

Institute of Certified Public Accountants
F1.2 Business Law & Professional Ethics
Model Answers

SECTION A- Question 1

1)

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

Total: 40 Marks

SECTION B- ANSWERS

2) (a) An offer is terminated in the following circumstances:

- ✓ Revocation- Revocation means an offer is withdrawn by the offerer
- ✓ Rejection- An offer is terminated when the offeree communicates his rejection to the offeror. Hence, the offeree making a counter-offer and introduces a new offer amounts to a rejection of the original offer
- ✓ Lapse of time- As it would be impracticable if an offer could be accepted after an unreasonable delay on the part of the offeree
- ✓ Conditional Offer- An offer which expressly provides that it is to terminate on the occurrence of some condition cannot be accepted after that condition has occurred; and such a provision may also be implied
- ✓ Operation of law
- ✓ Death- The death of either the offeror or the offeree will cause such termination: the right to accept an ordinary offer is not transferable.
- ✓ Acceptance- Once the offer was accepted by the offeree, the contract is formed and brought the offer to an end.
- ✓ Illegality- Finally, a change in the law which makes a potential contract illegal will terminate an offer, since courts will not enforce an illegal contract.

(6 Marks)

(b)

Equitable remedies are distinguished from "legal" remedies (which are available to a successful claimant as of right) by the discretion of the court to grant them. In common law jurisdictions, there are a variety of equitable remedies, but the principal remedies are:

- ✓ Injunction
- ✓ Specific performance
- ✓ Account of profits
- ✓ Rescission
- ✓ Rectification
- ✓ Equitable estoppel
- ✓ Certain proprietary remedies, such as constructive trusts
- ✓ Equitable compensation
- ✓ Appointment or removal of fiduciary

(6 Marks)

(c)

What is an offer?

An offer in contract law is defined as a "statement of an intention to be bound on terms which are certain, made by one party to another, which upon acceptance by that other party, form a binding contract. The offer must have been made to a particular person, or to a group of persons or to the world at large.

An offer should be distinguished from an invitation to treat. An invitation to treat occurs when one party invites another to make an offer. In this case the parties have not gone beyond the negotiation stage. The display of goods in a shop window is an invitation to treat and not an offer.

If a person makes an offer for a car at a car auction, then this will be regarded as an offer sufficient to form a binding contract, if the auctioneer accepts the offer

On the other hand if an auctioneer advertises cars that are going to be auctioned at a specified time and place, this will not count as an offer, but an invitation to consider offers for the cars.

What is acceptance?

An acceptance by one party of an offer must be clearly identifiable in the words used to accept the offer or the documentation used. A conditional acceptance of an offer is not a valid acceptance under contract law.

A fundamental rule of acceptance of an offer is that the acceptance must be communicated to the person who gave the offer; the intention to accept an offer is not enough.

If a person makes an offer to buy a car, and the seller does not respond to state that they accept the offer, then no contract has been created between the buyer and seller under contract law. However it is possible to have communication of the acceptance waived, in such a situation, acceptance will take place by the buyer displaying some sort of conduct.

If the person who has made the offer has stated there needs to be a particular method used in communicating acceptance, then a valid contract will not exist until that method has been used for acceptance. In the case that this method is by post, case that this method is by post, the contract will be made as soon as the acceptance has been posted. Even if the

letter is delayed, lost or destroyed so that it never reaches the person who made the offer. There will still be sufficient acceptance for a contract to be created.

(8 Marks)
Total: 20 Marks

3.) (a)

When forming a contract, consideration is needed in order to make the agreement a formal, valid contract. This is one of the three main requirements besides mutual assent and a valid offer and acceptance. Consideration basically refers to the exchange of items or services of value. For instance, for a contract for a sale of goods such as apples, the party receiving the apples needs to exchange something of value for the apples. This usually comes in the form of monetary payment. The consideration can also be other products or even services. The point is that the parties must exchange something of value.

Consideration is needed so that both parties incur some sort of burden or obligation in the agreement. Without consideration, the exchange would likely be classified as a gift. Gifts are treated differently than contract agreements, legally speaking.

(6 Marks)

(b)

What is Promissory Estoppel?

Promissory estoppel is the legal principle that a promise is enforceable by law, even if made without formal consideration, when a promisor has made a promise to a promisee who then relies on that promise to his subsequent detriment.

The 5 elements of Promissory Estoppel are:

1. Some form of legal relationship either exists or is anticipated between the parties.

A contractual relationship is the most common type of "legal" relationship. Parties to pre-contractual negotiations also fall within this principle.

2. A representation or promise by one party.

Traditionally, estoppel could only be used with respect to a representation about an existing fact.

3. Reliance by the other party on the promise or representation.

The party relying on the promise must suffer a detriment

4. Detriment

The party relying on the promise must have suffered some sort of detriment. In other words, the party must be in a worse position for having relied on the promise.

5. Unconscionability

There is no general restriction, which prohibits a person from breaking his or her promise. Accordingly, before an action for estoppel will succeed, it must be shown that, in the circumstances, it would be unfair or inequitable to allow them to do so.

(6 Marks)

(c)

Duties of Agent include

- ✓ Act on behalf of and be subject to the control of the principal,
- ✓ Act within the scope of authority or power delegated by the principal,
- ✓ Discharge his or her duties with appropriate care and diligence,
- ✓ Avoid conflict between his or her personal interests and those of the principal
- ✓ Promptly hand over to the principal all monies collected on principal's behalf.

Rights of Agent include

- ✓ Right of Remuneration: - It is basic right of an agent that he should receive the remuneration of his services.
- ✓ Right of Compensation:-In case of injury caused to agent by the negligence of the principal may be compensated by the principal.
- ✓ Right to Retain Money:-In conducting the business if an agent advances or spends some money for the betterment of a business. He has also right to retain that amount from the total sum received by him on account of the principal.
- ✓ Right of Lien:-An agent has also a right to retain the goods or property of a principal till the payment in due is received by him.
- ✓ Indemnity Right:-An agent has a right to be indemnified against the liabilities falls on him.

(8 Marks)

Total: 20 Marks

4)

(a)

- i. **Title**- In a contract of sale, there is an implied on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass.
- ii. **Sale by description**- Where there is a contract for the sale of goods by description, there is an implied that the goods will correspond with the description.

If the sale is by sample as well as by description it is not sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description. A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer.

- iii. **Satisfactory quality**- Where the seller sells goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality. For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances. For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods—

- (a) Fitness for all the purposes for which goods of the kind in question are commonly supplied,
- (b) Appearance and finish,
- (c) Freedom from minor defects,
- (d) Safety, and
- (e) Durability.

- iv. **Sale by sample**.-A contract of sale is a contract for sale by sample where there is an express or implied term to that effect in the contract.

In the case of a contract for sale by sample there is an implied term

- ✓ That the bulk will correspond with the sample in quality;
- ✓ That the goods will be free from any defect, making their quality unsatisfactory], which would not be apparent on reasonable examination of the sample.

(6 Marks)

(b)

Misrepresentation

- ✓ There is no intention to deceive
- ✓ A false innocent statement without any intention to .deceive is misrepresentation
- ✓ The person making the statement believes it to be true.
- ✓ It makes contract voidable at the option of the party injured.
- ✓ The contract cannot be avoided if the party, whose consent was so caused, had the means of discovering the truth with ordinary diligence.

Fraud

- ✓ There is intention to deceive
- ✓ A false statement deliberately made to deceive is fraud.
- ✓ The person making the statement does not believe it to be true.
- ✓ Besides making the contract voidable at the option of the party injured, it gives right to an independent action in tort.
- ✓ This plea cannot be raised in case of fraud, except in cases when silence amounts to fraud.

(6 Marks)

(c)

Responsibilities of Employer's

- ✓ Employers must give their employees a place to work and make sure they have access to it. They must give them the tools, equipment and other things they need to do their work.
- ✓ Employers must pay their employees the salary and benefits they agreed to, including vacation, paid holidays and other types of holidays.
- ✓ Employers must make sure their employees' working conditions are safe.
- ✓ In some cases, employers must give their employees written notice that their contracts are ending or that they are being laid off. Note that employers can pay employees a sum of money instead of giving the notice.

- ✓ Employers must treat their employees with respect. They must make sure their employees are not harassed or discriminated against.

Responsibilities of Employees

- ✓ To personally do the work they were hired to do
- ✓ To do their work carefully and seriously (In some cases, they could be fired or disciplined if they're often late for work, or if they're absent too often or for no good reason.)
- ✓ cooperate with the employer
- ✓ To follow their employer's instructions (There are some exceptions. For example, if an employer asks an employee to do something dangerous or illegal, the employee doesn't have to.)
- ✓ Obey a lawful, reasonable order within the terms of the contract of employment
- ✓ Serve faithfully
- ✓ Perform duties with proper care and diligence
- ✓ account for all money or property received
- ✓ Not to misuse the confidential information acquired while in service.

(8 Marks)
Total: 20 Marks

5)

i) The essentials of a partnership agreement are:

- Each partner must make a contribution.
- The object should be to make a profit.
- The partnership should be carried on for the joint benefit of the parties.

ii) The main object of the parties must be to procure patrimonial benefit. This benefit is usually referred to as 'profit'. Patrimonial benefit, however, is much wider than the narrow accounting definition of 'profit', because it also includes the avoidance of a financial loss or the reduction of expenses. If the parties to the enterprise are not interested in making a profit but have another objective, such as the advancement of culture or sport, no partnership is formed. In this set of facts the main purpose is to provide a shelter. The purpose is not to make a profit to be divided between the partners. This is therefore not a valid partnership agreement as one of the essential requirements is not present.

(6 Marks)

(b)

BASIS FOR COMPARISON	CONDITION	WARRANTY
Meaning	A requirement or event that should be performed before the completion of another action is known as Condition.	A warranty is an assurance given by the seller to the buyer about the state of the product, that the prescribed facts are genuine.
What is it	It is directly associated with the objective of the contract.	It is a subsidiary provision related to the object of the contract.
Result of breach	Termination of contract.	Claim damages for the breach.
Violation	Violation of condition can be regarded as a violation of the warranty.	Violation of warranty does not affect the condition.
Remedy available to the aggrieved party on breach	Repudiate the contract as well as claim damages.	Claim damages only.

(6 marks)

c) Any types of the following

- ✓ Guide employees in situations where the ethical course of action is not immediately obvious.
- ✓ Help the company reinforce – and acquaint new employees with – its culture and values. A code can help create a climate of integrity and excellence.
- ✓ Help the company communicate its expectations to the staff to suppliers, vendors and customers. Also, by soliciting feedback and questions, a company can use the code to encourage frequent, open and honest communication among employees.
- ✓ Minimize subjective and inconsistent management standards. A code explicitly outlines the rights and responsibilities of staff members and helps guard against capricious and preferential treatment of employees.
- ✓ Help a company remain in compliance with complex government regulations
- ✓ Build public trust and enhance business reputations. Also, a code helps demonstrate the company's values to socially responsible investors.
- ✓ Offer protection in preempting or defending against lawsuits.
- ✓ Enhance morale, employee pride, loyalty and the recruiting of outstanding employees.
- ✓ Help promote constructive social change by raising awareness of the community's needs and encouraging employees and other stakeholders to help.

✓ Promote market efficiency – especially in areas where laws are weak or inefficient – by rewarding the best and most ethical producers of goods and services.

(8 Marks)
Total: 20 Marks