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No. of Questions -04

**SCHOOL OF ACCOUNTING AND BUSINESS
BSc. (APPLIED ACCOUNTING) GENERAL/SPECIAL DEGREE
PROGRAMME 2013/14**

**YEAR I SEMESTER II
END SEMESTER EXAMINATION – MAY 2014**

LAW 10125 Commercial Law

Date : 30th May 2014
Time : 9.00 a.m. – 11.30 a.m.
Duration : Two and half (02 1/2) hours

Instructions to Candidates:

- Answer ALL questions
- This paper consists of two parts (I and II)
- Part I - Mark the correct answer for each question in the separate sheet provided.
- The total marks for the paper is 60.
- The marks for each question are shown in brackets.
- Answers should be written neatly and legibly.

PART I

Answer all the questions

1. Drugs Pvt Ltd. contracts with Supermarket Pvt Ltd. to manufacture and supply 50 cases of a drug called SuperX. Supermarket Ltd. pays the contract money, £5,000, to Drugs Ltd. but before delivery takes place the Government introduces a law banning the manufacture and supply of SuperX. Can Supermarket Ltd. enforce the contract?
- a. No, the contract is frustrated.
 - b. No, there is a breach of contract.
 - c. Yes, because Supermarket Ltd has already paid the contract price of £5,000.
 - d. Yes, the contract was legal when it was made.

(1 mark)

2. Jules sends a *SMS* to Robert, offering to sell 100 packets of **Chicken Sausages** at Rs. 500/- per packet. Robert replies back stating, "*I can accept your offer of 100 packets of **Bockwurst Chicken Sausages** at Rs.500/- per packet*". Identify the correct answer on the formation of a valid contract between Jules and Robert.
- a) Jules's *SMS* to sell 100 packets of Chicken Sausages is not an offer but an invitation to treat.
 - b) Robert's reply to Jules is the counter offer to Jules's initial offer.
 - c) There was a meeting of minds between John and Jules to form a valid contract.
 - d) Contracts cannot be formed via *SMS* messages; hence, there is no valid contract.

(1 mark)

3. Choose the incorrect statement:

Specific performance is

- a. An order of a court which requires a party to perform a specific act, as stated in the contract.
- b. It is a remedy if damages are not adequate.
- c. A remedy in contract law which can be sought with damages.

(1 mark)

4. Identify the instance of an Invitation to Treat:
- Clothes behind a shop window with a price tag
 - “I will sell my phone to you for Rs 15,000/- ”
 - A newspaper advertisement saying “Finder of my Puppy Rusty will be rewarded with Rs 5000/-”
- (1 mark)
5. Choose the correct statement
- A Contract needs to be in writing to be enforceable.
 - In a contract consideration has to always be in money.
 - Domestic Agreements are not deemed to be contracts due to the lack of the intention to create a legal relation..
- (1 mark)
6. When can a person (Offeror) withdraw an offer?
- A person can withdraw an offer which has been proposed, prior to that offer being accepted being and communicated to the other party that the offer has been withdrawn.
 - An offer once given cannot be withdrawn by the Offeror.
 - An offer will remain active until the party answering the offer either accepts it or declines the offer.
- (1 mark)
7. Mrs. Olley was a guest of the Marlborough Court Hotel, Lancaster Gate, London. Inside her room, her fur coat had been stolen. Mrs. Olley asked to be paid the cost of the coat. The Hotel pointed to an exclusion clause in a notice behind a door in the bedroom leading to a washbasin, which said,
"The proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the manageress for safe custody."
Mrs. Olley argued that the clause was not incorporated into the contract.
Choose the correct statement.
- The exclusion clause is part of the contract between Mrs. Olley and the Hotel.
 - The exclusion clause is an implied term in the contract between Mrs. Olley and the Hotel.

- c) The exclusion clause was brought to the notice of Mrs. Olley after the contract was formed and hence it is not part of the contract and the Hotel should pay Mrs. Olley.

(1 mark)

8. What is the aim of an award of damages for breach of contract?

- a. To punish the party who has broken the contract.
- b. To restore the innocent party to the position he was in before the contract was made.
- c. To ensure the party who has broken the contract suffers a reasonable penalty.

(1 mark)

9. The general effect of misrepresentation

- a. Is that it makes the contract voidable.
- b. Is that it makes the contract void.

(1 mark)

10. When will property in unascertained goods pass to the buyer?

- a. Never. Property in unascertained goods can never pass to the buyer.
- b. Once they have been paid for.
- c. Not until the goods are ascertained.

(1 mark)

11. Identify the incorrect statement?

- a. In terms of Section 15(1) of the SOG Ordinance the item should be fit for the purpose for which it was purchased.
- b. In terms of Section 15(1) the purpose of the item needs to be expressly made known to the seller even if it can be readily gathered from the description.
- c. Courts are strict in imposing the condition of fitness for purpose when looking at case law.

(1 mark)

12. Identify the correct statement.

In terms of Section 13 of the SOG Ordinance

- a. There is an implied warranty in every sale of goods contract that the seller has a right to sell the goods.
- b. If a seller sells a car without a right to sell the car, the buyer cannot recover the total purchase money he has paid to the seller.
- c. If a seller sells a car without the right to sell that car, the buyer can recover the full amount paid to the seller even if he has used it for several months.

(1 mark)

13. In a typical transaction conducted by the agent, who are the contracting parties?

- a. The agent and the third party.
- b. The agent and the principal.
- c. The principal and the third party.

(1 mark)

14. If an agent carries out an act in the name of a principal for which he was not authorized, what steps, if any, can the principal take to validate the act?

- a. Nothing. If the act was not authorized, it cannot be saved.
- b. He may seek the third party's consent for the transaction to proceed.
- c. He may ratify the act.
- d. He may obtain an order of the court to affirm the act.

(1 mark)

15. Which one of the following kinds of authority exists with the express consent or agreement of the principal?

- a. Apparent
- b. Actual
- c. Necessity
- d. Ostensible

(1 mark)

16. A bill for a Rs. 10 million which is payable “10 days after Ann Patel’s marriage”. This bill is

- a. Valid because it contains a specific event as a trigger.
- b. Invalid because it contains an indefinite time.

(1 mark)

17. “All negotiable instruments are transferable but not all transferable instruments are negotiable”. This statement is:

- a. a true statement
- b. a false statement

(1 mark)

18. Which one of the following statements about negotiable instruments is false?

- a. Today cheques are used more often than bills of exchange.
- b. An instrument can be negotiated even if it is conditional on some future event, or if the amount to be paid will be determined at some future date.
- c. Once a bank certifies a cheque, the bank must honour it.
- d. When a negotiable instrument is transferred to a holder in due course, she is entitled to enforce the instrument despite any difficulties that may arise under the original transaction.

(1 mark)

19. Identify the **most** correct statement.

Autonomy or Independent Principle in Documentary Credit means

- a. That the Letter of Credit is dependent on the sale of goods contract.
- b. That the Letter of Credit is a contract between banks and not between the buyer and seller.
- c. That a Letter of Credit is a separate transaction between banks and is different and independent from the contract of sale of goods, and banks are in no way bound by such contracts.

(1 mark)

20. The parties to a letter of credit are
- The supplier (seller), usually called the beneficiary, *the issuing bank* of which the buyer is a client, and an advising bank, of which the seller is a client.
 - The seller (supplier) and the buyer only.
- (1 mark)
21. What is not an obligation of a buyer in an FOB contract?
- Contract at its (buyer's) own expense for the carriage of the goods from the named port of shipment.
 - The buyer must give the seller sufficient notice of the vessel name, loading point and required delivery time.
 - Ensure that the goods are delivered on the date or within the agreed period at the named port of shipment.
- (1 mark)
22. A endorses a cheque to B as a gift. B is a :
- Holder for value.
 - Mere holder.
 - Holder in due course.
 - Wrongful possessor.
- (1 mark)
23. In terms of the Companies Act No. 7 of 2007, what is the maximum number of partners in a Partnership?
- 20
 - 30
 - 21
- (1 mark)
24. Okliglobal Pvt Ltd. is
- A partnership governed by the Partnership Act
 - a Limited Liability Company governed by the Companies Act No 7 of 2007
- (1 mark)

25. Select the incorrect statement

A Contract for Sale of Goods is

- a. Not a contract for work and materials.
- b. Not a contract of Hire Purchase.
- c. A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer, for a money consideration called the “price”.
- d. A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer, for a consideration.

(1 mark)

26. When is it mandatory (*must have to*) to register the business name of a Partnership in terms of Section 2 of Business Names Act No 7 of 1987?

- a. If the business is being carried out under the business name which does not consist of the true full names of all the partners who are individuals and corporate names of all partners who are corporations.
- b. If the business is being carried out under the business name which consists of the true full names of all the partners who are individuals and corporate names of all partners who are corporations.

(1 mark)

27. Can a partnership be sued in its own name?

- a. Yes
- b. No. The Partners would have to be sued in their personal names.
- c. Only when the business name of the Partnership is registered under Business Names Act No 7 of 1987.

(1 mark)

28. Duty of Utmost Good Faith or *uberrimae fidei* is with respect to a contract of insurance:

- a. That the insured must reveal the exact nature and potential of the risks that he transfers to the insurer.
- b. Insurer must make sure that the potential contract fits the needs of, and benefits, of the assured

(1 mark)

29. What amounts to a material fact when obtaining an Insurance Policy?
- a. A fact which would influence the judgment of a prudent Insurer in deciding whether to accept the risk and if so, in fixing the amount of premium.
 - b. A fact which the Insured thinks is not relevant is not a material fact.
 - c. All facts which have been questioned by the Insurer in the Insurance Policy application.

(1 mark)

30. Identify the incorrect statement regarding an “*Insurance Cover Note*” issued by an Insurer:

- a. An Insurance Cover Note would be valid only until the proposal of the insured is accepted or rejected.
- b. An Insurance Cover Note is the contract of insurance.
- c. An Insurance Cover Note is normally issued by the insurance agent on behalf of the insurance company (i.e. Insurer).

(1 mark)

(Total 30 marks)

Part II

Answer all the questions

Question No. 1

- i. List three important functions of a Bill of Lading.
(3 marks)
- ii. List differences of the duties of a Buyer and the Seller in a CIF Contract.
(2 marks)
- iii. When does risk pass in a CIF contract?
(1 mark)
- iv. When does risk pass in an FOB contract?
(1 mark)
- v. Dinesh purchased a quantity of paper from Ecma, a Swedish paper manufacturer, ‘cif London’. The contract did not stipulate the type of vessel to be used. Ecma was unable to find a cargo ship, but knew that Dinesh needed the paper urgently and so

sent it on a canal barge, which was not designed for sea journeys. As a result, the paper was damaged by sea water. Advise Dinesh.

(3 marks)

(Total 10 marks)

Question No. 2

- i. State the three types of Misrepresentation
(2 marks)
 - ii. What is 'Capacity of a Party' with respect to a contract?
(1 marks)
 - iii. What is "Privity of Contract"?
(1 marks)
 - iv. Explain what a Unilateral Offer is?
(1 mark)
 - v. What is a Condition in a Contract?
(1 mark)
 - vi. What remedies are available to an injured party when a Condition in a Contract is breached?
(1 mark)
 - vii. What is a Warranty in a contract?
(1 mark)
 - viii. What remedies are available to an injured part when a Warranty in a contract is breached?
(1 mark)
 - ix. What are innominate terms in a Contract?
(1 mark)
- (Total 10 marks)

Question No. 3

- i. Saman enters a shop which is renowned for selling valuable paintings and offers to buy a painting which he presumes to be a work of famous painter *Jolly Silva*. The painting was in fact not of *Jolly Silva's* but *Michele Perera's*. The seller also had

presumed that the painting was *Jolly Silva's*.

Saman paid the price for the painting and purchased it. However, after a few days Saman realized that the painting was not of *Jolly Silva's*. Explain whether Saman can return the painting considering the aspects of Contract Law.

(5 marks)

- ii. Buddhike is appointed by Nuts Ltd. to sell ground nuts. On 1st January, Buddhike is approached by Mary, the agent of Cadju Lanka Ltd., who knows that Buddhike is acting for Nuts Ltd. Mary offers to buy a quantity of ground nuts, but says that Cadju Lanka Ltd. cannot afford to pay for the purchase for six months. Buddhike tells her that he needs to refer the granting of credit to a senior manager at Nuts Ltd. for approval. Later that same day, Buddhike tells Mary that Nuts Ltd. has agreed to grant her time to pay. In fact, Buddhike had been unable to contact a senior manager, but he did not think Nuts Ltd. would disapprove because the price being obtained was so good.

On 3rd January, Mary discovers that Nuts Ltd. has no knowledge of the transaction. She has also discovered an alternative source of supply for the ground nuts at a lower price and no longer wishes to go ahead with the purchase. Discuss whether Nuts Ltd. can insist that Mary is bound by the contract.

(5 marks)

(Total 10 marks)