

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

PRINCIPLES OF LAW II– PAPER 6

ATC(U) EXAMINATIONS

LEVEL II MODEL EXAMINATION PAPER

DECEMBER 2001

INSTRUCTIONS TO CANDIDATES

1. Time allowed: **3 hours.**
2. Attempt **all** questions in Section A and any **two** questions from Section B and any **three** questions from Section C.
3. Section A consists of **twenty** compulsory questions each carrying 1 mark.
4. Section B has **three** questions and only two are to be attempted. Each question carries 20 marks.
5. Section C has **five** questions and only **four** questions are to be attempted. Each question carries 10 marks.
6. Please, read further instructions on the answer booklet before attempting any question.

SECTION A

Question 1:

- (i) To prove negligence, the plaintiff must prove all the following except:
 - (a) A legal duty owed to him / her.
 - (b) Recklessness on the defendant's part.
 - (c) Breach of duty.
 - (d) Consequent damages.
- (ii) Which of the following is true about a neighbour in law?
 - (a) A person with whom common facilities are shared.
 - (b) A person who may be affected by one's acts such that he must be put into contemplation.
 - (c) A person who ought to know that he is owed a duty of care.
 - (d) A person who is directly owed a duty of care.
- (iii) Detinue means:-
 - (a) Wrongful detention of goods belonging to another.
 - (b) Wrongful assignment of borrowed goods.
 - (c) Wrongful possession of goods belonging to another.
 - (d) Wrongful restitution of detained goods.
- (iv) A person who takes a bill complete and regular on the face of it, in good faith for value and without notice of any defect in title is called:-
 - (a) A holder of value.
 - (b) A payee of a bill.
 - (c) A drawee of a bill.
 - (d) A holder in due course.
- (v) What is meant by "negotiation"?
 - (a) Transfer of title in a bill to a third party.
 - (b) Sale of a bill to a third party.
 - (c) Purchase of a bill at a discount.
 - (d) Surrender of one's right to a bill.

(vi) An employee shall not be entitled to repatriation in one of the following cases:-

- (a) When the employee was brought to the place of employment by the employer.
- (b) When the employee is unable to fulfill the contract due to sickness.
- (c) When the employee's contract has been terminated by a court order due to the fault of the employee.
- (d) When the employer terminates the contract.

(vii) A contract of employment is governed by:-

- (a) employment rules.
- (b) the agreement between the parties.
- (c) by the general rules of contract.
- (d) by the Trade Union rules.

(viii) A Proxy is:-

- (a) A member of company who appoints another to vote for him.
- (b) A person appointed by a member of a company to vote for him.
- (c) A member of a company who absents himself from a meeting.
- (d) A company representative at a general meeting.

(ix) Issued Capital is defined as:-

- (a) Paid up capital of the company.
- (b) Capital issued by the company and actually purchased by shareholders.
- (c) Capital declared by the company as dividends.
- (d) Capital issued to shareholders.

(x) The share premium account can be used to pay for:

- (i) Premium for the redemption of debentures.
- (ii) Company's preliminary expenses.
- (iii) Dividends to shareholders.
- (iv) Fully paid bonus shares.
- (v)
- (a) i, ii and iv.
- (b) ii, iii and iv.
- (c) i and ii only.
- (d) i, ii, iii and iv.

(xi) When is it necessary to certify a transfer of shares?

- (a) On all transfer of unlisted shares.
- (b) When shares are being transferred to an existing member.
- (c) When a part-holding of shares is being transferred to the transferee.
- (d) When there are pre-emption rights in the articles.

(xii) Which of the following is true about shares and debentures?

- i. They are long-term investments in the company and are transferable in the same manner.
- ii. Both may be issued through a prospectus issue.
- iii. The holders are members of a company.
- iv. As a general rule, a company can purchase its own shares and debentures.

- (a) ii, iii and iv.
- (b) ii and iv.
- (c) i, ii and iv.
- (d) i and ii.

(xiii) How often does a company hold its statutory meeting?

- (a) Once a year.
- (b) Once in its lifetime.
- (c) Twice a year.
- (d) Once every two years.

(xiv) A special notice is required to be given in respect of a meeting which a resolution is to be passed for:

- (a) The appointment of a director who is below the age of majority.
- (b) The appointment of a director who is above the age of majority.
- (c) Re-appointment of an auditor.
- (d) Appointment of the Company Secretary.

(xv) Who of the following may be disqualified from acting as an auditor of a company?

- (i) A body Corporate.
- (ii) A firm of Certified Public Accountants.
- (iii) A person who is a partner of an officer of the company.
- (iv) A servant of a company.

- (a) ii and iii.
 - (b) i, ii, and iii.
 - (c) ii, ii and iv.
 - (d) i, iii and iv.
- (xvi) Which of the following is false?
- (a) The responsibility for the preparation and maintenance of a company's accounts lies with the directors and not the auditors.
 - (b) Directors may appoint the first auditors of a company.
 - (c) The company's directors should within twelve months after incorporation lay before the company in general meeting a profit and loss account.
 - (d) The balance sheet must be signed on behalf of the board by at least two directors.
- (xvii) Who of the following persons is not entitled to petition to wind up a company?
- (a) The Attorney General.
 - (b) The Inspector.
 - (c) The Official Receiver.
 - (d) Contributory.
- (xviii) The purposes for the rule of Foss V Harbottle include:-
- (i) To prevent multiplicity of suits if each and every shareholder were to institute proceedings without co-ordination with others.
 - (ii) To prevent members from suing if their individual rights have been invaded.
 - (iii) To prevent the violation of the principle of majority rule.
 - (iv) Upholds the principle of corporate personality.
- (a) i and iv.
 - (b) i, ii and iii.
 - (c) ii, iii and iv.
 - (d) i, iii and iv.
- (xix) The Registrar of companies may strike off a company's name from the register if:-
- (a) It is a defunct company.
 - (b) The company is under receivership.
 - (c) The company does not submit its annual return in the prescribed period.
 - (d) The company is being investigated for fraudulent trading.

- (xx) In which of the following circumstances may Winnie not be a member of a company?
- (a) She has sold all her shares in the company to James but her name has not yet been removed from the register of members.
 - (b) She subscribed the memorandum but her name is not as yet on the register of members.
 - (c) She has lodged a transfer with the company as transferee but has not yet been entered on the register of members.
 - (d) She has allotted shares and entered on the register but has not received a letter of allotment.

SECTION B

Question 2:

Etwang is the proprietor of West End Pub. On independence, Opaka, a regular patron at the pub registered for a drink. Since there was suspicion that he was in the habit of stealing from the pub, Etwang insisted that Opaka's briefcase be checked before he could leave the pub. He first resisted but Etwang overpowered him and on checking, some glasses and cutlery belonging to West End Pub were found in the briefcase. Being a prominent lawyer in town, Opaka decided to stay and defend himself before fellow patrons. However, because Etwang was so infuriated, she ordered Opaka out of the pub forthwith and never to come there again. However, due to the embarrassment, he refused to leave until he was forcefully thrown out of the pub. One week later, the widely read and popular Papparazi newspaper published the story giving details of what transpired at the West End Pub on that occasion. The paper added that Opaka was in the habit of stealing from other bars although he had actually never been caught. Opaka has approached you for advice.

Required:

Discuss all the legal issues involved and advise all parties.

(20 marks)

Question 3:

Billy Bobs Ltd. is an entertainment company with three shareholders viz: Billy, Bog and Billy's daughter who is 16 years old. Billy is the director of the company and has majority shares while Bob is the Secretary. The company has been doing lucrative business and making profits but no dividends have been declared since its incorporation. Billy has been letting his commercial premises in the city to the company at an inflated rent. He is also in the habit of diverting some of the company's business to Lariola Ltd., a company in which he also has shares and does similar business like Billy Bobs Ltd. Bob has threatened to sue Billy and Billy in turn wants to dismiss Bob from the company and promote his daughter to directorship. Further, unknown to Bob and Billy's daughter, Billy had contracted a loan in Keiza Bank Ltd on behalf of Billy Bobs Ltd. and the loan is due for repayment but Billy misused the money and the company may not be in position to repay the loan at present.

All the parties have come to you for advice separately.

Required:

What advice would you give to each of them?

(20 marks)

Question 4:

Moustache Ltd. is a man's wear outfit. It has two shareholders, Abdul and Abdul Co. Ltd., a company in which Abdul has majority shares. The company was incorporated five years ago but it has never held any company meeting and apart from the documents filed on registration, no other document has been filed on its file at the company registry. It has also been found out that most of the business which should be undertaken by Moustache Ltd. is done by Abdul Co. Ltd. which takes all the profits at the end of the day. Abdul has been thinking of ways in which the company would be made more vibrant. The prospective members who would want to join the company are worried of the role of Abdul Co. Ltd. as a shareholder.

Required:

Discuss the issues raised and advise on the course of action in order to rejuvenate the company.

(20 marks)

SECTION C

Question 5:

- (a) How does a cheque differ from a bill of exchange? **(5 marks)**
 - (b) Give and briefly explain five examples of negotiable instruments. **(5 marks)**
- (Total 10 marks)**

Question 6:

- (a) What is meant by winding up of a company? **(3 marks)**
 - (b) Discuss the various forms of winding up of a company/ **(7 marks)**
- (Total 10 marks)**

Question 7:

- (a) How are directors of a company appointed? **(4 marks)**
 - (b) Outline grounds for disqualification and removal of directors. **(6 marks)**
- (Total 10 marks)**

Question 8:

- (a) What is a debenture? What are the advantages of raising capital through the issuance of debentures? **(6 marks)**
- (b) Give and explain the types of charges that a company can issue **(4 marks)**

Question 9:

Discuss the duties created by a contract of employment.

(10 marks)