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CERTIFIED PUBLIC ACCOUNTANT

FOUNDATION LEVEL 1 EXAMINATIONS

F1.2: INTRODUCTION TO LAW

DATE: WEDNESDAY, 30 MARCH 2022

INSTRUCTIONS:

- 1. Time Allowed: 3 hours 15 minutes (15 minutes reading and 3 hours writing).**
- 2. This examination has seven questions and only five questions are to be attempted.**
- 3. Marks allocated to each question are shown at the end of the question.**
- 4. The question paper should not be taken out of the examination room.**

QUESTION ONE

(a) John Bosco and Uwintwari Nadine are both first year students in University of Rwanda to whom the lecturer informed that the next class will be focused on law and morality. Their understanding of law and morality were different because John Bosco was of the view that law and morality is one and the same but Uwintwari Nadine was of the view that Law and morality are two different terms altogether.

Required:

- (i) As a student of introduction to law who among the two students is right and who is wrong? **Support your answer** (5 Marks)
- (ii) If you are of the opinion that there is a relationship or the difference between law and morality **provide such two relationships and two differences if any** (5 Marks)

(b) Gabo Velosco and Mutabazi Peter are both enrolled students for Certified Public Accountants of Rwanda (CPA-R) and they are having a discussion about the constitution of Rwanda as it was enacted in 2003 and revised in 2015. Their discussion later became an argument on whether the constitution is the supreme law or there is another law which is greater than the constitution. Mutabazi Peter was of the view that the President of the Republic was above the constitution but Gabo Velosco was of the view that the constitution was supreme and that the president of the republic is the creature of the constitution itself.

Required:

- (i) As students who are well versed with the constitution **who among this two students' argument is right and support your answer.** (5 Marks)
- (ii) **Do you think the constitution is a source of law? If your answer is yes explain how the constitution is a source of law in Rwanda.** (5 Marks)

(Total: 20 Marks)

QUESTION TWO

(a) Mbanzabigwi Monique and Rurangirwa James are in agreement that the formal sources of law are the principal sources of law. In a narrow sense, these are laws enacted by the Parliament and promulgated by the President of the Republic. In a broader sense, the Law means all legal rules of written law formulated in a general way by means of exercising legislative power or even executive power. These laws have a general impact, emanating from public power and are obligatory for all individuals found in a given society. They however don't agree on what are the laws that are enacted by parliament.

Required:

(i) Explain to Mbanzabigwi Monique and Rurangirwa James any two types of laws enacted by parliament (3 Marks)

(ii) Explain how the laws promulgated by the President of the Republic is part of legislation (3 Marks)

(b) "The Constitution of Rwanda as enacted in 2003 and revised in 2015 provides that the sovereign power of the people shall be vested in the executive, the legislature and the judiciary, reflecting the democratic ideal that if power is concentrated in the hands of a few, it is prone to misuse. This provision aims to safeguard against arbitrary and capricious governance and the abuse of power".

Required:

From the statement above explain your understanding of administrative law and how the principle of separation of powers operates. (6 Marks)

(c) The court for the defendant's place of domicile, residence or elected domicile has jurisdiction over the case, unless the law otherwise provides. In case of several defendants, the plaintiff chooses the court for the place of domicile of one of the defendants. When the defendant's domicile is unknown, the case is heard by the court for the place of the plaintiff's domicile or residence.

Required

(i) Outline any four circumstances under which foreign nationals can be tried in Rwandan courts. (4 Marks)

(ii) Apart from hearing, at first instance, all labor and social security cases, outline any other specific areas that the chamber for labor and administrative cases determines. (4 Marks)

(Total: 20 Marks)

QUESTION THREE

(a) The COVID-19 pandemic has destabilized the traditional ways through which many professions operated. One of the sectors that have seen rapid change than it has ever experienced before is the legal profession where the use of legal technology in accessing justice has been embraced by force. This has arguably marked the beginning of a trend worldwide that may only become faster even post the pandemic. Technology is revolutionizing the way businesses and various sectors operate and although it comes with its advantages and disadvantages.

Apart from the effects of pandemic, the changes in the legal sector have also been largely attributed to the ascendancy of information technology, the globalization of economic activity, the blurring of differences between professions and sectors, and the increasing integration of knowledge. Technology has greatly impacted the way law and law firms are operating in this era as far as enhancing efficiency is concerned.

Required:

Explain the use of Legal Technology within the Legal Profession in Rwanda either as a Progressive or Conservative Profession (8 Marks)

(b) The specialized chamber of the High Court has jurisdiction to try at first instance cases transferred to Rwanda from International Criminal Tribunal for Rwanda/Mechanism for International Criminal Tribunals or transferred by courts of other countries. The specialized chamber of the High Court has jurisdiction over all persons including foreign nationals, non-government organizations or associations whether national or foreign, alleged to have committed, within or outside the territory of Rwanda a number of international or transnational crime. **Explain briefly any three such international or transnational crimes. (6 Marks)**

(c) The Law No30/2018 of 02/06/2018 determining the jurisdiction of courts provides for the organization of courts and establishes their jurisdiction. **Explain briefly the organization of the ordinary courts in Rwanda. (6 Marks)**

(Total: 20 Marks)

QUESTION FOUR

Donoghue v Stevenson [1932] UKHL 100

(a) On the evening of Sunday 26 August 1928, during the Glasgow Trades Holiday, May Donoghue took a train to Paisley, Renfrewshire. In Paisley, she went to the Well meadow Café. A friend, who was with her, ordered a pear and ice for herself. As for Donoghue, she asked for a Scotsman ice cream float, a mix of ice cream and ginger beer. The owner of the café, Francis Minghella, brought over a tumbler of ice cream and poured ginger beer on it from a brown and opaque bottle labeled "D. Stevenson, Glen Lane, Paisley". (Although the bottle was labeled as Stevenson's, McByde suggests it is possible it did not originally belong to him. Bottles were often reused, and in the process occasionally returned to the incorrect manufacturer. Moreover, Stevenson initially claimed he did not issue bottles matching the description provided by Donoghue. Donoghue drank some of the ice cream float. However, when her friend poured the remaining ginger beer into the tumbler, a decomposed snail also floated out of the bottle. Donoghue claimed that she felt ill from this sight, complaining of abdominal pain. According to her later statements of facts, she was required to consult a doctor on 29 August and was admitted to Glasgow Royal Infirmary for "emergency treatment" on 16 September. She was subsequently diagnosed with severe gastroenteritis and shock.

Required:

(i) From the above case study analyze the nature of tort committed and point out who is responsible for the tort committed and the remedies available to the victim of tort. (6 Marks)

(ii) Explain with the use of examples any three defenses available under the law of tort (6 Marks)

(b) Bernstein of Leigh v Skyviews & General Ltd [1978] QB 479

On 3 August 1974 the defendants took an aerial photograph of the plaintiff's house. The plaintiff alleged that in taking the aerial photo, the defendants had trespassed in the plaintiff's airspace. The defendants admitted taking the photo but claimed that they had taken it whilst flying over an adjoining property. The defendants also argued that if they had flown over the plaintiff's land, then they had the plaintiff's implied permission.

Required:

(i) In your own assessment and taking into account the above facts can you conclude that there was a tort of trespass committed by the defendants? Explain your answer (4 Marks)

(ii) In the case of *Mohamud v WM Morrison Supermarkets* a petrol station customer, Mr. Mohamud, found himself on the receiving end of physical assault and racist language from a Morrison's employee, Mr. Khan. Mr. Khan pursued Mr. Mohamud across the petrol station forecourt, punching him and kicking him to the ground. Mr. Khan ignored the instructions of his supervisor who tried to stop him. Mr. Mohamud brought a claim against Morrison's for the injuries he suffered as a result of the assault by Mr. Khan.

Required:

Assessing the facts on the above case study can this be a case of vicarious liability? **Explain any three conditions that ought to be present for someone to be vicariously held responsible for a tort committed.** (4 Marks)

(Total: 20 Marks)

QUESTION FIVE

(a) John Mupenzi committed a crime in which he was liable to imprisonment for twenty years if found guilty. Kabera David was the advocate who represented John Mupenzi. Based on the nature of the relationship (advocate Client) John Mupenzi confessed to the advocate on how he committed the crime. At some stage the two had a difference which was related to the payment of the advocate legal fee. The advocate wants to testify in court that John Mupenzi indeed committed the crime and he should be jailed for twenty years.

Required:

(i) In your own assessment **can this be a case of defamation? Support your answer**

(3 Marks)

(ii) If the answer is no can the judge use the confession made by John Mupenzi to his advocate to imprison him? **Support your answer in either case with reasons** (3 Marks)

(b) **Braun v. Glade Valley Sch., Inc., 77 N.C. App. 83, 89-90, 334 S.E.2d 404, 408 (1985)**

The defendant (D) owned the Hotel Forsyth in Winston-Salem and advertised it for rent. The advertisement was answered by plaintiffs (P), who resided in St. Louis, and what contract, if any, was entered into, is embodied in the written correspondence between the parties.

1. Letter from D to P, describing the hotel and offering it at \$200/month for 12 months.
2. Letter from P to D, asking for further information.
3. Letter from D to P giving further data and suggesting that P send \$400 to confirm the lease. "In case we should have closed before receiving your wire then you could have it wired back; otherwise we will confirm by wire."
4. Telegram sent by P to D: "Letter received after banking hours; will wire money order tomorrow."
5. Telegram from D to P: "Holding Hotel Forsyth for your order, as per wire of yesterday."
6. Telegram from P to D: "Mailed payment today; could not telegraph [money] order; blizzard; letter explains".
7. Letter written from P to D as follow-up to telegram: "Dear Sir: When it comes to wiring you \$400 this morning, every telegraph wire leading out of St. Louis was down. We are in the

midst of the worst blizzard this country ever witnessed. Wires down, railroads blocked with snow, wind blowing a gale 70 miles an hour. So, had to use my best judgment in the matter, thought this the wisest course to pursue. The \$400 enclosed is the advance payment for the first two months' rent to Hotel Forsyth fully furnished in every department from the date taking possession. On receipt of draft wire me care Wellington Hotel, St. Louis, confirming deal. Will start for Winston-Salem at once. Trusting, under the circumstances, this is satisfactory to you. Yours truly, E. C. Greene, care The Wellington." This letter and the telegram were sent on January 30, 1909.

The defendant did not send a telegram confirming the deal. The plaintiff left St. Louis on February 2 and arrived in Winston-Salem two days later, traveling directly to the Hotel Forsyth and arriving at midnight. The next day the plaintiff demanded that the defendant return their \$400 payment.

Required:

(i) From the facts of the case above was this contract entered and was the plaintiff in order to demand for the refund of \$400. Support your answer (3 Marks)

(ii) Explain any three ways through which contractual obligations are created (3 Marks)

(c) Peter owes FRW 100,000 to John and agrees to repay it within one year. They document the debt under a contract. Subsequently, he loses his job and requests John to accept FRW 75,000 as a final settlement of the loan. John agrees and they make a contract to that effect. This discharges the original contract.

Required:

(i) Do you agree that the contract is discharged? Explain the mode of discharge if indeed the contract is discharged (3 Marks)

(ii) Explain any other five modes through which contractual obligations are discharged (5 Marks)

(Total: 20 Marks)

QUESTION SIX

(a) In a contract of sale there should be a transfer or an agreement to transfer the absolute or general property in the goods sold. It contemplates the transfer of ownership in the goods. Though passing the title in the goods is an essential ingredient of sale, physical delivery of goods is not essential. The sale of goods contemplates the transfer of the general property or title in the goods from the seller to the buyer. In an agreement for sale, the property in the goods remains with the seller and he can dispose of the goods as he likes, although he may thereby commit a breach of his contract. In a sale, the property is with the buyer and as such the seller cannot resell the goods. If he does so, the buyer can recover the goods sometimes even from third parties.

Required:

(i) From the statement above **explain any four duties of a buyer and any two duties of a seller in a contract of sale of Goods** (6 Marks)

(ii) **Explain briefly the rights of the buyer and the seller with regard to general and particular goods.** (4 Marks)

(b) All acts of an agent done in the discharge of his duties and within the scope of his authority are binding upon the principal. Acts performed by an agent beyond the scope of his authority are not binding upon the principal.

Required:

(i) From the statement above **explain any four obligations of an agent towards the principal and two obligations of the principal towards the agent** (6 Marks)

(ii) In case of failure on the part of the two parties to perform their obligations **explain the two remedies available for the principal and four remedies available to the agent**

(4 Marks)

(Total: 20 Marks)

QUESTION SEVEN

(a) “Man is exposed to losses. For instance, the time of the death of a person is not certain and in the case of his premature death a man’s dependents may find themselves deprived of all means of existence. Similarly the property of a person is open to all risks of its being destroyed by the fire. Every prudent man will carefully consider how best he can prevent such risks or minimize or provide against its effects. It is difficulty for an individual or even a large business enterprise to invest millions of Francs in the factory building and equipment or joint ships unless the arrangement for covering the risk is possible. This arrangement is made possible by insurance. Insurance steps in to transfer such risk or dangers to the shoulders of the persons who are willing to accept the burden for monetary considerations”.

Required:

(i) From the statement above **explain any three principles or characteristics of the contract of insurance.** (6 Marks)

(ii) Bizimremye Harrison was the owner of an apparel showroom situated in a commercial area of Kigali City Market. The showroom stocked clothes for wealthy, trendy young people. It carried a variety of designs and premier collections designed by famous designers.

Every weekend Bizimremye Harrison spent time with his family. One evening, he was enjoying his weekend with his family in a restaurant situated outside the town on a small hillock. While Bizimremye Harrison and his family were enjoying a mid-night buffet at the restaurant, his cell phone started ringing. Jean Paul, the security guard of the apparel showroom, was on the line. In a panic-stricken voice, Jean Paul informed Bizimremye Harrison that there was a major fire in the showroom and that the showroom was completely destroyed in the fire.

After regaining his composure, he rushed to the spot and tried to get first-hand information about the fire accident. He asked the security guard how the accident had taken place. He then informed UPA Insurance Corporation of the incident. UPA insurance was the primary insurer for the property.

UPA insurance sent a claims adjuster, John Bosco, to meet Bizimremye Harrison and analyze the damage caused to the property. At the site, John Bosco met Bizimremye Harrison and assessed the situation. He asked Bizimremye Harrison about the daily turnover of business in his showroom. Bizimremye Harrison informed John Bosco that the business was moving quite smoothly. Later, John Bosco asked Bizimremye Harrison for the books of accounts related to the business.

Fortunately, the books of accounts were not damaged in the fire. The books revealed that in recent times, there was a reduction in sales. When John Bosco asked Bizimremye Harrison the reason for the decrease in sales, Bizimremye Harrison replied that it was because of low demand during the off-season period. John Bosco later made enquiries with other apparel shops in the area and was told that competition was quite intense in the region, and that demand had been low for the past two months.

Required:

From the case study above **explain the two main principles of insurance that are of concern to UPA Insurance** (4 Marks)

(b) Exchange of goods and services is the basis of every business activity. Goods are bought and sold for cash as well as on credit. All these transactions require flow of cash either immediately or after a certain time. In modern business, large number of transactions involving huge sums of money takes place every day. It is quite inconvenient as well as risky for either party to make and receive payments in cash. Therefore, it is a common practice for businessmen to make use of certain documents as means of making payment. Some of these documents are called negotiable instruments.

Required

(i) Mention any three types of negotiable instruments and explain any three characteristics of negotiable instruments (4 Marks)

(ii) How does a negotiable instrument differ from a contract? (3 Marks)

(iii) Explain any two differences between a promissory note and a cheque (3 Marks)

(Total: 20 Marks)

End of question paper

