

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

ATC(U) EXAMINATIONS

LEVEL TWO

PRINCIPLES OF LAW II - PAPER 6

MONDAY, 20 JUNE 2005

INSTRUCTIONS TO CANDIDATES:

1. Time allowed: **3 hours**.
2. Attempt **all** questions in Section **A**, **two** questions from Section **B** and **four** questions from Section **C**.
3. Section **A** has **twenty** compulsory multiple-choice 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** are to be attempted. Each question carries 10 marks.
6. Please read further instructions in the answer book.

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SECTION A

Question 1

- (i) What is the effect of a company's failure to hold a statutory meeting?
 - (a) Cannot commence business.
 - (b) Can be wound up.
 - (c) Can be fined.
 - (d) Cannot novate contracts.
- (ii) Who appoints auditors in a corporate structure?
 - (a) Directors.
 - (b) The Registrar.
 - (c) The shareholders.
 - (d) Managing Director.
- (iii) Which of the following information would not constitute part of the annual returns?
 - (a) List of directors.
 - (b) Nature of the shares issued.
 - (c) Location of the office.
 - (d) List of creditors.
- (iv) What is the statutory period that is required to terminate services of an employee on probation?
 - (a) 7 days.
 - (b) 14 days.
 - (c) 21 days.
 - (d) 10 days.
- (v) What is the effect of a bill endorsed with the words account payee?
 - (a) That a bill drawn and payable in Uganda.
 - (b) That a bill can be transferred by further endorsement.
 - (c) That the cheque cannot be paid across the counter.
 - (d) That the bill is invalid.
- (vi) Which of the following persons would you expect to pay a bill drawn on a banker that is in the process of winding up?
 - (a) A person who obtains a bill in good faith.
 - (b) The liquidator.
 - (c) The Government of Uganda.
 - (d) The Directors.
- (vii) What do you understand by the term remoteness of damages?
 - (a) Damages reasonably foreseeable.
 - (b) Damages that do not directly result from the happening of an event.
 - (c) Damages that are self inflicted.
 - (d) Recoverable damages.

- (viii) Which of the following is not a necessary condition for vicarious liability to arise?
- (a) Master servant relationship.
 - (b) Employment under a contract of service.
 - (c) Employment under a contract for services.
 - (d) Negligence.
- (ix) Which of the following is not an element of a tort of negligence?
- (a) Legal injury to the plaintiff.
 - (b) Legal duty owed to the plaintiff.
 - (c) Breach of duty by the defendant.
 - (d) Reasonable foreseeability of loss.
- (x) A gesture that is defamatory in nature falls under:
- (a) Slander.
 - (b) Libel.
 - (c) Innuendo.
 - (d) Crime.
- (xi) A Company's share capital is constituted by the company:
- (a) assets.
 - (b) shares.
 - (c) funds.
 - (d) profits and losses.
- (xii) Which court has jurisdiction to order rectification of the register where the directors have failed to enter relevant members' names?
- (a) Court of Appeal.
 - (b) Magistrate Courts.
 - (c) Supreme Court.
 - (d) High Court.
- (xiii) What is the basis of liability in a tort of false imprisonment?
- (a) Time of imprisonment.
 - (b) Deprivation of the right of movement.
 - (c) Damages suffered.
 - (d) Commission to a civil prison.
- (xiv) Which of the following remedies would court be reluctant to grant in a case of wrongful termination of an employment contract?
- (a) Injunction.
 - (b) Damages.
 - (c) Re-instatement.
 - (d) Rescission.

- (xv) Which of the following may not justify restraint of trade clause in a contract of employment?
- (a) Protection of trade secrets.
 - (b) Protection of business connections.
 - (c) Protection of markets.
 - (d) Protection of innovations.
- (xvi) How may a company change its objectives?
- (a) By an ordinary resolution.
 - (b) By extra ordinary resolution.
 - (c) Simple majority resolution.
 - (d) Special resolution.
- (xvii) Who is liable for pre-incorporation expenses?
- (a) The company.
 - (b) Promoters.
 - (c) Directors.
 - (d) Shareholders.
- (xviii) An individual employee is required to contribute to NSSF on a monthly basis.
- (a) 15% of the total pay.
 - (b) 10% of the total pay.
 - (c) 5% of the total pay.
 - (d) 20% of the total pay.
- (xix) Who bears the burden of proof in a tort of defamation?
- (a) Plaintiff.
 - (b) Defendant.
 - (c) The Media.
 - (d) The accused.
- (xx) Which of the following ways would a company use to meet pre-incorporation expenses?
- (a) Ratification.
 - (b) Liquidation.
 - (c) Novation.
 - (d) Passing off.

SECTION B

Question 2

In May 1996, Mende, Adema, Mayi and two others decided to form a company. In June, Mende identified some land for the company and borrowed Shs 20 million from Bagagaware Bank. Shs 10 million was used to pay for the land and another Shs 10 million was used to purchase the company vehicle. On 4 January 1997, the Registrar of companies completed the formalities for registration of their company and issued a certificate of incorporation in the names of Madema Co. Ltd. The company has since then also acquired a building, which houses its offices.

Mende and Adema appointed themselves directors of the company. In 2000, the directors after issuing a notice of seven days convened an extra-ordinary meeting, which was never attended by other shareholders. A resolution was passed to change the objectives of the company to include provision of audit services. A resolution was also passed to dismiss the other members who did not attend the meeting. The two directors have also proposed to sale the company building to meet its debts with Bagagaware Bank. Mayi is very angry and does not know what to do. The bank has directed its lawyers to sue the company to recover its money.

Required:

- (a) Raise all the legal issues involved and advise the parties on the appropriate course of action. (12 marks)
 - (b) Discuss the necessary qualifications of a director of a public company? (8 marks)
- (Total 20 marks)**

Question 3

Mwisho is a partner with Pitts and Co., an audit firm in Kampala. On the Sunday of 9 January 2005, while driving negligently the official firm's vehicle to Keba to audit Kiso Farm Ltd, was involved in an accident with Toss, a motorcycle rider. Mwisho was unhurt and continued for his assignment. An audit was carried out and an audit report produced. The report revealed that the company was making supernormal profits, but Tena, an accountant, at the farm had embezzled Shs 20 million which could not be accounted for. Mafutamingi, relying on the audit report, bought shares in the farm and invested Shs 50 million. Relying on the same report, the Managing Director of Kiso Farm Ltd dismissed Tena without warning for embezzling the company funds. Tena applied to court for appointment of another auditor and it has turned out that the expenditure of Shs 20 million was genuine. The independent report also revealed that the company has been making losses for the last four years and a petition for winding up has been lodged in the High Court. Mwisho insists that his employer should be held responsible for his acts.

Required:

(a) Advise all the aggrieved parties on their rights and possible remedies.
(12 marks)

(b) Explain the duties of an auditor?
(8 marks)

(Total 20 marks)

Question 4

DDT (U) Ltd is a registered company in Uganda and operates its accounts with Chez Bank. On 5 January 2004, Mubi an employee of the company stole two cheque leaves from the accounts section. He forged the only authorised signature of the Director for Finance. The first cheque was used to draw Shs 20 million and the second one Shs 30 million from the bank. By the time the company realised the fraud, a one Tom had negotiated the first cheque to Yausa Motor Dealers on purchase of a vehicle. The second cheque was banked on Dinger's account and it is still lying on the account. Although there were no standing instructions to confirm payment before cashing the cheque, it was an established practice of the bank to confirm the signatures from the company, which was not done in this case. When a complaint was lodged and investigations commenced, the company's financial statements were provided to police. The Atom newspaper got wind of it and published an article detailing the financial position of the company's account. The company wants to recover its money and sue both the bank and the Atom for divulging its financial secrets. The bank insists that DDT (U) Ltd should pay for its negligence.

Required:

(a) Discuss the issues involved and advise the parties on the appropriate remedy.
(12 marks)

(b) What are the exceptions to the general duty of secrecy imposed on bankers?
(8 marks)

(Total 20 marks)

SECTION C

Question 5

Discuss the basic forms of trespass to person and defences available to the defendant in a case of defamation?

(10 marks)

Question 6

Discuss the director's duty of good faith in a corporate structure and relevant ways adopted by the Companies Act to protect the company's property in the process of winding up.

(10 marks)

Question 7

Explain the employee's duties and the remedies available to the employer for breach thereof under a contract of employment.

(10 marks)

Question 8

In a corporate structure, when directors are failing in their duties, the right complainant is the company. Since the directors are the mind of the company, when they are the wrong doers, they will not institute the case. The company and the shareholders may as a consequence suffer.

Required:

With reference to the case of **Foss Vs Harbottle (1843)**, discuss how this problem has been dealt with in company law to ensure that justice is not defeated.

(10 marks)

Question 9

Describe the various types of company meeting and resolutions detailing the legal requirements for each type of resolution to have a force of law.

(10 marks)