

COVENANT UNIVERSITY
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TUTORIAL KIT
OMEGA SEMESTER

PROGRAMME: COMPUTER
SCIENCE & MIS

COURSE: MKT 323

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MKT 323: LEGAL ASPECT OF MARKETING

QUESTION 1

1. Peter established a company last year for the production of detergent and disinfectant. In February, 2010, he came out with a detergent that has the same as Omo the name of the detergent is Omons.

A lot of people bought Omons therefore there was a low demand for Omo, Unilever has now come to you to explain to them the term of Peter's act.

- (a) What explanation would you give?
- (b) What are the common types of passing off

ANSWER

(1a) It's tort of passing off. Which is the selling of goods or the carrying on of business in such a manner as to mislead the public into believing that the defendant's product or business is that of the plaintiff, Where it is proved, Unilever will be entitled to an injunction restraining Peter from continuing the wrong, to damages for any loss she has incurred thereby and to an account of the profits made by the defendant in consequence of the tort. Spalding v. Gamage: held that the plaintiff will recover damages for the loss of profits he has suffered as a result of customers being diverted from him to the defendant. He was also held entitled to recover for loss of business reputation and good will

(1b) Passing off takes various forms, the most common of which are the following:

- Marketing a product as that of the plaintiff: It is passing off for the defendant to sell merchandise with a direct statement that the goods are manufactured by the plaintiff, when in fact they are not. In Byron v Johnson
- Trading under a name so closely resembling that of the plaintiff as to be likely to mislead the public into believing that the defendant business and that of the plaintiff are one and the same: Niger Chemists Ltd v. Nigeria Chemists. Ogunlende v Babayemi
- Marketing goods under a trade name already appropriated for goods of that kind by the plaintiff or under a name so similar to the plaintiff's trade name as to be mistaken for it
- Marketing goods with the trade mark of the plaintiff or with any deceptive imitation of such mark
- Imitating the get-up or appearance of the plaintiff's goods: U.K Tobacco Co. Ltd v. Carreras Ltd, Trebor (Nigeria) Ltd v. Associated Industries

QUESTION 2

Explain the requirement for the formation of a valid contract.

ANSWER

- Offer -proposition made by one party, called the offeror, to another party, called the offeree, clearly and precisely indicating the terms under which the offeror is willing to enter into a contract with the offeree.
- a. It must be definite, certain and unequivocal.
 - b. The proposition must emanate from the person liable to be bound if the terms are accepted Ajayi-Obe v. The Executive Secretary, Family Planning Council of Nigeria
 - c. It must be communicated to the offeree. Carlill V. Carbolic Smoke Ball Co.

- Acceptance: An acceptance is the final expression of assent to the terms of an offer without variation, qualification or addition.. In *Odufundade v. Ososami*
- An acceptance may be made by word of mouth, in writing, or even by conduct. *Brogden V. Metropolitan Rail Co.*
- Communication of Acceptance
- Consideration: has been defined in *Currie v Misaas* "some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."
 - a. Consideration must be sufficient but need not be adequate
 - b. Consideration must move from the promisee, though not necessarily to the promisor
 - c. Consideration may be executed or executory, but must not be past.
 - d. Consideration must not be illegal or contrary to public policy
- Intention to create legal relations: Even where valuable consideration is present, an agreement will not become a binding contract unless it is intended by the parties to it that it should give rise to legal relations
- Lawful object: illegality: A contract, even where all the other requirements are satisfied, is totally void and unactionable if its object is illegal.
- Contractual capacity
 - Infants, Persons of unsound mind, drunken persons, Married women, Illiterates, Corporations

QUESTION 3

Trespass to chattel is distinct from conversion yet similar in some respect. Discuss

ANSWER

- Definition of trespass to chattel
- Interest the tort protects (3)
- Acts of trespass – *Ajao v Ashiru*
- Prove intention or negligence – *National Coal Board v Evan, Hokmes v Matthew*
- Protection of property- state the three principles
- Definition of conversion
- Difference between trespass to chattel and conversion (3) –*Ashby v Tolhurst, Consolidated co Ltd v Curtis & Son*
- Acts of Conversion (4)

QUESTION 4

Ayo put his hand on his sword and said to Matthew "if it were assize time, I would not take such language from you Mathew". Mathew seeks your advice.

Will your answer be different if Ayo raised a sword over Matthew's head and said "were it not for the policemen outside, I would have split your head open"

ANSWER

- Issue: whether Ayo's action could be said to amount to an assault
- Rule of law: definition of assault
- Analysis: Words will not constitute assault if they negative any threat the defendant is making - Tuberville v Savage. Secondly, For there to be an assault, the plaintiff must have reasonably expected an immediate attack- Stephens v Myers
- Conclusion: no assault
- Answer would be the same-

QUESTION 5

Trespass to chattel is distinct from conversion yet similar in some respect. Discuss

ANSWER

- Definition of trespass to chattel
- Interest the tort protects (3)
- Acts of trespass – Ajao v Ashiru
- Prove intention or negligence – National Coal Board v Evan, Hokmes v Matthew
- Protection of property- state the three principles
- Definition of conversion
- Difference between trespass to chattel and conversion (3) –Ashby v Tolhurst, Consolidated co Ltd v Curtis & Son
- Acts of Conversion (4)

QUESTION 6

Copyright is the right which the law gives an author or other originator of an intellectual production whereby he is invested with the sole and exclusive privilege of reproducing and selling copies of his work. In line with this definition discuss the following

- (a) Works eligible for copyright in Nigeria
- (b) Copyright Ownership
- (c) Transmission Of Copyright

ANSWER

- (a) Works eligible for copyright
 - Eligible work means "works" of copyright which the law will protect –S.1
 - a) Literary works
 - b) Musical works
 - c) Artistic works
 - d) Cinematographic works
 - e) Sound recording
 - f) Broadcast
- (b) - copyright ownership is not automatic; following are those who may claim copyright:
 - Persons who are either Nigerian citizens or domiciled in Nigeria.
 - Persons whose work is first published in Nigeria
 - Persons who are employed to make a work in the course of their employment.
 - Persons who are commissioned to make a work where the work has been commissioned by a person who is not the authors employer under a contract of service or apprenticeship.
 - Persons who copyright work are assigned.

- Persons to whom a license of the work has been granted.
 - The Federal or State government commissioning someone to make a work.-
 - Companies registered under Nigeria Law and which produce work of copyright.
 - Persons who are neither Nigerian citizens, nor domiciled in Nigeria but who are citizens of, or domiciled in a country that is a party to an obligation in a treaty to or other international organisation to which Nigeria is a party.
- C. Assignment of the whole or part, for or for no consideration.
- By disposal under a will.
 - By operation of law upon death or intestacy.
 - By license, which need not be in writing, unless it is an exclusive licence or by different kinds of agreement or licence.

QUESTION7

Discuss the remedies available for infringement of copyright

ANSWER

- Remedies in civil law include:
 - Award of damages
 - Injunction
 - Accounts for profit and payment of it to the copyright owner as profit.
 - Delivery up of all the copyright work
- Remedies in criminal law include:
 - Fine upon conviction
 - Imprisonment upon conviction
 - Impoundment or seizure of the infringing item, and its forfeiture
 - Order for surrender, or forfeiture of the infringing work to the copyright owner
 - Destruction of the infringing article or the making of such order as the court may think fit.

QUESTION 8

With the aid of decided cases discuss the tort of deceit and the elements needed to establish the tort.

ANSWER

- Definition of tort of deceit – Deek v Peek
- To sustain an action, prove fraud
- Elements needed in an action for deceit
 - False representation- James v Mid Motors(Nigeria) co ltd
 - Intention that the statement be relied upon- Edgington v Fitzmaurice
 - Knowing or reckless as to whether the statement is false- Derry v Peek
 - Reliance by the Plaintiff

QUESTION 8

Identify and discuss the five components of the marketing environment.

ANSWER

Competitive environment Interactive process that occurs in the marketplace among marketers of directly competitive products, marketers of products that can be substituted for one another, and marketers competing for the consumer's purchasing power. Companies with a monopoly usually accept regulation in exchange for the exclusive right to serve a market segment.

Oligarchy—Limited number of sellers in an industry with high start-up costs.

Types of competition

-Direct—among marketers of similar products.

-Indirect—involves products that are easily substituted for each other.

-Competition among all firms that compete for consumers' purchases.

Political-legal environment Component of the marketing environment consisting of laws and their interpretations that require firms to operate under competitive conditions and to protect consumer rights

Government Regulation

Anti-monopoly period of the late 19th and early 20th centuries.

Protecting competitors during the Great Depression.

Consumer protection in past 40 years.

Industry deregulation began in the 1970s and continues today.

Newest regulatory frontier is cyberspace – The Internet.

Economic environment Factors that influence consumer buying power and marketing strategies, including stage of the business cycle, inflation and deflation, unemployment, income, and resource availability

Stages in the business cycle - Prosperity, recession, depression, and recovery.

Inflation and deflation - Inflation—Rising prices caused by some combination of excess demand and increases in the costs of one or more factors of production.

Deflation—falling prices. Can decrease profits, lower investment returns, and bring widespread job layoffs.

Technological environment Application to marketing of knowledge based on discoveries in science, inventions, and innovations. Government and not-for-profits often contribute to research and development, which can be very costly

Applying technology

Marketers monitor new technology to gain competitive edge.

Social-cultural environment Component of the marketing environment consisting of the relationship between the marketer, society, and culture. Increasing importance of cultural diversity and submarkets with unique values, preferences, and behaviors.

QUESTION 9

To be successful under the tort of Negligence, the plaintiff must prove essentially three elements. Discuss these elements

ANSWER

Duty of Care; is said to be owed by the defendant to the plaintiff if it is foreseeable that his action would cause harm to the plaintiff. Principle laid by Lord Atkin in *Donoghue v. Stevenson*

To establish a duty of care, some factors are put into cognisance;

(a) Reasonable Foreseeability. (b) Proximity (c) Public Policy

Breach of the Duty of Care _ plaintiff must also prove that by objective standards, the defendant failed to take reasonable care or precaution to prevent the accident that occurred.

Factors taken into consideration (a) the seriousness of the risk. (b) practicability of taking precaution to avoid the risk among other factors is also considered.

Consequential Damage _ the plaintiff must also prove he has suffered some damages as a result of that breach.

Two elements needed; a. Causation in fact b. Causation in law

QUESTION 10

The tort of deceit is founded on the notion that a falsehood is made with the intention that it should be acted on by the party receiving it. What are the elements needed to be proved before a claimant can succeed under this tort.

ANSWER

Elements of the Claim of Deceit

False Representation: James V. Mid- Motors (Nigeria) Co. Ltd

Intention that the statement should be relied upon: See Edgington V. Fitzmaurice

Knowing or reckless as to whether the statement is false: Derry v. Peek

There was reliance by the plaintiff

QUESTION 11

Discuss three Consumer Protection Agencies. Stating, at least five important functions of each of the Agencies.

QUESTION 12

In a contract of the sale of goods, the courts can in the absence of express terms rely on Statutory implied terms to define the intention of the parties. Examine these implied terms using judicial authorities to buttress your answer

QUESTION 13

(i). Define and describe ethical issues in marketing.

(ii). What is consumerism?

(iii). Describe the effects of consumerism movement on marketing and the society at large

QUESTION 14

Define the tort of Negligence and explain its three elements

QUESTION 15

Explain the three separate torts of trespass to the persons.

Discuss extensively all the defences available to a defendant in an action for trespass to the person.

QUESTION 16

Explain the basic elements of contract of sale of goods.

QUESTION 17

Andrew brought out a gun from his pocket, pointed it at Wole and threatened to shot him if he refuses to do his bidding but quickly added that he won't shot him because of the Soldiers outside. Wole was terribly frightened and has now come to seek your advice. What advice would you give him.

Would your answer be different if Andrew had used his belt to whip Wole.

QUESTION 18

Once made, an offer remains open for acceptance until one of five events happens to terminate it. Discuss using judicial authorities these events

QUESTION 19

Explain the basic elements of contract of sale of goods.

In a contract of the sale of goods, the courts can in the absence of express terms rely on statutory implied terms to define the intention of the parties. Examine these implied terms using judicial authorities to buttress your answer.

QUESTION 20

Discuss three classification of Agency and the various ways agency relationship can be created.

TUTORIAL QUESTIONS

"Marketing as a philosophy is ever-growing and being continuously refined in order to ensure the satisfaction of man who himself is dynamic" Justify this statement with an outline of marketing definitions.

1. Marketing is an interdisciplinary quasi-science. Discuss.
2. Identify the common threads running through some marketing definitions you have studied and articulate their importance.
3. The importance of Marketing in a modern economy cannot be over-emphasised. Discuss
4. What do you understand by Agriculture?
5. Highlight the roles of Agricultural production in Nigeria

6. What are the obstacles of Agricultural development in Nigeria? Suggest ways to overcome these obstacles
7. Discuss the features of Agriculture procedure. And as a marketer, how would you market agriculture produce?
8. Examine the facilitating functions of marketing as related to food and agricultural marketing
9. Enumerate and discuss the functions of marketing in food and agricultural processes.
10. How do exchange, physical and facilitating functions of marketing in food and agricultural marketing differ from one and other?

What are the principal advantages and disadvantages of bulk over bag storage of grain?

11. Examine the stages of commodity marketing and their participants in LDC
12. Take any agricultural commodity you like. Present its essential features in relation to assembly, transporting, grading, processing and consumption.
13. Define co-operatives society and discuss reasons for Agricultural co-operatives
14. Mention and explain the types of Agricultural and marketing co-operatives known to you.
15. What are the benefits to be derived from membership of a co-operative society?
16. Identify the major problems of co-operative movement in Nigeria.

What is marketing board? Highlight the objectives of marketing board

With the aid of diagram explain the nature of stabilization and structural adjustment policies

What are the impediments to private sector participation in Agricultural marketing in Nigeria? What recommendations have you to offer?

List and explain the main obstacles to the entry of the private sector into deregulated agricultural marketing systems

(a) Distinguish between commercialization and privatization

(b) Briefly outline the main issue to be addressed before privatizing and commercializing an agricultural marketing parastatal

17. Specify the major objectives of economic Structural Adjustment Programmes

Marketing is like a big elephant which people tend to describe from their different angles of vision. Do you agree with this statement?

Approach to answering the Odd Questions

1. "Marketing as a philosophy is ever-growing and being continuously refined in order to ensure the satisfaction of man who himself is dynamic" Justify this statement with an outline of marketing definitions.

ANSWER

The situations described above have engendered several definitions of Marketing given by various scholars at different periods in time. A few of these definitions need to be considered. The American Marketing Association (AMA) in 1960 (Alexander, 1960:15) officially defined Marketing as
“the performance of business activities that direct the flow of goods and services from producer to consumers or users.”

- value to customer relationships in ways that benefit the organization and its stakeholders”
2. Identify the common threads running through some marketing definitions you have studied and articulate their importance.

ANSWER

An examination of the definitions of marketing would reveal some key words common to them, which are “needs” “wants” or “demand”, “satisfaction” and “exchange process”. We can therefore see that modern marketing is essentially concerned with the performance of the activities that enable individuals or organisations to find what people need or want and satisfying them through the exchange process. This means that marketing is not just the buying and selling or distribution of the goods and services that have already been produced. It precedes production, is intimately involved in providing the pertinent information needed to direct production, helps to offer the desired goods and services to people for patronage, and goes beyond patronage to ensure that consumers are satisfied with the goods and services they have patronised.

Marketing is a socio-economic activity. It is about people and how they interact to identify and satisfy needs. Consumers, whose needs have to be identified and satisfied, are at the centre of the activities of Marketing. It is only when consumers needs are properly identified and satisfied that Marketing process is completed.

3. What do you understand by Agriculture?

ANSWER

Agriculture perse refers to the cultivation of the soil. In practice, however, it means more than soil cultivation. It involves the production processing and distribution of products from crops, livestock, fishery, wildlife and forestry.

4. What are the obstacles of Agricultural development in Nigeria? Suggest ways to overcome these obstacles

ANSWER

There is the need at this point to first enumerate the problems of the agricultural sector. These include among others

OBSTACLES

- Inadequate land and the land tenure system handicap
- Lack of basic infrastructure like good roads, electricity etc.
- Poor financial status of the farmer
- Lack of storage facilities
- Inadequate agricultural, education and extension services
- Low literacy level
- Inadequate government policy/programmes resulting mainly from poor implementation.
- High incidence of pest
- High incidence of diseases
- Lack of mechanization
- Administrative constraints resulting from federal character.

OVERCOMING THE OBSTACLES

These efforts include

- provision of health care centers and schools
- provision of electricity in rural places
- provision of information/media centre
- provision of portable and drinkable water
- banning of export of some commodities
- subsidized rates of input
- provision of all season roads
- provision of extension services

There is also the need for more emphasis to be laid on the provision of:

- adequate research
 - timely supply of input
 - subsidy for farm inputs
 - adequate training in processing and storage
 - government to buy excess produce for future sales
5. Examine the facilitating functions of marketing as related to food and agricultural marketing

ANSWER: The facilitating functions include
product standardization,
financing,
risk bearing and
market intelligence.

Note that facilitating functions are those activities which enable the exchange process to take place.

STUDENT ARE EXPECTED TO DISCUSS IN DETAILS

6. How do exchange, physical and facilitating functions of marketing in food and agricultural marketing differ from one and other?

The Physical functions include

1. storage,
2. transportation and
3. Processing

While the facilitating functions include

1. product standardization,
2. financing,
3. risk bearing and
4. market intelligence.

7. Examine the stages of commodity marketing and their participants in LDC

A commodity marketing system encompasses all the participants in the production, processing and marketing of an undifferentiated or unbranded farm product (such as cereals), including farm input

suppliers farmers, storage operators, processors, wholesaler and retailers involved in the flow of the commodity from initial inputs to the final consumer.

The following are the stages of agricultural marketing and their participants

1. Stage 1: Assembling: Participant include commodity buyers specializing in specific agricultural products, such commodities as grain, cattle, beef, oil palm, cotton, poultry and eggs.
2. Stage 2: Transportation: Participation includes Independent truckers, trucking companies, railroads, airlines etc.
3. Stage 3: Storage: Participation includes Grain elevators, public refrigerated warehouses, controlled-atmosphere warehouses, heated warehouses, freezer warehouses.
4. Stage 4: Grading and classification: Participation includes Commodity merchants or government grading officials.
5. Stage 5: Processing: Participation include Food and fibre processing plants such as flour mills, oil mills rice mills, cotton mills, wool mills, and fruit and vegetable canning or freezing plants
6. Stage 6: Packaging: Participation includes makers of tin cans, cardboard boxes, film bags, and bottles for food packaging or fibre products
7. Stage 7: Distribution and retailing: Participation includes independent wholesalers marketing products for various processing plants to retailers (chain retail stores sometimes have their own separate warehouse distribution centres)

8. Define co-operatives society and discuss reasons for Agricultural co-operatives

Co-operatives are business organizations owned and controlled by the members (member-patrons) and they aim at rendering services for the mutual benefit of all members. A patron is a member of a co-operative society who uses the co-operative services, on cost basis. Co-operative organization are run on the principles of (1) Democratic-sharing savings in proportion to share contributions, (2) political and religious neutrality (3) cash trading, (4) promotion of education, (5) encouragement of the production (and supply) of pure and unadulterated goods.

The Reasons for Agricultural Co-operatives are as follows

1. To counter the exploitative tendencies of middlemen in agricultural and food marketing operations

2. Help in obtaining production and consumption credit from financial institutions for its members as well as mobilize funds within the society for production and marketing of agricultural produce
3. help in the education of members on modern agricultural practices and provision of other vital information to farmers
4. help in provision of agricultural inputs and machinery to members
5. provide essential manufactured commodities to farmers in the rural areas
6. take advantage of economies of scale in production, processing and marketing of agricultural produce.

9. What are the benefits to be derived from membership of a co-operative society?

Answer: students are expected to explain in details the following

- Possibility of investment
- Benefit of price advantages
- Mobilization of savings
- Social Benefits
- Educational Benefits
- Rural Development
- Employment generation
- Entrepreneurship skills

10. What is marketing board? Highlight the objectives of marketing board

Marketing Board is a legal body set up by the government to buy agricultural produce from farmers and market them either internally or outside the country. It was formed during the Second World War 1939-1945. The colonial masters established it in order to ensure a steady supply of export crops from Nigeria to Britain during the war years.

Objectives

The objectives for setting up the Board at that time was to:

- i. ensure a steady supply of exports crops to Britain

- ii. stabilize prices of cash crops during the war years when prices were high at certain seasons of the year
- iii. grant loan to farmers
- iv. make grants to universities and research institutions for research
- v. undertake development.