

## SOLUTION - BUSINESS LAW MAY 2007

### QUESTION 1 (a)

- Delegated legislation refers to the laws or regulations made by bodies or persons to whom the Constitution or parliament has conferred limited powers of law making.
- It must be exercised within the scope or parameters of the enabling act and must be laid before Parliament before coming into effect.

The rationales for the enactment of such legislation are:

- Parliament does not have time to debate the minute details of every law, so when its power of law making is delegated it has time saved to concentrate on the principles of the law.
- In an emergency, delegated legislation can be speedily brought into force than legislation.
- It allows bodies to inject skill and expertise into policies and programmes of government.
- It allows for flexibility: In a changing society there is the need for legislation to adapt to the changes in society.

### (b)

The jurisdiction of a court is the authority of that court to entertain or decide a case.

- It connotes the limit or extent of the power of the court. The limit of the court's authority is determined by law.
- The constitution provides authority for the jurisdiction of the superior courts while the courts spell out in detail the jurisdiction of the courts both superior and the lower courts.
- Factors that determine jurisdiction are geographical boundaries, subject matter of the litigation and time.

### QUESTION 2 (a)

In domestic or social agreements, the presumption is that they are not intended to be legally binding though evidence of writing under seal for example rebut the presumption. Examples of such agreements are that between members of a family, husband and wife and between friends.

With commercial agreements, however, there is a strong presumption that the parties intend them to be legally binding e.g. buying goods in a shop. This presumption can be rebutted if a contrary intention is clearly expressed in the agreement itself.

(b)

Ordinarily since Agyeman is Kwame's uncle, the agreement will be regarded as a domestic agreement not intended to be legally binding.

However, the presumption can be rebutted in the circumstances of the instant case. The fact that Kwame resigned his job, sold his house and moved to Kumasi means he had literally "burned his boats" and he had relied on the enforceability of the contract.

The fact that Agyeman found Kwame a job means that he was also relying on the contract to implement fully his portion of the agreement means that both parties intended to be legally bound.

There is also the fact that everything was written so there is documentary evidence of the existence of a contract. (Agyeman's offer letter and Kwame's acceptance letter).

Kwame will be advised to sue his uncle for damage for the value of rent free accommodation and other damages.

### **QUESTION 3 (a)**

Section 27 of the Sale of Goods Act stipulates.

The risk in the goods is transferred to the buyer when the parties intend it to be transferred.

Unless a different intention appears, the goods are at the sellers risk until property in them passes to the buyer, after which the goods are at the risk of the buyer.

Where delivery of the goods has been delayed through the fault of either the buyer or seller, the goods are at the risk of the party at fault as regards loss, damage or deterioration which might have occurred but for the delay.

(b)

Section 18 of the sale of Goods Act makes provision for the means of delivery where there is no contract as:

- the seller may deliver the goods by transferring to him the actual physical control over the goods; or
- transferring to him the means of obtaining actual physical control over the goods; or
- transferring to him documents of title to the goods
- delivery of the goods to a carrier for onward transmission to the buyer is delivery to him.

- Where the goods are in the possession of a third party, they are delivered to the buyer when the third party acknowledges to him that he holds the goods on his behalf.

#### **QUESTION 4 (a)**

A void contract has no legal effect on either party, it is as if there were no contract. For example property transferred must be returned because the transferor remains the owner of it and should the transferee detain it he can be sued for unlawful detention.

A voidable contract is one which is valid unless or until it is brought to an end at the option of one of the parties.

(b)

An injunction is an equitable remedy. It is an order of the court which either requires a person to do something (i.e. mandatory injunction) or prohibits a person from doing something (i.e. prohibitory injunction).

The court will grant an injunction to restrain a party from committing a breach of contract.

However, an injunction will be granted only where it is just and convenient so to do. If it is inappropriate the court can award damages instead.

Quantum Meruit means “as much as it is worth”. It is an award to compensate a person, either where there is no claim under contract or as an alternative to a claim for damages.

The circumstances where the award may be given are – where either there never existed or subsequently ceased to exist or the contract has been breached thereby preventing a party from performing under it.

#### **QUESTION 5 (a)**

Under the common law where an agent acts for a disclosed principal, the contract is between the principal and the third party – the agent is not liable nor entitled under it.

However, the agent will be personally held liable in the following circumstances

- where the agent showed an intention to undertake personal liability e.g. by signing a written contract in his own name.
- trade usage or custom

- where the agent refuses to identify the principal
- where the agent is acting on behalf of a fictitious principal.
- Where the agent is acting outside his authority.

(b)

The question is on the duties of an agent towards the fiduciary duties.

The fiduciary duties of an agent require that, an agent must not allow his own personal interest to conflict with that of the principal;

An agent must always act in the best interests of the principal and must not make secret profit or take bribes.

By collecting the extra commission from the purchasers Odompo has made secret profit and has taken a bribe by reducing the value of the building. He did not also act in the best interests of the principal. Consequently he has breached his fiduciary duty.

Mr. Patapaa can dismiss Odompo without notice.

He can also repudiate the contract with the second purchaser and he can recover the secret profit and the bribe if he sues him.

#### **QUESTION 6 (a)**

- A holder in due course is a holder who has taken a bill
- Complete and regular on the face of it
- Before it was overdue
- Without notice that it had been previously dishonoured, if such was a fact
- In good faith and for value
- Without notice, at the time the bill was negotiated to him of any defect in the title of the person who negotiated it.

(b)

Under the Bills of Exchange Act, protection is given to a collecting Banker.

- where a banker in good faith and without negligence
- receives payment for a customer of a cheque, whether crossed or not or
- having credited a customer's account with the amount of such cheque received
- payment for himself and the customer has no title or defective title to the
- cheque, the banker does not incur any liability to the true owner of the cheque by reason only of having received the cheque.

### QUESTION 7 (a)

- Where the employee commits a serious breach, the employer is justified if he dismisses the employee without notice and treat the contract as discharged.
- If the employee wrongfully leaves his employment without notice the employer can sue him for breach (this remedy is rarely used since damages awarded will be very small).
- Where the employee makes secret profit, the employer can bring an action to receive it.
- Seek an injunction – this remedy will not be granted to prevent the employee from leaving the employment but it will be granted to enforce the duty of confidentiality.

(b)

An employer is obliged to ensure that the workplace is clean – Dirt and refuse should be washed with hot water and soap. At least once a year, the premises must either be painted or varnished.

He must ensure there is no over crowding. Each person must have at least 40 sq feet to work in ceilings must be at least 9 metres high in factories

- Must ensure that factories are environmentally safe – must prevent accumulation of dust, fumes or impurities in the work place
- Washing facilities must be provided; sanitary conveniences for separate sexes.
- Must provide adequate protective clothing and appliances for their employees
- Noise and vibrations detrimental to health must be reduced as far as appropriate and practicable
- Drinking water, sitting facilities, lighting, drainage for its floor must be appropriate