

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

ATC(U) EXAMINATIONS

LEVEL ONE

PRINCIPLES OF LAW II - PAPER 6

WEDNESDAY, 16 JUNE 2010

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**, any **two** questions in Section **B** and any **three** questions in Section **C**.
3. Section **A** has **twenty** compulsory multiple-choice questions, each carrying 1¹/₂ marks.
4. Section **B** has **three** questions and only **two** are to be attempted. Each question carries 20 marks.
5. Section **C** has **four** questions and only **three** are to be attempted. Each question carries 10 marks.
6. Please read further instructions on the answer booklet.

SECTION A

Question 1

- (i) For purposes of employment, a child is a person under the age of ... years.
 - (a) 12
 - (b) 15
 - (c) 16
 - (d) 18
- (ii) Who of the following may be liable for misstatement of the audited financial statements of a company?
 - (a) Company Secretary.
 - (b) Auditor.
 - (c) Board of Directors.
 - (d) Managing Director.
- (iii) Which of the following is a legal consequence of failure to give a notice of dishonour?
 - (a) The payee becomes liable for negligence.
 - (b) The payee and drawer cease to be parties to the cheque.
 - (c) The payee cannot sue the drawer on the bounced cheque.
 - (d) The drawer may be discharged from his payment obligation.
- (iv) Who is a promoter?
 - (a) A person who lends money to a company for initial capital.
 - (b) Any person who holds qualification shares.
 - (c) A person who takes steps to form a company and controls its affairs until it is incorporated.
 - (d) A person who mobilizes other members to join and form a company.
- (v) An indirect defamatory statement is referred to as:
 - (a) slander.
 - (b) libel.
 - (c) innuendo.
 - (d) incorrect statement.
- (vi) The purpose of the general rule in the case of Foss vs Harbottle is to:
 - (a) permit individual members to sue if their rights have been infringed.
 - (b) permit multiplicity of suits.
 - (c) avoid the violation of majority decisions.
 - (d) uphold the principle of corporate personality.

- (vii) A forged cheque is:
- (a) voidable.
 - (b) void.
 - (c) incomplete.
 - (d) curable.
- (viii) Deprivation of the right of movement constitutes a tort of:
- (a) trespass to person.
 - (b) common assault.
 - (c) true imprisonment.
 - (d) false imprisonment.
- (ix) A proxy is a:
- (a) member of a company absent with apology.
 - (b) person appointed to vote for a member of a company who is unable to be present in the company's meeting.
 - (c) legal representative of a company.
 - (d) promoter of a company.
- (x) The legal notice for the annual general meeting of a company isdays.
- (a) 21
 - (b) 14
 - (c) 7
 - (d) 2
- (xi) Which of the following is **NOT** a tort?
- (a) Defamation.
 - (b) Theft.
 - (c) Trespass.
 - (d) Assault.
- (xii) A does **NOT** qualify to be a shareholder of a company
- (a) trustee in bankruptcy
 - (b) minor
 - (c) company
 - (d) partnership

- (xiii) A holder of a bill in good faith, complete and regular on the face of it without notice of any defect is referred to as:
- (a) holder for value.
 - (b) a good holder.
 - (c) an innocent holder.
 - (d) a holder in due course.
- (xiv) A debenture is a:
- (a) loan certificate.
 - (b) debt receipt.
 - (c) charge certificate.
 - (d) document that acknowledges company debt.
- (xv) The doctrine of vicarious liability renders an employer liable for torts which his/her employee commits:
- (a) while on his own frolic.
 - (b) accidentally.
 - (c) while in normal course of business.
 - (d) while assisting the employer's relatives.
- (xvi) The statutory notice for terminating an employee whose services have lasted for 4 years is days.
- (a) 15
 - (b) 30
 - (c) 45
 - (d) 60
- (xvii) Which of the following is the best description of the principle of 'res Ipsa loquitur'?
- (a) Breach of duty of care.
 - (b) Injury without impact.
 - (c) Assumption of negligence on the part of the defendant.
 - (d) Contributory negligence.
- (xviii) The power to handle a company's winding up proceedings is vested in the:
- (a) Registrar of Companies
 - (b) Industrial Court.
 - (c) High Court.
 - (d) Magistrates Court.

- (xix) The following are included in a memorandum of association **EXCEPT**:
- (a) the name of the company.
 - (b) objectives of the company.
 - (c) location of the registered office of the company.
 - (d) the way the company's affairs will be managed.
- (xx) Dividends can only be declared out of:
- (a) accumulated capital
 - (b) donations.
 - (c) profits.
 - (d) loans.

SECTION B

Question 2

- (a) Dolo is the proprietor of Sharp Academy. In March 2010, Dolo contracted Zimbe Contractors Limited to renovate the school's main hall which was in a sorry state.

While work was in progress, John the school bursar, was hit by falling debris as he passed by the main hall. There was no notice or warning of the likely dangers/risks. The following day, Zonto, an employee of Zimbe Contractors Limited who was working as a casual labourer forgot to close a water tap inside the main hall. As Mango, another employee of Zimbe Contractors Limited, was moving in the main hall, he slid on the slippery floor, fell and broke his arm. It was established that the slippery floor was caused by water from the water tap that was left open by Zonto. Mango was hospitalized at Multiple Care Hospital for two weeks.

An inquiry set up by the company established that at the time of the accident Mango had not put on protective shoes provided by the company like other employees, reason being that the company's storekeeper had lost the only key to the store where the protective shoes were being kept.

Mango reported back for work a week after he was discharged. Unfortunately, he was stopped from entering the school gate. He was instead given a dismissal letter. According to the letter, Zimbe Contractors Limited had dismissed him for gross misconduct. John and Mango are now contemplating suing their respective employers.

Required:

- (a) Raise and resolve all the issues disclosed by the facts. (14 marks)
 - (b) What are the possible defences for the intended defendants? (6 marks)
- (Total 20 marks)**

Question 3

Suna is the majority shareholder with 95% shareholding in Sumex Company Ltd. He is the only director and also company secretary of Sumex Company Ltd. The other shareholders are Simon, his young brother and Peter, his nephew, who amongst themselves hold 5% of the shares. When Suna borrowed Shs 30 million from KM Bank Ltd on behalf of the company, he used Shs 5 million of the borrowed money for paying school fees for his children with intentions of replacing it without knowledge of the other shareholders.

It also transpired that before incorporation, Sunna had borrowed Shs 2 million from Quick Service Microfinance Ltd on behalf of the company, for purposes of having the company registered. Sumex Company Ltd subsequently failed to repay the loans, and the management of KM Bank Ltd have impounded a Mercedes Benz car belonging to Suna to recover their money. Likewise, Quick Service Microfinance Ltd intends to sell Suna's house for recovery of their Shs 2 million loan and interest of Shs 8 million.

Required:

- (a) Raise and resolve the legal issues arising from the facts. (16 marks)
 - (b) What documents must be filed to effect the registration of a company? (4 marks)
- (Total 20 marks)**

Question 4

In July 2008, Dope, Loy, Joy and Kadu incorporated Dolojoka Ltd. The sole object of the company was to manufacture and sell nails and iron bars.

In September 2009, Dope and Kadu who were directors and managers of the company convened a meeting. A three days' notice had been issued to the other members who failed to attend the meeting. In the meeting, a resolution was passed to change the name of the company from Dolojoka Company Ltd to Doka Ltd and to dismiss Loy and Joy by July 2010.

Prior to the said meeting, Dope and Kadu had borrowed Shs 20 million from Star Bank Ltd in disregard of the company's articles of association which provided that borrowing in excess of Shs 10 million had to be approved by a general

meeting. Star Bank had ignored reading the articles of association and the memorandum of association of the company that had been provided to them.

The company has failed to repay the borrowed funds, and Star Bank is seriously demanding repayment of its loaned money plus accrued interest, but the company is in financial crisis.

Required:

- (a) Raise and resolve the legal issues disclosed by the facts. (16 marks)
 - (b) Describe the characteristics of an incorporated company. (4 marks)
- (Total 20 marks)

SECTION C

Question 5

Describe the duties and powers of the liquidator of a company. (10 marks)

Question 6

- (a) Describe the duties of a bank to its customer. (5 marks)
 - (b) Explain instances under which a bank may be justified to dishonour a customer's cheque despite availability of funds on the account? (5 marks)
- (Total 10 marks)

Question 7

List the **three** major types of company meetings and explain the purposes of each. (10 marks)

Question 8

- (a) What are the duties of an employee to an employer? (2 marks)
 - (b) Explain the remedies for wrongful summary dismissal. (8 marks)
- (Total 10 marks)