

SOLUTION 1

- (a) A court decision that is called as an example or analogy to resolve similar questions of law in later cases. The doctrine of *decisis et not quieta movere*. Stand by past decisions and do not disturb things at rest. It directs a court to look to past decisions and guidance on how to decide a case before it. This means that the legal rules applied to a prior case with facts similar to those of the case now before a court should be applied to resolve the legal dispute. The doctrine of binding judicial precedent is that a court's decision based on a particular set of circumstances is binding on other courts in later cases in situations where the relevant facts are the same or similar.

The use of precedent has been justified as providing predictability, stability, fairness and efficiency in the law. Reliance upon precedent contributes predictability to the law because a person contemplating an action has the ability to know beforehand the legal outcome. It also means that lawyers can give legal advice to clients based on settled rules of law.

An original precedent is one which creates and applies a new rule. A declaratory precedent is one which merely applies an already existing rule of law. Courts are bound by the decisions of courts superior in the judicial hierarch. This however is not applicable to inferior courts since higher inferior courts do not bind lower inferior courts. The High Courts and Regional Tribunals are not bound by their own decisions but their decisions bind all lower courts. The Court of appeal is bound by its own previous decisions which also bind all Courts lower than it. The decisions of the Supreme Court bind all other courts.

The Courts of Ghana also respect the decisions of the Superior Courts of other common law jurisdictions. They may be referred to and relied upon but of only persuasive authority and need not be followed.

The use of precedent has resulted in the publication of law reports that contain case decisions. Lawyers and Judges conduct legal research in these reports seeking precedents.

- (b) There are various ways in which the parties or one of them may be discharged or freed of their obligations under the contract. Contracts may be discharged by Performance, Agreement, Breach and under the doctrine of Frustration.

Performance

If both parties have performed what they agreed to do under the contract the contract is discharged. Discharge by performance requires complete and exact performance of the obligations in the contract. The parties must perform precisely and exactly.

Where a person carries out his obligations substantially though not precisely, he may be freed from his obligation. 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 promise to release one another from future performance will be sufficient consideration. Where the contract is executed the other party must provide consideration in order to be released from performing their part of the contract. A contract may be discharged by agreement through release, new agreement, accord and satisfaction, and provision for discharge contained in the contract itself. At any time before the performance of a contract is due, or after a breach of the contract has taken place, a release of the obligations under the contract may be granted by deed. Such a deed dissolves the contract and is binding. A contract may be rescinded by a new agreement between the parties at any time before it is discharged by performance or in some other way. Discharge by mutual agreement can only take place as long as there is something to be done by each party to the contract. If one party has completely performed all his obligations under the contract, discharge must be either by release, by deed or by accord and satisfaction. Accord and satisfaction occurs when after a contract is concluded a party obtains the release from his contractual obligation by giving or promising a consideration other than that which the other party is bound to accept under the contract. The agreement is known as accord and the consideration as satisfaction.

Breach

A breach of contract may occur in three ways. Where a party prior to the time of performance states that he will not fulfil his contractual obligation. Where a party fails to perform his contractual obligation and where a party performs his obligation in a defective manner. Any breach will result in the innocent party being able to sue 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. Anticipatory breach arises where one party, prior to the actual due date performance, demonstrates and intention not to perform their contractual obligations. That innocent party can sue for damages immediately or wait until the actual time for performance before taking action. If a party elects to affirm a contract after an anticipatory breach by the other party he is not absolved from tendering performance of his own obligation under the contract.

Frustration

Frustration comes where after the parties have made the contract it is established that due to subsequent change in circumstances the contract is rendered impossible to perform or it has become commercially sterile, i.e. deprived of its commercial purpose by an event not due to the act or default of either party. A contract will be discharged by reason of frustration in the following circumstances. Where destruction of the subject matter of the contract has occurred, government interference or supervening illegality prevents performance and a particular event which is the sole reason for the contract fails to take place. Where the commercial purpose of the contract is defeated and in the case of a contract of personal service the party dies or becomes otherwise incapacitated. Frustration will not apply where the parties have made express provision in the contract for the event which has occurred, the frustrating event is self induced, an alternative method of performance is still possible and the contract simply becomes more expensive

to perform. Frustration therefore occurs if the following three requirements are satisfied. An event occurs which was outside the contemplation of the parties; the contract if performed would thereby be made a different contract from that entered into; and the event is one for which neither party was responsible.

The effect of frustration is to discharge the contract automatically. However, in principle, rights and liabilities already acquired up to the termination of the contract remain intact. Only subsequent or future obligations are discharged. Under the Contracts Act 1960 (Act 25) there is equitable apportioning of the loss between the parties. Any money payable before the frustrating event ceases to be payable. Sums actually paid before the time of the discharge shall be recoverable from the payee.

SOLUTION 2

- (a) Redundancy implies the severance of the legal relationship of worker and employer due to the close down, arrangement or amalgamation and the worker becomes unemployed or suffering a diminution in the terms and conditions of employment.

When an employer contemplates that the introduction of major changes in production, programme, organisation, structure or technology of an undertaking are likely to entail terminations of employment of workers in the undertaking, the employer will be expected to provide in writing to the Chief Labour Officer and the trade union concerned, not later than three months before the contemplated changes all relevant information including the reasons for the termination, the number and categories of workers likely to be affected and the period within which any terminations to be carried out.

He is also to consult the trade union concerned on measures to be taken to avert or minimize the termination as well as measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

This situation called for the payment of redundancy pay. Payment to the worker by the undertaking at which he was immediately employed before the close down, arrangement or amalgamation as a form of compensation is what is known as redundancy pay. The amount of redundancy pay and the terms and conditions of payment are subject to negotiations between the employer and the worker or their representatives.

- (b) A professional who injures a client by providing care that is below the standard for that profession commits the tort of professional negligence. Professionals are required to act based on their skill and knowledge necessary for their profession. They are not assessed by the rather typical reasonable and prudent standard applied in general negligence cases. The failure of a medical doctor for example, to cure a patient does not amount to professional negligence. However, the medical doctor's removal of the wrong finger during surgery is a clear case of professional negligence. The true test for establishing negligence in diagnosis or treatment on the part of a doctor was whether he had proved to

be guilty of such failure as no doctor of ordinary skill would be guilty of if acting with ordinary care.

SOLUTION 3

- (a) As a general rule a minor is not bound by any contract made during his minority. The law primarily tries to protect minors from their own inexperience. It also tries to ensure that persons dealing with minors are not dealt with in a harsh manner.

Contracts with minors can be divided into three categories namely valid contracts, voidable contracts and other contracts.

Valid contracts are contracts for necessities and beneficial contracts of service. Necessaries are not restricted to things which are required to maintain a bare existence such as bread and clothes but includes articles which are reasonably necessary to the minor having regard to his station in life and to his actual requirements at the time of sale and delivery. The status of the minor can make luxurious goods of utility necessary but goods of pure luxury can never be necessities. In *Nash v Inman* the were found not be necessities as the minor already had a sufficient supply of them. Necessaries include medical and legal services.

Beneficial contracts of service must be for the benefit of the minor. A minor may bind himself by a contract of apprenticeship or of service since it is to his advantage that he should acquire a means of earning his livelihood. Where a minor will be receiving training and education or earning wages it is to his benefit *Whyte City Stadium v Doyle*.

Voidable contracts must be avoided by the minor before majority or shortly afterwards. These are contracts of continuing obligation such as contracts to acquire interests in land, or partly paid shares or partnership agreements.

Other contracts cannot be enforced against a minor.

- (b) An agreement will not be enforced unless it evinces an intention for the parties to be legally bound. Agreements are divided into commercial and business one as against social and domestic ones.

In commercial and business agreements, there is a presumption that the parties intend to create legal relations. Thus if one of the parties breaks the agreement, the other shall have the right to succeed in legal proceedings to enforce the agreement. *Edwards v Skyways Ltd*. The presumption can be rebutted but the onus of proof is on the party seeking to exclude legal relations. The presumption may be displaced either expressly or impliedly. To oust expressly, clear words must be used. In *Rose and Frank co v Crompton Bros* a clear term was that 'The agreement is not entered into as a formal or legal agreement and shall not be subject to legal jurisdiction in the law courts.

In social and domestic agreements there is a presumption that the parties do not intend to create legal relations. Such agreements are outside the realms of contract altogether because the parties never intended that they should be sued upon. The court refused to enforce a domestic agreement between a husband and a wife in *Balfour v Balfour* and a mother and a daughter in *Jones v Padaraton*. This presumption can be rebutted by contrary evidence. An intention to be legally bound may be inferred where one party has acted to his detriment in the agreement, where a business agreement is involved or where there is mutuality. In *Merritt v Merritt* an agreement between a husband and a wife was enforced. This is when the parties are no longer in amity and they are separating or separated.

SOLUTION 4

Companies Code, 1963 (Act 179) S179 (1), 203, 209

- (a) Any person, not being a duly appointed director of a company, who shall hold himself out or knowingly allow himself to be held out as a director of that company, or on whose directions or instructions the duly appointed directors are accustomed to act, shall subject to the same duties and liabilities as if he were a duly appointed director of the company.

If any person, not being a duly appointed director of a company, shall hold himself out, or knowingly allow himself to be held out, as a director of the company, or if the company shall hold out such person, or knowingly allow such person to hold himself out, as a director of the company, such person or the company and the case may be, shall be liable to a fine.

- (b) A director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf.

A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinary skilful director would act in the circumstances.

In considering whether a particular transaction or course of action is in the best interests of the company as a whole a director may have regard to the interests of the employees, as well as the members, of the company, and, when appointed by, or as representative of, a special class of members, employees, or creditors may give special, but not exclusive, consideration to the interests of that class.

No provision, whether contained in the Regulations of a company, or in any contract, or in any resolution of a company shall relieve any director from the duty to act in

accordance with this section or relieve him from any liability incurred as a result of any breach thereof.

- (c) If a director commits any breach of his duties the director and any other person who knowingly participated in the breach shall be liable to compensate the company for any loss it suffers as a result of such breach; the director shall account to the company for any profit made by him as a result of such breach; and any contract or other transaction entered into between the director and the company in breach of such duties may be rescinded by the company.

SOLUTION 5

Companies Code, 1963 (Act 179) S134, 135

- No person shall be appointed as auditor of a company without his prior consent in writing.
- Auditors shall be appointed by ordinary resolution of the company.
- The directors may appoint the first auditors of a company and may fill any casual vacancy in the office of auditor.
- If a company shall have no auditor for a continuous period of three months the Registrar may appoint auditors.
- Every existing auditor shall continue in office until he ceases to be qualified for appointment or resigns or is removed. When any casual vacancy occurs in the office the surviving or continuing auditor or auditors may act.
- A resolution to remove an auditor shall not be effective unless it is passed at an annual general meeting of the company.
- Written notice shall have been given to the company of the intention to move it not less than thirty-five days before the annual general meeting.
- The company shall send a copy of the notice to the auditor concerned.
- The auditor concerned shall be entitled to be heard on the resolution at the meeting and to send to the company a written statement copies of which the company shall send with every notice of the annual general meeting and if received too late circulated to every person entitled.
- If the resolution is passed it shall not take effect until the conclusion of the annual general meeting.

SOLUTION 6

Bodies Corporate (Official Liquidation) Act, 1963 (Act) S36 – 42

- **Duty To Collect Debts**
On the commencement of the winding up of a company it shall be the duty of the liquidator to secure the payment to him or other discharge of all debts other obligations the right to which has passed to him under the provisions of Section 16 of this Act.
- **Duty To Vest Property In Liquidator**
On the commencement of a winding up the liquidator may by notice in the Gazette direct that all property or any part of the property of whatsoever description belonging to the company or held by trustees on behalf of the company shall vest in his official name, and thereupon the property to which the notice relates shall vest accordingly, and the liquidator may bring or defend in his official name any acts or other legal proceedings which relate to that property or which is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.
- **Duty To Realize Assets**
On the commencement of a winding up it shall be the duty of the liquidator to realize as soon as practicable all assets not held as cash by such means and for such return as will produce for distribution to the creditors of the company sums representing the full value of the assets.
- **Duty To Verify Debts Ranking For Dividends**
At the conclusion of the first meeting of creditors or, if no such meeting were held, as soon as practicable after the admission of the proof of debt it shall be the duty of the liquidator to take such steps as are practicable to verify the correctness of every admitted proof.
- **Duty To amend Admitted Proofs**
If the value of a debt or security included in an admitted proof has changed otherwise than in respect of interest accruing after the commencement of the winding up order the proof shall be subject to amendment for the purpose of altering the value shown therein to give effect to the change. If a debt or security is incorrectly included in an admitted proof or the value of a debt or security at the date of the commencement of the winding up order is incorrectly stated, the proof shall be subject to amendment for the purpose of rectifying the incorrectness.
- **Duty To Ascertain Priority Of Debt**
On the commencement of a winding up it shall be the duty of the liquidator, in relation to each debt which ranks for dividend, to ascertain into which class the whole or any part of the debt falls.

- **Duty To consult Creditors And Members**

It shall be the duty of the liquidator to report to the creditors at intervals not greater than six months on the progress of the liquidation; to consult the creditors on the matters arising in the proceedings which substantially affect their interest; to give effect, so far as may be practicable, to any views expressed by the creditors in relation to the realization and distribution of assets.

SOLUTION 7

Incorporated Private Partnership Act, 1962 (Act 152) S32

- (a) Every firm shall cause to be kept proper accounts with respect to its financial position and changes therein, and with respect to the control of, and accounting for, all property acquired whether for resale or for use in the firm's business and in particular with respect to (a) all sums of money received and expended by or on behalf of the firm and the matters in respect of which the receipt and expenditure takes place; (b) all sales and purchases by the firm of property, goods and services; (c) the assets and liabilities of the firm and the interest of the partners therein.

Every firm shall, at intervals of not more than fifteen months, cause to be prepared, (a) a profit and loss account giving a true and fair view of the profit or loss of the firm for the period to which it relates; and (b) a balance sheet giving a true and fair view of the assets and liabilities and state of affairs of the firm and of the value of the interest of each of the partners therein as at the end of the period to which the profit and loss account relates.

- (b) The Registrar may, by order published in the Gazette, prescribe the form of, or minimum information to be given in, accounts and balance sheets to be kept and prepared in accordance with this section and may require accounts and balance sheets to be audited and may prescribe the qualifications of auditors.

SOLUTION 8

Incorporated Private Partnership Act, 1962 (Act 152) S17

A person who is admitted as a partner into an existing firm shall not thereby become liable to the creditors of the firm for anything done before he became a partner.

A partner who retires from a firm shall not thereby cease to be liable for the debts or obligations of the firm incurred before his retirement.

A retiring partner may be discharged from any existing liability by an engagement to that effect between himself and the firm and the creditor, and this agreement may be either express or inferred as a fact from the course of dealing between the creditor and the firm as newly constituted.

Where a person deals with a firm after the retirement of any partner whom he knew to be a partner in the firm, he shall be entitled to treat the retired partner as still being a partner until he has notice of the retirement and the retired partner shall be liable accordingly.

If any such person has dealings with the firm prior to the retirement he shall not be deemed to have notice of the retirement unless he has actual knowledge thereof, but an advertisement in a daily newspaper circulating in the district in which is situated the principal place of business of the firm shall be notice to persons who have not had dealings with the firm prior to the retirement.

The estate of a partner who dies or has an insolvency order made against him under the Insolvency Act, 1962 (Act 153) or, subject as provided by subsections (4) and (5) of this section, a partner who retires, shall not be liable for any debts or obligation of the firm contracted or incurred after the date of the death, insolvency order, or retirement respectively.