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CIPS Commercial Contracting Sample Questions (Q38-Q43):

NEW QUESTION # 38

Which of the following are likely to be express terms in a contract?

1. Legislation
2. Custom and practice
3. Contract particulars
4. Terms and conditions

- A. 1 and 4 only
- B. 1 and 2 only
- C. 3 and 4 only
- D. 2 and 3 only

Answer: C

Explanation:

Express terms are the terms of the agreement which are expressly agreed between the parties. Ideally, they will be written down in a contract between the parties but where the contract is agreed verbally, they will be the terms discussed and agreed between the parties.

The types of express terms to be found in a contract are many and varied and will depend on the type of contract. Any term written into the contract is an express term and may refer to price, time scales, warranties and indemnities, limitations on liability, conditions precedent and so on.

Reference:

- Contracts: Express and Implied Terms
- CIPS study guide page 32

LO 1, AC 1.2

NEW QUESTION # 39

Rochdale Ltd is looking for a new IT system to automate some of its operations. In designing the specification, procurement manager supposes that it should be done solely by the IT department who have deep expertise on this matter. Is procurement manager's opinion appropriate?

- A. Yes, because procurement professional has no expertise in IT sector
- B. No, because challenging the user's demand is the role of procurement
- C. No, because designing complex specification could only be outsourced
- D. Yes, because designing complex specification would waste procurement manager's time

Answer: B

Explanation:

Procurement professionals have a role in challenging specifications. Technical experts can get things wrong and asking naive questions can be useful in bringing these to light. The challenging may include:

- Does the organisation really need these features/functions?
- With this specification, are there many available suppliers in the market?

- How many does the organisation really need?
etc
Reference:
LO 1, AC 1.1

NEW QUESTION # 40

Which of the following will always give rise to a claim of misrepresentation?

1. Silence
 2. False thought
 3. Statement of fact
 4. Representation by conduct
- A. 2 and 4 only
 - B. 1 and 3 only
 - C. 1 and 2 only
 - D. 3 and 4 only

Answer: D

Explanation:

A misrepresentation is a false statement of fact or law which induces the representee to enter a contract. Where a statement made during the course of negotiations is classed as a representation rather than a term an action for misrepresentation may be available where the statement turns out to be untrue.

For a party to claim for misrepresentation, there must be a false statement of fact or law as oppose to opinion or estimate of future events. It does not matter whether the incorrect information is given by words or takes the form of misleading conduct.

Silence will not generally amount to a misrepresentation. However, it can become a misrepresentation in some exceptional circumstances.

In the L4M3 study guide, the author states that "A statement of law is not misrepresentation". This is untrue in both common law and civil law systems. In the UK, false statement of law will now amount to an actionable misrepresentation (see Pankhania v Hackney [2002] EWHC 2441).

Reference:

- Misrepresentation
 - L4M3 study guide page 53-55
- LO 1, AC 1.2

NEW QUESTION # 41

Which of the following KPIs is qualitative?

1. Openness and co-operation of supplier
 2. Responsiveness of supplier
 3. Customer satisfactory ratings
 4. Cost management
 5. OTIF deliveries
- A. 1 and 4 only
 - B. 1 and 3 only
 - C. 2 and 5 only
 - D. 2 and 3 only

Answer: B

Explanation:

Qualitative KPIs are based on pure opinions about how well or otherwise the goods are performing or the service is being delivered. Most often, these will be linked to, or converted into, a numerical measure.

However, such satisfaction surveys often also include free fields for respondents to explain why they feel the way they do, and what they might have liked to have been different.

On the other hand, quantitative KPIs are based on numerical measure with either definite number (e.g., actual number of orders incomplete or otherwise inaccurate during the time period) or as a percentage (e.g. number of inaccurate orders as a percentage of the total number of orders).

Openness and co-operation means that supplier is open and co-operative in its relationship with purchaser, e.

g., in terms of joint problem solving. This KPI is qualitative since it is measured by individual judgement.

Responsiveness of supplier means the supplier responds rapidly to requests for information and support without having to be chased. It is measured by the number of times requests chased as a percentage of number of requests. It is a quantitative KPI.

Customer satisfactory ratings means the level of customer's satisfaction. This KPI is measured by periodic survey and it is a qualitative KPI.

Cost management is another quantitative KPI. It can be measured by comparing between the actual costs and the contractual costs.

OTIF (one-time in-full) deliveries is a quantitative KPI. It can be measured by counting the inaccurate deliveries in the period or inaccurate deliveries as a percentage of total number of deliveries for period.

Reference: CIPS study guide page 117-122

LO 2, AC 2.2

NEW QUESTION # 42

Michelle contacts Hannah and asks her if she would be interested in purchasing her car for £2000. Hannah immediately takes £2000 to Michelle and says she wants to buy the car. Michelle subsequently refuses to proceed. Has the contract between Michelle and Hannah been made?

- A. No, because by refusing to proceed, Michelle rejects Hannah's counter-offer
- **B. No, because Michelle has rejected Hannah's offer on buying the car**
- C. Yes, by her performance Hannah has accepted Michelle's offer on selling the car
- D. Yes, because both parties have full legal capability to enter into a contract

Answer: B

Explanation:

To solve the question, you must distinguish the following notion:

- Offer: The case of *Storer v Manchester City Council* [1974] 1 WLR 1403 outlines that an offer is: An expression of willingness to contract on specified terms, with the intention that it is to be binding once accepted

- Acceptance: in order for a contract to be formed, the offer must be accepted. Acceptance represents the meeting of the minds of the parties to the contract - both agree to exchange something for the other (payment, services, goods, etc.).

- Counter offer: is an offer made in response to a prior offer.

- Invitation to treat: An important distinction to make in contract law is that between an offer and an invitation to treat. An invitation to treat is usually an invitation for another party to make an offer. It may also be defined as an indication that a party is open to negotiation.

Here are some key distinctions of offers and invitation to treats.

Offer:

- * Certain promise to be bound
- * Clear and specified terms
- * The conduct or words of the party show certainty
- * There is no room for negotiation

Invitation to treat:

- * There is room for negotiation
- * There is an invitation for offers
- * There is a request for information
- * Lack of certainty

In the scenario above, initially Michelle just gives an invitation to treat because she is asking whether Hannah is interested to buy her car (request for information from Hannah). Hannah may reject or go into a negotiation with Michelle. Then, Hannah makes an offer by taking the money and shows her intention to be legally bound. At this point, when Hannah's offer is present, Michelle can accept or reject. When she rejects, the contract is not formed. The answer must be "No, because Michelle has rejected Hannah's offer on buying the car".

Reference:

- Definition of Counter Offer
- Formation of the contract
- CIPS study guide page 28-35

LO 1, AC 1.2

NEW QUESTION # 43

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