

SOLUTION: BUSINESS LAW MAY 2008

QUESTION 1

- (a) An offer is a definite and unequivocal statement of willingness to be bound by a contract.
- It can be expressed or implied and an offer can be made in any form.
- (b) The essential elements of a valid offer are:
- It must be definite and unequivocal
 - It must be a clear intention to be bound
 - It can be made to a particular person or to the world at large
 - Must be communicated
- (c) Revocation: An offer can be revoked by the offeror anytime before it is accepted by the offeree. But the revocation will not take place until it has been received and clearly understood by the offeree.
- Rejection – an offer can also be rejected by the offeree outright by turning down the offer or by a counter offer.
 - Counter offer - is an offer in response to an offer. Where the offeree for example offers to pay a lower price in effect he is imposing conditions on the acceptance and that terminates the original offer.
 - Lapse of time – if the offer is open for a specific time period it will expire after this time where no time limit is given it will expire after a reasonable period.
 - Death of the offeror will terminate the offer. Death of the offeree also will terminate the offer since personal representatives cannot accept the offer.

QUESTION 2

Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:

- (a) The notice must be given by or on behalf of the holder, or by or on behalf of an endorser who, at the time of giving it, is himself liable on the bill.
- (b) Notice of dishonour may be given by an agent either in his own name or in the name of any party entitled to give notice whether that party be his principal or not.

- (c) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior endorsers who have a right of recourse against the party to whom it is given.
- (d) Where notice is given by or on behalf of an endorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all endorsers subsequent to the party to whom notice is given.
- (e) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payments.
- (f) The return of a dishonoured bill to the drawer or an endorser is, in point of form, deemed a sufficient notice of dishonour.
- (g) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A mis-description of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (h) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.
- (i) Where the drawer or endorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.
- (j) Where the drawer or endorser is insolvent, notice may be given either to the party himself or to the trustee.
- (k) Where there are two or more drawers or endorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (l) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless:

- (i) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.
- (ii) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour, and if there be no such post on that day then by the next post thereafter.

QUESTION 3a

- The tort of negligence has three basic requirements as laid down in the Donoghue v. Stevenson case.
- Duty of care, breach of that duty and resultant actionable damage.
- A duty of care under the neighbour's test is duty owed to all persons that should be in reasonable contemplation as persons that could be injured by acts or omissions of the defendant.
- Breach of duty depends on the concept of the reasonable man. If the reasonable man would have taken more care than the defendant then there is a breach of the duty to take care.
- In the case of actionable damage, the defendant must be the actual cause of the loss that occurred. Where however, the plaintiff also caused some of the loss by his action or inaction the damages can be reduced for contributory negligence.

3b

- If the workman gets injured in the following circumstances the employer will not be liable.
- If the injury occurred whilst the employee was intoxicated, the employer is not liable.
- The employer is not liable for self imposed injuries.
- If the employee makes a false representation that he has not previously suffered injuries the employer will not be liable if he is injured during the course of his employment.

QUESTION 4

- (a) i. Customary Law means the rules of law which by custom are applicable to particular communities in Ghana.
- ii. The customary practices prohibited are those which dehumanize or are injurious to the physical and mental well being of a person.
- (b)
 - This constitution
 - Enactments by Parliament
 - Orders, Rules & Regulations by a person or authority under a power conferred by this constitution
 - The existing law
 - The common law
- (c)
 - The Supreme Court
 - The Court of Appeal

- The High Court/Regional Tribunal
- The Circuit Court
- The District Court
- National/Regional Houses of Chiefs

QUESTION 5

- (a)
 - Transferring to him actual physical control over the goods
 - Transferring to him the means of obtaining actual physical control over the goods
 - Transferring to him documents of title to the goods
 - Delivery of goods to the buyer's agent or to his order, unless there is a contrary intention.
 - Delivery to a carrier upon a contract of sale for transmission to the buyer unless there is a contrary intention.
 - In possession of a third party who acknowledges to the buyer that he holds the goods on his behalf.
- (b)
 - When the parties intend it to pass
 - Unless there is a different intention when delivered to the buyer
 - When the buyer signifies his approval or acceptance to the seller or any act adopting the transaction
 - If he does not signify approval or acceptance but retains the goods without giving notice of rejection on the expiration of a fixed time or a reasonable time.

QUESTION 6

- (a) Where an agent has no authority to contract on behalf of the principal but does so and the principal later ratifies it; or
Where an agent exceeds the authority he has and the principal afterwards confirms and adopts the contract.
- (b)
 - The agent must expressly have contracted an agent
 - The contract can only be ratified by the principal who was named or ascertainable when the contract was made
 - The agent must have a principal who was in actual existence at the time of the contract

- The principal must have had contractual capacity at the date of the contract and at the date of ratification
- The principal must at the time of ratification, have full knowledge of the material facts
- The principal must adopt the whole of the contract
- The principal must ratify within the time set or within a reasonable time
- The contract itself must be valid and not void.

QUESTION 7

(a) The rights of a worker include the right to

- work under satisfactory, safe and healthy conditions
- receive equal pay for equal work without distinction of any kind
- have rest, leisure and reasonable limitation of working hours and period of holidays with pay as well as remuneration for public holidays
- form or join a trade union
- be trained and retrained for the development of his or her skills
- receive information relevant to his or her work

(b) Presentation of a complaint to the commission. The commission may:

- order the employer to re-instate the worker from the date of the termination
- order the employer to re-employ the worker either in the work for which the worker was employed before the termination or in other reasonably suitable work on the same terms and conditions before the termination
- order the employer to pay compensation to the worker.