

EDO STATE POLYTECHNIC, USEN
GENERAL PRINCIPLE OF NIGERIA LAW (BUS 124)
MARKING SCHEME 2019

QUESTION 1:

Define a state and list organs of a state

SOLUTION

A state is an independent political society occupying a definite territory the members of which are united together for the purpose of resisting external force and the preservation of internal order. (a) Executive (b) Legislative (c) Judiciary

How is a candidate for an election to the office deem to have been elected

He has not less than $\frac{1}{4}$ of the votes cast of the election in each of at least 2/3 of all the states in the Federation and the Federal Capital Territory Abuja, S. 133(b) Constitution

Qualification for presidential candidate

Qualification of candidate seeking election to the office of the president

- i. A citizen of Nigeria by birth
- ii. Attained the age of 40 years
- iii. A member of political party
- iv. Educated up to school certificate or equivalent

Qualification for a Governor

All the above except he attained the age of 35 years.

QUESTION 2:

Define Trespass.

SOLUTION

Trespass is a wrongful interference with a person or its property which is not desired by the plaintiff.

How can parental authority and consent amount to defence to trespass to person?

A parent or a guardian of a child may lawfully chastise or confine the child and will not be liable for assault, battery or imprisonment. Thus a father of 18 years old boy can give him a moderate beating or confine him to his room on the account of the boy misbehavior.

Consent - where a plaintiff consent to what would otherwise amounts to assault or battery by the defendant, the defendant will have consent as a complete defence. A participant in a boxing match cannot recover damages from his opponent in respect of blows inflicted upon him during the match. He is presumed to have consented to them.

QUESTION 3

(a) What is nuisance?

This is any inconveniences or annoyance cause by the defendant to the plaintiff.

(b) What is public nuisance?

This is committed where a person carries on some harmful activity which affect the general public or a section of the public.

(c) Who has the authority to institute action of public nuisance?

Public nuisance is a crime and actionable by the Attorney General. This is to avoid multiplicity of actions against one individual.

QUESTION 4

- (a) List four qualifications of a candidate seeking the office of president of Nigeria**
- (b) How is he deemed to have been elected**
- (c) How is he declared by the returning officer as winner of the election?**

SOLUTION

- (a)i. He is a citizen of Nigeria by birth**
- ii. He is a member of a political party and sponsored by that party.**
- iii. He has attained the age of forty years.**

- iv. He has been educated up to at least school certificate level or its equivalent.
- (b) He has not less than one-quarter of the votes cast at the election in each of at least two thirds of all the state in the federation and the Federal Capital Territory, Abuja.
- (c) That having meet the requirement of the law and scored the highest of the votes cast in the election is hereby declared the winner of the election and return elected.

QUESTION 5

Every person shall be entitled to his personal liberty S.35 of the CFN. List five reasons how a person's right to liberty can be denied legally under the law.

SOLUTION

- i. In execution of the sentence or order of a court in respect of criminal offence of which he has been found guilty.
- ii. By reason of his right to comply with order of court
- iii. Bringing him before a court in execution of court order
- iv. Any person under eighteen years for the purpose of his education or welfare
- v. Any person suffering from contagious disease, unsound mind, drug addicts, vagrants for their care and management.
- vi. To prevent unlawful entry into Nigeria.

QUESTION 6

Explain the qualification, powers and limitation of the Attorney General of the Federation.

SOLUTION

Qualification: The AG is the number one law officer of the federation. He must be 10 years old at the Bar. Qualify to be a member of House Representative.

Powers:

- i. He can institute criminal proceedings in any court established under the law in Nigeria.

- ii. He has power to discontinue at any stage before judgment in any criminal proceedings. This is called *nolleprosequi*

Limitation:

The AG had unfettered powers and can do and undo at any stage. He is law unto himself in taking decisions. The only seemingly limitation is public interest and the appointor to remove him.

QUESTION 7

- (a) Differentiate between Assault and Battery
- (b) Explain how consent can be use as defence of assault and battery.

SOLUTION

- (a) Battery is the intentional application of force to another person while Assault is the intentional putting of another person in fear of an imminent harm or battery.
- (b) Consent as defence of assault. If a person consent to what would otherwise amount to assault and battery, legal the defendant will have consent as a complete defence. A participant in a boxing match cannot recover damages from his opponent in respect of blows inflicted upon him during the match. This is the doctrine or *volenti non fit injuria*.

QUESTION 8

- (a) Define law of contract according to Court of Appeal, Abuja Division, in the case of *Stabilini and Co. v NwabuezeObas (1997)*.
- (b) Parties to a contract must have full legal capacity to enter a legal enforceable contract. Discuss

SOLUTION

- (a) Law of contract is define by Court of Appeal, Abuja Division in *Stabillini& Co. V. NwabuezeObas (1997)* as "a voluntary agreement whereby a person undertakes for a reward, to perform an act for another and its term are so contemplated and admitted by the parties themselves. It creates an obligation which is enforceable by law.

- (b) Parties to a contract must have full legal capacity to enter a legally enforceable contract.
- i. Insane persons and drunkards contracts are voidable at their option. If they were so drunk or mentally unbalanced as not to understand what the contract meant and the other party was aware of the implication of the contract.
 - ii. A corporation is an artificial person recognize by law. It can only enter a contract through human agents. Ultra-vires doctrine, a company can only contract validly within the powers conferred upon it. In the memo and article of ass. Any ultra-vires contract is void.
 - iii. Minors. Any contractual transaction governed by English law, the age of majority is 21 years. For all practical purpose, this is the contracting age. Anything less void and lack legal capacity.
 - iv. Aliens. They have legal capacity save that they must comply with legislation regulating the conduct of aliens in business in Nigeria.

QUESTION 9

Define consideration. Consideration must move from the promisee to the promisor. Discuss

SOLUTION

Consideration: This was defined by court in the case of *Currie v. Misa* (1875) as some rights, interest, benefit accruing to a party or some forbearance, detriment loss or responsibility given, suffered or undertaken by the other. It is simply a price paid by one party the promisor for the promise or act done by the promisee.

Consideration must move from the promisor to the promisee. It is only the promisor who paid the price who could sue.

No stranger to a contract can sue or take an advantage of contract even if contract is made for his benefit unless the contract is under seal. In *Gbadomosi v. Obadiwe* 1964. The plaintiff sue in his name to recover the loan given to the defendant by his party Act Group Part. The plaintiff was the treasurer of the party. Held: the plaintiff did not suffer or furnished any consideration towards the loan agreement.

QUESTION 10

Where a party is coerced into making a contract, he is generally entitled to avoid it, because there is no consensus ad idem. Discuss.

SOLUTION

Where a party is coerced into making a contract he is generally entitled to avoid it. There is no concensus as idem.

Kinds of coercion

- a. Duress: This means actual or threatened physical violence or imprisonment and this render the contract voidable in law at the option of the party coerced.
- b. Undue influence: This means any pressure not amounting to duress and render the contract voidable in Equity at the discretion of the court. Undue influence is presumed in all contract between parties in fiduciary relationship, where one party is in a natural ascendancy over the other. The court will ensure that the weaker party receive fair treatment and independent advice e.g. contract between parents and child, teacher and pupil, doctor and patient, lawyer and client, founder of religion organization and adherants.

QUESTION 11

Distinguish between general offer and specific offer with respect to Carllil v Carbolic Smokeball Company (1893)

SOLUTION

An OFFER is a definite statement by one party of the terms on which he will contract with the other party to whom the statement is made.

Distinguish:

A general offer is an offer made to the whole world which could be accepted by conduct without previous notification of the offer or of the acceptance. This means that there is no requirement for notification of offer or acceptance.

A specific offer is an offer made to a specific group or individual which the individual or group can accept the offer.

In *Carlill v. Carbolic Smokeball* (1893). It was held that it was a general offer to the whole world and could be accepted by anybody by conduct with previous notification to the offeree.

QUESTION 12

Define agency. Once agency is established in law, how can it be terminated?

SOLUTION

An AGENT is a person who is employed to bring his principal into contractual relationship with third parties.

Termination

1. By Act of Parties

Agency may be terminated by mutual agreement like any other agreement or contract. But the principal may be at any time revoke the agents authority and so prevent him from making binding contracts with third parties.

2. By operation of Law

- a. By death of a principal or agent
- b. By bankruptcy or insanity of the principal or the agent
- c. By frustration
- d. Intervening illegality. If the object of the agency which was supposed to be legal was found to be illegal, the agency is terminated
- e. By agency accomplishing his mission
- f. By effluxion of time

QUESTION 13

Write short notes on the following:

- (a) **Cross cheque and open cheque**
- (b) **Postdated cheque and cheque through post**
- (c) **Conditional payment by cheque and cheque as evidence of payment**

SOLUTION

- a. A cross cheque is to convey instructions that the cheque is not to be paid otherwise through a bank or to make some other stipulation as to the manner of payment S. 76 B.E.A.

An open cheque is a cheque which can be paid in cash across the counter during the normal business hours. Cross cheque can not be paid across the counter.

- b. A post-dated cheque are not cheque because they are not payable on demand. If the bank pays the cheque before the due date, it cannot debit the customers account and the bank must bear the loss if the customer stops the cheque before its due date. cheque through post are cheque sent through the post. If the cheque get lost, the loss falls on the sender, unless the creditor request this method of payments

- c. Conditional payment by cheque. Payment by any bill is conditional payment. Payment is only effected if the cheque (bill) is honoured. A creditor, therefore can refuse payment by cheque.

An endorsed cheque which appears to have been paid by the banker on whom it was drawn is a prima facie evidence of receipt by the payee of the sum stated on the cheque even without the payee endorsement.

QUESTION 14

Explain hire purchase in accordance with judicial approval in the House of Lords decision in *Helby v. Matthews (1895)*

SOLUTION

Hire purchase is an agreement or contract for the hire of goods under which the hirer is given an option to purchase the goods at any time or at the end of the hire period or to return the goods to the owner at anytime during the hire period for period of bailment if he is no longer interested in the hire or buying the goods.

In the case of *Helby v. Matthews (1895)* Matthews agree to let his piano on hire at a monthly rent of ten shillings six pence to Helby. Possession of the piano resided with Helby. When the installments paid by Helby totaled eighteen guineas, the piano will become his property, but that until such payments, it remained the property of the owner who will be entitled to resume possession it, if Helby defaulted in installmental payments or failed to keep the piano at his own address.

Helby took possession of the piano paid some installments but pledged the piano with pawn broker as a security for a loan. The piano over sued the pawn broker to recover the piano.

The House of Lords held that the action must succeed since Helby could return the piano before the sum of eighteen guineas had been paid. He was not a person who had bought or agreed to buy the piano within the meaning of S.9 of the Factor Act (1889).

QUESTION 15

- (a) Define misrepresentation**
- (b) What are its attributes?**
- (c) What is fraudulent misrepresentation?**

SOLUTION

a. Misrepresentation:

A false statement of material fact made by a party to a contract or his agent which induces the other party to enter into the contract.

b. Attributes of misrepresentation

- i. A statement of fact is made by an expert on his own subject.
- ii. It must be a material fact in the transaction e.g. car in good working order.
- iii. It must be made by a party to the contract, not a mere bystander.
- iv. It must induce the other party to enter into the contract.

c. Fraudulent misrepresentation

An untrue statement made knowingly, or without belief in its truth or recklessly, carelessly whether it be truth or false per Lord Herschel in *Derry v. Peak* (1889).

QUESTION 16

- (a) Define Insurable Interest**
- (b) Explain insurable interest with respect to the following: (i) property insured (ii) suicide of the insured suicide**

SOLUTION

- (a) Insurable interest: This is any interest that may be validly insured against any loss or injury. To constitute insurable interest, the insured or policy holder must be in some legally, recognized legal relationship with the object matter of insurance e.g. life, property etc.
- (b) (i) Property Relationship: Any insurance on property with which the insured has no connection, no nexus: no insurable interest the policy is void ab initio *Maucura v. Northern Assurance Co. Ltd (1952)*
(ii) Suicide of the insured: If the insured commits suicide while sane, the sum insured by the policy holder irrecoverable. *Berestort v. Royal Insurance (1938)*.

QUESTION 17

- (a) Define legal personality of an incorporated company
- (b) Illustrate your definition above with the case of *Macaura v. Northern Assurance 1925*
- (c) Explain the following attributes of legal personality of an incorporated: (i) Perpetual succession (ii) Taxation

SOLUTION

- (a) A company on incorporation by registration is basically a legal entity, a juristic person distinct from all natural person(s) who are the promoters. The company policy can be formulated and decided only individual human beings and can be put into effect and carried into effect by human agencies - Lord Haldane.
- (b) In *Macaura v. Northern Assurance Coy (1925)*, Mr. Macauraincorporated a company and sold his timber estate to it. The estate had earlier been insured in his name. After the sale to the company he neglected to transfer the insurance policy to the company. The estate was destroyed by fire. It was held that Mr. Macuara could claim under the policy because the estate that was destroyed by fire belong to a different person - namely the company and Macuara as a shareholder had no insurable interest in the asset of the company.

- (c) (i) Perpetual succession. A company as an artificial person, is not susceptible to "the thousand natural shock that flesh is heir to". A company cannot be incapacitated by illness - mental or physical. No allotted life span.
- (ii) Taxation - A company pay its tax under the relevant statutory provision applicable in Nigeria e.g. the Company Income Tax Act.

QUESTION 18

The doctrine of majority rule and minority protection has become a veritable tool in the actualization of the doctrine legal personality. Explain this doctrine and its two advantages.

SOLUTION

This is the rule in *Foss v. Harbottle* (1843) and also coded in S.300 of CAMA. It provides that:

"The proper plaintiff for wrong done to the company is the company itself and the company can act only through the its majority shareholders"

In that case, the minority shareholders brought an action against the director to compel them to make good losses incurred by the company due to their fraud by buying their own land for the company's use and paying themselves a price greater than its value. Held: The action must failed, for the proper plaintiff for wrongs done to the company is the company itself and the company can only act through its majority shareholders.

Advantages

- 1) If every individual is allowed to sue anyone who had injured the company through a breach of duty, there would be many actions as there are shareholders. This is wastage.
- 2) If individual could sue a person who had caused loss to the company, and the company then ratified the act of the individual at aAGM, the legal proceeding would be useless because court will hold that the will of the majority prevails.

QUESTION 19

Ultra vires doctrine in company law is to moderate the excesses that might occurred by the operators of public companies. Vividly expound the reasons for this doctrine and its problems.

SOLUTION

The doctrine of ultra vires. The company as a statutory creation, the powers, functions and objects of the company are stated in the memorandum and article of association. Acts performed in excess of its powers its beyond the powers of the company and therefore null and void under the doctrine of ultra vires. S.39(1) Ashbury Railway Carriage v. Richie (1875) as per Lord Cairns L.C.

- (1) To protect the investors by ensuring that they knew the purposes for which their money can be employed. According to Prof. Gower, the doctrine ensure "that an investor in a gold mining company did not find himself holding shares in a fried-fish shop.
- (2) To protect the creditors by ensuring that the company's fund for which alone they could look for payment of dividends are not dissipated in authorized activities.

Problems

1. It constitutes undue restrains on investors wishing to change their activities to a more profitable one outside its objects.
2. It causes hardships to creditors who had lend money to the company on ultra vires transactions.

QUESTION 20

Explain briefly the following: (i) Ordinary shares (ii) Founders shares (iii) Issued of shares at a premium

SOLUTION

Ordinary shares. This shares does not carry fixed rate of dividends or interest. They bear the major financial risk of the company. They are the equity shares of the company.

Founders shares. They are also called deferred shares. Payment of dividends and return on capital are deferred until payment has been made in respect of other classes of shares. They usually taken by the founders of the company.

Issue of shares at a premium. According to S.120(1) shares of company may be issued at a premium. This is when the price at which they are issued is higher than the nominal value of the shares. Thus the shares of a company with a nominal value of N1.00 per share may be issued at N1.75, then the premium is N0.75.

QUESTION 21

List and explain three accounts which an incorporated company must keep S.331 of CAMA

SOLUTION

Accounts required by CAMA

1. Statement of Accounting policies
2. Balance Sheet as at the last day of the year.
3. Profit and loss Account or
4. Income and expenditure Account
5. Notes on the Accounts
6. The auditor's report

QUESTION 22

- (a) **Defining Meeting**
- (b) **Explain the types of meeting expected of an incorporated company.**

SOLUTION

- (a) **Meeting:** A duly convened meeting is the coming face to face of members of a company for transaction of the company business. The decision taking at such a meeting is called resolution.
- (b) **Types of meeting:**
 - i. **Statutory Meeting**
 - ii. **Annual General Meeting**
 - iii. **An extra-ordinary General Meeting**

QUESTION 23

Define contract?

List five elements of a contract. How is domestic arrangement different from contract?

SOLUTION

A contract is an agreement enforceable at law. A feature of another to do or forebear from doing certain specified acts.

A domestic arrangement does not have the intention of creating a legal relationship. The parties does not have the intention of going to court to enforced the provision of the arrangement between the parties. In *Balfouor v. Balfour*A husband promised to pay a housekeeping allowance to his wife. He defaulted court held that is a mere domestic agreement.

While contract had the intention of parties going to court to enforce the provision of the agreement. E.g. where spouses are legally separated, an agreement is presumed to be legally enforceable as in *Merit v Merit*.

Elements of contract: (1) Offer (2) Acceptance (3) Consideration (4) Intention to create legal relation (5) Capacity

QUESTION 24

Parties to a contract must have full legal capacity to enter a legally enforceable contract. Discuss.

SOLUTION

1. Insane or drunkards contracts are voidable at their option. If they were insane or mentally unbalance to understand what the contract meant.
2. A corporation is an artificial person recognized by law. It can only enter into contract within the ambit of its memorandum of association.
3. Minors. Any contract between minors under the age of 21 years of age is not enforceable.

QUESTION 25

Briefly explain the following:

- a. Cheque
- b. Stale and overdue cheque
- c. Undated and postdated cheque

- d. **Cross cheque**
- e. **Open cheque**

SOLUTION

- a. A cheque is a bill of exchange drawn on a bank and payable on demand.
- b. A stale cheque is one which has been in circulation for a considerable period of time. Banks usually refuse to honour a cheque more than six months old.
- c. An overdue cheque is one which has been in circulation for an unreasonable period of time. A person who takes an overdue cheque cannot be holder in due course.
- d. Undated and postdated cheque. A bank is not bound to honour undated cheque. The holder may fill the correct date. Post dated cheques are not cheques because they are not payable on demand.
- e. An open cheque is a cheque that can be paid on cash across the counter during normal business hours

QUESTION 26

- (a) **What is citizenship?**
- (b) **Differentiate the citizenship of Nigeria by (i) Jus Sanguinis (ii) Jus Soli**
- (c) **Mr. Edokpayi an indigene of Usen city, Nigeria is the father of Miss Adesuwa by his Usen wife before he migrated to Italy in Italy in 1990. At Italy he remarried and had a daughter name Sofia in 1995. Explain the citizenship of Nigeria by Adesuwa and Sofia.**

SOLUTION

- (a) A citizenship are members of a country or persons who are entitled to hold political offices or exercise political rights.
According to Prof. Almond, citizen is "Those members of a state, whose relation to it is personal and permanent, and who by virtue of such relation received from the state special rights, powers and privileges.
- (b) Jus Sanguinis is citizen by decent. That is a person is regarded as a citizen of a particular state because one of his parents (usually his father is also a citizen of that state or his ancestors belong to an ethnic or racial group in the state e.g. France).

Jus Soli (birth). This implies birth within the state. The constitution of the US states; "All person born or naturalized in the US and subject to the jurisdiction thereof are citizens of US and of the states which they reside.

- (c) Adesuwa citizenship of Nigeria is both Jus Sanguinis because her ancestors belongs to a racial group in Nigeria and Jus Soli because she was born within Nigeria.
Sofia citizenship is only rest on Jus Sanguinis because his father belongs to a racial group in Nigeria.

QUESTION 27

The Supreme Court is the apex court in the hierarchy of courts in Nigeria. What are the jurisdiction of the Supreme Court of Nigeria?

SOLUTION

The Supreme Court has both original and appellate jurisdiction under the constitution.

- a. Original Jurisdiction: It has original jurisdiction in any dispute between the Federal and State Government or between States involving any question on which the existence or extent of any legal right depends any Act of National Assembly that confer on it a legal right.
- b. Appellate Jurisdiction: The Supreme Court has exclusive jurisdiction to hear and determine appeals from the Court of Appeal. Such appeals may be as of right or with leave of either Court of Appeal or Supreme Court.

QUESTION 28

Mr. Nosa contested the Senatorial seat of Edo South Senatorial seat with Mr. Uwegbegbe. Mr. Uwegbegbe who is a known underworld kingpin use thugs to harassed voters, snatch ballot boxes and employed all manners of election malpractices and was eventually declared the winner. Nosa is downcast, helpless and seek your counsel. Advice him on the course of action to take and the likely relief he will get.

SOLUTION

I will advise Mr. Nosa to file his petition at the National Assembly Election Tribunal for the Federation. It has original jurisdiction to the exclusion of other courts to hear and determine the petition as to whether:

1. A person has been validly elected as a member of National Assembly.
2. Whether the seat of such a member has become vacant
3. Term of office of the person has ceased under the constitution
4. Whether a question or petition brought before the Election tribunal has been properly or improperly brought S. 285(1).

QUESTION 29

- (a) **Define Law according to Cicero (106 - 43 BC)**
- (b) **Explain Coroners Inquest as a legal instrument of adjudication.**

SOLUTION

- (a) Law according to Cicero (106 - 43BC) is the highest reason implanted in nature which command those things which ought to be done and prohibits the reverse.
- (b) Coroners Inquest is not a court of trial. It is set up to investigate the cause of a person who died within jurisdiction and where the death is sudden, violent and unnatural. Or where death occurred in a prison, lunatic asylum. It takes evidence to establish the identity of the deceased, the time, place and manner of his death Coroners has power to summon witnesses and ask questions. But witnesses are not bound to answer questions especially if the questions will implicate them. Evidence from witnesses are used in regular court during cross-examination.

QUESTION 30

Explain these fundamentals in designing formal organisation structure

- i. **Policy**
- ii. **Authority**
- iii. **Responsibility**

SOLUTION

- i. Policy: This is a written or oral statement that serves as a general guide for decision making. They made by top executives but lower managers made to work.
- ii. Authority: This is the power to act and make decision in carrying out assignment. In a public company authority come from shareholders and its delegated to directors, then to top level managers, then to lower level managers some have authority because of their subject knowledge others because they have resources.
- iii. Responsibility: The individual obligation to carry out assigned duties. In assigning duties, the manager assigned responsibility to perform the duty. Responsibility and authority should be equal.