

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

ATC(U) EXAMINATIONS

LEVEL TWO

PRINCIPLES OF LAW II - PAPER 6

MONDAY, 11 DECEMBER 2006

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.

Question 1

- (i) What is the legal consequence of failure to give a notice of dishonour?
 - (a) The drawee becomes liable for breach of contract.
 - (b) The payee becomes liable for negligence.
 - (c) The drawer may be discharged of his obligation.
 - (d) The payee and drawer cease to be parties to the cheque.
- (ii) Dividends may be declared out of;
 - (a) accumulated capital.
 - (b) profits.
 - (c) unsecured loan.
 - (d) secured loan.
- (iii) Unless all shareholders agree to a shorter notice, a notice for the annual general meeting for a company must be for at least ...days.
 - (a) 28.
 - (b) 21.
 - (c) 14.
 - (d) 7.
- (iv) The process by which a legal representative acquires ownership of deceased's share(s) is referred to as:
 - (a) transmission.
 - (b) transfer.
 - (c) exchange.
 - (d) replacement.
- (v) The power of directors to manage the affairs of a company are derived from:
 - (a) Companies Act and Articles of Association.
 - (b) Companies Act and Memorandum of Association.
 - (c) resolution made by the board of directors.
 - (d) circulars issued by the Registrar of Companies.
- (vi) Which of the following is **not** a form of trespass to a person?
 - (a) Assault.
 - (b) Battery.
 - (c) False imprisonment.
 - (d) Conversion.

- (vii) Which of the following is true about an independent contractor employed under a contract for services?
- (a) There is a master and servant relationship.
 - (b) The employer supervises the work done on a day to day basis.
 - (c) The employer is the owner of tools and equipment used at work.
 - (d) The employer bears no risk resulting from negligence of the supervisor at work.
- (viii) A permanent form of false statement that tends to lower the reputation of a person is referred to as:
- (a) slander.
 - (b) libel.
 - (c) innuendo.
 - (d) scandalous abuse.
- (ix) Which of the following debts take the first priority for payment in the process of winding up of a company?
- (a) Government taxes.
 - (b) Liquidators.
 - (c) Payment to secured creditors.
 - (d) Outstanding payment of NSSF.
- (x) Conclusive evidence for incorporation of a company is the:
- (a) Memorandum of Association.
 - (b) Articles of Association.
 - (c) Statutory declaration.
 - (d) Certificate of incorporation.
- (xi) A company's objectives may be altered by:
- (a) special resolution.
 - (b) extra ordinary resolution.
 - (c) ordinary resolution.
 - (d) None of the above.
- (xii) The day's hours at work for any employee in any establishment should not legally exceed ... hours a day.
- (a) 12
 - (b) 6
 - (c) 4
 - (d) 14

- (xiii) Which of the following is true about a promissory note?
- (a) Must have only two parties.
 - (b) It has three parties.
 - (c) It has an order to pay.
 - (d) None of the above.
- (xiv) Which of the following is not a characteristic of a prospectus?
- (a) It may be offered for purchase of shares or debentures.
 - (b) It must be in writing.
 - (c) It may be an oral invitation.
 - (d) It cannot be offered by a private company.
- (xv) In which of the following circumstances may an employer be exempted from repatriating an employee?
- (a) When the contract has been terminated due to employer's inability to fulfill the contract.
 - (b) When the contract has been terminated by order of court due to employers.
 - (c) When the contract is terminated by agreement.
 - (d) When the contract is terminated at the expiry of the contract term.
- (xvi) A contract between a minor shareholder and a company in which he /she holds shares is:
- (a) illegal.
 - (b) voidable.
 - (c) void.
 - (d) unenforceable by court(s).
- (xvii) The main purpose of holding a statutory meeting is to:
- (a) appoint the auditor.
 - (b) examine the prospectus.
 - (c) receive accountability from directors.
 - (d) celebrate the commencement of the company.
- (xviii) The minimum notice to be given to an employer by employee and vice versa, in case service has lasted for a period ranging between 1-3 years is:
- (a) 10 days.
 - (b) 15 days.
 - (c) 20 days.
 - (d) 30 days.

- (xix) Which of the following is **not** an authorized deduction from employees' wages?
- (a) Contribution to a registered trade union in which the employee is a member.
 - (b) Contribution to any provident fund or pension fund.
 - (c) Contribution to any scheme which has been approved by the commissioner.
 - (d) Expenses incurred by the employer in paying for the treatment of the employee for injuries sustained while at work.
- (xx) Which of the following is **not** an ingredient or essential element of a tort of negligence?
- (a) Duty of care.
 - (b) Breach of duty.
 - (c) Resulting injury.
 - (d) Motive of the defendant.

SECTION B

Question 2

In November 2005 Paper Manufacturing Company Ltd was audited by its regular auditor, Nikson of Nik audit firm. While preparing an audit report, Nikson only considered two out of the five established branches that existed. He hurriedly prepared the report because he wanted travel abroad.

In his audit report, Nikson stated that accounts are satisfactory and that, in his view, directors may pay dividends. The directors without cross checking the details of the report acted on the Nikson's advice and declared dividends, in December 2005.

In January 2006 Paper Manufacturing Company Ltd, while seeking for more capital, showed Mapesa, an investor, the auditor's report. Upon seeing the report, Mapesa picked interest to invest in the company. By this time Nickson was unfortunately out of the country and could not be traced by Mapesa for assurance on the company's credit worthiness.

Believing that the report was fine after all, Mapesa invested Shs 50,000,000 for production of more yellow papers that were on high demand, at the time.

Subsequently, it transpired that:

- (i) Nikson had failed to consider records from 3 branch offices where the company had incurred debts.
- (ii) there were undetected losses even in the two branches that were considered.

- (iii) dividends had been paid out of capital.
- (iv) Nickson's report was rejected by the registrar of companies, on sighting the apparent irregularities therein.

As a result of the above omissions, Paper Manufacturing Company Ltd is being wound up for failure to pay debts.

Paper Manufacturing Company Ltd and Mapesa who incurred financial loss want to sue either Nickson or the directors or both.

Required:

- (a) Raise and resolve the issues involved, and advise the aggrieved parties.
(13 marks)
 - (b) Would your advice to Mapesa be different if Nikson had known about Mapesa's investment in the company before writing the audit report?
(3 marks)
 - (c) What are the rules governing distribution of company dividends?
(4 marks)
- (Total 20 marks)**

Question 3

On 2 February 2002, Dellas 2002 Company Ltd was incorporated in Uganda. The shareholders are Waya, Xavier, Yusta, Jingo and Mawa. All the shareholders were appointed directors except Mawa.

Waya, one of the directors, was appointed managing director on 6 June 2003. From the time of appointment, Waya took over the control of the company activities, and is involved in the day-to-day running of the company to the exclusion of other directors.

In April 2004, an extraordinary general meeting was purportedly convened by Waya. Waya only notified Yusta, his wife. The other two directors and a shareholder were not informed. In the meeting which was held by the two, a resolution to pay a monthly allowance of one million shillings to Waya, who is involved in day-to-day running of the business, was made. Being majority shareholders, they were not bothered by the non-attendance of the other shareholders.

Meanwhile, the other directors have discovered that Silk Bank Ltd is threatening to sell the company's land at Muyenga, Kampala, which was mortgaged to the Bank in May 2005. It was found out that the loan agreement was executed by Waya for and on behalf of Dellas Company. The bank had advanced Shs 50,000,000 which he used for his personal business.

The other directors except Yusta are bitter about Waya's conduct. They say that the company cannot pay back a loan which was neither approved by the Board of Directors nor used by the company.

Required:

- (a) Raise and resolve all the issues involved. **(16 marks)**
- (b) Silk Bank Ltd's duty as a banking institution is to pay on the instructions of its customers.

Enumerate other duties of a bank to a customer.

(4 marks)
(Total 20 marks)

Question 4

On the morning of 1 August 2005 at 8:30 a.m, Morris instructed Ssali, his lorry driver, to collect three trips of sand from Mukono and deliver them to his building site in Seeta. Ssali was told to receive further instructions after work. He complied with the instructions and delivered the three trips. However, before he returned for further instructions at 2:00 p.m, he drove to Namanve to collect his debt from John who works at Namanve.

While on his way to Namanve, Ssali negligently knocked Mpaka, a bicycle rider. As a result of the accident, Mpaka sustained injuries and his bicycle got damaged beyond repair. Morris engaged another driver to collect all the remaining materials to the site.

When Morris was ready, with all the materials on the site, he contracted Dorris Construction Company Ltd to independently carry on the construction work. In the course of work, Sikola, a passerby, was injured by falling debris as she was moving along the road near the site. It was found out that Dorris Construction Company had neither put a warning notice of falling debris to passersby nor had they enclosed the building under construction.

Mpaka and Sikola who are determined to sue Morris, have come to you for advice.

Required:

- (a) What are their chances of success and against who? **(16 marks)**
- (b) What are the possible defences available to Morris?

(6 marks)
(Total 20 marks)

SECTION C

Question 5

- (a) List down the documents which must be presented to the registrar of companies in order to have a company registered.
(5 marks)
- (b) What are the characteristics of an incorporated company?
(5 marks)
- (Total 10 marks)

Question 6

- (a) Explain the duties of a liquidator?
(6 marks)
- (b) What are the powers of a liquidator?
(4 marks)
- (Total 10 marks)

Question 7

Both the statutory law and common law impose duties on employers in order to protect the rights of employees in their employer-employee relationships.

Required:

- (a) Enumerate the duties of an employer to an employee.
(6 marks)
- (b) What are the remedies of an employee in case of breach of contract of employment?
(4 marks)
- (Total 10 marks)

Question 8

- (a) Explain the major elements of the tort of negligence.
(3 marks)
- (b) Explain major defences available to the defendant in the tort of negligence.
(7 marks)
- (Total 10 marks)

Question 9

- (a) What are duties of a holder of a bill of exchange?
(4 marks)
- (b) Under what circumstance is a bill said to be discharged?
(6 marks)
- (Total 10 marks)