

THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

A Committee of the Council of ICPAU

CPA(U) EXAMINATIONS

LEVEL ONE

BUSINESS LAW – PAPER 3

THURSDAY, 18 JUNE 2009

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 Sections **A** and any **two** from Section **B** and any **two** 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 **three** questions and only **two** 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) The court in Uganda which handles cases concerning armed forces is the:
 - (a) High Court.
 - (b) Court Martial.
 - (c) Court of Appeal.
 - (d) Chief Magistrate's Court.
- (ii) What is meant by the term ratio decidendi in law?
 - (a) Reason for the judicial decision.
 - (b) One of the grounds of appeal.
 - (c) Remedy given to any aggrieved party.
 - (d) Decision of the Supreme Court judges.
- (iii) Which of the following statements are correct?
 - (i) Where a contract is made orally, the terms of the contract can be proved by oral evidence normally by a person claiming that there is a contract.
 - (ii) If a written contract is presented before court and it is found to be ambiguous, the court is estopped from clearing up the ambiguity.
 - (iii) The parol evidence rule is to the effect that evidence cannot be admitted to add to, vary or contradict a written instrument.
 - (a) (i) and (ii)
 - (b) (i) and (iii)
 - (c) (ii) and (iii)
 - (d) (i), (ii) and (iii)
- (iv) One of the duties of the employer is to provide his/her employee with work. However, this does not apply if:
 - (a) the contract is frustrated.
 - (b) there is performance.
 - (c) the employee absents him / herself.
 - (d) the employer has run short of money.

- (v) Which of the following is **NOT** correct about the law of agency?
- (a) The relationship between the principal and agent may be by word of mouth, conduct or in writing.
 - (b) A minor or infant cannot appoint an agent to dispose of property so as to bind him irrevocably.
 - (c) An agent appointed to execute a deed on the sale of land does not need power of attorney.
 - (d) A bailee is a person who receives possession of goods from the owner for a specific purpose.
- (vi) A company limited by shares is one:
- (a) whose members' liability is limited by the memorandum to the amount that each has guaranteed to contribute to the assets of the company in the event of its liquidation.
 - (b) whose members' liability is limited to the amount, if any, unpaid on their shares.
 - (c) whose members have no limits on their liability in the event of their company's insolvency.
 - (d) which limits its members to sell shares to a limited number of people.
- (vii) The internal affairs of a company are governed by the:
- (a) Partnership deed.
 - (b) Statement of share capital.
 - (c) Memorandum of Association.
 - (d) Articles of Association.
- (viii) The capital clause of a company is a:
- (a) statement of called up capital.
 - (b) memorandum of the share capital.
 - (c) mere clause to show the capital of the company.
 - (d) statement of authorized capital.

- (ix) Which of the following statements is **NOT** correct about a debenture?
- (i) It includes debenture stock, bonds and any other securities of the company, whether constituting a charge on the assets of the company or not.
 - (ii) It is a document which either creates a debt or acknowledges it, and any document which fulfills either one of these conditions.
 - (iii) A fixed charge which is permanently secured over a fixed asset of a company and is for purposes of increasing capital and assets of the company.
- (a) (i) and (ii).
 - (b) (ii) and (iii).
 - (c) (iii).
 - (d) (i) and (iii).
- (x) Membership of a public limited company ranges from:
- (a) two to twenty people.
 - (b) two to infinity.
 - (c) seven to fifty.
 - (d) seven to infinity.
- (xi) Which of the following is **NOT** correct?
- (a) A director of a company is any person occupying the position of a director no matter what the name they are called.
 - (b) A shadow director is any person who acts in accordance with those directions or instructions the directors of a company are accustomed to act.
 - (c) A person is a shadow director merely because they give advice in professional capacity and the directors act on their advice.
 - (d) If qualification shares are required, every director has to obtain the qualification within two years of their appointment or such a short time as may be fixed by the articles.
- (xii) To whom are dividends of a company declared?
- (a) People who have agreed to be members or whose names have been entered on the register of members of the company.
 - (b) People in charge of the day-to-day affairs of the company's affairs.
 - (c) People who participate in floating of the company.
 - (d) People who facilitate the formation of the company.

- (xiii) The rule in *Foss v. Harbottle* is that, when a wrong is done to a company the proper plaintiff:
- (a) in any action to remedy the wrong is the minority shareholder who is affected.
 - (b) in any action to remedy the wrong is not the minority shareholder who is affected but the company itself.
 - (c) in any action to remedy the wrong is the majority shareholder who is affected.
 - (d) to sue is the third party.
- (xiv) Which of the following is **NOT** a liquidator's function in the winding up of a company?
- (a) Settling the company's liabilities.
 - (b) Realizing the company's assets.
 - (c) Requiring any past or present officers of the company to give such information as he requires.
 - (d) Distributing the assets of the company to the directors.
- (xv) An employment contract must be in writing if its duration is for:
- (a) 3 months or more.
 - (b) 6 months or more.
 - (c) 12 months or more.
 - (d) 1 month or more.
- (xvi) The of the company may be liable for the misstatement of audited accounts of the company.
- (a) shareholders.
 - (b) secretary.
 - (c) auditors.
 - (d) directors.
- (xvii) Which of the following statements are true about a partnership?
- (i) The partners may on their own agree to dissolve the partnership.
 - (ii) The bankruptcy of any partner automatically dissolves the partnership.
 - (iii) The illegality of a partnership dissolves it.
- (a) (i) and (ii).
 - (b) (ii) and (iii).
 - (c) (iii) and (i).
 - (d) (i), (ii) and (iii).

- (xviii) The law of partnership is governed by the:
- (a) Partnership Deed.
 - (b) Partnership Act.
 - (c) Protectorate Law of England.
 - (d) Laws of Uganda.
- (xix) The main duties owed by directors to their company are:
- (i) fiduciary.
 - (ii) skill and care.
 - (iii) statutory.
- (a) (i) and (ii)
 - (b) (ii) and (iii)
 - (c) (i) and (iii)
 - (d) (i), (ii) and (iii)
- (xx) Which of the following is **NOT** true about a trustee?
- (a) A trustee cannot be sued by the beneficiaries.
 - (b) A trustee can be sued by the beneficiaries.
 - (c) A trustee invests only in fixed return investments.
 - (d) A trustee is appointed by deed.

SECTION B**Question 2**

Geto Company Ltd is based in Kawempe. For a long time, the company has been audited by, Okech, a sole practitioner of Okech & Co. He has always had unlimited access to all the company's records. Unfortunately, the records are poorly kept. To make matters worse, Okech is not a diligent auditor. He recently signed the audit report for the year ending 31 December 2008 in which he stated that "the financial statements were satisfactory", and that in his opinion the directors could declare dividends. The directors subsequently declared dividends.

At the same time, the company was looking for additional capital. They showed their audit report to a prospective investor, Pantaleo, who was impressed by the report. Basing on the report, he decided to invest some money in Geto Company Ltd. Before committing himself to the investment, he sought for reassurance from Okech & Co. whether the net assets value of the company was not different from the figure shown in the recent set of audited financial statements. Unfortunately, Okech was away, but his audit assistant, Betty, who had limited knowledge about Geto Company Ltd, represented him. She affirmed that indeed the company's net assets value was not different from the figure disclosed by the recent set of audited financial statements.

Meanwhile, Pantaleo's friend Kariota, learned that Pantaleo had received reassurance from Betty on the state of the company's financial statements. He, therefore, arranged to buy a large number of Geto Company Ltd's shares from Kapale, one of the shareholders of that company.

On the other hand, Gazinio started supplying goods on credit to Geto Company Ltd after being shown the company's audited financial statements, before they had been lodged with the Registrar of Companies.

It later on transpired that, while conducting the audit, Okech had failed to visit various branch offices of Geto Company Ltd. There were serious errors in the provisions for bad debts; dividends had been paid out of capital and Okech's wording of the report had been rejected by the Registrar of Companies. Subsequently, the company went into insolvent liquidation.

Geto Company Ltd, Pantaleo, Kariota and Gazinio are considering suing Okech.

Required:

Advise them on their chances of success.

(20 marks)

Question 3

A consultancy firm recruited Kamate, an electrical engineer for an electrical company based in Kasese. She signed a contract of employment, the terms of which among other things, provided that during the period of her service of the company she would not be entitled to maternity leave; and would be required to work from 6.00 a.m. to 7.00 p.m.

One evening, as she was returning from work, she was waylaid and raped by a hooligan called Mulisamanyi. She became pregnant as a result of the rape. When her time to deliver came, she applied for maternity leave. In response, the manager referred her to the terms of the employment contract she had signed, which excluded maternity leave.

Because of the pregnancy, her performance at work started deteriorating. The management of the company decided to reduce her salary by 20%. Kamate does not have sufficient knowledge about employment laws. She has now approached you for advice.

Required:

In view of the above, advise Kamate on her rights and duties.

(20 marks)

Question 4

Okot is a sole shareholder and director of two independent companies, Hatari Ltd and Kabi Ltd. Both companies are in the business of selling second-hand clothes in different parts of Kampala. Mukozi is employed by Hatari Ltd as a shop attendant. Owing to a faulty glass door leading to the store in the shop, Mukozi was badly injured and is considering suing Hatari Ltd for damages. Okot realized that there was trouble and decided to close Hatari Ltd shop, transferred all assets and goodwill to Kabi Ltd shop and paid off all Hatari Ltd creditors in full. He did not put Hatari Ltd into liquidation but had the company dissolved.

Required:

Advise Mukozi as to whether he should apply to have Hatari Ltd restored to the register and then sue as a creditor, given that the company has no assets and no other creditors, or whether he should bring action for damages against Kabi Ltd, which is very prosperous or sue Okot personally.

(20 marks)

SECTION C

Question 5

- (a) What is illegality in the law of contract? (2 marks)
 - (b) Describe various types of illegal contracts. (18 marks)
- (Total 20 marks)**

Question 6

- (a) What is a partnership? (2 marks)
 - (b) What are the rights and duties of a partner in the management of the business of a partnership? (18 marks)
- (Total 20 marks)**

Question 7

- (a) State the advantages and disadvantages of case law. (10 marks)
 - (b) Distinguish between common law and statute law. (10 marks)
- (Total 20 marks)**