DELIGHT CONCEPT

COURSE CODE: CLL / ACC 307

COURSE TITLE: COMMERCIAL LAW

What is the rationale for the "nemo dat quod non habet" rule? Identify and discuss intelligently the exceptions to the rule.

The general rule is built on the legal principle of the Latin Maxim "Nemo dat quod non habeat" 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 agents 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 POSSESION

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. To constitute a sale in a market overt, it must be shown that the sale took place within the premises of the market, during ordinary business day, provided it is a sale of goods of the kind normally sold in the market. Not only must the sale be in a market overt and the whole transaction effected there, it is vital to show that the sale was open and public. In Reid v. Metropolitan Police Commissioner (1973)2 AER 97, the sale of stolen goods took place in a market overt in the morning when the sun had not risen and it was still only half light. The court held that the goods should have been sold in day time when all who passed could see the goods.

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. Consequently, a court bailiff acting in compliance with such an order may exercise a valid power of sale.

Is there difference between executed and past consideration?

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.

WHILE

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.

Write short notes on any three of the following

a. Pre-colonial judicial system in Nigeria

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.

b. Elements of unfair competition

Components of Unfair Competition

Unfair competition in commercial law refers to a number of areas of law involving acts by one competitor or group of competitors which harm another in the field, and which may give rise to criminal offenses and civil causes of action. The most common actions falling under the banner of unfair competition include:

- 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.

Various unfair business practices such as fraud, misrepresentation, and unconscionable contracts may be considered unfair competition, if they give one competitor an advantage over others. In the

European Union, each member state must regulate unfair business practices in accordance with the principles laid down in the Unfair Commercial Practices Directive, subject to transitional periods.

c. Trade libel

Trade Libel

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. In Ratcliffe v. Evans (1892) 2 QB 52, the

defendant falsely and maliciously published an article implying that the plaintiff business has gone out of business. The plaintiff sued to recover the losses resulting from the publication. The claim was granted.

This tort can be committed without impugning reputation. It is generally concerned with claimant economic and commercial interests.

(d) Constituents of an efficient tax system

1. **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. There must also be consistency in administration of the tax among the different strata of government.

2. **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. What we mean by horizontal equity is that those in equal circumstances should pay an equal amount of tax. And when

we say vertical equity, it means that those in unequal circumstances should pay different amount of tax. The importance of this criterion is to install confidence in the tax payer who will be more willing to pay their taxes if they believe that the system is fair and equal.

3. **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.

4. **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.

5. 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. Also the tax which every person is bound to pay ought to be certain and not arbitrary.

6. **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.

7**. 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.

Identify and explain the fiduciary duties of a director of a Nigerian company.

(a) The directors must observe utmost good faith towards the company in any transaction with or for the company S. 279 (1).

(b) They must act at all times in what they honestly believe to be in the best interest of the company. S. 279 (3) and (4).

(c) They must exercise company powers for the purpose specified and not for personal benefit. S. 279(5).

(d) They must not compromise their discretion to vote in a particular way in any Board resolution S. 279 (6)

(e) They must not delegate their powers in circumstances that amount to abdication of duties S. 279(7).

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.

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.

a) 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.

b) 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

3) Qualified Consent Theory

This can happen in a situation where the actual authourity 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 concept and principles of Arbitration and that of Commercial Arbitration are better presented and understood from its operational definitions vis-à-vis its relational benefits to the society most especially as against litigation. Discuss.

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.

There are variously definitions of arbitration which includes:

"….. 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." (Halsbury's Laws of England).

Furthermore, arbitration refers to the settlement of a dispute between two or more persons after hearing the parties in a quasi-judicial manner by persons other than a competent court. An exercise is not arbitration if it does not answer this definition.

In the words of Professor Schmitthoff:

- It is a truism to state that Arbitration is better than
- Litigation, conciliation better than arbitration and
- Prevention of legal disputes better than conciliation

COMMERCIAL ARBITRATION

Commercial arbitration relates to arbitration of relationship of a commercial nature. The question is what is "commercial"? It is generally agreed that arbitration is a particularly suitable approach for the resolution of disputes arising out of business relationships (as opposed, for instance, to domestic 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. Thus it would be permissible to hold arbitration over a contractual matter between two merchants but not for a contract based on the determination of inheritance of the property of the deceased.

ADVANTAGES OF ARBITRATION

The advantages of arbitration include:

(a) 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. They cannot force the court or judge to speed up things for them but this is possible in an arbitration proceedings. The freedom or "autonomy" of the parties gives them the opportunity to request for an accelerated or fast-track procedure.

(b) 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. For this reason, they opt for a private dispute mechanism like an International Commercial Arbitration. Recently, the issue of confidentiality came under criticism following the decision of the High Court of Australia in Esso Australia Resources Ltd and Others v Plowman (Minister for Energy and Minerals) and others. Scholars like Paulsson had actually suggested that the concept of confidentiality needs to be remodelled.

(c) 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. For this reason, they would need a neutral jurisdiction to arbitrate their dispute.

(d) 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.

(e) 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 provided for under Article V of the New York Convention 1958.

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

1. 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.

Magistrate Courts

Magistrate Court are established and governed by the laws of the various States. In this paper, we will use Lagos State Magistrate Courts Law (cap 127) which fairly represents all the others as a case study. (Amended as Lagos State Magistrate Courts Law 2009).

COMPOSITION

In Lagos State the Chief Magistrates Court are graded, Chief Magistrate Grade 1,2; Senior Magistrate Grade 1,2; Magistrate Grade 1,2 and 3.

A Court Registrar with the following duties serves every Magistrate.

a. To attend at such sittings of the court as the Magistrate shall direct.
b. To prepare or cause to be prepared Summons, Warrants, Orders, convictions, recognizes, writs of execution and other documents and submit the same for the signature of the magistrate.
c. To make or cause to be made copies of proceedings when required to do so by the magistrate and to record the judgments, convictions and orders of the court;
d. To receive or cause to be received all fees, fines, and penalties, and all other moneys paid or deposited in respect of proceedings in the court and to keep or cause to be kept accounts of the same, and
e. To perform or cause to be performed such other duties connected with the court as may be assigned to him by the Magistrate.

Every Magistrate is ex-officio Justice of the Peace in Lagos State and exercises all the powers of a Justice of the Peace. The Judicial Service Commission is empowered to appoint a justice of the peace as a Magistrate by a Notice Published in the State Gazette.

The Magistrate or Justice of the Peace has powers to:

1. Issue summons and warrants for the purpose of compelling the attendance of accused persons or persons as witnesses before the court;
2. Issue summons and other process in civil causes and matters;
3. Remand to the court persons who are accused but not convicted of crime; or admit them to bail,
4. Issue search warrants,
5. Take solemn Affidavits and Statutory declaration and
6. Administer any oath which may be required to be taken before him in the exercise of any of the jurisdiction and powers conferred upon him by law.

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

OR

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

CONSIDERATION

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 valve."

Consideration must Move from the Promise

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 promise (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.

Types of Consideration

We have Executory and Executed types of Consideration

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.

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.

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. See the case of Thomas V Thomas (1842)2 Q.B. 851. A testator, before his death, expressed the desire that his wife should continue to live in his house for the rest of her life. After he died, his executor wrote to the wife confirming her late husband's wish and stated that the widow could have the use of the house for the rest of her life, on

payment of £1 a year. When subsequently the executor tried to rescind his consent, he was held bound by the undertaking not because of the husband's wishes, but because of the widow's own undertaking to pay £1 a year, which was regarded as good consideration.

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. But once it is real and of some value, the act or promise will be sufficient, and it is immaterial that it is not adequate for, or commensurate to, the defendants promise.

4. 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.

Give a brief Discussion on the following concepts of Law:

a) Distinction between Agent and Bailee

b) Distinction between Agent and Trustee

c) Distinction between Agent and Servant and Independent Contractor

Agent and Bailee

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

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.

The law provides that if a person does not have the title to the goods they cannot pass good title.

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. It does depends on terms of the contract but in the case of Hartley v. Hymans (1920) All E.R 328, the court held that in ordinary commercial contracts for the sale of goods, the rule is that time is prima facie of the essence in the contracts.

If the time for delivery is fixed by the contract, then failure to deliver at that time will be a breach of condition, where no date is fixed in the contract, delivery by the seller must be within a reasonable time which will be determined by matters such as the nature of the goods. Although time is of

delivery, the buyer can waive this condition where he does, then it will be binding on him whether made with or without consideration.

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.

Explain the Sellers real rights in relation to the goods (rights in rem)

RIGHT OF THE SELLER

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 that will be discussed later. 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:

They are two of them;

1. action for the price
2. action for damage

1. Action for the Price

An action for the price is an action in debt. The seller has the right to bring an action for the price.

2. Action for Damages

Under 50 (1) of the Act, where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller will have an action for damages for non acceptance.

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.

I. 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.

II. 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.

The following are the requirements for stoppage of goods in transit. The method of stoppage is outlined in s46 of the Act, they are stated below as where:

- the seller is unpaid
- the buyer is insolvent: that is the buyer is either ceased to pay their debts in the ordinary course of business or cannot pay their debts as they become due. (s61 (4))
- the goods are in transit

III. 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.

Define Hire Purchase

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. The concept of Hire Purchase is an important aspect of commercial transactions developed in the United Kingdom and can now be found in existence all over the world now. It is also called closed-end leasing. In the true Hire Purchase Act did not come to being until the Factors Act, 1889, introduced the rule that a buyer in possession of the goods could pass a good title to a bonafide purchaser or pledgee.

In Nigeria as well, the contract of hire purchase is also of recent origin. Indeed, the first Act passed on this matter was in 1965, Its practice however dates back to scores of years ago when local traders sold on credit while dealers sold to people on local and informal.

Halsbury's Laws of England Vol. 1st Edition, defined 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

i. Hire Purchase from Hire

ii. Hire Purchase from Loans and Mortgages

iii. Hire Purchase from Sale on Credit Terms

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.

Define a Bill of Lading and state its functions.

The bill of lading is an important aspect of the carriage of goods by sea. 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.

It has been argued that the bill of lading falls into the category of contract referred to as contracts of adhesion, that is, contracts on take it or leave it basis. This view is particularly prominent in the United States of America.

The bill of lading is issued to the shipper in sets of three. One is retained by the master or broker, while two copies are dispatched; one by express mail to the buyer or the consignee. It is a document of title, possession of which, in legal sense, is possession of the goods which it represents.

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.

b) Define the following concepts

i. The Bill of Lading as a Contract

ii. The Bill of Lading as a Receipt

iii. The Bill of Lading as a Document of Title

iv. The Bill of Lading as a Negotiable Instrument

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. In Crooks v. Allan (1879) 5 Q.B.D, 38, it was held that a bill of lading is not the contract but only an evidence of the contract. But in The Ardennes, it was settled that a bill of lading is not, in itself, the contract between the shipowner and the shipper of goods, though it has been said to be excellent evidence of its terms.

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.