

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

CPA(U) EXAMINATIONS

LEVEL ONE

BUSINESS LAW – PAPER 3

TUESDAY, 22 JUNE 2004

INSTRUCTIONS TO CANDIDATES

1. Time allowed: **3 hours**.
2. Attempt **all** questions in Sections **A** and **B** and any **three** questions from Section **C**.
3. Section **A** has **twenty** compulsory multiple-choice questions each carrying 1 mark.
4. Section **B** has **one** compulsory question of 20 marks.
5. Section **C** has **five** questions and only **three** questions are to be attempted. Each question carries 20 marks.
6. Please, read further instructions on the answer book before attempting any question.

SECTION A

Question 1

- (i) Which of the following is not a branch of public law?
 - (a) Constitutional Law.
 - (b) International Law.
 - (c) The Law of Trusts.
 - (d) Administrative Law.
- (ii) Which of the following is not a source of law?
 - (a) Custom.
 - (b) Acts of Parliament.
 - (c) Chief Magistrate's Court decisions.
 - (d) The Constitution.
- (iii) The doctrine that once a judge has delivered a final ruling he cannot alter it is called:
 - (a) Precedent.
 - (b) Stare decisis.
 - (c) Functus officio.
 - (d) Fait accompli.
- (iv) Which of the following is false about equity?
 - (a) Equity deems done that which ought to be done.
 - (b) Our courts are courts of equity not law.
 - (c) Equity follows the law.
 - (d) He who seeks equity must do equity.
- (v) Which of the following is a rule of statutory interpretation?
 - (a) The casual rule.
 - (b) The literal rule.
 - (c) The liberal rule.
 - (d) The mechanical rule.
- (vi) In contract, a benefit accruing to one party or some detriment suffered the other is referred to as:
 - (a) Offer.
 - (b) Benefice.
 - (c) Consideration.
 - (d) Acceptance.

- (vii) A company is duly incorporated if:
 - (a) It has posted to the registrar of companies by registered mail to the right address an application for registration.
 - (b) It has been issued with a certificate of incorporation.
 - (c) Its directors have sworn a statutory declaration of registration.
 - (d) It is entered on the list of business names registration roster.
- (viii) The doctrine of past consideration was first propounded in the case of:
 - (a) Lewis v Avery (1971).
 - (b) Currie v Misa (1875).
 - (c) Lampleigh v Braithwait (1615).
 - (d) Roscorla v Thomas (1842).
- (ix) A special resolution is one made by:
 - (a) the directors under special circumstances.
 - (b) at least $\frac{3}{4}$ of the directors.
 - (c) at least 51% of the members.
 - (d) at least 75% of the members.
- (x) The day to day running of a partnership is governed by:
 - (a) Articles of association.
 - (b) Partnership Act.
 - (c) Partnership deed.
 - (d) Memorandum of association.
- (xi) A trustee in bankruptcy is appointed:
 - (a) at all times by court.
 - (b) at all times by bankrupt's creditors meeting.
 - (c) either court or bankrupt's creditors meeting.
 - (d) by the relatives of the bankrupt.
- (xii) A person involved in the planning, incorporation or initial running of a company is called:
 - (a) Director.
 - (b) Founding Director.
 - (c) Promoter.
 - (d) Initiator.
- (xiii) An agent who guarantees to his principal that the purchasers he finds will pay for the goods sold to them is called:
 - (a) A factor.
 - (b) A del credere.
 - (c) An Auctioneer.
 - (d) A Broker.

- (xiv) An act of the principal to adopt the acts of his agent entered without the principal's authority is termed as:
- (a) Merger.
 - (b) Rectification.
 - (c) Joint venture.
 - (d) Ratification.
- (xv) A company may pass a resolution to alter its capital clause by cancelling un-issued shares in a process called:
- (a) Conversion.
 - (b) Consolidation.
 - (c) Write off.
 - (d) Diminution.
- (xvi) A situation where a contract cannot be performed due to the fact that it has become more expensive than originally envisaged is called:
- (a) Frustration.
 - (b) Breach.
 - (c) Novation.
 - (d) Rescission.
- (xvii) Which of the following statements is true about a company under liquidation:
- (a) An ordinary receiver is appointed over the whole of the company's assets.
 - (b) An administrative receiver is appointed to preserve the company as a going concern.
 - (c) An administrator's function is to realise the charged assets for the benefit of a debenture holder.
 - (d) A receiver may be appointed by a debenture holder secured by a fixed charge.
- (xviii) A winding up petition may be presented to the court by any of the following except:
- (a) the company itself.
 - (b) any company creditor.
 - (c) the registrar of companies.
 - (d) a contributory.
- (xix) The veil of incorporation may be lifted if the company:
- (a) is an agent of another partner company.
 - (b) passes a resolution to that effect.
 - (c) is used to commit a crime.
 - (d) reconverts itself into a partnership.

- (xx) Which of the following is an act of bankruptcy?
- (a) Keeping house.
 - (b) Departing realm without informing creditors.
 - (c) Failing to pay creditors on demand.
 - (d) Mortgaging all one's property.

SECTION B

Question 2

Salongo owns a restaurant at Kisekka Market. Of late, business has improved and he is contemplating converting it into a company. To achieve this, he is proposing to simply register a trade name with the Registrar General's office because he wants business to commence immediately and has no time to waste on paper work. He is proposing the name "God is a Blackman Food Joint". He does not want the words Ltd. to appear on the company name because Uganda Revenue Authority personnel will be on his neck to collect taxes. Being a polygamist, he wants to be the sole shareholder to avoid problems.

Salongo has his other hidden reason why he wants to change the name of his business. In April this year, he saw an advert by Musilu in the papers about sale of a car. In reaction to the advert, Salongo went to Musilu and told him he was Bob Ande, a rich tycoon in Kampala. Musilu always sells his cars on cash at hand basis. But since Bob Ande was a reputable person, Musilu agreed to receive a cheque from him. The cheque bounced as Salongo had no money on the account.

Meanwhile, Musilu has been very unfortunate this season. Just in March, Mushuma approached him that he was organising a wedding and wanted to hire a Peugeot 405 from him. Mushuma had come with a written document which he gave to Musilu to sign as a hire agreement. Since Musilu was very busy, he had no time to read the document. So, he just signed, gave a copy to Mushuma and kept his copy in the drawer. When he checked it the next day, it was in fact a sale agreement. Mushuma had conned him of his luxury car! Because of that, Musilu's girlfriend in Kikuubo has told him that their relationship has ended. In monetary terms, Musilu estimates the loss on his girlfriend to be about Shs 2,000,000. He is contemplating an action in breach of contract against Mushuma who is the cause of his problems.

Required:

Discuss the legal problems raised above and advise all the parties accordingly.

(20 marks)

SECTION C

Question 3

- (a) Distinguish between conditions and warranties under the law of contract.
- (b) Describe the conditions that are implied under a validly entered contract.

(20 marks)

Question 4

Explain the circumstances under which the veil of incorporation would be lifted in order to find the members of a company personally liable on a company transaction.

(20 marks)

Question 5

You have been approached by Kapere, a shareholder in Moyo (U) Ltd. He tells you that he is tired of problems arising out of his shareholding in the company. He wishes to have it wound up.

Required:

Advise him on the:

- (a) Grounds for winding up.
- (b) Winding up options and procedures.

(20 marks)

Question 6

“The law of bankruptcy in Uganda is a mere paper tiger incapable of biting”.

Required:

Discuss the statement in view of your knowledge of the law of bankruptcy in Uganda.

(20 marks)

Question 7

“I am tired of archaic laws. For instance, the *ultra vires* doctrine in company law has outlived its usefulness and should be scrapped from the law books”.

Required:

Discuss the validity of this wish by a disgruntled company director with specific reference to the doctrine’s effect on:

- (a) Directors of a company.
- (b) Members of a company.
- (c) Outsiders dealing with a company.

(20 marks)