

SOLUTION 1

- (a) (i) The Supreme Court
(ii) Court of Appeal
(iii) High Court / Regional Tribunal
(iv) Circuit Court
(v) District Court
(vi) The Judicial Committee of National House of Chiefs
(vii) The Judicial Committee of Regional House of Chiefs
(viii) Judicial Committee of Traditional Council
- (b) The defence the company is likely to put up is the defence of volenti non fit injuria (to one who is willing no harm is done). In this case, Asonto was put on notice. He persisted to set onto the vehicle. He therefore voluntarily assumed the risk and cannot bring action against the company.

SOLUTION 2

Section 5 provides that a provision in a contract which purports to confer a benefit on a person who is not a party to the contract may be enforced or relied upon by that person as if he were a party to the contract.

Section 6 provides further that the right conferred by section 5 cannot be varied or rescinded if that person has acted on it to his prejudice unless he consents to the variation.

Section 7 also provides that an assignment of a legal right whether or not given for consideration transfers the full right and interest therein to the assignee and extinguishes the right and interest of the assignor.

Section 8 provides that a promise to keep an offer open for acceptance for a specified time shall not be invalid as a contract by reason only of the absence of any consideration.

The same section provides that a promise to waive the payment of a debt or part of a debt or the performance of some contractual or legal obligation shall not be invalid as a contract by reason only of the absence of any consideration.

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Section 9 also provides that the performance of an act or the promise to perform an act may be sufficient consideration for another promise notwithstanding that the performance of that act may already be enjoined by some legal duty, whether enforceable by the other party or not.

Section 10 also provides that no promise shall be invalid as a contract by reason only that the consideration therefore is supplied by someone other than the promisee.

SOLUTION 3

(a) A holder in due course is a person

- (i) Who has taken a bill, complete and regular on the face of it.
- (ii) That he became the holder of it before it was overdue and without notice that it had previously been dishonoured.
- (iii) That he took the bill in good faith and for value, and 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) Nemo dat quo – you cannot give what you don't have.

The exceptions to the nemo dat quod:

- (i) Estoppel
- (ii) Sale by an Agent
- (iii) Sale in a market overt
- (iv) Sale under avoidable title
- (v) Sale by a seller in possession
- (vi) Sale by a buyer in possession
- (vii) Sale by way of execution

SOLUTION 4

(a) Prohibited transactions in shares are:

- (i) Alteration of the number of shares or the amount remaining payable thereon
- (ii) Release of any shareholder or former shareholder from any liability on the share
- (iii) The provision of any financial assistance, directly or indirectly, for the subscription or purchase of the company's shares on the shares of its holding company.
- (iv) The acquisition by way of purchase or otherwise of any of its issued shares or any shares of its holding company.

(b) Exceptions to the prohibition are:

- (i) The payment of commission or brokerage to any person for subscription or agreeing to procure shares provided that the payment is authorised by the regulations and does not exceed 10% of the price at which the shares are issued or any lesser rate specified in the regulations.
- (ii) Where the lending of money is part of the ordinary business of the company, the lending of money in the ordinary course of business notwithstanding that such money may be used for subscription or the payment of shares in the company or its holding company.
- (iii) The provision by a company in accordance with any scheme of money for the purchase or subscription of shares to be held for the benefit of bona fide employees of the company.
- (iv) The making of loans to employees to enable them purchase shares for themselves in the company.
- (v) The payment by a company of a lawful dividend on its shares even though that dividend received by the shareholder is used to discharge any liability on his shares or to repay money borrowed for the purpose of subscription or purchasing shares.

SOLUTION 5

- (a) A member of the Institute of Chartered Accountants (Ghana) or in the case of a private company a practising accountant within the meaning of the Chartered Accountants Act 1963 (Act 170)
- (b) Not an officer of the company or any associated company.
- (c) Not an infant
- (d) Not found by a competent court to be of unsound mind
- (e) Not a company (excluding incorporated partnership)
- (f) Not an undercharged bankrupt, unless leave is granted by the court by which the person was adjudged bankrupt
- (g) Not a person convicted on indictment in Ghana or elsewhere of any offence involving fraud or dishonesty or any offence in connection with the promotion or formation or management of a company.
- (h) Where a court had previously ordered that a person, without the court's leave, cannot be a director of or in any way be concerned or take part in the management of any company or act as auditor, receiver or liquidator of any company for such period as the court specifies, leave of that court is required for that person to qualify as an auditor.
- (i) Not a person for the time being disqualified from acting as company auditor by order of the Registrar of companies.

SOLUTION 6

Commercial duties of a liquidator are:

- (a) Duty to vest property in the liquidator – this is done by giving notice in the Gazette that all properties of the company shall vest in him.
- (b) Duty to realize assets – this is done by selling of all assets so that the monies realized would be used for distribution to creditors.
- (c) Duty to verify debts – this is done by having a meeting with creditors to ascertain proof of their claims.
- (d) Duty to amend admitted proofs – this is done to rectify proofs incorrectly admitted or values incorrectly stated.
- (e) Duty to ascertain priority of debt – in this case liabilities of the company are prioritized in class A, B, C and D and paid off in the order of priority.
- (f) Duty to consult creditors and members – this is done at intervals of not less than six months to discuss progress of liquidation.

SOLUTION 7

- (a) The reason for the observance of utmost good faith among partners is that initial trust and confidence are essential for the well being of the partnership.

It follows that a partner must fully disclose all information relating to matters affecting the partnership.

A partner must not carry on business in competition with the partnership. A partner must account to the partners all secret profits and those obtained by using the partnership assets etc.

- (b) Entitled to take part in the management of the business

Entitled equally to share in the capital and the profit of the firm. Entitled to claim indemnity from the firm if made any payments or incurred any personal liability on behalf of the firm. Entitled to assign or mortgage his share in the partnership. Consent of all partners needed to change the nature of the firm's business or to introduce a new partner.

SOLUTION 8

- (a) Where the agreement was entered into for a fixed term, on the expiration of that term.
- (b) If entered into for an undefined time, by any partner giving notice to the others of his intention to dissolve the partnership.
- (c) If entered into for a single adventure or undertaking by completion of the adventure or undertaking.
- (d) By bankruptcy, death or charge. However it is agreed that the death or bankruptcy of a partner shall not automatically cause dissolution of the partnership. The reference to a charge means that if one partner's share in the firm is charged as security for a debt, the other partners may dissolve the partnership.
- (e) By illegality. The firm is dissolved by an event which makes it unlawful for the business to be carried out.