

THE INSTITUTE OF CHARTERED ACCOUNTANTS, GHANA
NOVEMBER 2015 PROFESSIONAL EXAMINATIONS QUESTIONS
EXAMINERS COMMENTS
BUSINESS AND CORPORATE LAW (1.3)

GENERAL PERFORMANCE

Generally the performance was quite fair. The isolated case of high performance i.e. 70% cut across all the centres. The low performance was also not peculiar to any particular centre. However, those centres who had the benefit of tuition performed fairly well. There were also no levels of copying at any centre.

Turning to strong performance, one cannot be said to spread across the paper. However, the main indices of high performance are a reflection of the candidates' preparedness for the examinations. The low performance is also a reflection of the unpreparedness of the candidates.

Most candidates do not appreciate the questions before they answer. Issues of language, grammar, spelling and legibility of writing have been commented upon in previous examinations but it appears there is no change. Since the Institute is organizing tuition, the lecturers should be encouraged to test grammar at least about five (5) minutes at each session before lectures begins.

SECTION A: BUSINESS LAW

Answer two (2) questions from this section

QUESTION ONE

The Constitution of the republic of Ghana 1992 consists of twenty six (26) chapters. Each chapter is arranged into articles and each article into clauses.

Mention any **TEN** topics dealt with in any **TEN** chapters of the Constitution.

(20 marks)

QUESTION TWO

Eddie is the manager of A-LIFE shopping mall owned by Bertha. In January he is told by Bertha not to buy biscuit from a new company called Crunch Ltd, because she has heard that their products are of poor quality.

On 18th February Christa, a representative of Crunch Ltd visits the A-LIFE shopping mall and as a result Eddie orders 10,000 cedis worth of biscuits. Christa is unaware of Bertha's instructions.

When later in the day Bertha discovers what Eddie has done, they have arguments and Eddie resigns. The following day Eddie goes to Drinkit Ltd, Bertha's regular supplier of wine and spirit and purchases 10 cases of whisky on credit in Bertha's name. He then absconds with the whisky.

Bertha comes to seek your advice as to her liability to:

- a. Crunch Ltd; **(10 marks)**
- b. Drink it Ltd. **(10 marks)**

(Total=20 marks)

QUESTION THREE

- a) Does every employee have the right not to be unfairly dismissed? **(10 marks)**
- b) Discuss five reasons which if one is established against the employee by the employer, may make the dismissal fair. **(10 marks)**

(Total=20 marks)

SECTION B: COMPANY LAW

Answer two (2) questions from this section.

QUESTION FOUR

What are the reasons for which the courts are prepared to lift or pierce the '*veil of incorporation*' of a limited liability company. **(20 marks)**

QUESTION FIVE

The Directors of a company are prohibited from making certain transactions in respect of shares.

Mention the prohibited transactions and discuss fully the reasons for the prohibitions. **(20 marks)**

QUESTION SIX

- a) Who is a member of a company? **(5 marks)**
- b) What are the commercial duties of a liquidator appointed by the members of a company?

(15 marks)

(Total=20 marks)

SECTION C: PARTNERSHIP LAW

Answer One (1) question from this section

QUESTION SEVEN

- a) What is an ultra vires contract? **(5 marks)**
- b) The Partnership will be liable where it has ratified the unauthorised act of a partner, 'the ratification is only valid where the agent professedly acted as a partner'.

List **TEN** activities or transactions that all the partners are required or expected to take part or give their consent to formally approve it? **(15 marks)**

(Total=20 marks)

QUESTION EIGHT

- a) What are the legal principles underlying profit sharing in partnership per Act 152, 1962? **(5 marks)**
- b) Addae has built a forty room hostel to serve a university community at Prampram in the Greater Accra region of Ghana. The hostel is estimated to be 97% work-in-progress.

Addae who has run out of cash resources approached his friend Baah for some additional financial resources to enable him complete the hostel building. Baah introduces Addae to NIB Bank credit officer who travelled to Prampram to inspect the building and immediately agree to advance a GH¢200,000 credit facility to enable Addae complete the building.

To enable him qualify for the loan, Addae has to register his building as a business entity and he opted for partnership with his friend Baah. He becomes A&B Partnership business entity and opens account with NIB bank in that business name.

The valuation report on the hostel prior to the approval for the loan, put the value at GH¢500,000. Baah actually paid the GH¢1,500 to the valuation officer for the preparation of the valuation report. That is his only financial contribution.

The loan amount with interest was paid from the rent income from the business and by the end of the third year; Addae has repaid the entire loan to the Bank.

At the end of the fourth year he realizes a profit of GH¢68,000 from the business.

He is wondering how much of this profit should be given to Baah.

Addae has come to seek your professional advice on what to do in the light of the Partnership law. Act 152, 1962. **(15 marks)**

(Total=20 marks)

SUGGESTED SOLUTIONS

QUESTION ONE

The Constitution of the Republic of Ghana, 1992 consist of chapters 1 to 26, each chapter is arranged into articles and clauses. Notable among the subject matters dealt with in the **TEN chapters** of the constitution are the following:

Chapters	Subjects dealt with
1.	Supremacy (sovereignty) of the constitution
2.	Territories of Ghana
3.	Citizenship of Ghana
4.	Laws of Ghana
5.	Fundamental human rights
6.	Directive principles of state policy
7.	Representatives of the people
8.	The executives
9.	The legislature
12.	Media Powers
13.	Finance
14.	Public Service
15.	Police Service
16.	Decentralization and local government

EXAMINER'S COMMENTS

Question 1

Only few candidates attempted this question. In this case therefore any candidate who was able to mention any item in the constitution was marked right. Candidates were not confused on any particular chapters or articles. Those who answered were therefore able to mention some of the contents of the constitution.

QUESTION TWO

The question is concerned with the issue of agent authority and in particular the extent to which a principal can be bound by contracts which the agents has made without authority.

(a)

- i) The relationship between Eddie and Bertha is an Agency Relationship (3 Marks)
- ii) Eddie has authority to buy goods for the shop as his normal course of duty (2 Marks)
- iii) The Instruction to Eddie not to buy from Crunch Ltd is not known to Crunch. (2 Marks)
- iv) Therefore Bertha is liable for the payment of the goods to Crunch Ltd (3 Marks)

(b)

- i) The relationship between Eddie and Bertha is an Agency Relationship (2 Marks)
- ii) Eddie has authority to buy goods for the shop as his normal course of duty (2 Marks)
- iii) Being a regular supplier, Drinkit knows Eddie as the Manager of the shop (2 Marks)
- iv) The fact of Eddie's resignation is not known to Drinkit or they were unaware (2 Marks)
- v) Bertha is therefore liable for the cost of the Whisky. (2 Marks)

EXAMINER'S COMMENTS

Question 2

Both (a) and (b) were two (2) sides of the same question. The question dealt with agency. In scenario (a), Eddie is presented as the manager of A-Life. In that capacity he could contract on behalf of the company. Thus Crunch Limited had the right to deal with him. The instruction given to Eddie by Bertha was not known to Crunch Limited. Since Eddie as a manager has acted within his ostensible authority, Bertha would be liable.

On the side of the coin, Drinkit knows Eddie as the manager of A-Life thus he has ostensible authority to deal with Drinkit. Even though Bertha has terminated Eddie's appointment once that fact has not been brought to the notice of Drinkit the sale of the cartoons of whisky could not bind Bertha. Most candidates could not identify the issues involved in this case study. It is only when one is able to identify the issues involved that one is able to argue logically.

QUESTION THREE

GROUNDS FOR FAIR TERMINATION- S.62 OF ACT 651

Grounds on which a worker can be fairly terminated are as follows:

- 1) That the worker is incompetent **(2 Marks)**
- 2) Or lacks the qualification **(2 Marks)**
- 3) Proven misconduct of the worker **(2 Marks)**
- 4) Redundancy under S.65 **(2 Marks)**
- 5) S.15 of the Acts stated grounds for termination **(2 Marks)**

GROUNDS FOR UNFAIR TERMINATION- S.63 OF ACT 651

Grounds on which a worker can be unfairly terminated are as follows:

- 1) That the worker has joined or intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union; **(2 Marks)**
- 2) That the worker seeks office as, or is acting or has acted in the capacity of workers representative; **(2 Marks)**
- 3) That the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment; **(2 Marks)**
- 4) That the worker's gender , race, colour , origin , religion , creed ,social , political or economic status; **(2 Marks)**
- 5) That the worker is temporarily ill or injured and this is certified by a recognized medical practitioner. **(2 Marks)**

EXAMINER'S COMMENTS

Question 3

Take (a) for example, the answer required by the question is a simple yes or no. Furthermore in labour relations we have unfair termination and wrongful dismissal.

In order to address the confusion we had to rewrite the marking scheme and award points for each and in order not to penalize candidates we combined the requirement under section 15 and section 63 of

the Labour Act and if a candidate mentioned any of these points in either subsection of the question it was marked right. Going by this yard stick it could be said that the candidates performed fairly well.

QUESTION FOUR

With the ‘**Veil of Incorporation**’, the company is separate from its members, such that, although the corporate veil principle is regarded as fundamental to company law, there are instances where it has been lifted or ignored in favor of the economic realities of the situation.

This occurs where the Courts are prepared to take judicial notice of the identities of the owners, directors or controllers with a view of fixing them with some legal liability. The reasons the Court give for lifting the veil may be several but notable among them are;

- i) Agency principle
- ii) Fraud principle
- iii) Capital flight
- iv) Public policy
- v) Facade principle/ Evasion of contractual obligation
- vi) Statutory provisions

Examples of statutory provisions are

- a) Failure to publish annual returns
- b) Operating with less than two directors
- c) No membership (a company without any member)
- d) Failure to display the company’s name

(20 Marks)

EXAMINER’S COMMENTS

Question 4

From the answers given most of the candidates were able to identify the circumstances under which officers of the company would be held personally liable for their acts.

QUESTION FIVE

Prohibited transactions in share are

- i) Alteration of the number of shares or the amount remaining payable thereon. This is to make sure that all shares are paid for and it corresponds to the accounting value or the share portfolio.
- ii) Release of any shareholder or former shareholder from his liability on the share. Should this be done it will diminished the capital of the company.
- iii) The provision of any financial assistance, directly or indirectly for the subscription or purchase of the company share on the shares of a holding company. This will give a misleading picture of the company to outsiders.
- iv) The acquisition by way of purchase or otherwise of any of its issued shares or any share of its holding company this with amount to inside trading.

EXAMINER'S COMMENTS

Question 5

The candidates who answered this question were able to identify the prohibited transaction in relation to shares. The main reason for the prohibition is to prevent insider trading in shares and by that falsely represent the value of shares to the public

QUESTION SIX

- a) **A member of a company** is any person who has subscribed to the regulations of the company and has his name entered into the register of the company.

Any shareholder of the company who owns at least one share in the company.

(5 Marks)

b) **Commercial duties of liquidation are:-**

- i) Duty to vest in the liquidator by notice in the Gazette that all properties of the company shall vest in him.
- ii) Duty to sell the assets so that the monies so realized could be used for distribution to creditors.
- iii) Duty to verify debts by meeting with creditors to proof their claim.
- iv) Duty to amend or alter claim or rectify admitted values or amount.
- v) Determine the priority of debt so the most priority debts are settled first.
- vi) Duty to consult creditors and members to discuss relevant matters.

(3 Marks each for any five points)

EXAMINER'S COMMENTS

Question 6

This question was straightforward. In isolated cases some of the candidates mentioned the powers of the liquidator. They were marked right since the powers could not completely divorce from the duties.

QUESTION SEVEN

- a) **An ultra vires contract** is a contract entered into by a company in excess of its objectives as contained in its regulations;

Or in excess of its powers as contained in the Regulations or the Company's Act;

Or a contract entered into by the directors of the company in excess of their powers as contained in the regulations or the Acts.

(3 Marks)

An ultra vires act can be ratified by members of the company or the directors.

(2 Marks)

- b) **Powers** normally held by all partners:

- i) To sell goods or personal chattel of the firm
- ii) To purchase an account of the firm goods or necessary usually employed in the business
- iii) To employ employees for business
- iv) To engage a solicitor to defend the firm
- v) To issue, accept, transfer and endorse bill of exchange either by signing the firms name or the partners own name for and on behalf of the firm.
- vi) To borrow money on credit for the firm, regardless of any limitations of authority agreed between the parties.
- vii) To secure a loan by pledging personal property of the firm or by depositing title deeds.
- viii) To admit a partner into the firm
- ix) To make donation to charity or for a reputable cause. etc
- x) Request for additional capital notices

(1.5 for each point raised = 15 Marks)

EXAMINER'S COMMENTS

Question 7

- (a) This question was well answered by most candidates.
- (b) This question relates to the management of the firm. Thus some of the candidates answered it on the management i.e. all partners are to take part in the running of the firm, consent of all partners for the admission of new partners etc. In this situation any candidate who brought out points that relate to management of the firm was awarded marks in addition to those listed in the marking scheme.

QUESTION EIGHT

- a) The interest of partners in the partnership property and their right and duties in relation to the partnership shall be determined subject to any agreement or implied between the partners. **In the absence of expressed agreement:**
 - i) All partners are deemed to be entitled to share equally in the capital and profit of the business and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.
 - ii) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by the firm.
 - iii) A partner making for the purpose of the partnership any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of 5% percent per annum from the date of the payment or advance.
- b) Partners are advised to set out their intention in a Partnership Agreement or Deed of Partnership. The Agreement should cover matters such as:
 - i) Profit sharing based on their individual contribution
 - ii) Capital contribution(500,000:1,500) based on the initial contribution taking into account of initial contribution vis-a vis the bank loan
 - iii) Management- this should be done together
 - iv) Liability sharing (500,000:1,500)- same as the capital sharing agreement/contribution

Until this period, there was no agreement so profit sharing should be 50-50. However going forward the partners should consider entering into the agreement with the above notes as guide

EXAMINER'S COMMENTS

Question 8

From the case study, it is apparent that the question was referring to section 35 of the Partnership Act. However, the working did not make it clear. Under section 35 of Act 152 where members of a partnership do not have any partnership agreement, the partners contribute equally to the partnership and share profits equally. They also bear losses equally. From the scenario the only contribution from each is GH¢1500 as against a contribution of GH¢500,000.00 from Addae.

The partnership was registered before the declaration of the profit therefore since at that time there was no partnership agreement then the ideal situation is to share the profits equally notwithstanding the level of contribution from Baah.

The question was answered by a handful of candidates and in order to be fair to them whichever way they answered either sharing the profits equally or in the proportion of contribution was awarded marks.