

Question 1

- (a) A false statement (b) of material fact, (c) made by a party to the contract or his agent (d) which induces the other party to enter into the contract
- (b) (i) The statement must be of fact. This ensures that it must not be of law or of an opinion however the opinion of an expert on this subject may amount to statement of fact. (Brown v Raphael 1958).
- (ii) It must be of material importance in the transaction e.g. in the sale of car a statement as to its condition would be actionable but representation relating to matters such as windscreen wipers would not amount to actionable misrepresentation.
- (iii) It must be made by a party to the contract or his agent i.e. not by a mere bystander. For instance if A invests money in a company in reliance on a false statement by the company's auditor A cannot sue the company for misrepresentation because the auditor cannot be said to be the agent of the company though A may maintain a possible action against the auditor for negligence. (Candler v Crane Christmas & Co v Hellsers etc)
- (iv) The statement must be relied upon. i.e. it should succeed in inducing the party to enter into the contract. (Harsfall v Thomas)
- (v) It must be possible words or conduct not by mere silence unless that silence amounts to active concealment of facts or silence about some facts amounts to active concealment of facts. (R v Kylant)
- (vi) Statements made when true but becoming false before the contract is made must be corrected (With v O'Flanagan)

QUESTION 2

- a) A contract is discharged when the parties are freed of their obligations under it.
- b) - Performance
- Agreement
- Breach
- frustration
- c) - ***Performance***

The complete and exact performance of the obligations in the contract. The parties must perform precisely and exactly all the terms of the contract.

A person may be freed from his obligation, where he carries out his obligations substantially though not precisely.

Where the contract is divisible or severable as in building or construction contracts a part performance could lead to a discharge.

- ***Agreement***

What has been created by agreement may be extinguished by agreement where the contract is executory, the mutual exchange of promises to release one another from future performance will be sufficient consideration. Where the contract is executed the other party must.

- ***Breach***

Failure to perform contractual obligations or performing obligations in a defective manner. Any breach will result in the innocent party being able to one for damages.

Where a breach gives the right to treat the agreement as discharged the innocent party can refuse either to perform their part of the contract or to accept further performance from the party in breach. The breach may be anticipatory, or total failure to perform on the due date and performance in a defective manner.

- ***Frustration***

The contract is made impossible to perform not by an event due to the act or default of either party.

The contract will be discharged by reason of frustration if the subject matter of the contract has been destroyed, government interference or supervening illegality, and the death of a party in the case of personal service.

Frustration will not apply where the frustrating event is self induced.

Under the Contracts Act, 1960 (Act 25) there is equitable apportioning of loss between parties.

QUESTION 3

Section 4 (1) of the Sale of Goods Act States that

- (a) In the case of sale by auction where the goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale.
- (b) The sale is complete only when the auctioneer announces its completion by the fall of the hammer.

Until the auctioneer announces the completion of the sale, any bidder may retract his bid, and unless the sale is with reserve the seller may withdraw the goods.

Where the sale is expressed to be without reserve the highest bidder shall be entitled to buy the goods even if the auctioneer refuses to accept his bid or to complete the sale.

The seller or any one person on his behalf may bid if a right to bid is expressly reserved, but in such a case the seller is allowed to make one bid and no more and not otherwise.

Where the sale is notified to be subject to a reserve price, it shall be lawful for the seller or any person on his behalf to make one bid and no more, and such a bid shall be openly declared at the auction before any other bid is received.

QUESTION 4

Candidates are expected to answer two separate questions.

- (a) Compensation to Bigman's family
 - (b) Compensation to Kofi Babone
- (a)
- (i) In answering (a) Candidates are to state the general rule on vicarious liability of an employer for the acts of his employee committed in the course of his work.
 - (ii) They are to establish whether given the situation it could be said that Kofi Babone was working.
 - (iii) They are to apply the findings to give answer
 - (iv) Case law
- (b) In the case of Kofi Babone the issue to be decided is whether his injury happened in the course of his employment.

Candidates are required to apply the facts to the case to this scenario.

Candidates to draw conclusions

Case law

QUESTION 5

- a.
- A bill is discharged by "payment in due course" i.e. payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.
 - Where a bill is intentionally cancelled by the holder or his agent and the cancellation is apparent on it the bill is discharged.

- Also any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such a case any endorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.
 - However, a cancellation made unintentionally, or under a mistake or without authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.
- b. Alterations of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally the addition of a place of payment without the acceptor's assent constitute material alterations.

Where a bill or acceptance is materially altered without assent of all parties liable on the bill, the bill is avoided except as against a party who himself made, authorized, or assented to the alteration, and subsequent endorsers.

QUESTION 6

- (a)
- (i) Candidates are required to identify that this is a case of hire purchase.
 - (ii) Candidates are to also mention the status of the goods i.e to explain that the goods are protected.
 - (iii) They are to define protected goods and apply the definition to the case.
 - (iv) Explanation that once goods have become protected they cannot be seized without a court order.
- (b) In the event of the company seizing goods without court order the following will happen.
- (i) Adwongo will be released from all liability under the agreement
 - (ii) He shall be entitled to recover from the company in an action all sums paid and any security given by him.
 - (iii) Any guarantor shall be entitled to recover from the company, in action, all sums paid by him under the contract of guarantee, or any security given by him.
 - (iv) Adwongo may apply to the court for an order for the return of the goods and for the re-scheduling of payment due under the agreement.

QUESTION 7

The buyer is entitled to reject the goods and refuse to pay, or recover the price in the following circumstances.

- (a) Where the seller is guilty of a breach a fundamental obligation.
- (b) Where the seller is guilty of a breach of a condition in respect of either all the goods or of part only.
- (c) Where the buyer has entered into the contract as a result of fraudulent or innocent misrepresentation on the part of the seller.

Where the contract is for the sale of goods which are to be delivered by instalments these requirements shall apply separately to each instalment but where there are persistent and grave breaches in respect of two or more instalments the buyer may treat the whole contract as repudiated.

Where the buyer rejects the goods, he is not bound to return them to the seller but merely has to intimate his rejection to the seller.

Thereafter he has to put the goods at the disposal of the seller.

But where the buyer has paid the price or any part of it he may retain possession until the seller refunds the money.