

# THE PUBLIC ACCOUNTANTS EXAMINATIONS BOARD

*A Committee of the Council of ICPAU*

## ATC(U) EXAMINATIONS

### LEVEL TWO

#### PRINCIPLES OF LAW II - PAPER 6

WEDNESDAY, 15 JUNE 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 in the answer book.

## SECTION A

### Question 1

- (i) A resolution passed in a general meeting of a company by a simple majority is referred to as:
  - (a) simple majority resolution.
  - (b) ordinary resolution.
  - (c) extraordinary resolution.
  - (d) special resolution.
- (ii) Which of the following remedies is readily granted by court in event of breach of contract of employment?
  - (a) Specific performance.
  - (b) Reinstatement.
  - (c) Injunction.
  - (d) Damages.
- (iii) The minimum number of members required for registration of a public limited company is:
  - (a) 2.
  - (b) 5.
  - (c) 7.
  - (d) 10.
- (iv) Vicarious liability of an employer is based on torts committed by his employee:
  - (a) in normal course of business.
  - (b) accidentally.
  - (c) on floor of his own.
  - (d) while moving from home to his/her place of work.
- (v) The probation period for a contract of employment lasts for:
  - (a) one month.
  - (b) two months.
  - (c) one year.
  - (d) six months.
- (vi) Which of the following is true about an inchoate cheque?
  - (a) It may not specify the amount to be paid.
  - (b) It refers only to post-dated cheques.
  - (c) It refers only to crossed cheques.
  - (d) It is a cheque where every detail required is specified.

- (vii) Which of the following is a special court for handling labour cases?
- (a) Labour Court.
  - (b) Industrial Court.
  - (c) Commercial Court.
  - (d) Anti-corruption Court.
- (viii) Transmission of shares in a company occurs upon:
- (a) death of a shareholder.
  - (b) bankruptcy of a shareholder.
  - (c) voluntary transfer of shares by a shareholder.
  - (d) admission of new members as shareholders.
- (ix) Which of the following contracts of employment qualify for legal requirement of attestation?
- (a) Where the employee is to be trained on the job.
  - (b) Where the employee has inability to read and understand the language in which the contract is written.
  - (c) Where the employee is below 18 years.
  - (d) If the employee is disabled.
- (x) Which of the following best explains why dividends are declared out of profits?
- (a) To make shareholders trust management of the company.
  - (b) To maintain the capital of the company.
  - (c) To maintain the value of shares.
  - (d) To increase capital.
- (xi) At which of the following places is a company's register kept?
- (a) Registry of the Registration of Company Names.
  - (b) Registered office of the company.
  - (c) At the bank of the company.
  - (d) At the residential premises of the director of the company.
- (xii) Statements that would otherwise be defamatory but legally are not, are those made by:
- (a) members of parliament at parliament.
  - (b) politicians on political rallies.
  - (c) journalists in newspapers.
  - (d) writers of textbooks.

- (xiii) A promoter is a person who:
- (a) borrows money from the company after incorporation.
  - (b) supports a company in its winding up process.
  - (c) becomes the first director of a company.
  - (d) supports a company in the process of formation until the company is incorporated.
- (xiv) Which of the following is **NOT** a defence for the tort of defamation?
- (a) A fair comment in public interest.
  - (b) Truth of the statement.
  - (c) The fact that the statement is not malicious.
  - (d) The statement not referring to the defendant.
- (xv) A responsible officer of the company under winding up is known as the:
- (a) director.
  - (b) registrar of companies.
  - (c) liquidator.
  - (d) auditor.
- (xvi) .... is a beneficiary to a cheque.
- (a) The banker
  - (b) The payee
  - (c) The drawer
  - (d) The drawee
- (xvii) The mandatory meeting that should be held within the first 3 months after a public company's incorporation is referred to as:
- (a) extraordinary general meeting.
  - (b) annual general meeting.
  - (c) statutory meeting.
  - (d) meeting of the board of directors.
- (xviii) The objectives of a company are contained in the:
- (a) articles of association.
  - (b) statement of statutory compliance.
  - (c) registration certificate.
  - (d) memorandum of association.

- (xix) An unregistered charge is known as a:
- (a) mortgage.
  - (b) common law charge.
  - (c) equitable charge.
  - (d) oral charge.
- (xx) Which of the following is **NOT** true about negotiable instrument(s)?
- (a) It is a chose in action.
  - (b) The transferee has no right of action.
  - (c) The holder in due course is not affected by any prior defect.
  - (d) It can only be transferred through negotiation.

**(20 marks)**

## **SECTION B**

### **Question 2**

In 2005, Magezi, Oculu, Zake, Kintu and Nakintu incorporated, Kappa Ltd, a company limited by shares. Magezi and Kintu became its first directors. In the extraordinary meeting, Kappa Ltd resolved to open up a bank account with Gagawala Bank. It was also resolved that both Magezi and Kintu become the signatories to the company's bank account.

Magezi being a very busy businessman, could at times fail to get time to sign as and when his signature was required. Kintu explained this problem to Nanani, the bank manager.

Subsequently the bank manager allowed payments against cheques signed by Kintu alone. Magezi could only sign as and when available. This practice continued for four years without any problem.

Early in 2010, Kintu issued a notice to Gagawala Bank informing the bank manager that Magezi had been replaced by Nakintu as a co-signatory to the company's bank account. Upon receipt of the notice, the bank made changes accordingly.

Following the above development, the bank paid five cheques, worth Shs 100 million on different occasions, signed by both Kintu and Nakintu who put the money to their personal use.

Upon spending six months without being called upon to sign on any cheque, Magezi became suspicious. He went to Gagawala Bank to ask for a bank statement whereupon he was informed that no statement could be availed to him because he had been replaced by Nakintu as a signatory to the company's bank account.

Magezi was annoyed and informed the other shareholders about matter. It was reported to police who, after investigations, called it embezzlement and causing financial loss, among other charges.

On 3 March 2011, when the matter came up for fixing a hearing date at the Anti-corruption Court, Ntege, a journalist with Exposure Everyday Ltd covered the proceedings. He then wrote an article in their newspaper in which it was stated that Kintu and Nakintu had appeared in court for embezzling Kappa Ltd's money, and that they were likely to "vomit" Shs 100 million if found guilty by the Anti-corruption Court.

Kappa Ltd has filed a civil suit against Gagawala Bank for recovery of the Shs 100 million. The company has also dismissed Kintu from the position of director for breach of his duties. On the other hand, Kintu and Nakintu have vowed to sue Ntege and Exposure Everyday Ltd for defamation.

**Required:**

- (i) Raise and resolve the issues arising from the facts. (16 marks)
  - (ii) Give the possible defences available for the intended defendants. (4 marks)
- (Total 20 marks)**

**Question 3**

In January 2011, Mika, Surambaya, Nambi, Pusi and Kamese incorporated a private company limited by shares. Surambaya was appointed director and secretary of the company at the sometime because he was the only educated person beyond primary level. The main objective of the company was to put pressure on the government to abandon all its decentralization programmes and to reduce the number of members of parliament to ten.

Surambaya being the majority shareholder convened an extraordinary general meeting upon which a 5 days' notice had been issued. Only Surambaya and Nambi attended and passed a resolution that Surambaya sells his house to the company for office space at the prevailing market rate and upon valuation by a private valuer.

Subsequently, Surambaya, without any valuation carried out, sold the house to the company at Shs 500 million. It transpired that the prevailing market value of the house at the time of sale was Shs 450 million which in fact Surambaya had accepted but added Shs 50 million for his commission.

**Required:**

(a) Raise and resolve all the legal issues involved.

**(15 marks)**

(b) Explain the duties of a director of a company.

**(5 marks)**

**(Total 20 marks)**

**Question 4**

On 3 July 2009, Mrs Jangu gave birth to a baby girl by caesarean section. After the operation at Lengo Hospital, her health deteriorated. She could feel a lot of pain in her womb. She returned to Lengo Hospital and was again operated upon by Dr. Juju who had performed the first operation. A metal object was removed from her womb. When she returned home, her health continued to deteriorate. After two weeks, she was returned to the hospital. The results of the scan showed another metal object in her womb. She was returned to the theatre, where she died immediately after the third operation. It transpired that Dr. Juju had left the two metallic objects while carrying on the first operation. According to a senior consultant at the hospital, this problem would have been detected at the earliest opportunity had Dr. Juju utilized all the available facilities at Lengo Hospital.

Shortly after the burial, Mr. Jangu, the widower, stormed the office of the director of medical services at Lengo Hospital. Unfortunately, the director was out of office. While walking in the hospital compound in a state of confusion, contemplating the next step, Jangu fell into a deep pit that had been left open for two years. He sustained a simple fracture on the right leg.

Semeo, the personal driver to Munta, director of medical services helped Mr. Jangu to get out of the pit. Mr. Jangu explained to Semeo what had taken him to the hospital and swore not to seek treatment from the same hospital. In sympathy, Semeo offered to drive him to the nearby Tripple Cure Hospital. He used the personal car of the director.

As they approached the gate, Semeo, received a phone call from his boss who had no knowledge of what had transpired. As he was parking in a hurry to let Mr. Jangu come out, Semeo erroneously engaged the reverse gear. As a result, he knocked the car that was behind him. Kaduli who was in the knocked car was seriously injured.

Jangu and Kadoli are seeking for legal advice.

**Required:**

- (a) Raise and resolve all the legal issues. (15 marks)
  - (b) What are the possible defences available to the defendants? (5 marks)
- (Total 20 marks)**

**SECTION C**

**Question 5**

Explain the ways in which a private company differs from a public company. (10 marks)

**Question 6**

Explain the merits and demerits of incorporating a company as a business entity. (10 marks)

**Question 7**

As people who have a stake in a company, members of a company have rights that accrue by virtue of membership.

**Required:**

Explain the rights of members of a company. (10 marks)

**Question 8**

Briefly describe any **five** of the major general defences of the tort of negligence. (10 marks)

**Question 9**

- (a) What is meant by the term 'defamation'? (2 marks)
  - (b) Explain the general defences for the tort of defamation. (8 marks)
- (Total 10 marks)**