

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

ATC(U) EXAMINATIONS

LEVEL TWO

PRINCIPLES OF LAW II – PAPER 6

TUESDAY, 26 NOVEMBER 2013

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 on a fresh page in your answer booklet.
8. Please, read further instructions on the answer booklet, before attempting any question.

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SECTION B

Attempt **two** of the **three** questions in this section.

Question 2

Kazi Ltd was incorporated in April 2010 as a private company. Ali Poko, who had celebrated his 75th birthday that very month, held 80% of the company's issued share capital. He was also the sole director and secretary of the company. The other shareholders were his two wives; Sarah and Hamida and his two sons; Juma, 24 and Ahmed, 14 who held the remaining 20% of the company's issued share capital in equal proportions.

Until the beginning of 2012, business was going on well under the management of Ali Poko. However, although he had declared dividends in the previous two annual general meetings, he neither distributed the same to the shareholders nor ploughed back the profits in business. He informed the other shareholders that as head of the family, he was keeping the profits on his personal account for the benefit of the entire family.

In May 2012, while contesting for a seat in parliament for Lusaku South constituency bye-elections, Ali Poko used the accumulated profits of the company he had kept on his personal account. To keep the company's business running, Ali Poko convened an extraordinary general meeting for "the way forward", issuing a 5-days notice. The meeting was attended by Poko, Juma, Ahmed and Hamida. Sarah did not attend as she had a business trip to China which she could not cancel.

In the meeting, the following resolutions were made:

- (i) Ahmed and Hamida were appointed company directors and bank signatories.
- (ii) Juma was appointed company secretary.
- (iii) It was agreed that the above resolutions be communicated to the Registrar of Companies and bank.
- (iv) Sarah who was not bothered about the company's affairs be dismissed.

Required:

- (a) Raise and resolve the issues arising from the facts. (17 marks)
 - (b) Explain the different ways by which Kazi Ltd can raise capital. (3 marks)
- (Total 20 marks)**

Question 3

Mali, Munene, Opara and Kefa are shareholders of Intore Traditional Dancers Ltd. In the recent past, they were invited to entertain international visitors at Munyonyo. Mali who was the managing director negotiated for and on half of the company and received a commission of Shs 500,000.

Prior to that event, Mali had unilaterally borrowed Shs 50 million from Creative Bank. Opara, his co-signatory, was not aware because he had signed the mortgage documents while drunk and having been deceived by Mali that it was his personal loan. However, the memorandum and articles of association stated that borrowing by the company in excess of Shs 30 million was prohibited. Mali used the money to prepare a colourful wedding ceremony for his son, Owino; a wedding the befitted the status of a son of a managing director of a powerful company.

When other shareholders came to know what Mali had done, they convened an extraordinary general meeting giving a 21-days notice. All the shareholders attended the meeting except Opara who was represented by Tonny as a proxy. On failure to provide satisfactory explanations to the shareholders, Mali stormed out shouting that he had made a lot of profits for the company and had played the biggest role in forming it.

The other shareholders and Tonny continued with the meeting. They resolved, through a vote to dismiss Mali from the position of managing director. They also resolved to withdraw the mandate of Mali and Opara of being signatories to company bank account. However, because Tonny was not allowed to vote for Opara, the required quorum of three quarters was not realized.

Mali and Opara are aggrieved. Creative Bank has also written to the company demanding for the refund of all money plus interest.

Required:

- (a) Raise and resolve all the issues in the given facts.

(17 marks)

- (b) Identify the three components of a pre-incorporation contract.

(3 marks)

(Total 20 marks)

Question 4

Okot was one of the drivers of Zion Ltd. The main objective of the company is to transport coffee and tea from Uganda to Kenya by trailers. In the letters of appointment, all drivers are under strict instructions not to carry any passenger(s). In July 2012, while Okot was driving his assigned trailer from the factory premises to Kenya, he got a phone call from Lutobazi requesting that he first picks him together with Nyanja and their four boxes of fish. They agreed that they would give him Shs 100,000 to boost his merge transport allowance.

In the trailer there were two other people; Sonko and Wakazi. The place at which Nyanja and Lutobazi were picked is 10 kilometres away from the road to Kenya, a route designated for Zion Ltd trailers by rules and regulations of the company.

When they reached Kanani bridge, Okot stopped to talk to his friend. After his friend had driven in the opposite direction, Okot decided to move on. Unfortunately, he engaged the reverse gear and in the process hit a metallic side barrier resting the rear part of the trailer in water. Nyanja and Lutobazi were killed instantly while Sonko and Wokazi survived with minor injuries. Zion Ltd summarily dismissed Okot and refused to pay him his salary arrears for the previous three months. Sonko, Wakazi and Okot are contemplating to sue Zion Ltd individually.

Required:

(a) Raise and resolve all the issues involved.

(18 marks)

(b) What possible defences can Zion Ltd raise?

(2 marks)

(Total 20 marks)

SECTION C

Attempt **three** of the **four** questions in this section.

Question 5

- (a) Describe the elements of the principle of vicarious liability. (4 marks)
 - (b) Explain the defences which an employer sued under the principle of vicarious liability may raise. (6 marks)
- (Total 10 marks)**

Question 6

- (a) State the advantages in the general rule of Foss Vs Harbottle whose effect is that it is the company that can sue for a wrong against it but not an individual member. (2 marks)
 - (b) State circumstances under which exceptions to the general rule may be applied. (8 marks)
- (Total 10 marks)**

Question 7

- (a) Describe the elements of the tort of defamation. (2 marks)
 - (b) Explain the circumstances under which a would-be defamatory statement may cease to be so. (8 marks)
- (Total 10 marks)**

Question 8

- (a) Explain what is meant by the term 'winding-up of a company'. (2 marks)
 - (b) What are the consequences of voluntary winding up? (8 marks)
- (Total 10 marks)**

Question 9

- (a) Define the term 'director' as used in company law. (2 marks)
 - (b) Explain the duties of a director. (8 marks)
- (Total 10 marks)**