

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

ATC(U) EXAMINATIONS

LEVEL TWO

PRINCIPLES OF LAW II - PAPER 6

MONDAY, 15 JUNE 2009

INSTRUCTIONS TO CANDIDATES:

1. Time allowed: **3 hours 15 minutes**.
The first 15 minutes of this examination have been designated for reading time. You may not start to write your answer during this time.
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.

SECTION A

Question 1

- (i) Which of the following type of shares entitles a shareholder to dividends?
 - (a) Ordinary.
 - (b) Preference.
 - (c) Qualification.
 - (d) Deferred.
- (ii) What are the weekly working hours under an ordinary contract of employment?
 - (a) 40.
 - (b) 60.
 - (c) 48.
 - (d) 38.
- (iii) What is meant by “Innuendo”?
 - (a) A direct defamatory statement.
 - (b) An indirect defamatory statement.
 - (c) An unprivileged statement.
 - (d) A fair comment in public interest.
- (iv) Which of the following is the most appropriate remedy for wrongful termination of a contract of employment?
 - (a) Re-instatement.
 - (b) Injunction.
 - (c) Damages.
 - (d) Specific performance.
- (v) Reserve capital is created by:
 - (a) special resolution.
 - (b) ordinary resolution.
 - (c) issuance of circulars to shareholders.
 - (d) issuance of prospectuses.
- (vi) What is the legal status of a contract between a minor shareholder and an incorporated company?
 - (a) Null and void.
 - (b) Voidable.
 - (c) Not enforceable at all against the minor.
 - (d) Enforceable against the minor's parent(s).

- (vii) What is the minimum number of members for a public limited company?
- (a) 2.
 - (b) 5.
 - (c) 7.
 - (d) 10.
- (viii) What is the salary percentage that an employer is supposed to contribute towards employee's savings with NSSF?
- (a) 15%.
 - (b) 10%.
 - (c) 5%.
 - (d) 3%.
- (ix) Unpaid share capital is referred to as:
- (a) reserve capital.
 - (b) issued capital.
 - (c) nominal capital.
 - (d) capital at call.
- (x) The power to declare dividends is vested in the:
- (a) annual general meeting.
 - (b) directors.
 - (c) secured creditors.
 - (d) registrar of companies.
- (xi) Which of the following claims take the first priority upon winding up of a company?
- (a) Government taxes and charges.
 - (b) Employees wages and salaries.
 - (c) Liquidators remuneration.
 - (d) Claims of secured creditors.
- (xii) A statement made by is **NOT** a privileged statement.
- (a) a judicial officer in court
 - (b) an employer in exercise of his duties
 - (c) a member of parliament in a parliamentary debate
 - (d) any person towards another among members of the same community

- (xiii) Which of the following does **NOT** constitute means of becoming a member of a company?
- (a) Subscribing to the memorandum of association.
 - (b) Applying for allotment of shares.
 - (c) By transfer or transmission of shares.
 - (d) By becoming a debenture holder.
- (xiv) Which of the following is **NOT** a pre-incorporation document?
- (a) Memorandum of association.
 - (b) Articles of association.
 - (c) Share certificate.
 - (d) Declaration of compliance.
- (xv) What is the most important feature of the relationship between a master and servant?
- (a) Existence of master's rights.
 - (b) Payment of wages and salaries.
 - (c) Master's power to control servant's work.
 - (d) Master's power to hire and fire employees.
- (xvi) Which of the following is **NOT** true about a cheque in the hands of a holder in due course?
- (a) It is obtained in good faith.
 - (b) It is obtained before it becomes overdue.
 - (c) It does not matter whether it is obtained with prior knowledge of fraud or not.
 - (d) It is obtained without notice of dishonour.
- (xvii) A cheque endorsed with the words "account payee" indicates that:
- (a) it is only drawn and payable to the drawer.
 - (b) it cannot be paid across the counter.
 - (c) payee is not certain.
 - (d) it is subject to transfer by endorsement.
- (xviii) Which of the following is true about a cheque "payable to the bearer"?
- (a) It is only drawn to a specific person.
 - (b) It is payable to any person who presents it.
 - (c) The bearer cannot endorse it to any other person.
 - (d) It is an invalid cheque.

- (xix) A certificate of incorporation shows that:
- (a) a company has been licensed.
 - (b) a company has paid value added tax (VAT).
 - (c) a company has been registered.
 - (d) two companies have merged to form one.
- (xx) Which of the following is the “nominal capital” of a company?
- (a) Unpaid for capital.
 - (b) Capital at call.
 - (c) Registered capital upon incorporation.
 - (d) Capital in stock.

(20 marks)

SECTION B

Question 2

Shrine (U) Ltd was incorporated in December 2007 with four shareholders; Sim, Jim, Mid and Vim. The company’s sole object is to produce flowers for export.

In November 2007, after booking a name for the company, the promoters, Mid and Jim, borrowed Shs 4 million from Dolla Bank to meet registration expenses. After incorporation, this contract was ratified by the general meeting through “a special resolution”.

In June 2008, Mid and Jim, who had become company directors, borrowed Shs 50 million from Bonus Bank. They issued a debenture in the company’s name as security for the loan. They also tipped the bank manager with Shs 2 million to fast track the transaction that lasted for only 2 hours.

Upon getting the Shs 50 million loan, Mid and Jim rewarded themselves with 10 million “for the good deal made, using their own money”. They invested the balance in the lucrative business of telecommunications items.

Shortly after, the company experienced financial problems and was not able to honour its obligations as they fell due. The other shareholders are confused about the situation, while Dolla Bank and Bonus Bank are seriously demanding for their money from the company.

Required:

- (a) Raise and resolve all the issues involved.
- (b) Under what circumstances may a director be personally liable while transacting the company’s business?

(16 marks)

(4 marks)

(Total 20 marks)

Question 3

John, James, Joy, Jowan and Mary incorporated a company under the names, “Financial Services Co. Ltd” in January 2008. The major objective of the company was to lend money to the members of the public upon providing security.

In the first meeting of the company, James was appointed company director as well as company secretary.

In July 2008, James convened an extra-ordinary general meeting by issuing a two days’ notice to other members.

Only James and Joy attended the meeting. By special resolution, the two shareholders resolved to sell the company’s land at a price lower than the prevailing market price. When, two days later, Mary learnt of the meeting and the resolution, her blood pressure shot up and as a consequence she died at Telego Hospital. Kenneth, the husband of the late Mary, presented his letters of administration to James requesting to acquire the late Mary’s shares. James rejected the request.

In his report, the company’s auditor revealed that one Peter had obtained an unsecured loan of Shs 500 million from the company. Peter, who happens to be James’s close friend, has failed to pay the loan principal and accrued interest.

Required:

- (a) Raise and resolve the issues involved. **(16 marks)**
 - (b) What are duties of a company secretary? **(4 marks)**
- (Total 20 marks)**

Question 4

Under a contract for services, Delicious Meals Hotel Ltd employed Quick Delivery Construction Ltd to build a five storeyed building.

When, construction had reached the 3rd floor, the building collapsed at around 4.00p m. As a result, 15 employees were injured and 25 died.

The Company Director of Quick Delivery Construction Co. Ltd, Ngonzi learnt of the shocking news at 5.30 p.m. after duty, while he was at his residence. He rushed to rescue the victims. On his way, he unfortunately knocked one Mulefu, a motor cyclist who was travelling in the same direction. The rear part of the motor cycle that was knocked got damaged beyond repair. Mulefu got serious injuries on the head.

Ngonzi hired Wakazi, a taxi operator, to take Mulefu to Dungo Referral Hospital. Wakazi found all the doctors and nurses on a “sit down” strike over low salaries.

He then left Mulefu at the hospital. Mulefu later died as a result of excessive bleeding.

Following these unfortunate events, Quick Delivery Construction Co. Ltd. summarily dismissed Mutima, the supervisor of the construction works.

Mutima, the widow to late Mulefu, the injured employees and relatives of the deceased employees are puzzled and are considering taking legal action.

Required:

- (a) Raise and resolve the legal issues disclosed by the facts. (16 marks)
 - (b) What are the possible defenses for the defendants generally? (4 marks)
- (Total 20 marks)**

SECTION C

Question 5

Explain the duties and powers of a director of a company.

(10 marks)

Question 6

- (a) Mention **three** forms of trespass to person. (2 marks)
 - (b) What are the defenses for the tort of trespass to person? (8 marks)
- (Total 10 marks)**

Question 7

- (a) Who are parties to a cheque? (2 marks)
 - (b) Under what circumstances may a bank be justified to dishonour a cheque? (8 marks)
- (Total 10 marks)**

Question 8

- (a) What is meant by 'share capital'? (4 marks)
 - (b) Give **three** basic ways in which a company's capital can be raised. (6 marks)
- (Total 10 marks)**

Question 9

- (a) Explain what is meant by 'contract of service'. (4 marks)
 - (b) Explain the duties of an employer to his employee. (6 marks)
- (Total 10 marks)**