

SOLUTION 1

A. The Lower Courts include:

- i. The circuit courts
- ii. The magistrate courts; and
- iii. The National House of Chiefs, Regional houses of chiefs and every traditional council in respect of the jurisdiction of any cause or matter affecting chieftaincy.

B.

- **CONDITION**

A condition is a very important term that goes to the root of the contract. If a condition is breached the innocent party can repudiate the contract and claim damages.

- **WARRANTY**

A warranty does not go to the root; it is only incidental or collateral to the main purpose of the contract. If a warranty is breached, there can only be a claim for damages, the contract must still be performed.

SOLUTION 2

A. Misrepresentation

- A misrepresentation is an untrue statement of fact made by one party to the other either at or before the time the contract was made, with the intention that the person to whom it is addressed would be induced to enter into the contract.
- Misrepresentation may be innocent, negligent, or fraudulent.
- Misrepresentation is innocent when the person making it honestly believes in the truth of the statement but it turns out to be false.

B. Types of Misrepresentation

- i. Negligent misrepresentation is where the re-presenter fails to take reasonable care to check the accuracy of the statement.

- ii. Fraudulent misrepresentation occurs where the statement was made knowingly that it is not true, or not or without any belief that the statement is true.

C. Remedies for Misrepresentation

- i. Sue for damage for the tort of deceit
- ii. Refuse to perform his obligations under contract
- iii. Apply to court to rescind or terminate the contract

SOLUTION 3

The rights of the employer include following:

- Employ a worker, discipline, transfer, promote and terminate the employment of the worker.
- Formulate policies, execute plans and programmes to meet set targets;
- Modify, extend or cease operations
- Determine the type of products or services to make or sell and the price of its goods and services.

The rights of the employee include the right to:

- Work under satisfactory, safe and healthy conditions.
- Receive equal pay for equal work without any distinctions.
- Have rest, leisure, and reasonable limitation of working hours and a period of holidays with pay as well as remuneration for public holidays.
- Form or join a trade union
- Be trained and be retrained for the development of skills
- Receive information relevant for the work of the worker.

SOLUTION 4

a. Nature of a company

- It is an artificial legal person, it may own property, enter into contracts, inflict or suffer wrong, sue and be sued. The rights and liabilities of the corporation belong to it alone and as a general rule cannot be enforced against its directors, agents or members personally.
- It has a common seal.
- It has (potentially) perpetual succession that is; it is not affected by a member's death, bankruptcy, and resignation or becoming of unsound mind.
- The corporation is managed by directors by passing resolutions at directors meetings. The powers of directors are collective. Members of the corporation as members do not manage corporation.

b. Pre-incorporated Contract

- Section 13 (1) of the Code states that "Any contract or other transaction purporting to be entered into by a company prior to its formation or by a person on behalf of the company prior to its formation may be ratified by the company after its formation; and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of such contract nor other transaction and had been a party thereto.
- Prior to the ratification by a company the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and shall be entitled to the benefit thereof.

SOLUTION 5

Rules governing the payment of dividend

Under section 71 of the Companies Act

- Except in a winding up a company shall not pay a dividend to its share holders, make a return or distribution of nay of its assets to its share holders unless;
- The company is able, after the payment, return or distribution to pay its shares as they fall due, and
- The amount or value of the payment, return or distribution does not exceed income surplus immediately prior to the making of the payment, return or distribution.

However, where any dividends are paid in contravention of the above rules,

- Every director of the company who is in default is jointly and severally liable to restore to the company the amount by which the dividend or other payment contravened the above with interest at the rate of 5%.
- Unless, within twelve months after the date of payment, return or distribution the total amount with interest is restored to the company by the directors in accordance with the above provision, every shareholder is liable to restore to the company the amount received by the shareholder in contravention of the rule against dividend payment.
- If the directors of the company make a restoration to the company as stipulated above, they shall have a right to be indemnified by a shareholder who has received an amount knowing that it contravened against the rule governing dividend payments to the extent of the amount received by the shareholder with interest at the rate of 5% per annum.

SOLUTION 6

a. Procedures for the removal of a Director

The company can by the means of an ordinary resolution duly passed at a properly constituted general meeting; remove one or all of its directors notwithstanding anything in its Regulations in any agreement with any director.

However, for the resolution to be effective the Companies Code requires that:

- Notice of the meeting to move the intended resolution to remove the director must be given to the company not less than 35 days before the meeting.
- Notice of the resolution must be given by the company to its members at the same time and in the same manner as the company gives notice of the meeting.
- Immediately the company receives notice of an intended resolution to remove a director, the director concerned must be sent a copy.
- The company must ensure that any written statement furnished by the director is read to the meeting and this without prejudice to the director's right to be heard orally at the meeting.

b. A director in such circumstances has the following rights:

- The director is entitled to be furnished immediately by the company with a copy of the intended resolution for his removal.
- He is entitled to be heard on the resolution at the meeting.
- He is entitled to send a written statement to the company, copies of which the company is obliged to furnish every member entitled to notice of the meetings.
- In addition to a right to make an oral statement, the director may also have a right to require the reading of his written statement.
- Where the director has a service agreement with the company he can enforce his contractual rights, e.g. where his removal amounts to a breach of contract he may have a right to damages or he may be lawfully entitled to payment of compensation.

SOLUTION 7

a. Proper Books of Accounts

- The sums of money received and expended by or on behalf of the firm and matters in respect of which the receipt and expenditure took place.
- The sales and purchases by the firm of property, goods and services.
- The assets and liabilities of the firm and the interests of the partners those liabilities and interests.

b. Types of Accounts to be kept

- An Income Statement giving a true and fair view of the transactions of the firm for the period to which it relates, and
- A Statement of Financial Position giving a true and fair view of the assets and liabilities and state of affairs of the firm and of value of the interest of each of the partners in the firm as at the end of the period to which the income statement relates.

SOLUTION 8

Any partner shall cease to be a partner in the firm on the application of another partner by the court in the following cases:

- When such a partner is shown to the satisfaction of the court to have become permanently of unsound mind;
- When such partner is shown to the satisfaction of the court to have become in any other way permanently incapable of performing his part of the partnership agreement;
- When such partner has been guilty of conduct as in the opinion of the court, regard being had to the nature of the firm's business, is calculated prejudicially to affect the carrying on of the business;
- When such partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the firm's business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
- Whenever circumstances have arisen which, in the opinion of the court, render it just and equitable that such a partner cease to be a partner in the firm.