

SOLUTION 1

- (a) A contract is made up of six main essential elements which are:
- i. The agreement, which is made up of offer by one party, which the other accepts unconditionally or without qualification.
 - ii. Consideration must be provided by each party to the contract. It is the exchange of values. One party suffering a loss or detriment (eg. By performing an activity or paying something), in turn for the benefit received.
 - iii. Capacity, each party must have the legal power to bind himself. A party to a contract must be sane, sober and over 18 years of age. Companies have their contractual capacity specified in their company's constitution, if not the contract becomes ultra vires.
 - iv. An intention to create legal relations. The agreement must be intended to be subject to an action in a court of law if a dispute arises between the parties as in a commercial agreement, as opposed to a mere domestic or social arrangement such as between a husband and wife.
 - v. Form-some contracts must be made in a particular form, such as writing. For most contracts, however, there is no special requirement and an oral agreement is just as much binding in law as a written agreement.
 - vi. The contract must not be illegal for any reason. Illegality can occur under a statute or at common law.
- (b)
- i. A contract can only be legally binding if all the elements are satisfied. Cato must show that there is a contract with PHT Motors, there must be a clear offer which is unconditionally accepted.
 - ii. On the facts, there is no clear offer, which is accepted. The option to buy can be a contract if Cato has given some kind of consideration.
 - iii. If PHT Motors had made an offer, that offer could be revoked at any time before acceptance. The revocation could occur from a reliable third party, not just the offeror.
 - iv. So on the facts; it was unlikely that Cato could sue since there was no contract in existence.

SOLUTION 2

- (a) Under section 8 (1) – (20 of Act 137, a seller has the following fundamental obligations:
- i. In a sale of specific goods, the fundamental obligation of a seller is to deliver those goods to the buyer.

- ii. In a sale of unascertained goods, the fundamental obligation of the seller is to deliver to the buyer substantially corresponding to the description or sample by which they were sold.
- (b) i. Specific goods are goods which are identified and agreed on before or at the time when the contract is made.
- ii. Unascertained goods are goods that are not identified and agreed on and
 - are goods that need to be manufactured or grown or acquired by the seller after the making of the contract;
 - may also be a sale of goods, the acquisition of which by the seller depends on contingency which may or may not happen.

SOLUTION 3

An agent is a person who is authorised to act for another (the principal) in the making of legal relations with third parties.

An agency relationship can be created by:

- i. Express agreement – This can be made orally or in writing. The agent is usually appointed for a particular task to undertake some general duties in return for a commission.
- ii. Ratification – Where a properly appointed agent exceeds his authority or a person having no authority purports to act as an agent, the principal incurs no liability on the contract purportedly made on his behalf, unless the principal ratifies the contract. When the contract is ratified, the principal is liable and entitled on it, from the date on which the contract was originally made.
- iii. Estoppels – an agency relationship can be created by estoppels (or agency by holding out). It arises where the principal (by words or conduct) holds out another as having the authority to make contracts on his behalf. The principal is prevented from denying that the person has this authority and is bound by such contracts as if he authorised them.
- iv. Necessity – This arises where there is a pre-existing legal relationship, there is an emergency, it is impossible to communicate with the principal.
- v. Agency by implication – this type of agency arises from the relationship that already exists between the principal and agent. It is assumed because of this existing relationship that the principal has given the agent authority to enter into contracts with third parties.

SOLUTION 4

- (a) An Annual General Meeting (AGM) is ordinarily held on the following:
 - i. Declaration of dividends

- ii. Consideration of the companies' accounts, directors' and auditors' reports
 - iii. Election of directors to replace those retiring
 - iv. The fixing of the remuneration of the auditors
 - v. Removal and election of auditor and directors in accordance with the provisions of the Code.
- (b) Annual General Meeting's are convened by the follow:
- Directors convene meetings in normal cases
 - Members, when the directors fail to convene after duly filed requisitions
 - The Registrar, when an AGM is not held, normally the Registrar on his own motion or on application from a member or officer of the company.
 - The court, if for any reason it is impractical to call a meeting in a manners prescribed by the Code, any director or member of the company or the Registrar may apply to the court to order the calling of a meeting.

SOLUTION 5

- (a) There are three broad companies that can be set up under the Companies Code, they are companies **limited by shares**, companies **limited by guarantee** and **unlimited companies**.
- i. A limited liability company or a company limited by shares is a company having the liability of its members limited to the amount if any, unpaid on the shares respectfully held by them. Eg trading concern capable of issuing shares.
 - ii. A company limited by guarantee is a company having the liability of its members limited to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up eg, a professional association or a scientific research organisation with no profit motive.
 - iii. An unlimited company is one not having any limit on the liability of its member.
- (b) A private company is one who's Regulations
- i. Restricts the right to transfer its shares if any;
 - ii. Limits the total number of its members and debenture-holders to fifty not including persons who are presently or previously in the genuine employment of the company and have become shareholders or debenture-holders while in the employment of the company.

- iii. It prohibits the company from making invitation to the public to deposit acquire any of the company's shares or debentures.
- iv. It prohibits the company from making invitation to the public to deposit money for fixed periods or payable at call, whether bearing interest or not.

SOLUTION 6

- (i)
 - i. An arrangement is defined in the Code as “any change in the rights or liabilities of members, debenture holders or creditors of a company or any class thereof or in the Regulations of a company, other than a change effected under any sections of the Code or by the unanimous agreement of all the parties affected thereby. Sometimes a company may wish to reorganise in some way without involving other companies. For example, it may wish to make an arrangement with members and/or creditors because it is in financial difficulties, but where winding up is not appropriate.
 - ii. An arrangement can be used for example to change creditors or members rights in or against the company or transferring their rights to another company which then issues shares or takes over liabilities in return for cancellation of existing rights against the first company.
 - iii. Amalgamation is defined in section 229 (b) of the Code as any merger of the undertakings or any part of the undertakings of two or more companies or of the undertakings or part of the undertakings of one or more companies and one or more bodies corporate.
 - iv. Amalgamation is basically a merger. This occurs when two companies join together under the name of one of them or as a new company formed for the same purpose.
 - v. Amalgamations or mergers generally only take place when there is an agreement between the directors of both companies.
- (ii) Winding-up refers to the steps taken to have a functioning corporate concern cease to be a corporate entity. It includes the appointment of a liquidator who gathers any assets, pays any debts and distributes any surplus in accordance with law.
- (iii) Dissolution is the formal pronouncement by the Registrar that the corporate entity no longer exists and has been struck off the register and the public has been notified in the gazette.

SOLUTION 7

- (i) A partnership is formed by two or more and not more than twenty members whilst a company especially public company can have thousands of members, in fact no limit. A private limited company however, cannot have more than 50 members.

- (ii) A partnership firm is governed by the Incorporated Private Partnerships Act 1962, (Act 152) whilst an incorporated company is governed by the Companies Code, 1963 (Act 179).
- (iii) All partners are entitled to take part in the management of the firm whereas the management of a corporation or a limited liability company is entrusted to a select body of directors.
- (iv) Every partner in a firm is jointly and severally liable with the firm and other partners to all the debts and liabilities of the firm incurred whilst he is a partner. A shareholder's liability in a limited liability company is the amount if any, remaining unpaid on his shares.
- (v) In a partnership, each partner is an agent of the firm for the purpose of its business. A company acts through its appointed agents like the directors only, and no other shareholder has power to bind it.
- (vi) Unlike a company the insolvency of the firm means insolvency of all the partners.

SOLUTION 8

- (a) Under the Incorporated partnership Act, 1962 (Act 152)
 - i. A partnership is an association of between 2 and 20 people carrying on business for the purpose of making profit.
 - ii. When Kalanbigi enters into a contract with Galanga Ltd, he is exceeding the power given him under the partnership agreement. However, since every partner has implied powers to enter into contracts on behalf of the firm, as long as the goods supplied could be used in the ordinary course of the business, the contract will be binding on both partners.
 - iii. Since Kalanbigi is in breach of the partnership agreement when he enters into the contract with Galanga Ltd, Datagna can sue for breach of agreement and recover damages for any loss he suffers.
 - iv. He can also be called to account for any profits made to the partnership.
- (b)
 - i. A partner who has retired is not liable for any debts that arise after his retirement. Kalanbigi must therefore notify the partnership's usual suppliers of his retirement and make sure that his name is taken off the list of partners.
 - ii. However, Kalanbigi will continue to be liable for the debts that arose while he was still a partner, unless he avoids this by an agreement with Datagna and Kweifoli.
 - iii. An incoming partner is only liable for the debts arising after he became a partner. But where there is an agreement with the creditors by which the new partners assume the obligations of the old, then Kweifoli will be liable for the old debts as well.