

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

ATC(U) EXAMINATIONS

LEVEL TWO

PRINCIPLES OF LAW II – PAPER 6

TUESDAY, 19 JUNE 2012

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. This examination contains Sections **A**, **B** and **C**.
3. Section **A** is bound separately from Sections **B** and **C**.
4. Attempt all the 20 multiple choice questions in Section **A**. Each question carries 1 mark.
5. Attempt **two** of the **three** questions in Section **B**. Each question carries 20 marks.
6. Attempt **four** of the **five** questions in Section **C**. Each question carries 10 marks.
7. Write your answer to each question in a separate answer booklet.
8. Please, read further instructions on the answer booklet, before attempting any question.

SECTION B

Attempt two of the three questions in this section.

Question 2

Brian, Grace, Herbert and Adam incorporated a private company, TENCO Ltd, to produce fruit juice. The nominal share capital was established as 100 and each member got an equal number of 25 shares each. Before the company was incorporated the four members identified suitable premises for their fruit juice factory and entered into a tenancy agreement on behalf of TENCO Ltd. The four friends also entered into contracts on behalf of TENCO Ltd to purchase the necessary machinery and office furniture. All four friends signed the contracts. One year into business the shareholders decided to enter into the Hotel business but this was outside the objects for which TENCO Ltd was established. A general meeting was called and an ordinary resolution was passed to alter the objects clause of the memorandum of association to include the hotel business. Brian and Herbert, who were both directors of TENCO Ltd were to negotiate the purchase of Felicity Hotel at Shs 250 million. Grace informed them that she too was negotiating the purchase of the same Hotel as an investment for her family and they agreed that all three would invest in Felicity Hotel together with Grace's family. A general meeting of the company was called and Brian, Grace and Herbert used their numbers to pass a resolution that the company was no longer interested in purchasing Felicity Hotel. The three went ahead, negotiated and entered into an agreement to purchase Sunshine Mall at Shs 300 million.

TENCO Ltd has now gone into liquidation as a result of making a deposit on Sunshine Mall and also no payments have been made to the landlord, the suppliers of the machinery and office furniture. Adam has also discovered that his friends went behind his back in passing the resolution not to purchase Felicity Hotel.

Required:

Raise the issues and advise the parties involved in the scenario.

(20 marks)

Question 3

Ashanti discovered that her son, Tom, had been drawing money from her account by forging her signature. To avoid bad publicity, she did not tell the bank immediately. She avoided confrontation with her son because he was going through a hard time and was suffering from depression. However, three months after she discovered his forgeries, she confronted him and threatened to disinherit him. Tom stormed out of her office and drove away in anger. He had an accident and died. Ashanti then brought an action against her bank reclaiming Shs 50 million which it had paid under the forged cheques.

She is also very bitter with the bank for honouring the Shs 2 million cheque she had drawn in favour of her son to enable him settle his school fees. She tells the bank that she had specifically requested her son not to present the cheque since she had given him cash instead.

Required:

- (a) Raise the issues and advise the parties.
- (b) Discuss the circumstances under which a banker's authority to pay a cheque drawn on their bank is terminated.

(12 marks)

(8 marks)

(Total 20 marks)

Question 4

Steven, a news reporter was in the presence of Chris and Ted who are prominent politicians in the country when they started discussing the security situation. As they talked they literally accused another prominent politician called Ben of funding and supporting rebels who were terrorizing parts of the country. Steven secretly recorded the conversation and later published it in a newspaper he works for. Although he did not mention the names of Chris and Ted in the story as the people who had the conversation, he mentioned Ben by name.

Required:

- (a) What must Ben prove to succeed in an action of defamation?
- (b) Discuss the defences available to the defendant in an action of defamation.

(8 marks)

(12 marks)

(Total 20 marks)

SECTION C

Attempt four of the five questions in this section.

Question 5

Answer the questions in each of the following scenarios with reference to the rule in *Rylands v. Fletcher*, giving reasons for your answer:

- (a) Trevor visited a factory that belonged to James and was injured by an article of a dangerous nature which exploded during the manufacturing process.

Required:

Explain whether James is liable for Trevor's injury under the rule?

(2 marks)

- (b) Camile allowed a group of campers to camp on her land. During the night they got drunk, wandered over to Robert's land making noise and they broke some windows.

Required:

Explain whether Camile is liable for the damage to Robert's property and the nuisance caused by the campers on her land under the rule?

(2 marks)

- (c) Due to a water shortage in their area, Ronald and Stephen agreed to put a water tank on Stephen's land which they could both use. The water tank leaked and Ronald's land was flooded destroying the vegetables he was going to sell at a nearby market.

Required:

Explain whether Stephen is liable for the damage to Ronald's crops under the rule?

(2 marks)

- (d) Peter's friend Paul was going on a trip and asked Paul to take care of his dog. Peter told Paul that the dog had to be kept on a leash at all times because it bites strangers. A person walking past Paul's house felt sorry for the dog and unleashed it. The dog ran to the neighbour's compound and bit the neighbour's child.

Required:

Explain whether Paul is liable for the injuries suffered by his neighbour's child under the rule?

(2 marks)

(Total 10 marks)

Question 6

Discuss duties of an employer to employees under common law.

(10 marks)

Question 7

(a) Describe the circumstances under which compulsory winding up of a company can take place.

(4 marks)

(b) Explain the effects of an order to wind up a company.

(6 marks)

(Total 10 marks)

Question 8

(a) Explain how a company secretary is appointed.

(2 marks)

(b) Discuss the duties of a company secretary.

(8 marks)

(Total 10 marks)

Question 9

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

(10 marks)