**ASSESSMENT TEST WINTER SEMESTER 2022/2023**

**YEAR 2 Group no: Law B2**

**NAME:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; Album no: \_\_\_\_\_\_\_\_ Date: ­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Student’s Book: unit: Selling and Buying**

**Score: \_\_\_\_\_\_\_\_\_\_\_\_/30 marks**

**READING 6 points**

**Read the following case study relating to the certainty of terms in contracts.**

In *Carlill v Carbolic Smoke Ball Co*(U.K., 1893), the company placed advertisements in a number of newspapers, declaring that it would pay Ł 100 to anyone who caught the flu after using its smoke balls according to the product instructions. The company further stated that it had deposited Ł1.000 at the Alliance Bank as a guarantee against any possible claims. Mrs Carlill bought one smoke ball, used it as indicated in the instructions, but still caught the flu. She claimed the sum of Ł 100 stated in the advertisement but the company refused to pay her. Mrs Carlill then sued the company, which argued that the advertisement was too vague to be considered a contract. The court eventually held that the product instructions were sufficiently clear and defined to constitute the terms of a contract and that the reference to the Ł 1000 deposit was evidence enough of the company’s intention to be bound. The court concluded, therefore, that Mrs Carlill was entitled to recover the Ł 100 stated in the advertisement.

**Mark “true” or “false” for the following sentences.**

1. Carbolic Smoke Ball Co had provided a bank deposit of Ł 1000 as a security for the reliability of its smoke balls.

2. Mrs Carlill was awarded Ł 100 by the Carbolic Smoke Ball Co because she had caught the flu despite having used the smoke ball.

3. The court held that Mrs Carlill was not entitled to the sum of Ł 100 since the advertisement was too vague to be considered a contract.

**Express and implied terms**

Commercial contracts should contain terms about delivery or completion of work. It is possible to imply certain terms, but to avoid misunderstandings the parties should make their intentions clear by providing express terms. Certain types of contracts, however, contain implied terms provided by the law or by judicial decisions. Generally, in contracts for the sale of goods, merchantability of goods and absence of defects in workmanship and materials are implied terms by operation of law. Such terms are often implied in contracts to ensure a minimum degree of protection for the parties to the contract.

**Select the correct answer by marking “true” or “false”.**

1. Contractual provisions must be express to be valid.

2. In contracts certain terms may be implied by the law or by judicial decisions.

3. Some contractual terms are implied by operation of law in order to ensure a better protection for the parties to the contract.

**professional skills: understanding contracts 12 points**

Replace the words and phrases in brackets with the contracts language in the box. Write a) to l) in the gaps. Use each phrase only once.

|  |  |  |
| --- | --- | --- |
| a) shall be responsible for | b) null and void | c) in witness thereof |
| d) contained hereinabove | e) shall keep in strict confidence | f) hereby accepts and agrees |
| g) terms and conditions | h) whereas | i) consent and approval |
| j) shall be construed | k) for and on behalf of | l) described hereunder |

**1** Signed \_\_\_\_\_ (instead of) . . .

**2** \_\_\_\_\_ (being present when something is signed), the parties have executed this Agreement . . .

**3** Each party \_\_\_\_\_ (must not reveal) all commercial and technical information . . .

**4** \_\_\_\_\_ (Considering that) the Company is organizing an event . . .

**5** . . . under the \_\_\_\_\_ (what the contract says must be done) of this Agreement.

**6** The Event Planner \_\_\_\_\_ (consents as a result of this statement) to use the Company’s name.

**7** . . . without first obtaining the \_\_\_\_\_ (permission) in writing.

**8** The provisions of this Agreement \_\_\_\_\_ (must be understood) and the performance thereof governed . . .

**9** . . . the services \_\_\_\_\_ (stated in the next part of the document) in Appendix A.

**10** . . . the mutual covenants and agreements \_\_\_\_\_ (included in this document).

**11** The Event Planner \_\_\_\_\_ (must take charge of) the organization of . . .

**12** Any breach of this term shall render the contract forthwith \_\_\_\_\_ (without legal force).

**VOCABULARY 12 points**

**Remedies to breach of contract**

A contract gives rise to legal rights and obligations; the non-performance or the non-compliant performance of contractual obligations shall result in a breach of contract and give rise to a contractual liability of the breaching party. Liability may be limited or excluded by way of exclusion or limitation of liability clauses.

When a breach of contract occurs, the non-breaching party may be entitled to contractual remedies, such as penalty, liquidated damages, contract termination.

Choose the correct definitions

**1. Breach of contract:**

A The extinction of the contractual obligations

B A default by one party in performing its contractual obligations

**2. Breaching party:**

A The party in breach of contract

B The party who terminated the contract

**3. Obligation:**

A The duty to do or not do something

B Compliance with the law

**4. Contractual liability:**

A The responsibility arising from a breach of contract

B The duty to fulfill the contractual obligations

**For each of the sentences below choose the correct word to fill in the blank: cancel, renege, sign, award**

|  |
| --- |
| 1. If you want to buy or sell a car, you need to .... a contract with the dealer. |
| 1. If you choose an advertising agency to improve the image of your company or a distributor to sell your products, you .... a contract to them. |
| 1. If you fail to pay for the goods you ordered or refuse to appear in the movie you promised to star in, you .... on a contract. |
| 1. If you are dissatisfied with your business partner because he/she doesn't meet your requirements, you may decide to .... a contract with them. |

**For each of the sentences  below choose the correct word to fill in the blank: draft, negotiate, take out, breach**

|  |
| --- |
| 1. To .... a contract on somebody means to pay someone to kill this person. |
| 1. To .... a contract means to prepare its written version which may still be changed. |
| 1. If you agreed to do a job and then fail to do it, you .... a contract and may have to pay damages. |
| 1. If you want to get the best price for a book you want to write, you should .... a good contract with your publisher. |

**KEY**

**Reading**

**1 t 2f 3f**

**1,2,3 t**

professional skills: understanding contracts

**1** k / **2** c / **3** e / **4** h / **5** g / **6** f / **7** i / **8** j / **9** l / **10** d / **11** a / **12** b

**Voc**

**1b2a3a4b**

**Award, renege, sign, cancel**

**Take out, draft, breach, negotiate**