CLL307 - COMMERCIAL LAW EXAM PAST QUESTIONS SUMMARY

Q. Define the term" source of law"

The term "source of law" is used in various senses. In the first place, it means the ultimate origin of the whole body of a legal system, the origin from which the system derives its validity: from the electorate or voters, a special body the general will or the will of a dictator. Secondly, the term source of law is used to name the historical origin of a rule of law.

Q. Identify various sources of law

Primary Source

The primary source of law is the Nigerian Legislation and Statutes. This consists of other statutes and subsidiary legislations. Statutes are laws made by the legislator or a body so duly constituted and authorized to enact laws; while subsidiary legislations are also known as delegated legislations or statutory instruments and are usually entrusted to Ministers or Commissioners.

The primary source of law consists of Ordinances, Acts, Laws, Decrees and Edicts, depending on the status of the issuing authority or the circumstances of the prevailing political situation.

Q. Critically examine the implication of the principle of "Nemo dat quod non habeat" under the Law of Sale of Goods and the possible exceptional situations which the law has attached to its operations.

It is the general rule that good title would not pass, unless the buyer gets a good title free from any encumbrance by buying from the owner or his authorized agent but there are circumstances in which the law will deemed a proper transfer when there is a transfer by a person who has either no property or whose rights are defective disposes of goods. The general rule is built on the legal principle of the Latin Maxim "Nemo dat quod non habeat" which means that no one can give what he or she does not have. The purpose of this rule is to protect the interest of the property owners. This principle is established in Section 21 of the Rule 1 of the Act.

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A bill of lading is not a negotiable instrument under the Bill of Exchange Act, because unlike a bill of exchange, the bona fide holder of a bill of lading and for value cannot acquire a better title than the transferor possesses. A negotiable instrument is therefore an exception to the general rule of law that nemo dat quod non habeat. International commercial contracts, the bill of lading is the pivot upon which other contractual relationships are dependent. The important point, however, in the context of negotiability of the bill of lading is that the fact that a party is an indorsee of the documents does not by itself permit right of suit under the terms of the documents per se. The extent of the negotiability of the bill of lading as it pertains to right enforcement in contract is contigent upon the particular enforcement regime in the particular country.

Q. Discuss bills of lading as a negotiable instrument

A bill of lading is an assignable document of title to the goods. If a bill is transferred or assigned by one person to another, either by a mere delivery (as in the case of a bearer of bill of lading) or by an indorsement of the bill of lading followed by its delivery (as in an order bill of lading), the bill of lading is said to have been negotiated, and the party to whom the bill is transferred is referred to as the transferee of the bill of lading. A bill of lading is not a negotiable instrument under the Bill of Exchange Act, because unlike a bill of exchange, the bona fide holder of a bill of lading and for value cannot acquire a better title than the transferor possesses.

Q. Define arbitration

Arbitration is a process controlled by one or more arbitrators. It provides a forum for the parties to present disputes to a neutral third party who is/are chosen by them to make a binding decision called an Award. Arbitration is a process for the settlement of disputes under which the parties agree to appoint their own judge or judges (arbitrator or arbitrators) who will decide according to their agreement and the law and the parties agree to be bound by their decision. Arbitration provides a forum for the parties to present disputes to a neutral third party who is/are chosen by them to make a binding decision called an Award. It is seen as an alternative means of access to justice in the sense that the parties do not need to refer their disputes to the court of law. It is an aspect of alternative dispute resolution mechanism.

Q. Define and explain Commercial Arbitration and also enumerate the advantages of Arbitration.

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Commercial Arbitration

Commercial arbitration relates to arbitration of relationship of a commercial nature. The question is what is "commercial"? It is generally agreed that arbitration is a particularly suitable approach for the resolution of disputes arising out of business relationships (as opposed, for instance, to domestic relationships). Contracts entered into by merchants and traders in their ordinary course of business are regarded as a commercial contract. The level of importance that is placed on the concept of commercial contract is very high in the civil law countries as regards arbitration. This is so because in some countries only disputes arising out of commercial contracts may be submitted to arbitration. Thus it would be permissible to hold arbitration over a contractual matter between two merchants but not for a contract based on the determination of inheritance of the property of the deceased.

Q. Identify the advantages of arbitration

The Advantages Of Arbitration

The advantages of arbitration include:

(a) Speed/Flexibility: Arbitration puts the parties in the driving seat of the proceedings. Businessmen would not want to sit in a court for weeks or months in the name of settling a dispute when they could actually spend such time making money for their firms. They cannot force the court or judge to speed up things for them but this is possible in an arbitration proceedings. The freedom or "autonomy" of the parties gives them the opportunity to request for an accelerated or fast-track procedure.

(b) Confidentiality: Confidentiality is an essential matter for major firms who are involved in hi-tech, production, investment and research contracts. Whenever there is a dispute between them, they would not want to appear before the national court due to the issue of publicity. For this reason, they opt for a private dispute mechanism like an International Commercial Arbitration.

(c) Neutrality of Parties: Parties to a commercial contract and subsequently participants in the arbitration proceedings are usually from different countries or the nature of the dispute may be said to be a transnational contract. For this reason, they would need a neutral jurisdiction to arbitrate their dispute.

(d) Choice of Expert: When a matter is before a court, the judicial system would nominate, and by so doing, impose a judge on the parties but with arbitration, parties are free to choose who they believe has the required

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expertise to marshal their disputes to a convincing end. Parties are more relaxed with this choice.

(e) Enforcement of Award: This is by far the most important part of the arbitral proceedings because it will be a futile task if, after all the money, time and brains that have been put into the whole arbitration process an award is set aside or annulled on the grounds provided for under Article V of the New York Convention 1958.

Q. Name various arbitral institution

There are quite a number of arbitration institutions around the world today and these institutions are saddled with the responsibility of overseeing the proceedings of the arbitration process. Examples of such institutions are:

1. International Chamber of Commerce (ICC) Paris
2. London Court of International Arbitration
3. World Intellectual Property Organization (WIPO) Arbitration Center
4. International Centre for the Settlement of Investment Disputes (ICSID)

Highlight the advantages of arbitral institution

- Automatic incorporation of the rule book of an arbitral institution is one of the principal advantages of institutional arbitration. A good example of this is the issue concerning number of arbitrators. Article 10 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration provides a way out for parties where such have failed to determine the number of arbitrators. It provides thus;
    - The parties are free to determine the number of arbitrators.
    - Failing such determination, the number of arbitrators shall be three.
- Another advantage of institutional arbitration is the provision of trained personnel by the arbitral institution that the parties have chosen to oversee their dispute. The trained personnel bring with them their wealth of experience. They are well equipped to carry out secretarial and administrative duties for the parties.
- Furthermore, the trained personnel can also review the draft form of the award rendered by the arbitral tribunal before sending the final copy to the parties.

Q. Explain, using decided cases, the rules of consideration under the following headings

a. Consideration must not be past

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A past consideration is a promise given after the act is completed and is independent of it that is the act is wholly executed and finished before the promise is made. Consideration is said to be past when it consists of a promise or an act prior to, and independent of, the promise which the plaintiff seeks to enforce. See the case of Roscoria V Thomas (1842)3 Q.B 234, the plaintiff bought a horse from the defendant. Sometime after the sale, the defendant promised the plaintiff that the horse was sound and free from vice when in fact the horse was vicious. Whereupon, the plaintiff sued the defendant for breach of warranty on discovering that the horse was vicious. It was held that, since the warranty that the horse was sound was subsequently to the transaction, and independent of the sale, the promise amounted to past consideration which was not capable of supporting an action in contract.

b. Consideration must not be adequate

In the absence of fraud, duress or misrepresentation the courts will not question the adequacy of consideration. This means that they do not measure the values of the consideration furnished by the plaintiff and the defendant respectively. This means that a contract will not be declared invalid simply because one party has got a much better bargain than the other. No consideration is too small or too much or unfair. See the case of Thomas V Thomas (1842)2 Q.B. 851. A testator, before his death, expressed the desire that his wife should continue to live in his house for the rest of her life. After he died, his executor wrote to the wife confirming her late husband"s wish and stated that the widow could have the use of the house for the rest of her life, on payment of £1 a year. When subsequently the executor tried to rescind his consent, he was held bound by the undertaking not because of the husband"s wishes, but because of the widow"s own undertaking to pay £1 a year, which was regarded as good consideration.

c. Consideration must be real and for value

Since consideration is a „price" it must be something real, something of value. Therefore, if the price of which the plaintiff bought the defendant"s promise is worthless or unreal, that price, whether it be in the form of an act, or a promise to do an act, will not be sufficient consideration and therefore incapable of supporting a contract. But once it is real and of some value, the act or promise will be sufficient, and it is immaterial that it is not adequate for, or commensurate to, the defendants promise.

d. Consideration must be Legal

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A consideration will not be deemed proper until it has a legal value. It most important that consideration must possess some legal value. Any contract where the consideration involved is contrary to the expectation or provision of the law will not be given effect to by the law. For example, the payment involved in an act of prostitution will not be given effect to by the law as it is an illegal contract.

Q. Define taxation and explain the components of a good tax.

Meaning of Taxation

In a plain language, the Oxford English Dictionary (1973) has defined tax as „a compulsory contribution to the support of government levied on persons property, income, commodities, transactions, etc, now at a fixed rate proportionate to the amount on which the contributions is levied". However, to further simplify this definition, the Oxford Advanced Learner"s Dictionary (2006) defined tax as „money that you have to pay to the government so that it can pay for public services." It further concluded that „people pay tax according to their income and businesses pay tax according to their profits. Tax is also often paid on goods and services."

The Component of a Good Tax

There are various essential components of a good tax and these have been highlighted in the works of Kath Nightingale (2001) "Theory and Practice of Taxation" which states that a good tax must possess the following:

1. Simplicity: A good tax system must be straightforward, simple and coherent. The concept and principles of the tax must be understood by majority of the citizens and also must be simple to operate. There must also be consistency in administration of the tax among the different strata of government.

2. Equity: An ideal tax must be administered on the principles of equity. There are two types of equitable principles in the taxing system – horizontal equity and vertical equity. What we mean by horizontal equity is that those in equal circumstances should pay an equal amount of tax. And when we say vertical equity, it means that those in unequal circumstances should pay different amount of tax. The importance of this criterion is to install confidence in the tax payer who will be more willing to pay their taxes if they believe that the system is fair and equal.

3. Ability to pay: By this, we mean that the tax must not be unbearable for the tax payers. It must be within their financial capability.

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4. Administrative Efficiency: The administrative costs should not be higher than the revenue yielded. Also the tax must take into account certain factors such as, the effects on economic incentives, and whether it is compatible with desirable international economic relations.

5. Certainty: The scope of the tax should be clear. This criteria also means the certainty that the tax can and will be enforced, because a tax that is easily evaded usually causes resentment and often a decline in tax payer morality. Also the tax which every person is bound to pay ought to be certain and not arbitrary.

6. Flexibility and Stability: The tax system should be flexible especially in a federal and democratic country such as Nigeria where there are always changes in government.

7. Neutrality: A tax must be neutral thus it must avoid distortions of the market. For instance, a selective tax, such as the sales tax, is not neutral, because it encourages the consumer to spend his money on another item rather than a taxable one.

Q. State the importance of taxation

The subject of tax is important and material to any proactive and effective nation. A country that will embrace development must initiate a good and laudable tax system that will help in generating income for its operations. Thus, taxation is very important for all of the following reasons:

a. Income tax raises revenue to meet government expenditures. Such expenditures include the running of day to day activities of the Government.

b. Tax system can be an instrument to discourage the promotion of certain businesses that are found to be detrimental to societal values; such as sales and usage of alcohol or purchase of cigarettes. Such gods can be marked with high tariff thus, making them expensive.

c. Tax system helps the Government to take care of the needs of her citizens which includes the provision of social amenities and essential reliefs such as , light, water, scholarships and grants, and e.t.c.

d. Taxation has been described to be useful in assisting in the redistribution of wealth in the society. Taxes paid are used to bridge the gap between the rich and the poor.

e. Taxation has also been seen to help in determining population growth, e.g. A state with a low income tax rate will find that more people are moving

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into that state, while traders will leave states with high income tax rates or engaged in various schemes of tax avoidance and tax evasions.

Q. Give the classifications of taxes

Tax can be classified into two major classes namely; Direct/Indirect Tax There are two major categories of taxation depending on the object of the taxation. The different categories of taxes include the following:

1. Direct/Indirect Taxation

Taxes can be classified into either direct or indirect. The distinguishing factor between these two is that whether the taxpayer is aware of the incidence of the particular tax paid.

a. Direct Tax: This is the tax levied directly on the person who is expected to pay the tax. With this type of taxation, the taxpayer will be duly advised through a notification known as „assessment notice" and he will also be given receipt for he tax paid. Examples of direct taxation include personal income tax, Pay As You Earn (PAYE), capital gain tax, capital transfer tax, company"s income tax, etc.

b. Indirect Tax: This is a tax demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another. Indirect tax is borne by a person other than the one from whom the tax is collected. Such tax is usually levied on the manufacturer but paid by consumer. The taxpayer of indirect tax s never notified nor have actual knowledge of such levy. Examples of indirect tax include value added tax (VAT), stamp duty, custom"s duty, excise tax, etc.

2. Proportional, Progressive and Regressive Taxation

a. Proportional Tax: This is the kind of tax in which the amount paid as tax is directly proportionate (equal) to the amount raised (calculated) as the value of the property taxed (also known as tax base). For this, the percentage of the tax rate remains the same as the tax base increases. It is also referred to as neutral tax.

b. Progressive Tax: This is the form of tax in which the percentage of the tax rate increases as the tax base of a person increases. Therefore a person with higher income would pay a greater percentage of tax than a person who earns a lower income. The progressive tax system preaches fairness and equity by asking the richer to pay more tax than the poor.

c. Regressive Tax: This is a tax whose structure is such that the percentage of tax rate paid becomes smaller as the value of the property taxed (tax base)

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increases. Thus a person earning higher income pays lesser tax than a person earning lower income.

Q. Briefly explain the historical development of the concept of Hire Purchase and suggest your own definition of the term.

Definition of Hire Purchase

A Hire Purchase transaction is a bailment of goods but with a provision for the option of sale or transfer of the property in the goods bailed from the bailor to the bailee. The contract of hire purchase is mostly governed by the Hire Purchase Act, Law of the Federation, 1990 and common law.

Halsbury"s Laws of England Vol. 1st Edition, defined a contract of hire purchase as "a contract of hire with option to purchase under which the owner of the chattel undertakes to sell it to, or that it shall become the property of the hirer conditionally on his making a certain number of payments. Until the making of the last payment, however, no property in the chattel passes."

The Historical Development Of The Concept Of Hire Purchase

The concept of Hire Purchase is an important aspect of commercial transactions developed in the United Kingdom and can now be found in existence all over the world now. It is also called closed-end leasing. In the true Hire Purchase Act did not come to being until the Factors Act, 1889, introduced the rule that a buyer in possession of the goods could pass a good title to a bonafide purchaser or pledgee.

In Nigeria as well, the contract of hire purchase is also of recent origin. Indeed, the first Act passed on this matter was in 1965, Its practice however dates back to scores of years ago when local traders sold on credit while dealers sold to people on local and informal.

Q. Distinguish between the contract of Hire Purchase and other Legal Transactions.

Hire Purchase Distinguished From Hire

Hire is a kind of contract that does not pass title of the goods at a future date. The definition of Hire Purchase as seen above is different from the concept of hire. Hire only enables a person to use the goods for his immediate use and does not want to own the property. The hirer will return the chattel to the owner after its use.

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Hire Purchase Distinguished From Loan and Mortgage

Loans and Mortgages is a kind of arrangement where one person who desire some finance borrows money from a person or a financial institution for his use in order to satisfy some needs.

Hire Purchase Distinguished From Sale on Credit Terms

This is a situation where a person wants to make an outright purchase of goods but may find out that he does not have sufficient money to make full payment for them. In this instance, the person may pay in installment, while the goods pass to the buyer on credit. In this instance, the seller loses his seller"s right of lien on the property and where the buyer resells the goods; the third party will be an innocent purchaser for value without notice and will have a good title.

Q. State the reasons for the adoption of the hire purchase system

There are mainly three reasons for the Hire Purchase system of commercial transactions

1) One of the most important reasons and the first is that it enables credit to someone, who is unable to pay cash for the goods he wants and who would be happy to pay some deposit and therefore pay the balance in instalments at a stipulated rate of interest.

2) The other reason for this system is that the dealer or the manufacturer of the goods cannot always provide credit and yet the goods must be bought to enable the dealer in business.

3) The third option for the adoption of the hire purchase system is the possible evasion of the Money Lenders Act 1939 Cap 124 LFN, 1958, which regulates the conduct of the business of money lending.

Q. Discuss the elements of hire purchase transaction

1. Offer and Acceptance

This is the first essential requirement of the hire-purchase agreement, which will give a party the right to enforce or sue for a breach of the agreement, in order to enforce a contract. If the number of the parties in agreement is two then, the offer in respect of the hire-purchase in writing is constituted by the hirer signing the hire purchase agreement, while the owner signifies acceptance by executing the agreement already signed by the hirer. The acceptance must be communicated to the hirer in order for it to be valid.

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An oral agreement between the hirer and the owner is also possible. If the hire-purchase agreement involves three parties, i.e the owner, the dealer and the hirer, then the offer is made by the hirer. Generally the dealer is not an agent of the owner, but for the purpose of receiving the offer, he may be construed as the agent of the owner for that particular moment. Mere delivery of the goods is not sufficient as acceptance. It is important and compulsory to communicate such to the hirer.

2. Capacity of the Parties

The liability of infants under the general law of contract is the same under the hire-purchase agreements. Prima facie, infants are not liable under the hire-purchase agreement except those relating to necessaries and beneficial contract.

Q. Write brief notes on the obligation of the owner, hirer and dealer

1. Obligation of the Owner

The first obligation of the owner under the common law is to deliver the goods which are the subject matter of the hire purchase agreement to the hirer. It is therefore a fundamental duty and its breach will entitle the hirer to repudiate the contract. Delivery in this sense might not be physical transfer but voluntary transfer of possession from one person to another.

2. Obligation of the Hirer

This is the fundamental obligation of the hirer to accept delivery of the goods, the subject matter of the hire purchase. Such Hirer will be liable in damages if he fails to take delivery within a reasonable time after he had been requested to do so. It is also the primary duty of the hirer to pay, punctually the various sums provided for in the agreement in accordance with the provisions of the agreement. The payment of installments as specified in the hire-purchase agreement is mandatory and must be strictly complied with. There are certain circumstances where the installment payment may be suspended or waived. See the case of Offodile and Sons Enterprises v. S.C.O.A (Nig.) Ltd (1969) CCHCJ 1333. The court held that the owners were entitled to the rentals, and that the hirer‟s strict liability to pay rentals during the war period was only waived or suspended during the civil unrest that should not be regarded as destroying the right to recover the rentals.

3. Obligation of the Dealer

In practice generally, the hirer is allowed to face with the dealer in the transaction to enforce certain rights under an independent contract entered

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into between them despite the fact that the finance company is the owner of the goods. However the dealer is closer to the hirer as stated by the Supreme Court in Amusan and Thomas v. Bentworth Finance Co. Ltd (1966) N.M.L.R 276, that in law, the dealer (S.C.O.A) could be treated as agents of the finance company for the purpose of delivery of the vehicles but not for all purposes.

Q. Give a brief Discussion on the following concepts of Law:

a) Distinction between Agent and Bailee

A bailment arises where personal property is delivered or transferred by the owner (bailer) to another person (bailee) under an agreement that the property can be returned to the owner (bailor) or transferred to a third party or dealt with in any other way indicated by the owner (bailor).

The distinction between the two are in their features which are the fact that:The agent is the representative of his principal but the bailee does not thereby become the representative of the bailor. Also, the agent has authority to contract for and on behalf of his principal and can make him liable in tort. A bailee essentially has no authority to bind the bailor in contract except perhaps to preserve the property the subject of the bailment, and can rarely make the bailor liable in tort.

b) Distinction between Agent and Trustee

For certain purposes, an agent may be treated as a trustee of his principal. An example of this in cases of money had and received on behalf of the principal. Equally, a trustee may for certain purposes be treated as an agent of the beneficiary (cestui que trust). This notwithstanding, both functionaries are nonetheless distinguishable on the following grounds:

I. The relationship of principal and agent is generally consensual in origin, whereas and except in minor cases, a trust is created without the consent of the beneficiary (cestui que trust) or the trustee.

II. When an agent is appointed, this is invariably done by the principal himself, whereas, in a trust situation, the trustee is never appointed by the beneficiary (cestui que trust).

III. The agent is for all purposes, the representative of his principal in dealing with third parties whereas, the trustee is not in anyway the representative of the beneficiary (cestui que trust).

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IV. Actions between the principal and the agent may be barred by lapse of time under the limitation Acts whereas, no such limitation is imposed on actions between the beneficiary (cestui que trust) and the trustee.

c) Distinction between Agent and Servant and Independent Contractor

Basically, an agent is distinguishable from both a servant and an independent contract. The essential feature of the master servant relationship is that the master always has the right to control the diligent performance by the servant of the terms of his employment while a servant merely works for his master, an agent acts for and in place of his principal to effect legal relations of his principal with third parties.

An independent contractor on the other hand renders services to his employer in the course of an independent occupation or calling. He contracts with his employer only as to the results to be achieved, but not as to the means whereby the work is done. Accordingly, he employs his own means and skill and is entirely independent of control and supervision of his employer.

d) The Concept of the Law of Agency

The Law of agency is a very important part of commercial law as companies can only carry out their daily business activities through agents. The essence of the law of agency is to ensure proper and legal dealings when it comes to actions carried out in a representative capacity. Thus the interest of the parties to an Agency relationship, third party inclusive is duly protected by the law.

Q. What is Agency?

Agency relationship is created in a situation where one called “the Agent” acts for and on behalf of another called “the Principal” under the authourity conferred by “the Principal” on “the Agent”, thus, establishing an Agency relationship.

This term has been defined by the Oxford Companion Law to mean:

“The relationship between one person, the agent, having authority to act, and having consented to act on behalf of another, the principal, in contractual relations with a third party. The term is also used more widely as one acting in the interest of another”.

Q. Discuss the theories of agency

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There are three main theories that seek to define and explain the role of the agent. These are:

a. The power-liability theory.

b. The consent theory.

c. The qualified consent theory.

a) The Power-Liability Theory

The concept of agency exists when a person (the agent) acquires the power to alter the principal"s legal relations with a third party in such a way that it is only the principal who can sue, and be sued by that third party. This focuses on the external relationship with the third party and ignores the internal relationship between the principal and the agent. Nevertheless, they are subject to fiduciary duties in the same way as agents narrowly defined.

b) The Consent Theory

This arises in a situation where the Agent, is acting on behalf and for the Principal with the consent of the principal thus establishing a direct relationship with the duo. In other words, the agent must have been invested with a degree of discretion that shows the principal has placed trust and confidence in the agent. It is this which gives rise to a fiduciary duty. Here both the Agent and the principal can be liable for a breach or misconduct.

c) Qualified Consent Theory

This can happen in a situation where the actual authourity of the Principal was not given initially but the action of the Agent became acceptable and approved by the Principal. This theory combines the consent theory with the protection of „misplaced reliance" to account for actual and apparent authority. This is more clearly defined in agency by ratification to reflect commercial reality since authorization may not always be neatly contemporaneous with the initial transaction.

Q. Define a Bill of Lading and state its functions

The bill of lading is an important aspect of the carriage of goods by sea. A bill of lading is a document signed by the ship owner, or by the master or other agent of the ship owner, which states that certain goods have been shipped on a particular ship and sets out the terms on which these goods have been delivered to and received by the ship owner. It is usually in standard form, which in some cases governs the contract of carriage of

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goods by sea. It is divided into two parts: one is blank, on which the names of the party"s freight and the particulars voyage will be reproduced, and one printed containing clauses inserted unilaterally in advance by the carrier.

Bill of lading is a major part of the contract of freight, but it serves a dual purpose either as a contract between the ship owner and the third party or as merely an evidence of goods between the ship owner and the charter party. The bill of lading is in the category of contract referred to as contract of adhesion. A contract of affreightment is normally evidenced by a bill of lading when the goods to be shipped form only part of the cargo which the ship is to carry.

It has been argued that the bill of lading falls into the category of contract referred to as contracts of adhesion, that is, contracts on take it or leave it basis. This view is particularly prominent in the United States of America. The bill of lading is issued to the shipper in sets of three. One is retained by the master or broker, while two copies are dispatched; one by express mail to the buyer or the consignee. It is a document of title, possession of which, in legal sense, is possession of the goods which it represents.

Functions of the Bill of Lading

A bill of lading in its classical legal terms has three main functions:

1. It is the contract of carriage of goods or at least evidences the contract of carriage.

2. It acts as a receipt for goods put on board the vessel.

3. It acts as a document of title.

Q. Define the following concepts i.

The Bill of Lading as a Contract

The bill of lading is merely evidence of the contract between the shipowner and the shipper and a contract between the shipowner and third parties, An assignee who acquires rights in a bill of lading by way of negotiation of the bill of lading is bound by the terms of the contract as contained in the bill of lading or other documents in which the terms of the contract may be contained.

In Crooks v. Allan (1879) 5 Q.B.D, 38, it was held that a bill of lading is not the contract but only an evidence of the contract. But in The Ardennes, it was settled that a bill of lading is not, in itself, the contract between the

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shipowner and the shipper of goods, though it has been said to be excellent evidence of its terms.

ii. The Bill of Lading as a Receipt

This was originally the traditional or original role of the bill of lading. It served as receipt for the goods to which it related that the goods have been taken on board. In its original role, it itemized the goods shipped and gave further particulars of the goods such as the description, quality and shipping mark. In Cox v. Bruce (1886) 18 QBD 147, it was held that it was no part of the master"s duty to insert these quality marks. A document which is not signed by or on behalf of the carrier is not a bill of lading in the legal sense.

iii. The Bill of Lading as a Document of Title

The third function of a bill of lading is that it serves as a document of title to the goods it represents, and its transfer is equal to the physical transfer of the goods. The holder of a bill of lading in respect of goods that had been shipped may effect a transfer of ownership in respect of the goods by transferring the bill of lading to anybody who has given him value for the goods.

iv. The Bill of Lading as a Negotiable Instrument

A bill of lading is an assignable document of title to the goods. If a bill is transferred or assigned by one person to another, either by a mere delivery (as in the case of a bearer of bill of lading) or by an endorsement of the bill of lading followed by its delivery (as in an order bill of lading), the bill of lading is said to have been negotiated, and the party to whom the bill is transferred is referred to as the transferee of the bill of lading.

A bill of lading is not a negotiable instrument under the Bill of Exchange Act, because unlike a bill of exchange, the bona fide holder of a bill of lading and for value cannot acquire a better title than the transferor possesses. A negotiable instrument is therefore an exception to the general rule of law that nemo dat quod non habeat. International commercial contracts, the bill of lading is the pivot upon which other contractual relationships are dependent. The important point, however, in the context of negotiability of the bill of lading is that the fact that a party is an indorsee of the documents does not by itself permit right of suit under the terms of the documents per se.

Q. Write short notes on any three of the following

(a) Pre-colonial judicial system in Nigeria (5 marks)

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Before the introduction of the British system of government and its courts in Nigeria, each tribe had developed their separate Customary Law that binds the people. In the northern States, the Emir as the Supreme Ruler with his advisers constitutes the Supreme Court of the land. They resolve land, family and inheritance disputes. In most cases, these cases are referred to the Alkalis, who are teachers on Islamic law. In the west, the Oba in council adjudicates on all issues brought before them, and they applied strict Customary Law in resolving the disputes. While in the East, the Elders in Council and the age grades help very much in settling disputes and in the application of Customary Law. All the tribes in Nigeria also have a set of Customary laws regulating criminal conducts in the society, known as customary criminal law which covers all known crimes in the society, like theft, rape, murder, manslaughter etc. and they all have powers within their communities to impose fines, imprisonment, banishment from the community, death etc; they also impose punishments like, public caning, public apology, offering of sacrifices or appeasing the gods. The Customary System of both civil and criminal adjudication are very well known to the whole community and observed.

(b) Elements of unfair competition (5 marks)

Unfair competition in commercial law refers to a number of areas of law involving acts by one competitor or group of competitors which harm another in the field, and which may give rise to criminal offenses and civil causes of action. The most common actions falling under the banner of unfair competition include:

Matters pertaining to antitrust law, known in the European Union as competition law. Antitrust violations constituting unfair competition occur when one competitor attempts to force others out of the market (or prevent others from entering the market) through tactics such as predatory pricing or obtaining exclusive purchase rights to raw materials needed to make a competing product.

Trademark infringement and passing off, which occur when the maker of a product uses a name, logo, or other identifying characteristics to deceive consumers into thinking that they are buying the product of a competitor. In the United States, this form of unfair competition is prohibited under the common law and by state statutes, and governed at the federal level by the Lanham Act.

Misappropriation of trade secrets, which occurs when one competitor uses espionage, bribery, or outright theft to obtain economically advantageous information in the possession of another. In the United States, this type of

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activity is forbidden by the Uniform Trade Secrets Act and the Economic Espionage Act of 1996.

Trade libel, the spreading of false information about the quality or characteristics of a competitor's products, is prohibited at common law.

Tortious interference, which occurs when one competitor convinces a party having a relationship with another competitor to breach a contract with, or duty to, the other competitor is also prohibited at common law.

(c) Trade libel (5 marks)

Trade libel is a tort that is related to passing off and is sometimes referred to as malicious falsehood. It could occur where someone publishes information that could be damaging to a trader"s position or reputation. The idea behind malicious falsehood is a tort that is related to passing off, and this could also be referred to as trade libel. It is a tort that originated from slander of title, most especially slander of goods and any false disparagement about a business.

(d) Constituents of an efficient tax system (5 marks)

Q. Explain what trade libel means

Trade libel is a tort that is related to passing off and is sometimes referred to as malicious falsehood. It could occur where someone publishes information that could be damaging to a trader"s position or reputation. The tort is wide ranging, having originated from slander of title to land and developed to include slander of goods and any false disparagement about a business. It could include a false and malicious statement for instance, that a dismissed company director had broken into the company premises and stolen a cash box, was setting up a business of his own and was in breach of his fiduciary duty as accompany director.

Q. Identify the element of trade libel

The essential elements that must be proved by the claimant in an action for trade libel are:

1. A false statement of fact

2. Malice

3. Damage

False Statement

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The defendant must have made a false statement of fact to another person than the claimant. The statement stated must be of fact not a statement of opinion. In trade puff the advert is substantially devoted to the merit of the product while impliedly denigrating the quality of rival products. Even saying that they have the superior product does not amount to false statement provide that no false reason is advanced for lack of quality in another"s product.

Malice

Another essential ingredient is that the statement must have been made with malice. Malice means without just cause or with improper motive. Where the statement is made recklessly or knowing it to be truth, there is malice.

Damage

This tort is not actionable per se but upon proves of actual damage. This is done by proving general loss of business.

Q. What is Unfair Competition?

Unfair Competition means all dishonest or fraudulent rivalry in trade and commerce, but is particularly applied to the practise of endeavouring to substitute one"s own goods or products in the markets for those of another, having an established reputation and extensive sale by means of imitating or counterfeiting the name, title, size, shape, or distinctive peculiarities of the article, or the shape, colour, label, wrapper, or general appearance of the package, or other such simulations, the imitation being carried far enough to mislead the general public or deceive an unwary purchaser, and yet not amounting to an absolute counterfeit or to the infringement of a trade-mark or trade –name.

Q. Identify and explain the fiduciary duties of a director of a Nigerian company. (10 marks)

Fiduciary duties of Directors (loyalty and good faith)

(a) The directors must observe utmost good faith towards the company in any transaction with or for the company S. 279 (1).

(b) They must act at all times in what they honestly believe to be in the best interest of the company. S. 279 (3) and (4).

(c) They must exercise company powers for the purpose specified and not for personal benefit. S. 279(5).

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(d) They must not compromise their discretion to vote in a particular way in any Board resolution S. 279 (6)

(e) They must not delegate their powers in circumstances that amount to abdication of duties S. 279(7).

Q. Explain using relevant authorities, the factors which must be proved by a defendant as a defence for the action for passing off.

The main defences will normally be that the claimant has failed to establish the element of the tort, that is, one of the classic trinity is missing. Defences to passing off are straight forward, and will be highlighted in this unit for easy understanding.

The defences to passing off action include but are not limited to the following;

a. the claimant does not have locus standi. b. the defendant"s activities have not harmed and are not likely to harm the claimant"s goodwill associated with the name, mark or get up.

c. the defendant is not using the name in the course of trade d. the claimant has not established the existence of goodwill associated with the name, mark or get-up in the course of trade.

e. the defendant is making honest use of his name or company name.

f. the claimant has acquiesced in the defendant"s use of the name, mark expressly or impliedly granted the defendant permission to use the name or mark.

g. the claimant is estopped from enforcing his rights under passing off because he has encouraged the defendant"s act.

h. the defence of no common field of activity, that is, the claimant and defendant are not in the same line of business.

Q. Explain the remedies to passing off.

There are numerous remedies available to the claimant in an action for passing off and they range from injunctions (especially interim injunctions), damages or alternatively an account of profit. Additionally, an order may be granted for the delivery up or destruction of the article to which the name or mark has been applied.

Damages will usually be based upon the actual loss attributable to the passing off that may result from the loss of sales experienced by the

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claimant. Damages may also be calculated on a royalty basis, that is, based on the amount that would have been payable by the defendant if he had sought a licence to use the name or mark from the claimant.

A royalty basis could be applicable if it would yield a greater amount than that attributable to loss of sales. It will always be difficult to calculate damages resulting from a loss of sales and each sale by the defendant does not necessarily represent a sale lost by the claimant. Passing off resulting from a false impression that a celebrity has endorsed a product may be determined on the basis of what that celebrity would normally charge as a fee for such endorsement. See Irvine v. Talksport Ltd (2003) FSR 619. If the defendant"s action infringes a trade or services mark as well as constituting passing off, the damages that may be awarded will not cumulative.

Q. What is an offer?

An offer may be defined as a definite undertaking or promise, made by one party with the intention that it shall become binding on the party making it as soon as it is accepted by the party to whom it is addressed. The person making the offer is known as the offeror, and the person to whom it is addressed, the offeree. Thus all commercial transactions must involve an offer and an acceptance. By its very nature, there is no limit to the number of people to whom an offer can be made. It is however noteworthy that a contact comes into existence only between the parties, that is, the offeror and the offeree.

Q. Discuss briefly on legislation and statutes as the primary source of law.

Statutory Materials as a Source of Law

Statutory materials as source of laws include statutes like Sale of Goods Act 1893, Infants Relief Act 1874, Partnership Act 1890, Fatal Ancient Act 1846, Wills Act 1873, Statutes of Fraud 1877, Criminal Code Cap 77, The Nigerian Constitution 1999 [as amended] etc.

Judicial Materials as a Source of Law

Judicial precedent is a source of law. Judicial precedent or case law consists of laws found in judicial decisions. A judicial precedent is the principle of law on which a judicial decision is based. It is the ratio decidendi or the reason for the decision. Other judicial material includes the Nigerian Law Reports. Nigerian law reports are reports of cases, wherever published or edited, decided by Nigerian courts. They include English law reports containing decisions of the Judicial Committee of the Privy Council given on

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appeal from Nigeria, a number of Local and foreign periodicals containing case reports and various reports including loose-sheet (unbound) series.

Reasons for Studying Sources of Law

- It affords an understanding of the various means by which the law governing the society is made or through which it comes into existence, e.g. through formal Legislative processes in parliament or through judicial precedents
- It affords the means by which authoritative written materials are derived.
- The study of the sources of law facilitates an understanding of the process by which law derives its validity.
- A mastery of the sources of law of a given society also enhances an understanding of the historical factors that have influenced the evolution of the laws to such a direction as it had taken.

Secondary Sources of Law

Legal journals are the most current sources of law because of their frequency of publications, some being monthly, quarterly, half-yearly or bi-annual. They contain scholarly articles, commentaries, notes and comments on current legal problems.

In most cases, some of the contents of legal textbooks might have been published or serialized in journals earlier on. Legal journals that are of(iii) Conduct a research on secondary source of general nature may contain articles reflecting various subject background and topical issues in law. Like the law reports, legal periodicals may be broadly categorized into foreign and local titles.

Foreign Materials

Foreign materials as secondary source of law are those materials published outside the jurisdiction of Nigeria. They include treaties and conventions. These treaties and conventions consist of the various International agreements and understandings concluded by countries amongst themselves. Where the law-making bodies of the subscribing nations have ratified such treaties and conventions, they become binding. They serve as useful source of law especially in the areas of international law.

THE USE OF SOURCE MATERIALS

Source materials are those major items or institutions used in carrying out legal research. These source institutions include the law libraries, the

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Nigerian Institute of Advanced Legal Studies and the Nigerian Institute of International Affairs.

Law Library

Law libraries are very essential to the proper study of law. You should be familiar with the cataloguing and shelving systems used in the library to which you have access. Usually, university law libraries classify books by subject and shelve them in accordance with that classification. In order to enable you find easily books required by you, a law library usually has at least one general card catalogue.

A general card catalogue lists all the books in the library. There is at least one card in the catalogue for each book. If only one card catalogue is available it may be arranged by author or by author and title or by subject.

Functions of the Catalogue

(1) The catalogue allows access to the collection and provides service to its users

(2) It enables you to find a book or other library material if you know any of the following: (a) Author‟s name;

(b) Title of the work;

(c) The subject;

(3) It enables you to know the following:

(a) All the works of a given author held in the library

(b) The editions of any work

Organization of Library

Acquisition Department

In the Acquisitions department books and other materials are acquired and processed. Books, pamphlet, government publications and audio- visual materials are received in the Acquisition Department. These materials may be acquired by purchase, gift and by legal deposit especially if the library has been made a depository by the government.

Reference Services

The Reference Department of the library is very important in the library. It is in this section that the library staff answers reference questions and also

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provides bibliographic services to the library patrons. Books in this part of the library cannot be borrowed like books in the open shelves; they can only be used or consulted in the library.

Judicial System before Colonization

Before the introduction of the British system of government and its courts in Nigeria, each tribe had developed their separate Customary Law that binds the people. In the northern States, the Emir as the Supreme Ruler with his advisers constitutes the Supreme Court of the land.

In most cases, these cases are referred to the Alkalis, who are teachers on Islamic law. In the west, the Oba in council adjudicates on all issues brought before them, and they applied strict Customary Law in resolving the disputes. While in the East, the Elders in Council and the age grades help very much in settling disputes and in the application of Customary Law.

Customary Law

Before the advent of colonization there is what we call customary law. (As we learnt above).Customary law has been described as body of law that evolved from the custom of the native people.

Customary law has a distinctive characteristic of being totally unwritten and only known to its subjects. It is not all the practices and customs that have the force of law, many practices are merely complied with without any fear of being sanctioned when there is a breach, while some that touches the life and well being of the community or affects the well being of the community is normally backed with sanctions.

British Courts

In Southern Nigeria before the amalgamation of the country, a single court named Supreme Court served the region. The Supreme Court consisted of the Chief Justice and a small number of pursne judges. The court operated as a court of law and it sometimes apply the doctrines of equity. As a court of law, its powers are unlimited. It operates as 3 organs:

1. Full Court
2. Divisional Court
3. District Courts

Inferior Courts

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There are four types of courts that could be regarded in Nigeria as inferior courts, while two, though strictly could not be regarded as a court but play important role in the administration of Justice in Nigeria.

Native (Area) and Customary Courts

The Native and Customary Courts in respective states are established under the Customary Courts Law for the respective States. Each Court is established not directly by the enabling Statute but by Warrants issued by the enabling authority. In the Eastern States the Commissioner for Justice and in Lagos State the Attorney-General and Commissioner for Justice and in the Northern States by Warrant by the Chief Judge of the State. The warrant defines the jurisdiction, powers, and quorum of the court, it established, and its provisions in that behalf are conclusive. Area and Customary Courts are the responsibility of the Local Government Council. Customary courts members including the Presidents are appointed by the Customary Courts Judicial Service Committee for the State.

Qualifications for appointment are as follows:

i. He is literate in English Language

ii. He possess at least the Primary School Leaving Certificate or its. Equivalent and suitable experience

iii. He is a native of the area of jurisdiction of the Customary Court.

Area Courts/Customary Courts

Closely related to this is the issue of service of processes the Federal Legislature has enacted a uniform regulations on service of processes. The Sheriffs and Civil Process Act allows the Order of judgment of High Court of a state to be registered in the High Court of another State and so executed by the bailiffs of that state.

Jurisdiction

Every Magistrate shall have jurisdiction throughout Lagos State. A magistrate"s civil and criminal jurisdiction shall extend over any territorial water adjacent to the district in which for the time being he is exercising jurisdiction as well as over inland waters whether within or adjacent to such district.

The Chief Magistrate Grade 1 shall have and exercise jurisdiction in civil causes or matters in all personal actions whether arising from contract or from tort, or from both where the Debt or Damage claimed is not more than N25, 000.00. The Magistrate has until the Recovery of Residential Premises Edict, power over landlord and tenant matters

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A magistrate is vested with powers to try criminal and civil cases summarily. Summary trial means with dispatch with minimum of formalities. Apart from capital offences, the magistrate may try any criminal matter provided the accused is properly given the option to choose summary trial before the magistrate or prefer his matter before the High Court.

THE ROLE OF MAGISTRATES IN THE JUDICIAL SYSTEM

They act as the bridge between the Customary Courts and the High Court; the Customary Courts are concerned essentially with the administration of customary law and local enactments. Their personnel are untrained, and are generally non suitable for the enforcement or interpretation of serious laws but inconsequential enactments.

The High Courts on the other hand are manned by lawyers and the procedure very elaborate, strict and formal. The personnel are highly trained individuals both in law and procedure. Thus, there is an obvious gap that must be filled by an intermediate court having a personnel neither completely untrained nor over-exalted, and a procedure which would be both simple and fast.

District Courts

The District Courts are magistrate courts exercising only civil jurisdiction in the Northern Nigeria. They are graded Senior District judge, District Judges grade I, II and III corresponding to the grades of magistrates. They have the same organization, and the magisterial districts serve as he districts for the district courts. The jurisdiction of the district courts is the same as the civil jurisdiction of magistrates in the rest of the country.

Justice of The Peace

The justice of the peace need not be a magistrate in the first instance, he may be appointed as justice of the peace by publication in the state Gazette by the Attorney-General of the state. No qualification is legally required for appointment, but in practice a person to be appointed must reside in the area to which he is to be appointed and be worthy.

Their main concern is with conservation of peace. Remand to a magistrate‟s court persons who are accused, but not convicted to crime, or to admit them to bail. Issue search warrants. Take solemn affirmations and statutory declarations. Administer any oath, which may be required to be taken before him in the exercise of any of the jurisdiction and power confirmed upon him by law.

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The justices of the peace are mostly Chiefs, retired top administrative officers and police officers considered capable enough to be entrusted with some of the judicial powers of a magistrate. A justice of the peace has the powers, rights and duties of a magistrate to:

- Issue summons and warrants for the purpose of compelling the attendance
- Issue writs of summons and summonses in civil cases

Juvenile Courts

The first enactment of Juvenile Courts in Nigeria is the Children and Young Persons Ordinance 1943. This has been re-enacted and modified by the different States. A Juvenile court is established in every magisterial district in each state. The court is constituted by a magistrate sitting with such other persons as the Chief Judge of the state may appoint.

A Juvenile Court has jurisdiction to try all types of offences committed by the child i.e. children under the age of 14 and young persons i.e. persons between the age of 14 and 18 years of age. The Magistrate is the Chairman of the panel, with at least two other persons selected by the magistrate from time to time.

A juvenile court has power to commit a juvenile, by means of a corrective order, to approved institution, or a remand home, or to the care of any fit person who is willing to undertake his care, or to the supervision of a probation officer for a period not exceeding 3 years, or order his parents or guardian to pay a fine or enter into recognizance to exercise proper care and guardianship, or to order the juvenile to be caned.

SUPREME COURT OF NIGERIA

The law governing the Supreme Court derives from the following sources: The Constitution of the Federal Republic of Nigeria 1999. Which establishes the court, and prescribes the bulk of its jurisdiction and the method for the appointment and dismissal of judges.

- The Supreme Court Act
- The Supreme Court rules made by the court

COMPOSITION AND ORGANIZATION OF THE COURT

The constitution of the Federal Republic of Nigeria provided for a Court consisting of the Chief Justices of Nigeria, and such number of justices of the Supreme Court not exceeding twenty- one as may be prescribed by an Act of the National Assembly.

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The number of Justices of the Supreme Court had been increased from the former limit of 10 to 19 the Chief Justice of Nigeria shall be appointed by the President on the recommendation of the national Judicial Service Commission subject to confirmation by the Senate. The appointment to the office of Chief Justice of Nigeria is therefore not at the discretion of the

President, but is based on the recommendation of the National Judicial Service Commission subject to the confirmatory power of the Senate.

The minimum qualification of the Justice of the Supreme Court is fifteen-year post call as a legal practitioner.

JURISDICTION

The Supreme Court is the final court of Appeal in Nigeria and the decision of the court is final and is binding on all parties. In effect, there is no appeal from the decision of the court. The court has both original and appellate jurisdiction.

The Supreme Court has original jurisdiction over any dispute between the Federation and a state, or between the federation and a state, or between states if and in so far as that dispute involves any question (whether law or fact) on which the existence or extent of a legal right depends.

COMPOSITION AND ORGANIZATION OF THE

COURT The Court of Appeal consists of the:

President of the Court of Appeal and Such number of Justices of Court of Appeal not less than forty

At the level of the Court of Appeal, the Justices of the Court of Appeal must include at least three Justices learned in Islamic law and three in Customary Law

The President of the Court of Appeal is appointed by the President of Nigeria on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate while appointment of the Justice of the Court of Appeal is made by the President on the recommendation of the National Judicial Council.

The qualification of the President of the Court is not started in the Constitution though it may be argued that the same qualification as applies to the Justice of the Supreme Court should apply to the President of the Court of Appeal, as they are rated in most cases equal.

Q. Discuss the structure of the Customary Court of Appeal.

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APPEALS

Appeals to the Court of Appeal may be classified into two, Appeals as of right and Appeals by leave of the court or the lower court.

a. Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance.

b. Where the ground of appeal involves questions of law alone, decision in any civil or criminal proceedings.

c. Decisions in any civil a criminal proceedings on questions as to the interpretation or application of this Constitution.

d. Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of chapter IV of this Constitution has been, is being or is likely to be contravened in relation to any person.

e. Decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death.

Appeals with Leave

Like the Supreme Court, appeals lie to the Court of Appeal from the High Courts, with the leave of either the High Court or the Court of Appeal, in all other cases. The practice is to first seek the leave of the High Court, to appeal, and when such is refused, the appellate may then apply to the Court of Appeal for leave to Appeal. It is important to state that only parties to suit may appeal or in cases where there are interested parties, then they must first apply for leave to appeal to the High Court or the Court of Appeal.

IMPORTANCE OF THE COURT OF APPEAL

The Court of Appeal is a very important Court in the machinery of justice in Nigeria, unlike the Supreme Court that sits only in Abuja, the Court of Appeal has its divisions closer to the states and thus affords more citizens the opportunity to appeal when aggrieved against any decision of the High Courts.

Being a Federal Court, and or an appellate one at that, the allegations of corruption is non- existent there, and many litigants are satisfied with the decisions. It also helps to limit the number of cases going to the Supreme Court, as majority of the cases terminate at the Court of Appeal.

That unlike the Supreme Court, the Court of Appeal has experts in both Sharia and Customary law for proper adjudication on matter arising from

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the Sharia Court of Appeal of state and Customary Court of Appeal of the states.

The High Courts

The High court is a Superior Court of Record with unlimited jurisdiction. It has original jurisdiction and also appellate jurisdiction over the decisions of the magistrate Courts, Juvenile courts and any other jurisdiction assigned under any other law. The Federal High courts and the State High Courts are of coordinate jurisdiction but having different spores of responsibility, both recognized under the constitution.

The Federal High Court

The Federal High Court took it‟s origin from the then Federal Revenue Court Established by Federal Revenue Court Act, 1973, in order to simplify the machinery of Justice in Nigeria, the Constitution Drafting Committee of the 1979 Constitution simply renamed the Federal Revenue Court as Federal High Court with its jurisdiction and powers unaltered. It was thus a court of limited jurisdiction.

The Federal High Court also has exclusive jurisdiction and powers in respect of treason, treasonable felony and allied offences.

A complication was introduced by Decree 107 of 1993 which seems to enlarge the jurisdiction of the Federal High Court and also stated that all „Matters involving the Federal Government and it‟s agencies must to the exclusion of any other court be determined by the Federal High Court. However, under the 1999 constitution which we shall examine the position seems to have been corrected and streamlined.

JURISDICTION

- Relating to the revenue of the Federal Government
- Taxation of companies and persons subject to Federal Taxation
- Customs and excise duties, claims against customs service
- Bankruptcy and insolvency
- Aviation and safety of aircraft
- Arms, ammunition and explosive
- Drugs and poisons
- Heights and measures
- The administration or the management and control of the Federal Government or any of its agencies
- Matters arising from the operation of Companies and Allied Matters Act and other Allied Issues

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CONSTITUTION

The High Court consists of the Chief Judge of the State and each number of Judges as may be prescribed by the House of Assembly of the State. The Chief Judge is the head of the State Judiciary and he exercises administrative control over the entire system, though his judicial powers is not greater than those of other Judges of the High Court; all of whom enjoy equal judicial power and authority.

ORGANIZATION

High Court of a State is organized on a territorial basis, the State is divided into Judicial Division of the State High Court. There is only one High Court of a State, the Judicial Division are merely created for administrative purposes. The Courts are numbered serially, while in most States, the number 1 is preserved for the Chief Judge in terms of judicial duties and functions, the judge of the High Court in Nigeria is a special person, he is an expert in all areas of law, and must adjudicate on all matters signed to him.

CIVIL AND CRIMINAL JURISDICTION

The high Court thus have original and appellate jurisdiction in both criminal and civil proceedings.

S 272 (1) of the Constitution states „subject to the provisions of this constitution, the High Court of a State shall have jurisdiction to hear and determine only civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in use or to hear and determine only criminal proceedings involving or relating to any penalty, punishment or other liability in respect of an offence committed by any person.

SUPERVISORY JURISDICTION OF THE HIGH COURT

The High Court exercise supervisory jurisdiction over the lower courts to ensure not only that justice is done but is seen manifestly to have been done. A mistake as to facts or law committed by a lower court or failure to observe a fundamental rule of evidence, corruption, obvious bias, or failure to observe rule of national justice could lead to miscarriage of justice. The High Court supervises the lower courts in various ways, these are:

1. Appeal

2. Case Stated

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3. Review by means of mandamus, prohibition, certiorari and habeas corpus proceedings

4. Revision through monthly returns submitted by inferior courts

5. Transfer of cases from one court to another

The Sharia Court Of Appeal

The Constitution made provisions for Sharia Court of Appeal for the Federal Capital Territory and the State, the Constitution and jurisdiction are virtually the same.

CONSTITUTION

The court is constituted by the Grand Khadi of the court and such number of khadis of the court as may be prescribed by the House of Assembly in the case of a State and National Assembly in cases of Federal Capital Territory **(F.C.T).**

JURISDICTION

It is essentially an appellate court, and sits over appeals from inferior courts in civil proceedings involving questions of Islamic personal law, these include:

a. Marriage concluded under Islamic Law, validity, dissolution of the Marriage, family relationship or guardianship of an infant.

b. Succession inheritance where the deceased person is a Muslim

c. Where all the parties to a dispute are all Muslims and have requested the lower court to determine their case according to Islamic Personal Law

OFFER

An offer may be defined as a definite undertaking or promise, made by one party with the intention that it shall become binding on the party making it as soon as it is accepted by the party to whom it is addressed. The person making the offer is known as the offeror, and the person to whom it is addressed, the offeree. Thus all commercial transactions must involve an offer and an acceptance.

Communication of an Offer

An offer is only subject to acceptance if it is duly communicated by the Offeror to the offeree. No person can accept an offer of which he has no knowledge.

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Offer Distinguished from Invitation to Treat

It is necessary to distinguish a true offer from what is called an "Invitation to treat", because very often an invitation to make an offer (i.e an invitation to treat) is confused with an offer. The major distinctive feature between an offer and an invitation to treat is that for an offer to be a true offer, the offeror must have completed his part in the formation of a contract by finally declaring his readiness to undertake an obligation upon certain conditions, leaving to the offeree the option of acceptance or refusal.

An invitation to treat, on the other hand, is a preliminary to an offer such expressions or acts of a person to which no legal consequence are intended to attach but may only be regarded as preliminaries to the making of a contract are generally referred to as "invitation to treat".

Termination of an Offer

It is the general rule that once an offer is made it remains open for acceptance until it becomes terminated by certain factors which includes:

REVOCATION: Revocation simply means withdrawal. An offer can be revoked any time before acceptance notwithstanding the expected or stipulated time of expiration.

REJECTION: This happens when the Offeree decline the offer. Rejection of an offer terminates the offer. Whenever an offer is rejected, it can no longer be accepted, except where a fresh offer is made. Rejection of an offer may either be by a direct intentional refusal of the offer or by a counter offer.

LAPSE OF TIME: If an offer is stated to be open for a fixed time, it clearly cannot be accepted after that time.

OCCURRENCE OR NON-OCCURRENCE OF CONDITION: - If an offer is expressly or impliedly made to terminate on the occurrence of some condition, it ceases to exist and becomes incapable of acceptance after that condition has occurred.

DEATH BEFORE ACCEPTANCE: - The death of both the offeror and the offeree before acceptance terminates the offer.

MEANING AND CONDITIONS OF ACCEPTANCE

Acceptance occurs when the offeree indicates his intention and willingness to take up the offer and decides to be bound by the terms of the offer and once accepted it is complete and the offer becomes irrevocable. For an acceptance to be valid, it must fulfil the following conditions. The acceptance

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must be unqualified. An acceptance must not be conditional. An offer can only be accepted by the person to whom it is made or by his agent duly authorized. An acceptance must be made not only with full knowledge of the offer but also in reliance on it

Modes of Communicating Acceptance

The general rule is that acceptance of an offer is not complete until it has been communicated to the offeror either by the offeree himself or by his duly authorized agent. Therefore, acceptance becomes operative only when it has been communicated to the offeror. The acceptance of an offer can be communicated in any of the following modes.

- Where a particular mode is prescribed
- Where no particular mode is prescribed
- Where acceptance is by post

Rules of Consideration

Consideration must not be past: A past consideration is a promise given after the act is completed and is independent of it that is the act is wholly executed and finished before the promise is made.

Consideration need not be adequate: In the absence of fraud, duress or misrepresentation the courts will not question the adequacy of consideration. This means that they do not measure the values of the consideration furnished by the plaintiff and the defendant respectively

Consideration must be real and for value: Since consideration is a „price" it must be something real, something of value. Therefore, if the price of which the plaintiff bought the defendant"s promise is worthless or unreal, that price, whether it be in the form of an act, or a promise to do an act, will not be sufficient consideration and therefore incapable of supporting a contract.

Consideration must be legal

CONDITIONS

The word condition is used in two senses. In the first sense it means a term or a stipulation in a contract which is absolutely essential to its existence, the breach of which entitles the injure party to repudiate the contract and to treat it as discharged.

WARRANTIES

Warranty ordinarily denotes a binding promise, but when it is used in a narrower and technical sense, it means a subsidiary term in a contract (i.e a

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term of minor impotence) a breach of which gives no right to repudiate the contract, but only a right to an action for damages for the loss sustained.

The main difference between a condition and a warranty is that a breach of the former entitles the other party to treat the whole contract as discharged, while a breach of the latter merely entitles the other party to claim damages, but does not absolve in from performing his duties under the contract.

Q. What is Agency?

Agency

Agency relationship is created in a situation where one called "the Agent" acts for and on behalf of another called "the Principal" under the authourity conferred by "the Principal" on "the Agent", thus, establishing an Agency relationship.

Theories of Agency

There are three main theories that seek to define and explain the role of the agent. These are:

a. The power-liability theory

b. The consent theory

c. The qualified consent theory

The Power-Liability

Theory The concept of agency exists when a person (the agent) acquires the power to alter the principal"s legal relations with a third party in such a way that it is only the principal who can sue, and be sued by that third party.

The Consent Theory

This arises in a situation where the Agent, is acting on behalf and for the Principal with the consent of the principal thus establishing a direct relationship with the duo. In other words, the agent must have been invested with a degree of discretion that shows the principal has placed trust and confidence in the agent.

Qualified Consent Theory

This can happen in a situation where the actual authourity of the Principal was not given initially but the action of the Agent became acceptable and approved by the Principal. This theory combines the consent theory with the

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protection of „misplaced reliance" to account for actual and apparent authority.

Agent and Trustee

For certain purposes, an agent may be treated as a trustee of his principal. An example of this in cases of money had and received on behalf of the principal.

Agent, Servant and Independent Contractor

Basically, an agent is distinguishable from both a servant and an independent contract. The essential feature of the master servant relationship is that the master always has the right to control the diligent performance by the servant of the terms of his employment while a servant merely works for his master, an agent acts for and in place of his principal to effect legal relations of his principal with third parties.

Agent and Bailee

A bailment arises where personal property is delivered or transferred by the owner (bailer) to another person (bailee) under an agreement that the property can be returned to the owner (bailor) or transferred to a third party or dealt with in any other way indicated by the owner (bailor).

The distinction between the two are in their features which are the fact that:The agent is the representative of his principal but the bailee does not thereby become the representative of the bailor.

General and Special Agents

A General Agent is one who is authorized to act for and on behalf of his principal in all his affairs in connection with a particular kind of business, trade or profession or who represents him in the ordinary course of his own trade, business or profession, as agent. While A special agent on the other hand is one authorized to act for and on behalf of his principal on or for special occasion.

Commission Agents

A commissioned agent is the one to whom certain goods have been consigned for a foreign principal. A commissioned agent is therefore saddled with dual responsibility, firstly as an agent to his principal with equal rights and obligation of any other agent and secondly as an agent who does not bind his principal contractually to third parties.

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Mercantile Agents

A mercantile agent is an agent having authority to sell or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods.

There are three types of mercantile agents. These are Factors, Brokers and Del Credere Agents.

Factors Agent: A person to whom goods are consigned for sale by a merchant residing abroad or at a distance away from the place of sale and who normally sells in his own name without disclosing that of his principal.

Brokers: A broker is a mercantile agent who, in the ordinary course of his business is employed to make contact with third parties for the purchase of goods, or property or for the sale of his principal"s goods or property of which he is not entrusted with possession or document of title thereto.

Del Credere: Agent A del credere agent is one who, in consideration of extra remuneration called a del credere commission, guarantees to his principal that third parties with whom he enters into contract for and on behalf of the principal shall duly pay any sums becoming due under those contracts.

THE TYPES OF

AGENCY 1. Agency by Agreement or Contract

This occurs in a situation where the Agency agreement is formalised by the express intention of both parties. The Principal appoints and the Agent consent.

2. Agency by Estoppel

The general position of the law in this area is to the effect that where a supposed principal intentionally or otherwise causes a third party to believe that another person is his agent and the third party so relies in dealing with the supposed agent, the principal will be estopped from denying the existence of an agency relationship between him and supposed agent.

3. Agency By Ratification

This occurs in a situation where a supposed agent portrays himself to be representing a supposed principal whose consent he might not have secured and the principal on becoming aware of this assented to the transaction.

4. Agency by Necessity

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This occurs in a situation where a person acts in good faith as regards the property of another with the intention of protecting the interest of the owner or that of the general good, such an agent will be regarded as an agent of necessity.

Conditions for Necessity of Agency

The existence or otherwise of an agency of authority is dependant on the fulfilment of certain conditions and these are:

I. That there is an emergency situation necessitating instantaneous action
II. That it was impossible for the claimed agent to communicate with the presumed principal at the material time

III. That the action taken was reasonably necessary having regard to the circumstances in the case. IV. That the claimed agent acted bona fide and in the interest of the presumed principal

Disclosed Principal and Third Party

The general rule is that where a person contracts as agent for a principal the contract is the contract of the principal and not that of the agent, and prima-facie, at common law the only person who may sue is the principal, and the only person who can be sued is the principal.

The Doctrine of Undisclosed Principal

An undisclosed principal is one whose existence and identity are unknown to the third party at the time of entering into a contract with an agent. Under the doctrine of undisclosed principal, it is permissible, in appropriate circumstances for such principal on whose behalf a contract has been entered into by an agent to sue and be sued on the contract.

THE DUTY OF AGENT

Duty to Perform Duty of Obedience or Loyalty Duty of Care and Skill Duty of Personal Performance

Duty to Act in Good Faith

Duty to Account

THE DUTY OF PRINCIPAL

Duty to Remunerate Duty of Re-Imbursement and Indemnity

REMEDIES AVAILABLE TO THE PRINCIPAL PARTIES

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Dismissal: The principal may determine or bring the agency relationship to an end or otherwise dismiss the agent from his employment without notice.

Rescission and Damages: The principal may also rescind any contract made on his behalf by the agent without authority or in breach of his duty and this may include claims for damages.

Action for Account: The principal may take an action to compel the agent to render an account for all his dealings on his behalf, in respect of their agency relationship.

Action in Tort: The principal may in addition sue the agent for conversion where the latter has received property on his behalf and has misappropriated or misused it.

Private Prosecution: The principal may be entitled to and may take out private summons against the agent where the latter‟s conduct, act or omission is criminal.

REMEDIES AVAILABLE TO THE AGENT

Damages: The agent may sue the principal to recover any loss or injury he may have suffered as a result of the principal‟s failure to perform any of his duties under the agency arrangement.

Right of Set-Off: Whenever the principal institutes an action in a court of law against the agent, the latter may claim a right of set- off or counter-claim of engagement due to him from the principal by way of remuneration, indemnity or re-imbursement.

Right of Lien: The agent also has a right of lien on the property, goods or chattels of his principal in his lawful possession or custody in respect of and up to the amount of his claim for remuneration, losses, liabilities and expanses incurred lawfully and for advances made in favour of the principal.

Right of Stoppage in Transit: Where the agent stands towards his principal in the position of an unpaid seller of goods, he may exercise this right against the goods of his principal.

TERMINATION OF AGENCY RELATIONSHIP

Termination of Agency by Acts of the Parties: the parties can on their own accord agree to bring the relationship to an end.

Termination of Agency by Operation of Law: this happens in a situation where the law will presume certain operations in such a relationship and it will be deemed to have occurred.

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WHAT IS SALE OF GOODS?

Sale of Goods is defined in section 1(1) of the Sale of Goods Act, 1893 as "A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price".

A contract of sale, in which the property in the goods is transferred from the seller to the buyer

An agreement to sell, in which the transfer of the property takes place „in future" (at a future time), or a fulfillment of certain conditions

SALE GOODS AND OTHER TRANSACTIONS

Sale of Goods is distinguishable from other commercial transactions but similar to them in context. Some of these transactions are:

SALE AND EXCHANGE

A contract of exchange simply means the giving of goods to the person in exchange for the other persons goods-barter. In other words, money, which is a prerequisite for a contract of sale is not involved in a contract of exchange. When there is an exchange the property in the goods passes.

SALE AND BAILMENT

A bailment is a transaction under which goods are delivered by one party (the bailor) to another (the bailee), on certain specified terms, which generally provide that the bailee is to have possession of the goods and subsequently redeliver then to the bailor in accordance with his instruction.

SALE AND HIRE PURCHASE

Generally, contracts of hire purchase resemble contract of sale very closely, and indeed in practically all cases of hire-purchase, the ultimate sale of the goods is the real object of the transaction.

SALE AND GIFT

A gift is an immediate, voluntary and gratuitous transfer of any property from one person to another. In other words, it is a transfer of property without any consideration. It is, not binding.

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TERMS OF CONTRACT OF SALE OF GOODS

THE PRICE

In a sale of goods contract there must be a money consideration called "the price". This usually includes any form of payment except trading by barter which is exchange of goods for good without money.

CATEGORIES OF GOODS

There are different categories of goods and they are provided for by the virtue of Section 5 of the Act. Goods may be categorized as:

(a) Existing Goods

(b) Specific (or ascertained) goods

(c) Goods sold by description

(d) Future Goods

EXISTING GOODS

These are goods that are owned and possessed by the seller at the time of contract. This can be meant to be that they are goods actually in existence when the contract is made. Such existing goods may either the specific or unascertained.

SPECIFIC (OR ASCERTAINED) GOODS

These are goods identified and agreed upon at the time the contract of sale was made. For example, "a 2009 Rhumba Motor Boat with Engine number 10465 and chassis number AB60421".

GOODS SOLD BY DESCRIPTION

These are goods sold by description, but which were not identified or agreed upon at the time of the contract but are included in a particular class of goods, for example "10" "18 kilogrammes mahogany wood"

FUTURE GOODS

These are goods not yet in existence, and goods in existence but not yet acquired by the seller. That is to say, goods yet to be acquired or manufactured by the seller after the contract has been made.

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