.
- v. Using the company's seal, whenever necessary.
- vi. Performing all acts in the name and on behalf of the company.
- vii. Carrying on the business of the company.
- viii. Establishing subsidiaries for the company.
- ix. Calling up any uncalled capital of the company.
- x. Doing all things incidental to the exercise of the foregoing powers.

(1 mark each for any 4 point = 4 Marks)

5(b)i. Essential elements of a valid will

- A will in writing, must be signed by the testator.
- It must take effect after the testator's death.
- It must be made voluntarily and not under duress or undue influence.
- The testator must be of sound mind.
- The testator must appoint at least 2 executors for the will.
- The testator must sign the will in the presence of the executors.

- The executors must all sign in the presence of the testator to attest the signature.
- The will must be duly executed.

(1 mark each for any 4 point = 4 Marks)

ii. Trusteeship may be terminated through the following methods :

- **By The Trustee's Disclaimer**

A person appointed trustee may refuse the office and decline by disclaiming the trust appointment. This can be done expressly by deed or in writing. He could also make verbal declaration to disclaim the trust, or by conduct of refusal to act.

- **By removal from office**

A trustee may be removed from office by termination of the trusteeship. Such removal from office could be as a result of being found unfit or for non-performance or being incapable of acting or continuous absence from the country for an unbroken period of 12 months.

- **By retirement**

A trustee who has already accepted and performed the functions of trustee may subsequently retire from the office, by giving written notice and exploiting the retirement provisions in the trust instrument. He may also apply to the court for order retiring him from office, or by consent of the trust beneficiaries.

- **By death of the trustee**

The death of a trustee naturally brings to an end his office as trustee which automatically terminates the trusteeship appointment.

(2 Marks each for any 2 = 4 Marks)

5(c).i Bailment is a transaction under which possession of goods is delivered by a bailor to a bailee on terms requesting the bailee to hold on to the goods and later re-deliver the goods as the bailor may direct. (2 Marks)

The distinguishing element between contract of sale and bailment is that, bailment is a mere transfer of possession, while sale is transfer of possession and ownership in the property (title). (2 Marks)

ii. The following are the characteristics of hire purchase contract :

- It is a contract between owner of the goods and the hirer which is required by law to be in writing and to include certain statutory provisions. There is a detailed list of required content that must be stated in the memorandum of the hire purchase agreement.
- The owner of the goods must state in writing, the cash price at which the hired goods may be purchased.
- The hire purchase price and the amount of periodical instalments, as well as the duration of the instalmental payments must be stated in the agreement.
- The contractual relationship between the owner and hirer is that of bailor and bailee, although the bailment law is slightly modified.
- Property in the goods does not pass when the agreement takes effect, but until all the stipulated conditions are satisfied by the hirer.
- The hirer can terminate the contract at any time during the hire purchase period and return the goods in good condition. Thereafter, he is not liable to pay further instalments.
- The hirer enjoys the privilege and option to purchase the goods at the expiration of the hire purchase transaction, and after satisfying the agreed conditions of purchase.

(2 marks each for any 2 = 4 Marks)  
(Total = 20marks)

6(a) (i) **Literal Rule**

This rule requires the court to apply the words of a statute or legislation according to their ordinary meaning, irrespective of the absurdity or injustice that may arise therefrom. Judgements from this rule always generate controversy and are usually challenged in superior courts. (2 Marks)

(ii) **Mischief Rule.**

This rule requires the Judge to look at the law before the passing of the statute or Act and the mischief which the statute or Act intended to remedy, and interpret the Act in such a way as to suppress that mischief and advance the remedy intended by the statute or Act.

(2 Marks)



6(b)i Elements of bribery under the criminal code

- When a public officer corruptly asks, receives or obtains or agrees or attempts to receive or obtain the bribe.
- When the bribe is given or taken with intent to either on the part of the offeror or of the taker or both, that the public officer should be deflected from his duty.
- There should be the offer, demand or receipt of any property or benefit of any kind for himself (the public officer) or any other person on account of anything already done or omitted to be done, or to be done afterwards or omitted to be done by him.

(2 Marks each for any 2 = 4 Marks)

- ii E-signature, acronym for electronic signature, is the signature appended on business documents through electronic media to signify approval or acceptance of business deals and proposals.

(3 Marks)

The proof of e-signature required may be in any manner with the use of all lawful and legal means and are admissible in electronic evidence. (1 Mark)

6(c)i Punishments for persons found guilty of obstructing officials of authorised agencies from performing their duties under the law, are

- An individual found guilty of the offence of obstruction under the Act is liable to prison term of not less than 10 years and not exceeding 15 years.
- Body corporate: financial institution or bank and other body corporate found guilty of obstruction under the Act shall be liable to a fine of one million naira.

(4marks)

ii. The classes of agents under agency law are as follows :

- General agent
- Special agent
- Factor
- Broker
- Auctioneer

- *Del credere* agent
- Estate agent
- Rent collector

(1 Mark each for any 4 = 4 Marks)