

SOLUTION – BUSINESS LAW MAY 2009

QUESTION 1

The laws of Ghana apart from the constitution are:

- (a) Acts of Parliament established under the constitution.
- (b) Orders, Rules and Regulations made by any person or authority under a power conferred by the constitution
- (c) Existing law
- (d) Common law
 - i. Common law properly called
 - ii. Rules of equity
 - iii. Customary law

QUESTION 2

The questions deal with one important principle of the elements of a valid contract ie intention to create legal relations. Each set question will therefore be analysed to determine whether there was an intention to create legal relations.

- (a)
 - i. The advert in the paper could be described as an offer made to the whole world.
 - ii. By finding the lost dog Joe Boy has accepted the offer.
 - iii. The next issue is whether John K. intended to create legal relations. By depositing the money at the bank that intention could be presumed. Therefore contract enforceable against John K.
- (b)
 - i. Candidates are expected to explain that in domestic and social agreements there is no presumption of intention to create legal relations.
 - ii. Candidates to identify that this was a domestic or social agreement.
 - iii. Candidates to explain whether Araba Lucy can enforce the promise
- (c)
 - i. Candidates to identify that the question is also a domestic agreement.
 - ii. Candidates to state that in this case the presumption is that there is no intention to create legal relations.

- iii. Candidates to identify that this presumption could be rebutted. If the parties execute agreement as in this case.
- iv. The parties are no longer in amity and the promise made though not reduced into writing is still binding.

QUESTION 3

- (i) “Caveat Emptor” means let the buyer beware. It means that where a buyer fails to examine goods when given the opportunity he can not complain if he later detects any defect which should have been seen on examination.
- (ii) Under Section 11 where goods are sold by description whether or not the sale is by sample as well as by description the goods shall correspond to the description.
- (iii) Under section 12 if goods are sold by sample whether or not the sale is by description as well as by sample the goods shall correspond to the sample.
- (iv) Section 13 also says that there is an implied condition that goods sold are free from defects which are not declared or known to the buyer before or at the time of the sale. However where the defects could have been detected upon reasonable examination then the implied condition will not apply.
- (v) The Section also prohibits the exclusion of the implied term where the buyer makes known the purpose for which the goods are bought and the seller sells those goods in the ordinary course of his business.

QUESTION 4

- (a) Any amount due from the worker in respect of contributions to any provident or pension fund agreed by the worker.
- (b) Any financial facility advanced by the employer to the worker at the written request of the worker or any facility guaranteed by the employer to the worker.
- (c) Any amount paid to the worker in error as remuneration, in excess of the worker’s legitimate entitlement.
- (d) Any amount due from the worker as membership fee or contribution to an organization to which the worker belongs.

- (e) For meeting any loss suffered by the employer as a result of the loss of or damage to any property or thing used in connection with or produced by the employer's business and which is made under the control of the worker.
- (f) Any deduction made by the order of the commission.

QUESTION 5

- (a)
 - i. Candidates are to state that an employer is vicariously liable for the torts committed by a worker in the course of his duties.
 - ii. They are also to state any defence which the employer may raise
 - (a) In this case there is the defence of volenti non fit injuria. ie the notice on the vehicle and in the cabin clearly prohibited the use of the vehicle by non employees.
 - (b) There is also the defence that the employee was on a frolic of his own therefore the employer can repudiate liability
- (b) Under Section 2 of the Workmen's Compensation Act PNDC Law 187 an employer is liable to pay compensation to a worker who suffers injury in the course of execution of his duties.

Section 2 (5) however excludes liability if it is shown that the worker was under the influence of alcohol at the time of the accident

In this case since the worker was under the influence of alcohol the employer is not liable.

- (c)
 - i. The brokerage firm owes a duty of care to all clients.
 - ii. There should be breach of that duty.
 - iii. The injured party should have relied on the advice.
 - iv. Injury should have been suffered by the injured party.

QUESTION 6

- a) A holder in due course is a holder who has taken a bill complete and regular on the face of it under the following conditions:-
- that he became the holder of it before it was overdue
 - and without notice that it had previously been dishonoured
 - that he took the bill in good faith and for value
 - that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.
- b) Circumstances making the title defective
- obtains the bill or acceptance of it by fraud
 - obtains the bill or acceptance of it by duress
 - obtains the bill or acceptance of it by force
 - obtains the bill or acceptance of it by fear
 - obtains the bill or acceptance of it by other unlawful means
- or for an illegal consideration
or when he negotiated in breach of faith
or under such circumstances as amount to a fraud

QUESTION 7

- (a) A workman means any person who has entered into or is working under a contract of service or apprenticeship with an employer, whether skilled or unskilled, and whether the contract is expressed or implied, oral or in writing (PNDCL 187 S 38 (1))
- (b) Where a workman sustains personal injury by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with this law (PNDCL 187 S 2 (1)).
- (c) - The employer shall not be liable to pay compensation where the injury of the workman resulted from an accident from attributable to the workman being under the influence of drink or drugs at the time (PNDCL 187 S2 (5))
- No compensation shall be payable under the law in respect of any incapacity or death resulting from a deliberate self injury (PNDCL 187 S 2 (7))
 - No compensation shall be payable under this law for any incapacity or death resulting from personal injury, if the workman has at anytime represented to the employer that he was not suffering or had not previously suffered from that or similar injury, knowing that the representation was false (PNDCL 187 S2 (8)).