

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

ATC(U) EXAMINATIONS

LEVEL TWO

PRINCIPLES OF LAW II - PAPER 6

TUESDAY, 29 NOVEMBER 2011

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 on the answer book, before attempting any question.

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SECTION A

Question 1

- (i) Which of the following circumstances may give rise to winding up a company under the just and equitable clause?
 - (a) Bankruptcy.
 - (b) Illegality.
 - (c) Inability to pay debts.
 - (d) Loss of substratum.
- (ii) Which of the following claims takes first priority for settlement upon liquidation of a company?
 - (a) Liquidator's salary / wages.
 - (b) Secured creditors.
 - (c) Employees' salaries / wages.
 - (d) Directors' allowances.
- (iii) The principle upon which an employer is held liable for torts committed by his employee is referred to as:
 - (a) Volentin–non–fit injuria.
 - (b) contributory negligence.
 - (c) vicarious liability.
 - (d) vicarious sensitivity.
- (iv) In which of the following circumstances may the promoter of a company **NOT** be held personally liable for pre-incorporation contracts?
 - (a) Ratification of a contract by the company.
 - (b) Disclosure of the contracts.
 - (c) Upon verification by the company.
 - (d) Contracts novation by the company.
- (v) What is meant by the term '*Volentin–non–fit injuria*'?
 - (a) Employer's liability for torts committed by his employees.
 - (b) Breach of duty of care.
 - (c) Voluntary assumption of risk.
 - (d) Involuntary assumption of negligence.
- (vi) In which of the following documents is an objects clause of a company incorporated?
 - (a) Articles of association.
 - (b) Memorandum of association.
 - (c) Prospectus.
 - (d) Statutory declaration.

- (vii) A 'hidden' defamatory statement is referred to as:
- (a) libel.
 - (b) slander.
 - (c) an abuse.
 - (d) innuendo.
- (viii) Which of the following terms best matches the endorsement of a bill by the holder to the third party?
- (a) Negotiation of a bill.
 - (b) Transfer of interests.
 - (c) Crossing a bill.
 - (d) Opening a crossed bill.
- (ix) The most convenient remedy for an employee for wrongful termination of a contract of employment is:
- (a) reinstatement.
 - (b) award of damages.
 - (c) offer of an alternative job.
 - (d) award of redundancy benefits.
- (x) Trespass to person is constituted in all the following forms **EXCEPT**:
- (a) assault.
 - (b) battery.
 - (c) detainment.
 - (d) false imprisonment.
- (xi) The safety of an employee at work is responsibility of:
- (a) employee.
 - (b) police.
 - (c) government.
 - (d) employer.
- (xii) Which of the following constitutes a reason for crossing cheques?
- (a) To make it easy to negotiate.
 - (b) To make it payable to the bearer.
 - (c) Make it only payable to the payee's account.
 - (d) To make it payable across the counter.

- (xiii) A proxy is:
- (a) a company secretary.
 - (b) a representative of a company at a general meeting.
 - (c) any person appointed by a member of a company to vote for him / her in a company meeting.
 - (d) a member of a company who communicate an apology on behalf of an absent member.
- (xiv) For a defendant to be liable in tort the following must be proved **EXCEPT**:
- (a) legal duty of care.
 - (b) injury resulting from breach.
 - (c) breach of legal duty.
 - (d) malice aforethought on part of the defendant.
- (xv) Which of the following meeting is held once in a company's lifetime?
- (a) General meeting.
 - (b) Statutory meeting.
 - (c) Extraordinary general meeting.
 - (d) Board of directors meeting.
- (xvi) The words 'account payee' on a cheque mean that:
- (a) the payee can access funds by payment of cash across the counter.
 - (b) any person in possession of the cheque can access funds across the counter.
 - (c) the payee can only access funds through his / her account in the bank.
 - (d) the payee can easily negotiate the cheque.
- (xvii) The maximum number of members required for formation of a private limited company is:
- (a) 100
 - (b) 50
 - (c) 70
 - (d) Infinite
- (xviii) A company may validly increase its share capital by any of the following ways **EXCEPT**:
- (a) borrowing.
 - (b) issuing reserved shares for members to purchase.
 - (c) registration.
 - (d) owning up its unpaid up shares through purchases.

- (xix) The accounting officer for a company under winding up process is the:
- (a) managing director.
 - (b) Liquidator.
 - (c) secretary.
 - (d) Registrar of Companies.
- (xx) Who is an independent contractor?
- (a) The one who gets instructions, on how to carryout work, from the employer from time to time.
 - (b) The one who controls and supervises employees on how to carry out work and pays their salaries / wages.
 - (c) The one who is given workers to supervise but is not responsible for their salaries and wages.
 - (d) The one who has no connection with the employer whatsoever.

(20 marks)

SECTION B

Question 2

Gill, Milly and Naana are shareholders of Vision 2010 Ltd in which Gill is the managing director. The general objective of the company is to sustainably manage natural resources. One of the specific objectives of the company is to produce and sell flowers and tree seedlings locally and abroad.

Two months after its incorporation, the managing director convened a meeting whereby a 3 days notice was issued. Milly attended the meeting but Naana stubbornly refused to attend.

In the meeting the following resolutions were passed:

That the company objectives be altered by adding the following objectives:

- (i) Organising members of the public to demonstrate against any government proposal or policy on reclaiming of wetlands and clearing forests.
- (ii) To borrow funds for use to achieve objective (i) above.
- (iii) To do any other thing incidental thereto or connected therewith.

Naana who was a staunch ruling party loyalists organised against the achievement of the added objectives. One evening while returning from organising members of the public to shun a demonstration that was in the offing, he got an accident and died on the spot. His wife, Shakira, presented letters of administration to be registered as a shareholder but Gill has vowed not to have her registered on grounds that her late husband was not fully participating in the company activities and was mobilising against the attainment of the company's

objectives. The company has also obtained a loan of Shs 10 million from Zirete Bank. Following the above events, Kwasakwasa, a ruling party mobiliser, approached Zirete Bank to obtain detailed confidential information about the company. The bank manager, Nuruba, provided him with all the required confidential information about the company.

Upon learning about the development, the company wrote a letter to the bank, threatening to sue it for breach of its duty. In the meantime the Attorney General is contemplating suing Vision 2010 Ltd for sabotaging government development programmes.

Required:

- (a) Raise and resolve the issues arising from the above facts. (16 marks)
 - (b) What are the possible remedies for the intending plaintiffs? (4 marks)
- (Total 20 marks)**

Question 3

Kago is a sole director and a company secretary who holds 95% shares in KK Enterprises Ltd. which was incorporated in March 2005. Other shareholders are his wife Zamu and two sons (minors).

In August 2010, the company obtained a bank loan of Shs 20 million from Liquid Bank Ltd and mortgaged company house valued at Shs 5 million as a security for the loan.

On 6 December 2010, it was established that no interest was being paid by Kago, the director of the company. The bank manager wrote a reminder but Kago did not heed to the remainder. In May 2011, the bank wrote to court brokers to attach and sell the personal car of Kago for recovery of the loan plus the accumulated interest all totaling to Shs 30 million.

It transpired that Kago was 17 years when he became a director and has been declaring dividends even when the company was making losses.

Required:

- (a) Raise and resolve all the issues as per the given facts. (15 marks)
 - (b) Explain how the services of a director of a company may be terminated. (5 marks)
- (Total 20 marks)**

Question 4

Muliro, Zake, Toko and Zonto incorporated XYZ Ltd to deal in the business of exporting and importing scholastic materials.

On 4 July 2007, being the company's first directors, Toko and Zake held an extraordinary meeting. The meeting was attended by both directors only as the other shareholders were committed elsewhere. While Muliro was organizing the graduation ceremony for his son, Sanyu, Zonto was busy celebrating the birth of his wife, Jolly, at the material time.

In the meeting, the two directors resolved that the company borrows Shs 40 million from Quick Bank Ltd. Thereafter, Toko and Zake went ahead and acquired the loan, for purposes of establishing a subsidiary company in Mbarara, without the approval of the other shareholders as stipulated in the articles of association of the company.

Upon obtaining the loan, Toko and Zake paid themselves a commission of Shs 5 million for the business deal; well initiated and accomplished.

After learning about the above developments, Muliro and Zonto approached the directors for an explanation, in vain. Meanwhile, Quick Bank Ltd has embarked on the process of the loan recovery plus the accumulated interest. In another development, the Mbarara subsidiary company wants to buy the 10% reserve shares of the parent company.

Required:

- (a) Raise and resolve issues as per the above facts. (15 marks)
 - (b) Advise the aggrieved parties on the possible remedies. (5 marks)
- (Total 20 marks)**

SECTION C

Question 5

Explain the rights and duties of an employer in the employee and employer relationship.

(10 marks)

Question 6

- (a) Define the term 'company'. (3 marks)
 - (b) Explain the merits of incorporating a company. (7 marks)
- (10 marks)**

Question 7

Legally, an incorporated company is at liberty to alter its objectives subject to the legal provisions.

Required:

Explain why it may be very necessary for a company to alter its objectives.

(10 marks)

Question 8

Explain the types of torts that comprise 'trespass to person' and 'trespass to goods'.

(10 marks)

Question 9

(a) What are the **four** basic ways of raising capital?

(2 marks)

(b) Explain the types of share capital.

(8 marks)

(Total 10 marks)