

BUSINESS LAW

SET 1

MULTIPLE CHOICE QUESTIONS

1. Which of the following is not a Statute of General Application?
 - A. Infants Relief Acts 1874
 - B. Partnership Act 1890
 - C. Companies and Allied Matters Act 1990
 - D. Will Act 1837
 - E. Bill of Exchange Act 1882

2. The material facts upon which a decision is based and which constitutes a precedent is known as
 - A. Stare decisis
 - B. Ratio decidendi
 - C. Res judicata
 - D. Obiter dicta
 - E. Per Incuriam

3. The legislative list in which only the National Assembly has the power to make law is known as
 - A. National list
 - B. Residual list
 - C. Exclusive list
 - D. Concurrent list
 - E. Specific list

4. The principal statute on company formation and management in Nigeria is the
 - A. Companies Act
 - B. Companies Formation and Management Act
 - C. Corporation Act
 - D. Business Associations Act
 - E. Companies and Allied Matters Act

5. The minimum authorized membership of a Public Limited Company is
- A. 2
 - B. 5
 - C. 7
 - D. 9
 - E. Unlimited
6. The existence of a company is indicated by its
- A. Articles of Incorporation
 - B. Situation of the Registered Office
 - C. Place of domicile
 - D. Certificate of Incorporation
 - E. Profitability of its business
7. What effect has the death of a partner on the partnership?
- A. Dissolution
 - B. Consolidation
 - C. Amalgamation
 - D. Vacancy for admission of a new partner
 - E. Amendment of the partnership agreement
8. One of the following requires a unanimous agreement of all partners
- A. Admission of a new partner
 - B. Paying off unsecured creditors
 - C. Deciding the number of branches
 - D. Take out an insurance policy
 - E. Sharing profit equally
9. Which of the following makes policies for a company?
- A. The General Meeting
 - B. The Board of Directors
 - C. Alternate Directors
 - D. The Statutory Meeting
 - E. The Promoters

10. Quorum at a General Meeting of a company shall be
- A. One-third of the members or 25, whichever is lesser
 - B. One-fifth of the members or 25, whichever is lesser
 - C. Two-fifth of the members or 25, whichever is lesser
 - D. Three-fifth of the members or 25, whichever is lesser
 - E. One-half of the members or 25, whichever is lesser
11. A company is said to be insolvent if
- A. It is able to discharge its tax obligation
 - B. It is unable to grant credit facilities
 - C. It is unable to give loans to its employees
 - D. It is unable to pay its just debts
 - E. It is unable to compete
12. The body established to investigate and prosecute cases bothering on official corruption in Nigerian is
- A. The Nigerian Bar Association
 - B. The Corruption Tribunal
 - C. The Code of Conduct Bureau
 - D. The Independent Corrupt Practices and Other Related Offences Commission.
 - E. The Nigerian Defence Academy
13. Electronic Evidence was introduced and admissible in Nigerian Courts in
- A. 1960
 - B. 1990
 - C. 2011
 - D. 2000
 - E. 1979
14. An Agreement which creates legal rights and obligations between parties is known as a(n)
- A. Accord
 - B. Deal

- C. Form
 - D. Contract
 - E. Transaction
15. An agency that arises out of a need to prevent loss is referred to as
- A. Agency of need
 - B. Agency of necessity
 - C. Agency by agreement
 - D. Agency by default
 - E. Commissioned Agent
16. Liability for a tort attaches only when _____ are present.
- A. Loss of property and damage
 - B. Breach of a legal duty and resultant loss
 - C. Actual damage and injury
 - D. Breach of covenant and agreement
 - E. Maintenance and Champerty
17. Section 62 of the Sales of Goods Act describes goods to include things attached to land or forming part of it except
- A. Hats
 - B. Books
 - C. Computer software
 - D. Choses in action and money.
 - E. Manufactured goods.
18. A contract for hire purchase is not a sale of goods because it gives the hirer the
- A. Option to renew
 - B. Right to sell
 - C. Power to withhold
 - D. Option to purchase
 - E. Right to transfer

19. Which of the following is not a test for determining a master-servant relationship?
- A. The control test
 - B. The Integration test
 - C. The economic reality test
 - D. The multiple test
 - E. Public policy test
20. A charitable trust is also known as a(n)
- A. Express trust
 - B. Public trust
 - C. Private trust
 - D. Implied trust
 - E. Generous trust

BUSINESS LAW – SET 1

SOLUTIONS TO MCQ

- 1. C**
- 2. B**
- 3. C**
- 4. E**
- 5. A**
- 6. D**
- 7. A**
- 8. A**
- 9. A**
- 10.A**
- 11.D**
- 12.C**
- 13.B**
- 14.D**
- 15.B**
- 16.B**
- 17.D**
- 18.D**
- 19.E**
- 20.B**

SET 1

ESSAY

QUESTION 1

- a. Distinguish between "Obiter dictum" and Ratio decidendi" (6 marks)
- b. Ahmed was convicted six months ago by an Abuja Area Court for committing a fraud on his Employers XYZ Limited.
Ahmed appealed against the judgment up to the Supreme Court successfully. The decision of the Area Court was then set aside.
XYZ Ltd however insisted on relying on the decision of the Area Court, claiming that since it was the first in time, it should prevail over that of the Supreme Court. XYZ Ltd therefore dismissed Ahmed from its employment based on the decision of the Area Court. Ahmed intends to sue XYZ Ltd.

REQUIRED

Advise Ahmed. (14 marks)

QUESTION 2

- (a) State THREE instances in which the Companies and Allied Matters Act permits a company to reduce its capital (3 marks)
- (b) Explain briefly THREE purposes for which company's capital may be reduced. (6 marks)
- (c) Explain the reasons for which a company may acquire its own shares and how it may pay for such acquisition. (11 marks)

Total 20 Marks

QUESTION 3

The insolvency of a company may sometime lead to the winding up the company through the presentation of a winding up petition, consequent upon which a liquidator is appointed who must repay the debts owed by the company in certain order.

REQUIRED

(a) State the effects of winding up petition. (10 marks)

(b) State the order in which liquidator must repay debts owed by the company. (10 marks)

Total 20 Marks

QUESTION 4

(a) Explain what in law constitutes fraudulent false accounting.

(6 marks)

(b) Ken, an accountant, was invited to attend a presentation at a local company's headquarters. The company manufactures equipment for the defence industry. Before the presentation, Ken had to wait in the reception area while the receptionist went to the toilet. Ken observed that the receptionist had been typing a document headed 'A new anti-personnel bomb'. Ken went round the receptionist's desk, intending to take the document, but was surprised by the receptionist sudden return. When questioned by the police, Ken says that he was going to photocopy the document and then return it. He was however charged for the offence of theft.

REQUIRED

Advise Ken of his possible liability for the offence of theft under the Criminal Code.

(14 marks)

Total 20 Marks

Question 5

(a) Explain briefly the following elements of a contract:

(i) Offer

(ii) Acceptance

(10 marks)

(b) Isaiah operates a deep sea trawler which he uses for fishing. In January 2014 he insured the trawler with Nasiru Insurance Co. Ltd in the sum of N50 million

against general risks after duly and fully completing a proposal form given to him by the insurers. The trawler sank in March 2014 due to a propeller fault the trawler had developed in December 2013. Nasiru Insurance Co. Ltd is resisting Isaiah's claim under the insurance policy on the ground that the propeller fault was not disclosed by Isaiah before the policy was issued.

REQUIRED

- (i) Advise Isaiah (6 marks)
- (ii) Would your advice to Isaiah be different if this had happened where only the common law is applicable? Give reasons. (4 marks)

QUESTION 6

- (a) State, with examples, five classes of tort. (5marks)
- (b) State FOUR duties of a Principal. (4 marks)
- (c) Andrew issues a cheque crossed 'A/c Payee Only' to Julius who presents the cheque at Jango Bank which paid the cheque across the counter. A few hours before the cheque was paid, Andrew had sent an email to Jango Bank countermanding the cheque which countermand was acknowledged by the branch manager of Jango Bank.

REQUIRED

- Is the payment across the counter by Jango Bank lawful? Give reasons for your answer. (3 marks)
- (d) In the context of employment law, state the THREE remedies for unfair dismissal. (6 marks)
- (e) State TWO certainties for the creation of a trust (2 marks)

SET 1

BUSINESS LAW

SOLUTION 1

- (a) *Obiter dictum* is the part of a previous decision of a Court which does not constitute a precedent and which a lower Court is not bound to follow. It is often described as a "statement by the way" or other things said, such as a chance remark or opinion expressed by a Judge in the course of his decision in a case. *Ratio decidendi* on the other hand is the reason for the decision. It consists of the material facts of a case plus the decision thereon. It constitutes a precedent that lower courts must follow in subsequent similar cases. 6 marks)

- (b) The case in question is on the application of precedent within the Nigerian courts' hierarchy. Precedent is a case-law system where judges follow previously decided cases in subsequent similar cases. The doctrine of binding precedent is to the effect that decisions of superior courts in the hierarchy are binding and must be followed by inferior courts whenever the fact of the case before the inferior Court are sufficiently similar to the one decided by the superior court. The Supreme Court being the highest and the final court in the hierarchy, its decision constitutes a binding precedent on all other courts below it and must be followed. Therefore, the Abuja Area Court must follow the decision of the Supreme Court. The purported dismissal of Ahmed by his employer XYZ Ltd, based on the decision of the Abuja Area Court which has been set aside by the Supreme Court is invalid. As such, Ahmed may rely on the Supreme Court decision in proceeding against his employer XYZ Ltd for unfair dismissal and could claim remedies such as damages, reinstatement or reengagement. (14 marks)

Total 20 Marks

Solution 2

- (a) Section 106 of the Companies and Allied Matters Act permits a company to reduce its share capital

- (i) If so authorized by its Articles of Association;
 - (ii) By passing a special resolution; or
 - (iii) By obtaining the approval of the court. (3 marks)
- (b) Under the Act, the instances or purposes for which a company may reduce its share capital are as follows under section 106(2):
- (i) To extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
 - (ii) To cancel any paid up share capital which is lost or unrepresented by available assets. The company may do this with or without extinguishing or reducing liability on any of its shares; or
 - (iii) To cancel any paid up share capital that is in excess of the company's need. (6 marks)
- (c) A company may acquire its own shares for the following reasons:
- (i) To settle or compromise a debt or claim asserted by or against the company;
 - (ii) To eliminate fractional shares;
 - (iii) To honour the terms of an agreement by which the company has an option or is obliged to purchase shares owned by an officer or an employee of the company;
 - (iv) To satisfy the claim of a dissenting shareholder; or
 - (v) To comply with a court order. (10 marks)
- To this extent, the purchase must be done out of profits and not out of capital. (1 mark)

Total 20 Marks

Solution 3

- (a) The winding up petition has the following effects:
- (i) All actions for the recovery of debt against the company are stopped.
 - (ii) All floating charges crystallise.
 - (iii) Any legal proceedings against the company are halted and none may start unless leave is granted from the court.

- (iv) The company cease to carry on business except where it is necessary to complete the winding up, e.g to complete work in progress.
 - (v) The powers of the directors cease although the directors remain in office.
 - (vi) The employees are automatically made redundant but the liquidator can re-employ them to help him complete the winding up. (10 marks)
- (b) The Liquidator must repay debts in the following order;
- (i) Fixed charge holders.
 - (ii) Preferential creditors, this include wages and salary of any clerk or servant in respect of services rendered to the company, accrued holiday remuneration becoming payable to any clerk, servant, workman on the termination of his employment before or by the effect of the winding up order or resolution.
 - (iii) Floating charge holders
 - (iv) Unsecured creditors-rank equally amongst themselves.
 - (v) Post liquidation interest
 - (vi) Members-declared but unpaid dividends
 - (vii) Member-return of capital in accordance with the class rights.
 - (ix) Any surplus to be distributed to members. (10 marks)

Total 20 Marks

Solution 4

- (a). Section 438 of the Criminal Code makes provision for the offence of fraudulent false accounting. Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the following acts with intent to defraud is said to have committed an offence of fraudulent false accounting:
- (i) Destroys, alters, mutilates, or falsifies, any book, document, valuable security or account, which belongs to or is in the possession of his employer, or has been received by him on account of his employer or
 - (i) Makes, or is privy to making any false entry in any such book, document, or account; or

- (iii) Omits, or is privy to omitting; any material particular from any such book, document or account.

On conviction, he is guilty of a felony and is liable to imprisonment for seven years. (8 Marks)

- (b). The issue in this hypothetical case is whether Ken intended to take the document and whether this would have amounted to theft. Under Section 390 of the Criminal Code, stealing is committed if a person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

By taking the document, Ken would clearly have committed the *actus reus* of theft. But he did not succeed in taking it. It is clear that Ken was being dishonest, as all ordinary persons would consider his action dishonest. However, he intended to return the document after photocopying it. Therefore, he had no requisite intention (of taking) to be guilty of theft. In addition, the property he was trying to take was not the document itself but the information contained in it. This excluded his action from theft.

Therefore, Ken is not guilty of stealing as he had no intention to take the document within the meaning of the Criminal Code. This also rules out the possibility that he could be convicted of attempted stealing. (12 marks)

Total 20 Marks

Solution 5

- (a) (i) Offer
- Offer is made when a person proposes and communicates terms to another person to the effect that if the other accepts the terms he is willing to contract.
 - An offer is a definite, clear and final offer by an offeror to an offeree with the clear intention that they be bound by the terms if they are accepted.
 - An offer is neither an invitation to treat nor a counter-offer.
 - An offer is not an advert nor a tender nor an auction sale.
- (ii) Acceptance is assent to offer on the terms as stated by the offeror.
- ✓ Acceptance must be plain
 - ✓ It must be unequivocal
 - ✓ It must be unconditional
 - ✓ It must not vary as to terms offered

✓ It must be communicated to the other party without delay **(10 marks)**

(b)

- (i) This question raises the issue of disclosure of material facts under the law of insurance contracts. The position of the law generally is that since insurance contracts are contracts of utmost good faith, parties, especially the insured, are under a legal duty to disclose all such material facts that are necessary to the formation of the contract and would affect the prudent insurer in determining whether to accept the risk or not and at what premium and conditions. This is strictly the common law position.

However, in Nigeria, Section 58 of the Insurance Act provides that where an insurer requires an insured to complete a proposal form, the insurer is to draw up the proposal form in such manner as to elicit all such information as the insurer considers material in accepting the risk and that any information not specifically requested in the proposal form shall be deemed not material.

In the present case between Isaiah and Nasiru Insurance Co. Ltd, it would appear that the proposal form did not specifically request for a disclosure on the condition of the propeller. In the event, the insurer cannot successfully resist Isaiah's claim. Isaiah is accordingly so advised that Nasiru Insurance Co. Ltd cannot resist his claim.

- (ii) My advice to Isaiah would be different if this had happened where only the common law was applicable. This is because the strict common law position does not provide for the exemption as in Section 58 of the Insurance Act but that since insurance contracts are contracts of utmost good faith, parties, especially the insured, are under a legal duty to disclose all such material facts that are necessary to the formation of the contract and would affect the prudent insurer in determining whether to accept the risk or not and at what premium and conditions. (10 marks)

Total 20 Marks

Solution 6

- (a) Torts may be classified into five major categories as follows:

- i. Torts affecting personal safety and freedom e.g. assault, battery, false imprisonment and negligence,
 - ii. Torts affecting property e.g. trespass and nuisance,
 - iii. Torts affecting reputation e.g. libel and slander, that is defamation,
 - iv. Torts affecting economic interests e.g. deceit and passing-off, conversion and detinue,
 - v. Torts involving interference with judicial process e.g. malicious prosecution, maintenance and champerty.
- (5marks)**

(b) A principal has several duties towards his agent including:

- (i) A duty to pay the agent's fees or commission.
 - (ii) A duty to indemnify the agent for all lawful acts carried out by the agent on his behalf.
 - (iii) A duty to ratify the acts of the agent as the case may be.
 - (iv) A disclosed principal is under a duty to assume responsibility and liability for the authorized acts of the agent.
- (4 marks)**

- (c) The payment across the counter by Jango Bank is not lawful. This is because a cheque crossed 'A/c Payee Only' can only be paid into the bank account of the payee.
- (3 marks)**

(d) Where unfair dismissal is established, three remedies are available as follows:

- (i) Reinstatement to the same job without any break in the continuity of employment.
 - (ii) Re-engagement in a different but comparable and suitable job with the same employer or his successor or associate; and
 - (iii) Compensation.
- (6 marks)**

(e) The certainties for the creation of a trust are:

- (i) Certainty of word;
 - (ii) Certainty of object; and
 - (iii) Certainty of subject-matter.
- (2 marks)**

Total 20 Marks