

SOLUTION BUSINESS AND CORPORATE LAW MAY 2010

QUESTION 1

- (a) Offer
Candidates are expected to explain the form in which an offer can take. They are also to explain that to be effective an offer has to be communicated. They are also to explain the target group of the offer.
- (b) Acceptance
Candidates are to explain what amounts to acceptance. They are to explain the distinction between acceptance and counter offer and also what amounts to mere enquiry.

They are to explain how acceptance is communicated.
- (c) Intention to Create Legal Relations
Candidates are expected to draw a distinction between domestic and business arrangements and explain the presumption in both cases.
- (d) Consideration
Candidates are to explain in simple terms what amounts to consideration. They are also to explain the importance of consideration in the formation of contract in relation to privity of contracts. They are not expected to talk about executory past consideration etc.
- (e) Capacity
Candidates are expected to explain the capacity of children, insane and drunken persons.
- (f) Legality
Candidates are to explain what a contract to be enforceable should not either be against public policy or should not be prescribed by law.
- (g) Genuineness of Consent
Candidates are to explain what the minds of the parties must be consensus ad idem. Thus there should be no vitiating factors like mistake or misrepresentation.
- (h) Form of Contract
Here candidates are expected to draw a distinction between ordinary contracts and contracts which the law requires that they should be in writing.

QUESTION 2

- (a) Candidates are to explain the meaning of the term.
- (b) Candidates are to explain the exceptions to the rule.
- (i) Sale by order of court

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- (ii) Sale where the owner is stepped
- (iii) Sale under voidable title
- (iv) Sale by a mercantile agent
- (v) Sale by a seller in possession
- (vi) Sale by a buyer in possession

Candidates are expected to explain these points. In all cases the law requires that the purchaser should have acted in good faith and without notice of the defect in title of the vendor.

QUESTION 3

- (a) Candidates to explain the principle of vicarious liability. The negligent act complained of should have occurred whilst the employee was carrying out his duty in the course of his employment. Where the employee goes on a frolic of his own the employer cannot be held liable. Candidates are expected to give some examples.
- (b) Candidates are to explain that where a victim voluntarily assumes a risk he cannot later complain about same. Candidates are to give examples of such acts by victims eg where there is clear notice that one cannot ride on a particular vehicle or notices have been posted at a construction site about imminent danger.
- (c) Candidates are to explain any five points dealt with in section 63 (2) of the Labour Act.

QUESTION 4

- (a)
 - i. A company limited by guarantee cannot be registered with the object of carrying on business for the purpose of making profit. If this provision is breached all officers and members of the company cognisant of the fact of carrying on business are jointly and discharge of all debts and liabilities of the company incurred during the carrying on of such business and shall also be liable to a fine.
 - ii. The total liability of the members of the company in the event of being wound up shall not be less than one hundred pounds.

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- iii. Where there is breach the total liability of the members shall not be less than hundred pounds and every director or member cognisant of the breach is liable to a fine not exceeding hundred pounds.
 - iv. The Regulations may also provide for the retirement or exclusion of membership.
- (b)
- i. There should be no unpaid liability on any of the company's shares.
 - ii. All its members must agree in writing to the conversion and to the voluntary surrender to the company for cancellation of all shares held by them immediately prior to the conversion.
 - iii. New regulations, appropriate to a company limited by guarantee are adopted under Section 22.
 - iv. Members agree to contribute to the assets of the company in the event of its being wound up amount not less than hundred pounds.
 - v. A copy of the new regulations, a special resolution adopting same and a statutory declaration by a director and secretary confirming the compliance with conditions are submitted to the registrar who then issues a new certificate of incorporation to meet the circumstances of the company.

QUESTION 5

- (a) A resolution will have to be passed at an annual general meeting.
- (b) A written notice of the intention to move the resolution shall be given to the company less than thirty-five days prior to the meeting and on receipt the auditor concerned shall be given a copy.
- (c) The company shall give copies of the notices to members of the company at least twenty one days before the meeting.
- (d) If after the notice is given to the company annual general meeting is called for a date thirty-five days or less after the notice has been given to the company the notice shall be deemed to have been given.
- (e) Where the auditor was appointed by the directors the period stipulated in fourteen days for thirty-five and seven days for twenty-one days.

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- (f) The auditor concerned is entitled to be heard. He may send to the company a written statement and copies of the said statement shall be send to all members except that where that statement is received less than seven days before the meeting the company need not circulate it.
- (g) The company may also apply to the court and where the court is so satisfied that the statement is unduly long or being used to secure needless publicity for defamatory matter the court may exclude same.
- (h) The auditor concerned may also be heard orally at the meeting unless he is precluded by a court order.
- (i) If the resolution is passed, it shall take effect at the conclusion of the meeting.