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END-OF- FIRST SEMESTER EXAMINATIONS: 2015/2016

FACULTY OF LAW

LAW 106

LAW OF CONTRACT II

TIME ALLOWED: 2 1/2 HOURS

LEVEL 100

STUDENT ID No

INSTRUCTIONS

There are a total of five (5) questions. Candidates are to answer three (3) questions only.

Question 1 is compulsory.

Answer Sheets will be provided. Each answer must begin on a fresh page.

Any extra answer sheet should be properly tied to the original answer sheet.

Marks will be awarded for good presentation, clarity in legal arguments and proper use of Legal Authorities.

Please write legibly

DO NOT TURN OVER THIS PAGE UNTIL YOU HAVE BEEN TOLD TO DO SO BY THE INVIGILATOR.

Examiners: Rev. Yaw Dankwa & Reynolds Twumasi Jnr.

Good Luck

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Question 1 - [40 marks]

- (a) Asonaba Sanitation Services Ltd (ASSL) is a reputable company which provides sanitation and cleaning services in the Wassa West District. The company has been extremely successful in its primary business of providing sanitation and cleaning services. It applied and obtained a permit from the Environmental Protection Agency to construct a compost plant to manufacture fertilizers for sale to farmers.

Subsequently, it started an expansion project which included the diversification of its business and ventured into energy production. Its Board of Directors sent a proposal to the Energy Commission, and also applied for a permit to build a biogas plant to generate electricity. Inspectors from the Energy Commission reviewed the proposals and visited the site earmarked for the biogas plant. Initial reviews pointed to the likelihood that the permit would be granted to ASSL.

In view of the huge capital outlay required for the building of the biogas plant, the Directors issued a prospectus representing, inter alia, that the company was building a biogas plant which would generate 100 megawatts of power to be sold to the consuming public.

Alhaji Razak, a business mogul who was looking for an investment opportunity in the energy sector, saw the prospectus and on the basis of the representations made therein bought shares in ASSL.

On a further review of ASSL's proposals, the Energy Commission has refused to grant it the requisite permit to construct the biogas plant. This refusal is threatening the very foundation of the company, which may end up winding up. Alhaji Razak is very angry and has filed a suit against ASSL for fraudulent misrepresentation.

As an expert in the Law of Contract, advise ASSL. Are there any remedies available to Alhaji Razak should ASSL be deemed liable for fraudulent misrepresentation? [25 marks]

- (b) Explain, with the decided cases how *silence* can constitute a misrepresentation. [15 marks]

Question 2 - [30 marks]

Aqua Canoe Company Ltd (ACC) is engaged in the building of canoes for fishing communities in Accra. It entered into a contract with Ata Nii Fishing Company (ANF) to build 10 canoes for ANF's fishing business. The total contract price for the canoes was GHC100,000, payable in five equal monthly instalments.

ACC had made only the first two instalment payments, when Government imposed a sudden ban on logging. This resulted in a shortage of wood and consequently an escalation in the price of wood products by almost 100%. ACC demanded a 20% price increase of the contract and further threatened ANF that it would not complete the contract if ANF failed to pay the top-up. It was the fishing season and ANF had entered into supply contracts with its customers and could not afford to default. It therefore reluctantly paid the original contract price, plus the 20% top-up, protesting though that the ACC had no legal right to claim the additional 20%.

Due to the extra cost incurred as a result of the increase in the contract price, ANF is facing serious financial difficulties and its Managing Director, Anita Aryee, has come to seek advice from you. She claims that a Level 100 law student has advised that she could bring an action under for to recover the 20% extra cost.

Applying decided cases, discuss the law of 'economic' duress and advise if ANF has a good case.

Question 3 – [30 marks]

Alberto is employed by Mrs. Williams, a State Attorney, as her personal driver. Mrs. Williams took a third party insurance policy with Safeway Assurance Co. Ltd., and named Alberto in the driver clause.

In June 2015, Alberto was granted sick leave as he suffered from chicken pox. In view of the length of his sick leave, Mrs. Williams employed Robert temporarily to relieve Alberto. One evening after work, Robert was involved in an accident, and damaged another vehicle owned by Lawyer Yaw Oppong.

Mrs. Williams has applied to Safeway Assurance Co. Ltd, to get it to underwrite the cost incurred for the repair of Lawyer Oppong's vehicle. Safeway has rejected the claim on the basis that Robert the driver at the time of the accident was not the person named in the policy document and therefore the company is not liable.

With the aid of decided cases, discuss how the Contracts Act, 1960 (Act 25) deals with "incidental beneficiaries" of a contract, and advise Safeway Assurance regarding its rights if any.

Question 4 – [30 marks]

- (a) Differentiate between the effect of mistake at common law and the effect of mistake in Equity. [20 marks]

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- (b) Explain with decided case(s) or scenarios Unilateral Mistake – [10 marks]

Question 5 – [30 marks]

- (a) Kiki Fast Foods Services (KFS) is a successful fast foods business with its main focus being fried rice, French fries and pastries. Its main operating base is Accra with outlets in Akosombo and Kasoa. It has entered into a Sale and Purchase Agreement with Araba Restaurants Ltd. and sold the business to BB Kitchen for GHC2 million.

KFS further entered into a contract to restrain its future business activities, under which it covenanted that it would not engage directly in the restaurant business for 15 years, if BB Kitchen continues in business for that long.

After 5 years, KFS decided to start a restaurant to cook only local foods, including, fufu, banku, konkonte, boiled plantain and yam. KFS has started operating in Accra. BB Kitchen is very furious and claims KFS has breached the restraint of trade contract between them, and has come to you for advice.

Using relevant authorities, including case law, advise BB Kitchen on its rights, if any. [15 marks]

- (b) Redeemer has worked as a driver for Kobbs Engineering Company Limited, engaged in the manufacturing of agricultural equipment for 12 years. He has been elevated to the position of Chief Driver, Engineering. He has tendered his resignation and the company has given him a draft agreement which seeks to restrain him for a period of 7 years from working for any rival companies operating in the area of his current employer. He thinks he is being treated unfairly and has come to you for advice.

Applying decided cases discuss the limits of restraint clauses in employment contracts and advise Redeemer accordingly. [15 marks]

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