

QUESTION ONE

- a) Explain the statement: “*Judicial precedent depends on the hierarchy of courts*”.
(6 marks)
- b) The term “*Sources of Law*” may have several meanings. State **TWO (2)** of those meanings.
(4 marks)
- c) Ohemaa, a physically challenged girl of 13 years sells oranges at Banana-Inn junction. She was so popular and friendly that, so many young girls and boys come around to her shop whilst she is selling. One day, a Police vehicle pulled off in front of her shop and the police officers got down only to indiscriminately shoot in the air. All the young girls and boys around run for their lives but Ohemaa could not runaway.

The police arrested two boys and Ohemaa and detained them in police cells for three days. Whilst in police custody, the two boys were beaten and Ohemaa was slapped. They were arraigned before a district magistrate court. The magistrate after listening to the police remanded them for 30 days.

Required:

- i) List **FOUR (4)** fundamental human rights of Ohemaa and the two boys that may have been violated.
(4 marks)
- ii) What **TWO (2)** courses of action can Ohemaa and the two boys take?
(4 marks)
- d) Explain the legal maxim “*Audi Alteram Partem*”.
(2 marks)

(Total: 20 marks)

QUESTION TWO

- a) Mr. and Mrs. Michel booked in for a week’s stay at a Hotel De-Horses. There was a notice in the bedroom which stated that “the proprietors will not be responsible for articles lost or stolen unless handed to the manageress for safe custody”. A stranger gained access to the room of the Michels and stole Mrs. Michel’s wedding ring and ornaments. The owners of the hotel have denied being liable. The Michels’ have decided to take action against the hotel.

Required:

- i) Explain whether Management of the Hotel De-Horses, can rely on the concept of *exclusion clauses* in business contract to defend itself.
(4 marks)
- ii) Assuming that the stranger gained access because the Michels did not lock their door, identify **THREE (3)** essential elements of negligence that must be proven by Management of Hotel De-Horses.
(6 marks)
- b) Explain **TWO (2)** options open to a purchaser who is induced to buy property by a vendor’s fraudulent misrepresentation.
(4 marks)

c) Comment on the following statements:

i) *Fraud vitiates contracts.* (3 marks)

ii) *Contract freely entered into by parties with capacity are treated in law as sacred.* (3 marks)

(Total: 20 marks)

QUESTION THREE

a) Joe Ocran intended to sell two storey buildings. He agreed with Tawiah an estate agent that he would pay commission 'on completion of sale'. Tawiah introduced a third party who wanted to buy both storey buildings, but Joe Ocran changed his mind and refused to sell. Tawiah is your neighbor who has heard you are reading a professional programme that contains business law. He is contemplating suing Joe for the commission and has approached you for advice.

Required:

Advise the parties whether there was a contracted relationship. (5 marks)

b) A Company Secretary is an officer of the company responsible for the recording of proceedings of both Board and General Meetings. The Company Secretary embodies the institutional memories of the organisation and brings directions in the governance of the company. The Company Secretary may be an individual, a partnership or a company.

Required:

i) Identify **THREE (3)** characteristics that qualify a person to be appointed as Company Secretary under the Companies Act, 2019 (Act 992). (6 marks)

ii) State **THREE (3)** fiduciary duties required of a Company Secretary. (6 marks)

iii) Explain **TWO (2)** types of Company Secretary. (3 marks)

(Total: 20 marks)

QUESTION FOUR

a) In a negotiation meeting between the Ministry for Employment, representatives of the Mineworkers Union and Management of Anglosilver Ltd, the meeting ended in deadlock. The following day, the workers were notified that the company has been closed down. After some discussions, the workers were asked to sign declarations of confidence in the management as a precondition for re-engagement. They did so but were rather issued with letters of rejection.

Required:

i) Identify **THREE (3)** grounds on which termination of employment will be considered unfair under the Labour Act, 1963 (Act 651). (6 marks)

ii) Explain **TWO (2)** remedies available to a worker who was issued with a letter of rejection and is alleging unfair termination. (4 marks)

- b) Jane, Ama and twenty-two other individuals agreed to incorporate a private partnership, which, they simply referred to as Partnership. The individuals neither stated any registered address of the partnership, nor the nature of the firm's business. The individuals, however, stated the names of the foundation partners. The amount and percentage of contribution of each partner to the capital of the firm was also not stated. Even though the individuals stated the periodic and monthly drawings of funds, they failed to indicate any profit-sharing arrangements.

Required:

- i) Identify **TWO (2)** issues that may arise in the above scenario. **(4 marks)**
ii) State **SIX (6)** requirements for partnerships to be established under the Incorporated Private Partnership Act, 1962 (Act 152). **(6 marks)**

(Total: 20 marks)

QUESTION FIVE

- a) A company may raise a loan capital and or long term funds by the issue of a debenture or a series of debentures or of debenture stock in order to finance the business without increasing its share capital. Debentures may be secured by a charge or may be unsecured by any charge.

Required:

- i) In **THREE (3)** ways, distinguish between a *fixed charge* and *floating charge*. **(6 marks)**
ii) Under what **TWO (2)** circumstances can a floating charge crystallise into a fixed charge. **(4 marks)**

- b) A person is not eligible to be appointed or to act as a receiver or manager unless that person has in the opinion of the Registrar the requisite expertise, skills and experience to manage and administer a company in receivership.

Required:

Explain **THREE (3)** powers of receivers or managers in a voluntary liquidation process. **(6 marks)**

- c) Explain the following under the Companies Act, 2019 (Act 992):
i) Amalgamation
ii) Takeover **(4 marks)**

(Total: 20 marks)

SUGGESTED SOLUTION

QUESTION ONE

- a) The doctrine of judicial precedent in terms of the hierarchy of Courts.
Judicial precedent is based on the principle of stare Decisis: The doctrine of judicial precedent states that a previous judicial decision is binding on a judge who tries later cases in a lower court.

Judicial precedent is a result of case law, in that the decision of the Superior Courts are binding on the relatively lower courts.

Judicial Precedent, a feature of the common law tradition, has a binding nature of the Higher Court's decision over the relatively lower courts.

For doctrine of Judicial Precedent to be effective, there must be a settled hierarchy of courts and a system of law reports. It, therefore, means that the doctrine of Judicial Precedent depends on the hierarchy of Courts as follows:

Supreme Court is not bound to follow the decisions of any other court (Article 129 (2) of the 1992 Constitution). While treating its own decision as normally binding, the Supreme Court may depart from a previous decision, when it appears to it right to do so. All other courts are, however, bound to follow the decision of the Supreme Court on question of law. (Article 129 (9)).

The Supreme Court may vary or overturn its own earlier decision upon application for a Review (Article 133(1)).

Court of Appeal is bound by the decisions of the Supreme Court and its own decision. It cannot depart, vary or overturn its own decisions as the Supreme can do. Its decision is binding on all courts below it (High Court, Circuit Court, Administrative Court and Tribunals).

High Court: It is bound by the decision of the Supreme Court and the Court of Appeal but not bound by its own decision. There is one High Court which sits at different locations (towns) in Ghana. The decision of one High Court does not bind another High Court because both have co-ordinate jurisdiction, Decisions of the High Courts binds all court below it.

Decisions of the lower Courts (Circuit and District Court), have no binding effect. They have persuasive effect, in that, the force of the judgement may influence (persuade) even a high Court to adopt it.

Decision of foreign Court fall into the same category, they have no binding force in Ghana, its force and suitability may persuade a superior Court in Ghana, to apply it, with necessary adaptations.

(6 marks)

- b) The meanings of the term “ Sources of Law” may have:
- It may mean that which gives the law its formal validity (formal sources) e.g the Constitution.
 - It may also mean the direct means which law is made or comes into existence. (legal source) eg. Legislation.
 - It may also mean that written materials from which we obtain knowledge of at the law is or was at my given time. eg. Sarbah’s Fanti Customary Laws. etc.
 - It may also mean factors that have influenced the development of the law, and from which the content of the law may be traced (history or material trial source)
- (any 2 point @ 2 marks each= 4 marks each)**

c)

i) Rights of Ohemaa and the two Boys that may have been violated:

- Right to personal liberty
- Right to human dignity
- Right to privacy and protection
- Right to fair trial.
- Right of disabled persons

(Any 4 points @ 1 mark each = 4 marks)

ii) Courses of action Ohemaa and the two boys can take:

- Petition to the Inspector General of Police (IGP)
- Petition to Commission for Human Rights and Administrative Justice (CHRAJ)
- Petition the Police Professional Standards Bureau (PPSB) – Police Department
- Taking civil action
- Invoking article 33 of the Constitution, 1992 – proceeding to the high court which handles human right cases. The High court may order various writs including the writs of habeas corpus, certiorari, prohibition etc.
- Petition to the ministry of Gender Affairs.

(Any 2 points @ 2 marks each = 4 marks)

d) *Audi Alteram Partem* is a Latin phrase meaning "listen to the other side", or "let the other side be heard as well". It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them. **(2 marks)**

(Total: 20 marks)

QUESTION TWO

a)

- i) *Exclusion clauses* or exemption clauses are express terms which seek to exclude or limit the liability that might belong to one party in the event of a breach of contract. **(1 mark)**

Such clauses are perfectly fair where they are the result of free negotiation between equals, but are almost invariably imposed upon a weaker party.

This means that to be able to rely on exclusion clause to avoid liability in any business contract, there is the need to serve the notice of those exclusion clauses to the other party before the contract is concluded. **(1 mark)**

In the circumstance of this case, the Michels attention was not drawn to the notice in the bedroom stating that the proprietor of the Hotel would not be liable in the event of theft, of any article lost or stolen unless handed over to the management for safe custody before they booked in. **(1 mark)**

That Michels saw the notice only after the contract to stay in the Hotel room had been concluded.

The management of the Hotel can therefore not rely on the exclusion or exemption clause(s) to set up a defence that the Hotel is responsible for the loss of Mr. Michel's wedding rings and other ornaments. **(1 mark)**

- ii) Essential elements of negligence

The law sets out certain requirements or elements which the claimant must prove for a successful claim.

- A duty of care owed by the defendant towards the Plaintiff, which duty must arise from the nature of the relationship between them
 - A breach of duty must next be established, and
 - Finally there must be damage suffered by the Plaintiff as a result of the breach.
- (3 points @ 2 marks each = 6 marks)**

- b) Options open to a purchaser who is induced to buy property by a vendor's fraudulent misrepresentation:

- The purchaser may abide by the contract and then bring action to recover damages he has suffered due to the fraud.
- The purchaser may rescind the contract, return the property already accepted, and recover the purchase price, if already paid by legal action.

(Any 2 points @ 2 marks each = 4 marks)

Note: the principle is that a contract induced by fraud is not void but only avoidable at the election of the person defrauded and when once the party has elected to abide by the contract, being aware of the fraud, he cannot after on rescind it.

c)

i) Fraud vitiates contracts:

Fraud manifests itself in conduct when one does something with the intention of inducing reliance or performance by another, knowing very well that his action is untrue. **(1 mark)**

The law does not tolerate fraud. It, therefore, makes a contract voidable, hence the essence of the statement that fraud vitiates contract. **(1 mark)**

However, because fraud makes a contract voidable, if the Court's assistance is sought in a timely manner, and if no third party rights have intervened, the court will set aside a contract tainted by fraud to protect the innocent party. **(1 mark)**

ii) Contract hereby entered into by parties with capacity are treated in law as sacred:

In the law of contract, six (6) principles, ie, freedom of contract, contracting party beware, protecting the innocent third party, purchaser reasonableness and intolerant of fraud, acting in symbiosis and together hold, sway. The principles underscore the issue of sanctity of contracts.

Contracts freely entered into by parties with capacity are treated as sacred in law. The law is concerned with the free will of the parties and not with fairness of the terms of a valid contract. **(1 mark)**

In other words, once the contracting parties, in the absence of any case of insanity, and are within the contracting age, the contract is valid, and the court will not entertain complaints about contractual fairness. **(1 mark)**

Court uphold the sanctity of contract firstly because of deference to the contracting parties, meaning, if the parties have freely come to terms. The court must defer to the parties and respect those terms. The second reason is that the court find themselves incompetent, and, therefore, reluctant to substitute terms freely entered into by the parties themselves. **(1 mark)**

It must, however, be that the sanctity of contracts, is not a licensed for fraud or so deceive illiterate and blind.

(4 marks)

(Total: 20 marks)

QUESTION THREE

a) Advise to the parties

Joe Ocran should be told that Tawiah did not complete the sale of the house because of his (Ocran) unilateral decision not to sell the house any longer to the third party. There was breach of contractual relation with Tawiah.

In the case of Tawiah, he could be advised to sue Joe Ocran for breach of contract.

The remedy available to Tawiah is quantum meruit for introducing a third party.
(5 marks)

b)

i) The directors shall not appoint a person as a Company Secretary unless that person:

- Has obtained a professional qualification or a tertiary level qualification that enables that person to have the requisite knowledge and experience to perform the functions of a Company Secretary.
- Has held office, before the appointment, as a Company Secretary trainee or has been articulated under the supervision of a qualified Company Secretary for a period of at least three years.
- Is a member in good standing of
 - ✓ (i) The Institute of Chartered Secretaries and Administrators, or
 - ✓ (ii) The Institute of Chartered Accountants, Ghana,
- Having been enrolled to practice, is in good standing as a barrister or solicitor in the Republic, or
- By virtue of an academic qualification, or as a member of a professional body, appears to the directors as capable of performing the functions of secretary of the company.

(Any 3 points @ 2 marks each = 6 marks)

ii) The fiduciary duties of a Company Secretary include;

- **Confidentiality:** The company secretary cannot, with the insights it has gained from a company, run to disclose corporate matters, including corporate secrets, to outsiders.
- **Diligence:** The company must carry on his, her or it's duties conscientiously and timeously - in a word, with diligence. Any tardiness on the part of the company secretary is bound to adversely affect the governance of the company, say, with respect to Board and General Meetings and to filings with the registrar of companies and other compliance matters, as well as the quality of it's management.
- **Faithfulness:** Faithfulness includes avoiding a conflict of interest or making a secret profit. A company secretary is not to place himself, herself or itself in a position where it will be more interested in his, her or it's welfare than in that of the company. One cannot, for example, as company secretary, set up a rival

business or make a private deal that otherwise and properly should go to the company.

(Any 3 points @ 2 marks each = 6 marks)

iii) **Types of Company Secretary**

- **Member Secretary:** In this category, the secretary is part of the board and a member of the board meeting who is also responsible for recording the deliberations of the meeting. Records of the members present will include the secretary but where he/she is a non-member secretary, the record will indicate that secretary, under 'In attendance'.
- **Non-member Secretary:** The argument in favour of this category is that one cannot effectively fully participate in deliberations and then fully or fairly record proceedings.
- **Professional Secretary:** This involves the practice which touches on company administration and secretarial services. Legal and paralegal services will be delivered by lawyers, chartered accountants, chartered secretaries and most commonly solicitor secretaries.
- **Executive Secretary:** An organisation may employ a secretary as part of its full time staff and his or her schedule will include executive responsibilities such as serving as secretary to the board, acting as chief administrative officer and or being the Registrar of the organisation. Examples of such positions can be found in Public Universities, Ghana Energy Commission, Law Reform Commission etc.

(Any 2 points @ 1.5 marks each = 3 marks)

(Total: 20 marks)

QUESTION FOUR

a)

i) A worker's employment is terminated unfairly if the only reason for the termination is:

- That the worker has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union.
- That the worker seeks office as, or is acting or has acted in the capacity of, a workers' representative.
- That the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment.
- The worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status.
- In the case of a woman worker, due to the pregnancy of the worker or the absence of the worker from work during maternity leave.
- In the case of a worker with a disability, due to the worker's disability.
- That the worker is temporarily ill or injured and this is certified by a recognized medical practitioner.

- That the worker does not possess the current level of qualification required in relation to the work for which the worker was employed which is different from the level of qualification required at the commencement of his or her employment.
- That the worker refused or indicated an intention to refuse to do any work normally done by a worker who at the time was taking part in a lawful strike unless the work is necessary to prevent actual danger to life, personal safety or health or the maintenance of plant and equipment.

(Any 3 points @ 2 marks each = 6 marks)

- ii) A worker who claims that the employment of the worker has been unfairly terminated by the worker's employer may present a complaint to the Commission.

If upon investigation of the complaint the Commission finds that the termination of the employment is unfair, it may:

- Order the employer to re-instate the worker from the date of the termination of employment.
- Order the employer to re-employ the worker, either in the work for which the worker was employed before the termination or in other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination.
- Order the employer to pay compensation to the worker.

(Any 2 points @ 2 marks each = 4 marks)

b)

- i) The question has to do with the legal requirements for the incorporation of a private partnership pursuant to the provisions of Incorporated Private Partnership Act, 1962 (Act 152).

Section 1(1) of Act 152, provides as follows:

"Partnership means the association of two or more individuals covering a business jointly for the purpose of making profit"

Issues arising from case

- It should be noted that the membership of the partnership should not be more than twenty (20) persons.
- In the facts of the instant case, the number of persons is more than twenty (20) as required by the law.
- There is no firm name because they referred to it only as Partnership.
- The individuals neither stated any registered address, nor the nature of the business of the so-called Partnership.
- There is no statement on the amount and percentage of contribution of each partner to the capital of the firm.
- There is nothing on the admission to the partnership and exit from the Partnership.

- There is no statement on the management and administration of the firm.
- The so-called Partnership Agreement or Deed of Partnership did not contain provision that are required by law.

(Any 2 points @ 2 marks each = 4 marks)

ii) The requirements of registration pursuant to Section 3(1) of Act 152 are as follows:

- The firm name of the Partnership
- The general nature of the business
- Address, which include an electronic address, and Post Office box number of:
 - The principal place of the Partnership, and
 - Any other places in the Republic of which the jurisdiction is carried on.
- The names and former residential address and business occupation of the partners.
- The Date of Commencement of business
- Particulars of changes on Partnership assets or a statement that there are no charges.

(6 marks)

(Total: 20 marks)

QUESTION FIVE

a)

i) The following are the major differences between fixed charge and floating charge:

- The charge that can be easily identified with a certain asset is known as Fixed Charge. The charge which is created on assets that changes periodically is Floating Charge.
- Fixed Charge is specific in nature. Unlike floating charge which is dynamic.
- Registration of movable assets is voluntary, in the case of fixed charge. Conversely, when there is a floating charge, the registration is compulsory irrespective of the asset type.
- The fixed charge is a legal charge while the floating charge is an impartial one.
- Fixed Charge is given preference over floating charge.
- The fixed charge covers those assets that are specific, ascertainable and existing during the creation of the charge. On the other hand floating charge, covers present or future asset.
- When the asset is covered under fixed charge, the company cannot deal with the asset until and unless the charge holder agrees for so. However, in the case of floating charge the company can deal with the asset until the charge is converted to fixed charge.

(Any 3 points @ 2 marks each = 6 marks)

ii) Circumstances under which a floating charge crystallise into a fixed charge

- If a company fails to repay the loan or enters liquidation, the floating charge becomes crystallized or frozen into a fixed charge. With a fixed charge, the assets become fixed by the lender so the company cannot use the assets or sell them.
 - Crystallization can also happen if a company ends operations or if the borrower and lender go to court and the court appoints a receiver. Once crystallized, the now-fixed rate security cannot be sold, and the lender may take possession of it.
- (2 points @ 2 marks each = 4 marks)**

b) Powers of receivers or managers in a voluntary liquidation process

- A person appointed receiver of a property of a company shall, subject to the rights of any prior incumbrances;
 - ✓ take possession of and protect the property
 - ✓ receive the rents and profits
 - ✓ discharge the outgoings in respect of the property
 - ✓ realise the security of those on whose behalf that person is appointed, but unless also appointed manager, that person shall not carry on a business or an undertaking.
- From the date of appointment of a receiver or manager, the powers of the directors or liquidators in the voluntary liquidation of a member to deal with the property or undertaking over which the receiver or manager is appointed shall cease until the receiver or manager is discharged.
- Where, on the appointment of a receiver or manager, the company is being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), or the property concerned is in the hands of any other officer of the Court, the liquidator or officer is not bound to relinquish control of the property to the receiver or manager except under an order of the Court.

(3 points @ 2 marks each = 6 marks)

c)

- i) A merger involves the mutual decision of two companies to combine and become one entity; it can be seen as a decision made by two "equals." **(2 marks)**
- ii) A takeover, or acquisition, is usually the purchase of a smaller company by a larger one. It can produce the same benefits as a merger, but it doesn't have to be a mutual decision. **(2 marks)**

(Total: 20 marks)