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CLL307: COMMERCIAL LAW

explain the term "source of law".

Answer

The term "source of law" is used in various senses. firstly, 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.

Identify and explain the various sources of law

Answer

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.

Statutory source

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 source.

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

Distinguish between statutory source of law and judicial source of law

Answer

Statutory source	Judicial source
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,	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

Criminal Code Cap 77, The Nigerian Constitution 1999	Reports. Nigerian law reports are reports of cases, wherever published or edited, decided by Nigerian courts.
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State the Reasons For Studying Sources of Law

Answer

1. 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
2. It affords the means by which authoritative written materials are derived. This constitutes the literary source such as are represented by the statute books and the various compilations of the annual laws and the statutes in force including textbooks and monographs, with which a lawyer should be thoroughly familiar.
3. The study of the sources of law facilitates an understanding of the process by which law derives its validity. This refers to formal sources of law such as reflected in the constitution of a country and the activities of enacting bodies like the National Assembly.
4. 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. By delving into such historical sources, it may be possible to trace the nature and content of the law with a view to arriving at the stuff of which the law was made.

Discuss briefly the secondary materials as source of law

Answer

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. Periodicals oftentimes contain book reviews, seminars, and roundtable and conference announcements. Some of the standard foreign law journals as secondary source of law include, the Cambridge law journal; (C.L.J.), Harvard Law Journal (H.L.J.), Yale Law Journal (Y.L.J), Harvard law review (H.L.R). Remarkable advancement has been recorded in the area of local periodicals publishing. Some typical examples of academic and professional local journals as secondary source of law include the Nigerian Law Journal (N.L.J), The Nigerian Journal of Contemporary Law (N.Y.C.L).

Why do you think Newspaper writing on legal issues is veritable source of law?

Answer

Newspaper Interviews granted by legal writers and jurists can also serve as a secondary source of law. This is because these legal luminaries are regarded as “authorities” and therefore their speeches or legal letters written by them are persuasive and form secondary source of law. Law libraries subscribe to newspapers and magazines not for the mere purpose of general reading. A deliberate effort is usually made by the law librarian to cut feature articles and notable news items and clip them neatly for storage. Such materials are thus arranged under broad subject headings in alphabetical sequence for

easy retrieval. Newspaper and magazine clippings provide the most accessible current sources of research materials and therefore form secondary source of law. Articles in newspapers often cover wide areas of subject matters spanning every conceivable field of human endeavour. The only major snag about newspaper clippings as source of law is that the facts contained in a particular report or write-up may need to be further clarified or verified possibly from the writer or the maker for authenticity

Attempt an appropriate classification of materials falling under primary and secondary sources of law and explain them briefly.

Answer

secondary sources of law

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. Typical examples of treaties include Nigeria's treaties in force, 1971; consolidated treaty series, 1920 – 1946 and the United Nations Treaty Series 1946. These are all vital sources of international laws.

Words and phrase Defined

Another secondary source of law is the multi- volume work titled "Words and Phrases Defined". This covers wide areas of definition and interpretation of legal expressions. An example of such is the work of Onomade (1988) in guide to words phrases and doctrines in Nigeria law.

Bibliographies and general references

Bibliographies serve as most useful source of law. A bibliography is a publication that lists the topic or titles of materials available in a given subject. The general arrangement is usually in alphabetical order by subject. Compilation of legal bibliography is the preserve of the professional law librarian. Typical examples of legal bibliographies, general or specific include Jegede's "Nigeria legal Bibliography" (1993), which is a detailed listing of invaluable source materials on the various aspects of the Nigeria law. General references usually at the end of a chapter in a book or at the end of an articles or paper assist in legal research by offering directives as to further sources of information. Such general references have become universally acknowledged sources of law and legal writing

Thesis, Dissertations and Technical Reports.

These are written research reports and authoritative pontifications in the area of law. They essentially have the characteristics of originality being the outcome of spirited research endeavours. These are listings and implications of such materials in aid of legal research. The lists are helpful in the preliminary aspects of legal research especially in literature searches and reviews, thereby forming secondary sources of law.

Legal textbooks and Monographs

These constitute the bulk of the stock of a law library and can therefore be regarded as the most authoritative secondary sources of law. Legal textbooks consist of scholarly views, opinions, commentaries and authoritative expositions in certain subject area. Some legal series have become household names in academic and professional legal parlance.

Government Publications.

Government documents have assumed great importance as source of law owing to the fact that they emanate directly from government sources, they are always considered to be very authoritative. For instance, any information contain in the Gazette are deemed to have been issued by authority and as such deemed to be authentic. This also applies, for example, to all documents and official publications

emanating from and bearing the stamp of Her Majesty's Stationary Office (HMSO) in the United Kingdom. Official publications include books, pamphlets, posters and pictorial items issued by the government printer. Such materials also consist of laws, regulations, directives, notices, decrees, edicts, bye – laws and important announcement relating to the state as contained in the gazette or an extra ordinary publication.

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.

Briefly discuss the shelving of legal textbooks in the law library

Answer

1. Legal periodicals

- (a) Nigerian Legal Periodicals
- (b) English Legal Periodicals
- (c) Other Legal Periodicals arranged by country

2. Statute books

- (a) Nigerian Statute Books
- (b) English Statute Books
- (c) Other Statute Books arranged by country

3. Law reports

- (a) Nigerian law reports
- (b) English law reports
- (c) Other law reports arranged by country

4. Digests

- (a) Nigerian law digests
- (b) English law digests
- (c) Other law digests arranged by country

1. Encyclopedia 2. Reference books Generally, textbooks may be similarly divided into three classes, namely: (1) Nigerian law textbooks; (2) English law textbooks; and (3) Other textbooks.

Discuss the library catalogue and the functions it performs

Answer

The Library Catalogue

Libraries are of various sizes ranging from those with very few books and other materials to the very large ones with several thousands of materials. The former are very easy to cope with. The contents of such libraries could be known by heart. But in the larger libraries, a formal organization of their contents is imperative to make their use beneficial and less frustrating. The catalogue is therefore a record of materials held by the library ranging from books, magazine / journals, documents, theses, and dissertations to non-print media sources. The catalogues, therefore, is the key to the library holding since it contains entries, representing each material in the library. It is a vital tool to the use of the library because of the functions it performs.

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

Explain Reference Services and state the major characteristics of reference materials

Answer

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 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. Books that are housed in this part of the library have the inscription "REFERENCE ONLY, NOT TO BE TAKEN OUT OF THE LIBRARY".

The major characteristics of reference materials are:

- (1) The materials are meant to be consulted in the library only;
- (2) The library usually buys one copy or in rare cases two copies;
- (3) They are not meant to be read from cover to cover. Users usually
- [4]look for specific information. They contain factual information;
- [5] They are housed in a separate section within the library;
- (6) The arrangement of each material may be made to suit the peculiarity of that material.

Discuss the evolution of the court system in Nigeria?

Answer

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.

Explain the repugnancy test on customary law?

Answer

Repugnancy to natural justice, equity and good conscience Incompatibility In the field of criminal law, initially the native courts were allowed to administer the customary criminal law alongside the criminal code in 1959, the Western and Northern Regional Governments in Nigeria abolished all criminal jurisdiction under customary law unless the customary offence with local enactments. In the field of

criminal law, initially the native courts were allowed to administer the customary criminal law alongside the criminal code in 1959, the Western and Northern Regional Governments in Nigeria abolished all criminal jurisdiction under customary law unless the customary offence may have been embodied in a law made by a local council or a native authority. In 1960, the Nigerian Constitution put the final nail on the coffin of customary criminal law, when it declares that, no person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is presented in a written law.

Mention all inferior courts

Answer

Native (Area)
Customary Courts
Magistrate Courts
district courts

Discuss and explain customary courts

Answer

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. Qualification 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 and
- iii. He is a native of the area of jurisdiction of the Customary Court. A Customary Court has both civil and criminal jurisdiction. In certain civil matters the Customary court has unlimited jurisdiction i.e. a. Matrimonial cases and other matters between persons married under Customary law, that is matrimonial causes and related matters under customary law; and b. Suits relating to the guardianship and custody of children under customary law. It has limited jurisdiction in (1) causes and matters relating to inheritance upon intestacy and the administration of intestate estates under customary law, and (2) other cases under customary law – provided the subject matter of the case does not exceed N100.00. The Customary Court would exercise criminal jurisdiction in the following cases: a. Any offence against the provisions of an enactment, which expressly confers jurisdiction on the court. b. Offences against rules and bye-laws made by Local Government Council or having effect as if so made under the provisions of any enactment and in force in the area of jurisdiction of the court. c. Contempt of court committed in the face of the court.

Discuss the jurisdiction and powers of the magistrate courts

Answer

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. However, they could still adjudicate on landlord and tenant matters where the tenancy is over commercial premises only subject to the N250, 000.00 limits. This has been discovered lately to be too low and has divested the Magistrate Court of jurisdiction in a lot of minor cases that could easily have been handled by them, thus leading to congestion of the High Courts.

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 magistrate court lacks jurisdiction over land, matrimonial and succession matters. The Magistrate Court entertains appeals from the Customary Courts, and the Magistrate sits as an appellate court over appeals from the customary courts of the State.

Mention 5 duties of the Justice of the peace.

Answer

- i. Issue summons and warrants for the purpose of compelling the attendance.
- ii. Issue writs of summons and summonses in civil cases.
- iii. Remand to a magistrate's court persons who are accused, but not convicted to crime, or to admit them to bail.
- iv. Issue search warrants.
- v. Take solemn affirmations and statutory declarations.
- vi. Administer any oath, which may be required to be taken before him in the exercise of any of the jurisdiction and power conferred upon him by law
- vii. Power to preserve peace, to suppress riots and affrays, and to disperse all disorderly and tumultuous assemblies, and for any of these purposes call in the aid and assistance of police officers and others, who shall solely be bound to obey all such lawful commands

Discuss the importance of Juvenile court in the judicial system

Answer

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. The Magistrate is the Chairman of the panel, with at least two other persons selected by the magistrate from time to time. The magistrate may sit alone where no panel members have been appointed or where no member of the panel turned up at any sitting of the court and the magistrate thinks it inexpedient to adjourn the proceedings.

The Juvenile Court is part of the magistrate court, in order to avoid contamination, it must sit in a separate place or at different times from those in or at which the ordinary sittings of the magistrate courts are held. 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. If jurisdiction has been assumed on the basis of the age, the trial may go on, even if it was later discovered otherwise. A juvenile court cannot convict or use the word convict in its sentence and no child shall be ordered to be imprisoned. 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.

Compare and contrast, the role and duties of the coroner's inquest and justice of the peace.

Answer

Coroner inquest

A coroner's inquest may not strictly be called a court of law but every magistrate is permitted by law to hold inquests under the coroner's law. It is the duty of a coroner to hold an inquest whenever there is lying in his district the body of a deceased person who died a violent or unnatural death or a sudden death of which the cause is unknown or in a place or under circumstances which in the opinion of the coroner makes the holding of an inquest necessary and desirable. An inquest must likewise be held in all cases of death in a lunatic asylum or of prisoners or persons in police custody. A coroner's court is merely a fact-finding body, concerned with the ascertainment of the identity of the deceased and of how, when and under what circumstances he met with his death. A coroner does not commit anyone to trial even where it is discovered that such a person caused the death of the deceased.

Justice of peace

A justice of the peace has the powers, rights and duties of a magistrate to: i. Issue summons and warrants for the purpose of compelling the attendance. ii. Issue writs of summons and summonses in civil cases. 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 conferred upon him by law. Power to preserve peace, to suppress riots and affrays, and to disperse all disorderly and tumultuous assemblies, and for any of these purposes call in the aid and assistance of police officers and others, who shall solely be bound to obey all such lawful commands.

Discuss the jurisdiction of the Federal High Court

Answer

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. As we have discussed above, 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. In addition, the National Assembly may add, not detract from the original jurisdiction of the court, where the dispute is between the Chief executive of a government and another, or between the Arm of Federal Government and a State. Adefarasin J, in the case of Governor of Kaduna State v the President of Nigeria. In trying to answer the above stated as follows: "It seems to me that S 212 is designed as well to cover only dispute between one government and government. I consider also that any dispute raises question of law or fact touching upon a legal right". The Supreme Court cannot exercise original jurisdiction over criminal matters.

What is the relevance of the Sharia court of Appeal?

answer

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.

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). The appointment of the Grand Khadis is made by the Governor acting on the recommendation of the National Judicial Council and confirmed by the Senate. The appointment of other khadis made by the Governor on the recommendation of the National Judicial Council in case of a State while that of the F.C.T. is made by President on the recommendation of the National Judicial Council. The minimum qualification for the appointment into the office of a khadi of the Sharia Court of Appeal is ten years post – qualification as a legal practitioner and the person must have obtained a recognized qualification in Islamic Law from an institution acceptable to the National Judicial Council, or in the alternative, the person has obtained a recognized qualification in Islamic Law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than two years, and (i) he either has considerable experience in the practice of Islamic Law, or (ii) he is a distinguished scholar of Islamic Law. The implication is that the Khadi of the court need not be a lawyer provided he has attended an Islamic training institution approved by the National Judicial Council and has considerable experience, though the measure of this considerable experience is not specified. Islamic Law itself is regarded as Customary Law, or rules stated in the Koran guiding devoted Muslims. The rule itself only binds those people subject to it and no other person.

Discuss the civil and criminal jurisdiction of the High Court of a State

Answer

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. The high Court thus have original and appellate jurisdiction in both criminal and civil proceedings. The jurisdiction of the High Court in all matters is unlimited. This means that the court is not limited by monetary limitations unlike the Magistrate Courts, and subject to those areas specifically reserve under S 251 for the Federal High Court, and other election matters which is the exclusive preserve of Election Tribunals, the High Court has jurisdiction to try form of issue or matter so far as it relates to determination or extent of a civil right.

Examine the importance of the High Courts in administration of criminal Justice system in Nigeria.

Answer

- a. Relating to the revenue of the Federal Government
- b. Taxation of companies and persons subject to Federal Taxation.
- c. Customs and excise duties, claims against customs service.
- d. Borrowing and other financial institutions actions between two banks, or Central Bank of Nigeria and matters arising out of Banking related issues and other fiscal measures, this does not include Banker/Customer disputes.
- e. Matters arising from the operation of Companies and Allied Matters Act and other Allied Issues.
- f. Copyright, patent designs trade marks and passing-off, Industrial designs and merchandise marks business names, commercial and industrial monopolies, combines and trusts standards of goods and commodities and industrial standards.
- g. Admiralty, supply and immigration matters inland waterways and the international waterways, Federal Ports, and consular trade representation.
- h. Citizenship, naturalization and aliens, deportation, extradition immigration passports and visa

matters.

- i. Bankruptcy and insolvency
- j. Aviation and safety of aircraft
- k. Arms, ammunition and explosives
- l. Drugs and poisons
- m. Heights and measures
- n. The administration or the management and control of the Federal Government or any of its agencies
- o. Proceedings for injunction or declaration affecting the Federal Government or its agencies.

The Federal High Court also has exclusive jurisdiction and powers in respect of treason, treasonable felony and allied offences. The interpretation of the jurisdiction of the Federal High Court has been the subject of a plethora of cases mainly due to the vague and ambiguous manner the jurisdiction of the court was couched.

What is an offer?

Answer

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

Distinguish between an offer and an invitation to treat?

Answer

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". The essence of an invitation to treat is that by it the supposed offerer is merely initiating negotiations from which an agreement might or might not in time result.

Enumerate and discuss the various ways by which an offer could be terminated.

Answer

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.

LAPSE OF TIME:- If an offer is stated to be open for a fixed time, it clearly cannot be accepted after that time. Therefore, if the time for the acceptance of an offer is limited or fixed, the offer lapses automatically, if not accepted within the prescribed 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. The death of the offeree before acceptance terminates the offer whether death is notified to the offeror or not unless, on its true construction, the offer was made to the offeree and his successors in title

LOSS OF CONTRACTUAL CAPACITY BY EITHER PARTY: - If either of the parties loses his contractual capacity, for example through becoming insane, before the offer is accepted, the offer lapses.

ACCEPTANCE

At any point in time that an offer is made, the expectation is that such an offer should be accepted by whosoever could fulfil the condition for acceptance, thus, a clear definition of acceptance will be made here in order to give a better picture of the concept.

Explain the term acceptance and explain the conditions of acceptance

Answer

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 must be unqualified.

It must correspond with the offer. Therefore, any variation or modification of the offer while accepting or any acceptance which is dubiously expressed will be invalid. An attempt to accept an offer with qualification or addition operates as a counter-offer and not an acceptance.

An acceptance must not be conditional.

Therefore, a conditional assent to the terms of an offer is not an acceptance. In *ODUFUNDADE V OSOSAMI* (1972) U.I.L.R. 101, it was held that an acceptance expressed as 'a tentative agreement without engagement' could not result in a contract.

An offer can only be accepted by the person to whom it is made or by his agent duly authorized. But where an offer is made to the public at large, any member of the public may accept if (see *Carlill V Carbolic Smokeball Co.* (supra)). Where the offeror prescribes a certain mode of acceptance, an acceptance otherwise than in the manner prescribed by the offeror, is ineffective. However, where the offeror merely indicates, without insisting on a particular mode of acceptance, any acceptance in some other but more expeditious mode will be good.

An acceptance must be made not only with full knowledge of the offer but also in reliance on it. Therefore, a contract cannot result from the mere coincidence of two independent acts. Thus, if a person does some act in ignorance of a standing offer, but subsequently discovers that he has unwittingly done an act for which a reward has been offered, he cannot claim the reward, since his act was not done with the knowledge of or in reliance on the offer.

List and explain the types of consideration

Answer

Executory: When the offer and acceptance consist of promises – the offeree making a promise in return for the offeror's promise consideration is regarded as executory. This happens where the delivery and payment are to be made in the future. Both parties became bound in the contract, prior to actual performance.

Executed: Executed consideration on the other hand is when an act is performed in return for a promise. The most common examples of this are offers of reward by the owner of a lost article to anyone who finds and returns it to him, or offers of reward by the police or anyone else for information

leading to the arrest and conviction of a criminal.

Explain the INTENTION TO CREATE LEGAL RELATION

Answer

It is the general rule that the intention of the parties to a contract is material. Where there is an action on any contractual relationship, the law will read meaning into the contract to discover whether the parties intended to be bound by the contract. Where the intention is lacking, the contract is void.

Explain express terms

Answer

Express terms are those terms or substance material to the existence of the agreements which are clearly stated at the inception of the contract and which are within the understanding of the parties involved. Express terms are easily identified in a contract or agreement that is subject to writing as opposed to those orally entered into.

Explain Implied Terms

Answer

There are instances in which the Court will read meaning into and give effect to other factors that are associated with the contract even when they are not expressly stated, in order to discover the actual intention of the parties when entering into the contract, and such other factors are known as implied terms. Implied terms are terms implied in the contract, and they, like express terms may assume the character of conditions or of warranties.

define the term conditions

Answer

a condition is a term of major importance which forms the main basis of the contract, the breach of which normally gives the aggrieved party a right, at his option, to repudiate the contract and treat it as at an end.

Explain the term warranties

Answer

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

What is Agency?

answer

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"

List and explain the theory of an agency

Answer

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.

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

Qualified Consent Theory

This can happen in a situation where the actual authority 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.

List and explain the classification of agents

Answer

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.

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. In essence, when one is dealing with a mercantile agent, it becomes pertinent to enquire whether in the "customary course of the agent's business he has authority to sell, consign for sale or to buy or raise money on the security of goods in his possession as such agent

Discuss briefly the types of agency

Answer

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.

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

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.

Agency by Necessity

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.

Mention and discuss the duty of agents

Answer

Duty to Perform

The primary duty of an agent particularly where he was appointed under an agreement with the principal is to execute his agency in accordance with the terms of such agreement.

Duty of Obedience or Loyalty

When an agent is executing the terms of his agency, he is obliged to carry out such instructions as may be given to him by the principal relating thereto and must be seen to act promptly.

Duty of Care and Skill

In the course of executing the terms of his agency, an agent is bound to exhibit such care, skill and judgment as are required under the circumstances of the particular situations.

Duty of Personal Performance

The basic principle of law in this regard is covered by the maxim "Delegatus Non Potest Delegare" which means a delegated power cannot be further delegated. Agency relationship is one of confidentiality of principal and the agent, and the agent is generally expected to perform his duties as an agent, personally.

Duty to Act in Good Faith

This duty of an agent arises principally from the fiduciary nature or character of the principalagent relationship. Agency relationship, as a whole, is based essentially on the trust reposed on the agent by the principal. The principal employs an agent normally because he requires that agent's personal service or expertise.

Duty to Account

It is a fundamental obligation of every agent to keep and to render appropriate account of his stewardship to his principal whenever he is called upon to do so.

Mention and discuss the REMEDIES AVAILABLE TO THE PARTIES

Answer

1. Dismissal: The principal may determine or bring the agency relationship to an end or otherwise dismiss the agent from his employment without notice. **2. 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. **3. 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. This may also include an account for all money or property of the principal in his possession. **4. 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. He may also institute an action for negligence where such is in contravention of the agency agreement. 5. 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.

Mention and discuss the Remedies Available to the Agent

Answer

- 1. 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. This may include his right to indemnity or re-imbursement and damages unless the parties agreed otherwise or the agent has waived or otherwise lost his right to sue
- 2. 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.
- 3. 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 expenses incurred lawfully and for advances made in favour of the principal.
- 4. 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.

What is a sale of Goods?

Answer

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".

Mention and discuss the CATEGORIES OF GOODS

Answer

- A. 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 be specific or unascertained.
- B. 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"
- C. 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"
- D. 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

Mention and discuss the duty of a seller

Answer

A. Duty to Deliver Goods at the Right Time Delivery is the voluntary transfer of possession from one person to another. See Section 62(1). It does not necessarily mean transportation. Transfer of possession may be actual or constructive or conceptualized as legal possession. Stipulation as to time is of essence in the contract of sale of goods.

B. Duty to Pass Good Title: This is a condition of the contract for which the buyer can terminate the contract and seek damages for any loss, or affirm the contract and recover damages for loss. The right of the buyer is to receive the best title to the goods, that is, title that cannot be defeated by another person.

C. Duty to Supply Goods of The Right and Satisfactory Quality: There is usually an implied term that the goods supplied under the contract are of satisfactory quality and correspond with the description. Goods are regarded as sold by description, where the buyer contracts to buy the goods in reliance on the description given by or on behalf of the seller.

Mention and discuss the DUTY OF THE BUYER

Answer

A. DUTY TO PAY THE PRICE It is the primary duty of the buyer to pay for the price of the goods supplied to him. Payment for the goods and delivery of the goods are concurrent conditions and the buyer is not entitled to claim possession of the goods unless he is ready and willing to pay the price in accordance with the contract.

B. DUTY TO ACCEPT THE GOODS This is also one of the major duties of the buyer, the duty to accept the goods in accordance with the terms of the contract. In this instance, acceptance in essence involves taking possession of the goods by the buyer.

Mention and discuss the rights to sellers

Answer

A. Personal Remedies The seller of goods under a sale of goods contract has two remedies under this head available to him as against the ones available under the real remedies. This is an action that directly affects the buyer for the seller to recover sums of money representing that he has lost, it is a right in personam.

B. Real Remedies The seller may exercise some real rights against the goods as against the personal remedies discussed above. These are real rights and are in relation to the goods. They are rights in rem.

C. Rescission and Re-sale A contract of sale is not rescinded by the exercise of the rights of lien or stoppage. Here, the buyer may be able to require delivery on tendering payment of the price. Where property in the goods has passed to the buyer, it will not revert in the seller merely because they exercise the right of lien or stoppage. Note that the seller must terminate the contract before property in the goods will revert.

Mention and discuss the RIGHT OF THE BUYER

Answer

Recovery of the Price

If the buyer has paid the price, he may sue the seller to recover the amount paid if the goods are not delivered or the consideration for the payment has failed.

Rejection of the Goods

The buyer can repudiate the contract if the seller is in breach and the breach goes to the root of the agreement. That is, the breach is a breach of condition and not warranty.

Acceptance

The buyer loses the right to reject the goods if all or part of the goods are accepted, unless the contract permits rejection after acceptance.

Damages

Any claim the buyer may have for damages a distinction must be made between a claim for failure to deliver and a claim relating to goods that have been delivered

Mention the ways in which a breach of contract may arise

Answer

- ♣ late tender of the goods
- ♣ breach of an implied condition
- ♣ right of rejection by virtue of an express or implied term or usage of trade.

What is hire purchase transaction

Answer

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.

Explain the following terms

Obligation of the Owner

Obligation of the Hirer

Obligation of the Dealer

Answer

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 into between them despite the fact that the finance company is the owner of the goods.

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.

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.

Mention and discuss briefly the component of a good tax

Answer

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.

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

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

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.

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

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.

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.

Mention the importance of taxation

Answer

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

what is unfair competition

answer

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.

Mention the Scope of “Unfair Competition”

Answer

A. The equitable doctrine of unfair competition is not confined to cases of actual market competition between similar products of different parties, but extends to all cases in which one party fraudulently seeks to sell his goods as those of another.

B. It is not confined to practices involving competitive injury but extends to practises resulting in injury to consumers.

Mention The most common actions falling under the banner of unfair competition

Answer

- 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 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.

Define arbitration

Answer

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

Definition of commercial arbitration

Answer

Commercial arbitration relates to arbitration of relationship of a commercial nature. It is generally agreed that arbitration is a particularly suitable approach for the resolution of disputes arising out of business 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.

Identify the advantages of arbitration

Answer

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.

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.

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

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

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

Highlight the advantages of arbitral institution

answer

- Automatic incorporation of the rule book of an arbitral institution is one of the principal advantages of institutional arbitration.
- Another advantage of institutional arbitration is the provision of trained personnel by the arbitral institution that the parties have chosen to oversee their dispute.
- 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.

Define ARBITRABILITY

Answer

Wiktionary defined arbitrability as “the characteristics of being arbitrable; the ability to be arbitrated”. It is the ability of a matter to be arbitrated. The term “arbitrability” is used to determine whether the dispute under the arbitration agreement could be settled by arbitration

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

Answer

- 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

Explain the remedies to passing off

Answer

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 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.

Explain what trade libel means

Answer

This 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.

Identify the element of trade libel

Answer

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; and
3. damage

False Statement

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.

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.

What is a company

Answer

A company was defined by Lord Justice James as an association of persons formed for a common object while Lord Lindley defines a company as a voluntary association or an organization of many persons who

contribute money or money's worth to a common stock and employ it in some trade or business and who share profit or loss arising therefrom.

Mention and explain briefly the types of company

Answer

Company Limited by Shares: - In Nigeria, these are companies incorporated under the Companies and Allied Matters Act. A company limited by shares is a company where the liability of the shareholders for the debts of the company is limited to the amount unpaid on their shares (see Sec A on 21 CAMA 2004).

Company Limited by Guarantee :- When a company is limited by guarantee the motivation is not to make profits, this is a company having the liability of the members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of the company being wound up

Unlimited Company:- An unlimited company is a company where the liability of the members is unlimited. It follows that the members shall be personally responsible for the debts of the company.

Private Company: A private company is a company that restricts the right to transfer its shares and limits the number of its members to 50, not including the persons who are in the employment of the company and persons who having been formerly in the employment of the company who were while in that employment and having continued after the determination of that employment to be members of the company and (3) prohibits any invitation to the public to subscribe for any shares or debentures of the company. Minimum share capital of private company is N10,000.00

Who is a director

Answer

A Director is a person duly appointed to direct and manage the business of a company. it covers any person occupying the position of director in a company irrespective of the name by which he is called (

List and explain the types of director

Answer

Non Executive Directors; These are Directors who do not hold any employment with the company as directors i.e. their position as directors is not by virtue of their being employed and paid salaries in the company. They only collect sitting allowances.

Executive Directors: these are persons who are employed by the company as Directors under a contract of employment. Executive directors are responsible for the day to day running of the company, while non Executive directors only attend periodic meetings of the Board of Directors where company policies are formulated for the Executive directors to implement.

Alternate Directors: These types of directors are usually created by the Articles of Association of the company. They are directors appointed by a serving director to seat on the board in his place in case he has to be absent.

Shadow Directors: these are persons on whose directives and instructions the Board of Directors is accustomed to act. This refers to those who control the decisions of the board from behind the scenes. Directors by estoppel. Section 250 and 260 of CAMA. Where a company holds someone out as its director and he so acts, the company is bound by his acts and the defect in his appointment i.e. the fact that he was never appointed in the first place will not be a defence for the company.

The concept of consideration has gone beyond ordinary definition, its operation are firmly entrenched in certain characteristics, forms and rules which uphold its practices. Discuss

Answer

A judicial definition of consideration has been given in the case of *CURIE V MISA* (1875) L. R. 10 Exch 153 at 162 where Lush J. said: "A valuable consideration in the eye of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other. Thus consideration does not only consist of profit by one party but also exist where the other party abandoning some legal rights in the present, or limits his legal freedom of motion in the future as an inducement for the promise of the first. So it is irrelevant whether one party benefits but enough that he accepts the consideration that the party giving it does thereby undertake some burden or lose something which is in contemplation of law may be of value."

Rules of Consideration

1. 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 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.
2. 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. 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.
3. 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.
4. Consideration must be legal: A consideration will not be deemed proper until it has a legal value. It is 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

Arbitration has been defined as the reference of a dispute or difference between not less than two parties for determination after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction. Discuss this in line with probable benefits over and above litigation.

Answer

Arbitration is a private law system available only to those who agree to use it instead of litigation. Parties to an agreement may further agree that any dispute arising there from shall be settled through arbitration by one or more arbitrators. The agreement must be in writing (Arbitration and Conciliation Act, Section 1). Under Sections 4 and 5 of the Act, where an action is the subject of an arbitration agreement, the court can enforce the arbitration agreement and direct the parties to go to arbitration. An award in arbitration is enforceable as a judgment. Arbitration in the primitive years was governed by

system of laws known as the Lex Mercatoria. The most common dispute among merchants in those days had to do with either the price or quality of the goods supplied and it is expected of them to submit such disputes to a neutral third party who would normally be a fellow merchant to assist them settle it amicably.

The ACA does not stipulate any particular subject matter that may not be referred to arbitration. The question of whether or not a dispute is arbitrable is therefore left for interpretation by the Courts. In *Ogunwale v. Syrian Arab Republic* the Court of Appeal held that the test for determining whether a dispute is referable to arbitration is that the dispute or difference must necessarily arise from the clause contained in the agreement. However not all disputes are necessarily arbitrable. Only disputes arising from commercial transactions are referable to arbitration.

some matters are generally more suitable for litigation than arbitration. For instance, applications for immediate enforcement of right or preservation of res e.g. the enforcement of fundamental human rights, application for *Anton Pillar*, *Mareva* and other injunctions are less suitable for arbitration than litigation. In addition, since an arbitrator has no statutory power of joinder under the ACA, multi party proceedings may be less suitable for arbitration unless the arbitration agreement makes specific provision for it.

The Magistrate Courts' operations are daily carried out by the Registrars who are assigned with specific duties in that regard and likewise is the Customary Courts' operation as an inferior court which membership have requisite qualifications and specific jurisdiction under the Nigerian Legal System. Discuss

Answer

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

A Customary Court has both civil and criminal jurisdiction. In certain civil matters the Customary court has unlimited jurisdiction i.e. a. Matrimonial cases and other matters between persons married under Customary law, that is matrimonial causes and related matters under customary law; and b. Suits relating to the guardianship and custody of children under customary law. It has limited jurisdiction in (1) causes and matters relating to inheritance upon intestacy and the administration of intestate estates under customary law, and (2) other cases under customary law – provided the subject matter of the case does not exceed N100.00. The Customary Court would exercise criminal jurisdiction in the following cases: a. Any offence against the provisions of an enactment, which expressly confers jurisdiction on the

court. b. Offences against rules and bye-laws made by Local Government Council or having effect as if so made under the provisions of any enactment and in force in the area of jurisdiction of the court. c. Contempt of court committed in the face of the court.

Give a brief Discussion on the following concepts of Law:

Distinction between Agent and Bailee

Distinction between Agent and Trustee

Distinction between Agent and Servant and Independent Contractor

The Concept of the Law of Agency

Theories of Law of Agency

Answer

Distinction between Agent and Bailee

A bailment arises where personal property is delivered or transferred by the owner (bailor) 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.

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).
- 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.

Distinction between Agent and Servant and Independent Contractor

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.

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

Theories of Law 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. 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.

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

Qualified Consent Theory

This can happen in a situation where the actual authority 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.

Everything in nature does not just exist, everything thing that exists is traceable to a valid or contestable source; how true will this assertion be as regards “Law”. Examine this vis-à-vis the purpose of the study of law in the light of the thoughts and reasoning of jurists and writers.

Answer

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. Periodicals oftentimes contain book reviews, seminars, and roundtable and conference announcements. Some of the standard foreign law journals as secondary source of law include, the Cambridge law journal; (C.L.J.), Harvard Law Journal (H.L.J.), Yale Law Journal (Y.L.J), Harvard law review (H.L.R). Remarkable advancement has been recorded in the area of local periodicals publishing. Some typical examples of academic and professional local journals as secondary source of law include the Nigerian Law Journal (N.L.J), The Nigerian Journal of Contemporary Law (N.Y.C.L).

Law libraries are very essential to the proper study of law.

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.

Answer

Nemo dat quod non habeat is a general rule built on the legal principle of the Latin Maxim which means 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.

1. SALE UNDER AGENCY The main exception under this head is the sale by an agent as created by Section 21 Rule 1 and it states that an innocent buyer would acquire a good title where the seller sells under the authority or consent of the owner. In this instance, it means that a sale by an agent without actual authority will give the purchaser a good title if the sale is within the agent's apparent or usual authority.

2. ESTOPPEL If the owner of goods represents that another is his agent or allows a person to represent himself as his agent, although no such agency exists in fact, he, the owner will be estopped from denying the existence of his agent's authority to act, on his behalf, in relation to the goods. This exception is created by the later part of Section 21(1) of the Act

3. SALE BY A PERSON WITH VOIDABLE TITLE By section 23, the buyer, who buys in good faith and without notice of any defect in the title of the seller, will acquire good title if the goods are bought from a seller whose title is voidable but at the time of the sale it has not been avoided.

4. SALE BY A SELLER IN POSSESSION Where a person who sold goods retains possession of them and resells them, for instance, where A, the seller, sell goods to B and then resells the same goods to C. If property has passed to B, but the seller is still in possession of the goods or documents of title to the goods, and the seller sells them to C, who purchased in good faith and without notice of the sale to, this second transaction passes title to C. B will only have an action for breach of contract against the seller. Section 25 of the Act For the second buyer to acquire good title, the seller must deliver possession of the goods or documents of title. merely contracting a second sale is not sufficient to give title to the second buyer

5. SALE BY A BUYER IN POSSESSION Section 25 (2) of the Act provides for this. The goods or title to the documents of title must have been obtained under a sale or an agreement to sell that which is bought or agreed to buy. **6. SALE IN MARKET OVERT** The word market overt was been defined by Jervis, J in *Lee v. Bayes* (1856) 18 CB 599 as an open, public and legally constituted market. Note that an unauthorized market does not qualify as a market overt.

7. SALE BY COURT ORDER The second arm of section 21(2) (b) of the sale of Goods Act protects all sales carried out under the order of a court of competent jurisdiction. The High Court has the power to order the sale of any goods which may be of perishable nature, or likely to deteriorate from keeping or which for any other just and sufficient reason it may be desirable to have sold at once.

Every conceptual study has an origin and probably a viable reason behind its voyage and this is inclusive of a study in law, critically examine the possible origin and reasons behind its study.

Answer

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. For instance, the common law is a historical source of English law, for the origin of many rules of English law is traceable to the common 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. Ordinances were laws passed by the Legislative body during the colonial era. In most cases, such enactments were usually in the form of orders from the mother- country’s parliament and were deemed to be applicable to the colonies concerned.

Reasons For Studying Sources of Law

1. 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
2. It affords the means by which authoritative written materials are derived. This constitutes the literary source such as are represented by the statute books and the various compilations of the annual laws and the statutes in force including textbooks and monographs, with which a lawyer should be thoroughly familiar.
3. The study of the sources of law facilitates an understanding of the process by which law derives its validity. This refers to formal sources of law such as reflected in the constitution of a country and the activities of enacting bodies like the National Assembly.
4. 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. By delving into such historical sources, it may be possible to trace the nature and content of the law with a view to arriving at the stuff of which the law was made

There are other commercial transaction relationships which may have the similitude of Agency but yet quite different in nature, examine these in the light of their distinct features and kindly examine along the sustaining theories of Agency.

answer

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). 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.

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. 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.

Agent and Bailee

A bailment arises where personal property is delivered or transferred by the owner (bailor) 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.

The Customary Court is an example of the inferior courts under the Nigerian Legal System with delineated jurisdiction and which membership must fulfil certain qualifications. So also is the Magistrate Court which has its daily operations sustained by the Registrars who are marked with certain specific duties. Discuss

Answer

THE INFERIOR COURTS

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. Qualification 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 and iii.

He is a native of the area of jurisdiction of the Customary Court. A Customary Court has both civil and criminal jurisdiction. In certain civil matters the Customary court has unlimited jurisdiction i.e. a. Matrimonial cases and other matters between persons married under Customary law, that is matrimonial causes and related matters under customary law; and b. Suits relating to the guardianship and custody of children under customary law. It has limited jurisdiction in (1) causes and matters relating to inheritance upon intestacy and the administration of intestate estates under customary law, and (2) other cases under customary law – provided the subject matter of the case does not exceed N100.00. The Customary Court would exercise criminal jurisdiction in the following cases: a. Any offence against the provisions of an enactment, which expressly confers jurisdiction on the court. b. Offences against rules and bye-laws made by Local Government Council or having effect as if so made under the provisions of any enactment and in force in the area of jurisdiction of the court. c. Contempt of court committed in the face of the court.

Critically examine the concept of consideration under the Law of Contract vis-à-vis its characteristics, forms and practical rules governing its operations.

Answer

The plaintiff must show that the defendant's promise was part of a bargain to which he himself contributed. A moral obligation does not constitute consideration. A judicial definition of consideration has been given in the case of *CURIE V MISA* (1875) L. R. 10 Exch 153 at 162 where Lush J. said: "A valuable consideration in the eye of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other. Thus consideration does not only consist of profit by one party but also exist where the other party abandoning some legal rights in the present, or limits his legal freedom of motion in the future as an inducement for the promise of the first. So it is irrelevant whether one party benefits but enough that he accepts the consideration that the party giving it does thereby undertake some burden or lose something which is in contemplation of law may be of value."

Consideration must Move from the Promisee

The general rule in this regard is that only a person who has furnished consideration in a contract can bring an action to enforce a promise given by the defendant in that contract. The absence of consideration on the part of the promisee (plaintiff) can take one of various forms.

Where Consideration is furnished by a Third Party and not the Plaintiff

The general rule is that only a party to a contract can of course bring an action to enforce it. This is the whole essence of the doctrine of privity of contract. The law is that a party that has not furnished consideration in a contract cannot be strictly regarded as a party to that contract. Therefore any action based on consideration furnished by another party will necessarily fail. Where the plaintiff belongs to an organization that furnished the consideration, then he must sue in a representative capacity and not in his own name on his own behalf. See *Gbadamosi V Mbadiwe* (1964) 2 All N.L.R. 19.

Rules of Consideration

1. **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 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. Some time 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.

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. 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.

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: 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.

Define a bill of lading and state its functions

Answer

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 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.

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

Define the following concepts

The bill of lading as a contract

The bill of lading as a receipt

The bill of lading as a document of title

The bill of lading as a negotiable instrument

Answer

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

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.

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.

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.

Define Hire purchase

Answer

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. It also defines 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."

Distinguish between hire purchase and the following legal transactions;

Hire purchase from hire

Hire purchase from loans and mortgages

Hire purchase from sales on credit

Answer

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.

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 instalment, 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.

State the Reason for the Adoption of the Hire Purchase System

Answer

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.

Explain the ways in which an agency agreement can be formed, and using illustrative examples to support your answer, explain the theories of agency

Answer

Agency by agreement

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. This was established in the case of *AYUA V ADASU & ORS* (1992) 3 N.W.L.R. 598 Akanbi, JCA, restated the law in the following statement of page 611 thus; "In the ordinary law of Agency, the paradigm is that in which the agent and the principal agree that one should act for the other. And the term "agency" is assigned to this basic principle which involves consent of both parties.

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. 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.

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

Qualified Consent Theory

This can happen in a situation where the actual authority 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.

The law provides that if a person does not have the title to the goods they cannot pass good title. explain the sellers real right in relation to the goods (rights in rem)

Answer

Rights of the Unpaid Seller

An unpaid seller is a seller who has not been paid the whole of the price or when the bill of exchange or other negotiable instrument has been received as conditional payment and the condition for which it has been received has not been fulfilled by reason of the dishonour of the instrument it. See Section 38 (1). It does not matter that the time for payment has not arrived, note that if the buyer has tendered the price and the buyer has refused to accept, he cannot be an unpaid seller within the meaning of the Act. See *Lyons and Co v. May and Baker Ltd* (1923) 1KB 685.

Rights of Stoppage in Transit

The right is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price. The unpaid seller has the right to resume possession of goods which are left in his possession as long as they are still in the course of transit.

Rescission and Re-sale

A contract of sale is not rescinded by the exercise of the rights of lien or stoppage. Here, the buyer may be able to require delivery on tendering payment of the price. Where property in the goods has passed to the buyer, it will not revert in the seller merely because they exercise the right of lien or stoppage. Note that the seller must terminate the contract before property in the goods will revert.