

**NOVEMBER 2016 PROFESSIONAL EXAMINATIONS**  
**BUSINESS & CORPORATE LAW (PAPER 1.3)**  
**CHIEF EXAMINERS REPORT, QUESTIONS & MARKING SCHEME**

**EXAMINER'S GENERAL COMMENTS**

The standard of the paper compared favorably with previously administered ones. There were no serious ambiguities typing or typographical errors. All the questions were of required standard. They were also fairly spread across the syllabus thus any candidate who decides to confine himself to a particular area had himself to blame.

**GENERAL PERFORMANCE**

The general performance still falls below expectations even though one gets few outstanding candidates. The main reason for this is that some candidates come into the examination hall unprepared. Apart from that, it appears that some candidates do not take their time to read over the questions to appreciate the requirements from the questions.

One other issue is that some candidates do not relate their answers to the marks allocation. For instance if the allocation of marks gives (4 marks) to a particular question this implies that the candidate is only required to give a short answer instead of writing copiously. By so doing a candidate will be able to make time to answer other questions that may require detailed analysis. If candidates would take their time to read through the whole questions, they would be able to allocate their time properly for each question.

Turning to the strengths and weakness it is difficult to state that high performance or low performance is concentrated in a particular center. Because in each pack you would get cases of high performance and low performance but the bottom line is the level of preparedness of the candidates, I believe that if candidates learn in syndicates, this will benefit them in future.

## BUSINESS & CORPORATE LAW QUESTIONS

### QUESTION ONE

- a) "The 1992 Constitution is the **Supreme Law** of the Republic of Ghana".  
Explain the above Statement. **(8 marks)**
- b) List, in **an ascending order**, the Superior Courts of Ghana, as stated in the 1992 Constitution of Ghana. **(6 marks)**
- c) Ezra was arrested by the Police for allegedly assaulting an unarmed beggar. Upon his arrest, the Police handcuffed him and also tied a rope around his waist, and dragged him on the ground to the Police Station, which was about fifty (50) metres from where Ezra allegedly committed the offence. At the Police Station, Ezra was kept in the Police cells for three (3) days without food, apart from the fact that he was not allowed to have his bath. On the fourth day, Ezra was rushed to a District magistrate Court, and without being allowed to state his side of the story, he was sentenced to six (6) months imprisonment without the option of a fine.

**Required:**

State, any **THREE** human rights of Ezra which have been violated by the Police. **(6 marks)**

**(Total: 20 marks)**

### QUESTION TWO

Mr. Bossman bought a Nissan diesel vehicle from Trans Africa Engineering and Motor Co. Ltd. However, when the vehicle broke down, Mr. Bossman did not go to the dealers for spare parts, but rather went to Messrs Jones Williams & Co, and through one of its directors, placed an order for the spare parts from Japan. The order was placed for the spare parts with TSS Co. Ltd, and by Telex, headed "**we quote for Japan**", TSS Co Ltd, supplied Jones Williams & Co. with the requisite quotation, and that the spare parts would be delivered in three (3) months' time. Mr. Bossman then got his foreign bankers to transfer the amount, being the cost of the spare parts to the bankers of Messrs Jones Williams & Co. Ltd, who in turn, paid the amount to the suppliers. When the spare parts were not forthcoming, Mr. Bossman sued Messrs Jones Williams & Co for the return of his money, interest and damages. Before the court case started, Mr. Bossman received the spare parts, and therefore had to abandon his claims.

**Required:**

- a) Explain the following in terms of the provisions of the Sale of Goods Act, 1962 (Act 137):
- i) The relationship between Mr. Bossman and Messrs Jones Williams & co. Ltd. **(3 marks)**
  - ii) The relationship between TSS Co. Ltd and Messrs Jones Williams & CO. Ltd **(3 marks)**
- b) Identify **FOUR** differences each between **Free On board (FOB)** contracts and **Cost, Insurance, Freight (CIF) contracts**. **(8 marks)**

- c) Orlando Motors, an American Automobile Company, paid for three (3) cars and consigned them to Mr. Kobby Ayensu in Ghana by a bill of lading; vehicle No. GTB 7084 was one of the three (3) cars, Mr. Kobby Ayensu, as the consignee, took delivery of the vehicles and registered vehicle No. GTB 7084. He later sold the vehicle he registered to Tracy Achiaa. The appropriate change of ownership was then effected. Later, one Mr. Oko Lartey who was claiming interest in the cars, sued Mr. Kobby Ayensu in respect of the cars and immediately went to court and obtained an order resulting in the impounding of the vehicle from Tracy Achiaa.

**Required:**

Explain whether there is any legal basis for Tracy Achiaa to take action to recover the impounded vehicle. **(6 marks)**

**(Total: 20 marks)**

**QUESTION THREE**

- a) The Contracts Act, 1960, Act 25, has modified the common law doctrine of consideration. List **FOUR** of the modifications. **(4 marks)**
- b) Explain the following terms as used in the legal business environment:
- i) Capacity
  - ii) Acceptance
  - iii) Misrepresentation
  - iv) Goods
  - v) Quantum meruit. **(12 marks)**
- c) State **FOUR** means by which a contract, lawfully entered by parties, may be discharged. **(4 marks)**

**(Total: 20 marks)**

**QUESTION FOUR**

- a) By a letter dated 18<sup>th</sup> February, 2014, addressed to the Manager of their partnership firm, Kofi Nti informed the Management of his and Mrs Obeng's immediate retirement as partners. The Manager replied that their application was under consideration. However, by another letter dated 12<sup>th</sup> January, 2015, Mr. Kofi Nti and Mrs. Obeng withdrew their letter dated 18<sup>th</sup> February, 2014. The conduct of the remaining partners, however, showed that they considered the letter of 18<sup>th</sup> February, 2014 to be of no effect, and continued the partnership accordingly. A dispute later arose and Jeff, one of the partners, obtained an order of the High Court directing Mr. Kofi Nti and Mr. Obeng to submit themselves to arbitration in accordance with the partnership agreement. The arbitrator submitted to the court that by their letter dated 18<sup>th</sup> February, 2014, Mr. Kofi Nti and Mr. Obeng ceased as from that date to be partners as the said letter could not be recalled.

**Required:**

Explain whether by the provisions of the Incorporated Private Partnership , Act, 1962, Act 152), Mr. Kofi Nti and Mr. Obeng, remain partners in the firm after their letters of 18th February, 2014 and 12th January, 2015. **(15 marks)**

- b) List **FIVE** applicable rules in a Partnership in the absence of a contrary agreement.**(5 marks)**

**(Total: 20 marks)**

**QUESTION FIVE**

- a) Share certificates are required to be issued to shareholders by a company.  
List the particulars that are required, by law, to be on the certificate. **(6 marks)**
- b) Certain transactions in shares are statutorily prohibited by the provisions of the Companies Act, 1963, Act 179, List **FOUR** of the said transactions. **(4 marks)**
- c) State **TWO** effects of a breach of the provisions prohibiting these transactions. **(4 marks)**
- d) State the liability of a member of a company prior to the winding up of the company. **(4 marks)**

**(Total: 20 marks)**

**QUESTION SIX**

- a) Capare Industries Ltd, which already held shares in a company known as Logotex Co, later made a takeover bid on the strength of its accounts prepared by Dickman Ltd. a firm of auditors. Capare Industries Ltd realized that the accounts were inaccurate in that they showed a pre-tax profit of GHs1.3million when in actual fact there had been a loss of GHs400, 000. It was the case of Capare Industries Ltd that if they had known the true situation, they would not have made a bid at the price they did or may not have made a bid at all. They argued that they were owed a duty of care by the creditors as new investors and as existing shareholders who in reliance on the accounts had bought more shares.

**Required:**

Explain whether Capare Ltd would be justified in taking action against the firm of auditors. **(6 marks)**

- b) Briefly explain what is meant by **professional negligence**. **(4 marks)**
- c) Corporate Governance has been defined as a set of systems, processes and principles which ensure that a company is governed in the best interest of all stake holders.

**Required:**

List **SIX** principles of corporate governance. **(6 marks)**

**(Total: 20 marks)**

## **QUESTION SEVEN**

- a) List **EIGHT duties** of an employer under the Labour Act, 2003, Act 651. **(8 marks)**
- b) Mention **FOUR rights** of a worker under the Labour Act, Act 2003, Act 651. **(4 marks)**
- c) State **EIGHT duties** of a worker as prescribed in the Labour Act, 2003, Act 651. **(8 marks)**

**(Total: 20 marks)**

## **MARKING SCHEME**

### **QUESTION ONE**

#### **a) Constitution is the basic law or the grundnorm**

- It is the law that defines the power and limits of key organs of government including the Executive, legislature & Judiciary
- It is law that defines the fundamental rights of individuals
- All laws are subordinated to the Constitution
- Any law inconsistent with any provisions of the Constitution, to the extent of the inconsistency, the constitution prevails

**Four (4) points at 2marks each (8marks)**

b)

- Supreme Court
- Court of Appeal
- High court/ Regional Tribunal

**(2 marks each) (6 marks)**

c)

- Right to human dignity
- Right to personal liberty
- Right to fair trial

**3points at 2marks each (6 marks)**

**(Total: 20 marks)**

## **EXAMINER'S COMMENTS**

[a]Supremacy of constitution.

Candidates were expected to state that the constitution is the basic law of the land. It defines the power and limits of the key organs of government i.e. the Executive, the Legislature

Judiciary. It is the law that defines the fundamental right of individuals. All laws take their root from the constitution and any law that is inconsistent with any of the provisions of the constitution is void to the extent of the inconsistency.

[b] The question only wanted the list of superior courts. The superior courts are the courts from the high court and above

[c]This question required candidates to explain the basic human right of Ezra that had been violated. By dragging him on the ground, the police had violated his right to dignity, since he was treated like an animal. By holding him in custody beyond forty eight hours the police had breached his right to liberty and finally by convicting him without him being heard, his right to fair trial had been breached.

## QUESTION TWO

a)

i) **one of agency and not of sale of goods.**

In the instant case Messrs Jones Williams & Co Ltd never delivered to Mr. Bossman a pro-forma invoice of its own stating the price at which it would sell the spare parts to Mr. Bossman or the time it would deliver the goods.

All that Messrs Jones Williams & Co, Ltd did was to give Mr. Bossman a copy of the telex from the suppliers, and asked him to pay for the cost of the spare parts calculated from the unit prices.

The obligation that Messrs Jones Williams & Co Ltd assumed towards, Mr. Bossman was that of using its best endeavors to procure the goods for him on the most favourable terms, and was not responsible for the delay

**3points at 1 mark each (3 marks)**

ii) when the TSS Company Ltd agreed to procure the goods for Messrs Jones Williams and Co. Ltd, TSS Co. Ltd did that as the agent of Messrs Jones Williams Co. Ltd, or as a principal party standing towards Messrs Jones Williams Co. Ltd in the relationship of a seller.

The contract between the supplier TSS Co. Ltd and Jones Williams and Co. Ltd was of the type in commercial circles known as Free on Board(FOB) contract.

By the rules of FOB Contracts, the supplier assumed the responsibility for shipping the goods to the buyer. In this case TSS Co Ltd, the supplier was to ship the spare parts to James Williams and Co. Ltd. (**See section 62 of Act 137**).

**3points at 1 mark each (3 marks)**

The seller TSS Co. Ltd, assumed no responsibility for insurance or freight nor did it give guarantees as to the time of the arrival of the ship at its destination.

The only representation which TSS Co. Ltd made was that it was ready and willing and able to deliver the goods (spare parts within three(3) months to any part in Japan nominated by James Williams and CO. Ltd and load them at their own expense on the ship designated by them ( Messrs Jones Williams & Co. Ltd).

### b) **Free on Board (FOB) Contracts**

The rule of FOB contract in section 62 of Act 137 states as follows:

- Buyer entitled and bound to nominate a ship to the seller calling during the agreed period.
- The seller is bound at his own expense, to have the good on the ship nominated by the buyer.

- The seller is bound at his own expense, to give such notice to the buyer.
- The seller is not bound to effect any insurance on the goods.
- The seller is bound to transmit to the buyer bills of lading by which the goods are deliverable to the buyer.
- The risk of the goods passes to the buyer when they are shipped

**4 points at 1 mark each (4marks)**

**Cost, Insurance and Freight (CIF) contracts.**

- Seller is bound at his own expense to ship the goods during the period, if any, to the port agreed upon or to acquire goods afloat which have been so shipped.
- The seller is bound, at his own expense, to effect on the goods an insurance of the type normal for goods and voyage of the kind in question;
- The seller is bound to transfer to the buyer proper shipping documents in accordance with terms of the contract;
- The buyer is bound to take up proper shipping documents and, on doing so, to pay the price in accordance with the terms of the contract;
- The goods are deemed to be delivered to the buyer, and the property therein accordingly passes to the buyers, on the transfer to him of the bills of lading;
- The risk in the goods passes to the buyer when they are shipped or acquired afloat.

**4 points at 1 mark each (4marks)**

**c) There is a legal basis for Tracy Achiaa to take action to recover the impounded vehicle.**

- Tracy Achiaa was a bonafide purchaser for value without notice under the provisions of the Sale of goods Act, 1962, Act 137, and, therefore, had a legal interest in the vehicle. By the provisions of Section 26 of the Act 137, property in the vehicle had passed to her.
- Even if under an agreement between Mr. Oko and Mr. Kobby Ayensu, Mr. Ayensu could be regarded as a mere agent of Mr. Oko, and as a mercantile agent in possession, Mr. Ayensu could, under Section 30 of Act 137, validly dispose of the vehicle to Tracy Achia.
- The vehicle was shipped to Mr. Kobby Ayensu by Olando motors Ltd. as a consignor, and Mr. Kobby Ayensu as a consignee. That by the bill of lading, Mr. Kobby Ayensu was the owner of the vehicle, as proclaimed to the whole world, and therefore. Tracy Achiaa validly acquired the vehicle from Mr. Ayensu, under a contract of sale which passed on valid title in the vehicle to her. And that Tracy Achiaa is, therefore protected, on the face of it all by Act 137.

**3 points at 2marks each (6marks)  
(Total: 20 marks)**

## **EXAMINER'S COMMENTS**

[A]The team were of the view that this was not a question based on agency. Bossman never had any dealings with ISS co neither did the quotation indicate that the quotation came from a third party. Thus the team took the view that the relationship between Messus Jones Williams and Bossman was that of seller and buyer.

At a compromise the team gave 1 mark in the event of a candidate taking the question as involving agency. Incidentally only few candidates answered the question and out of that except for one or two candidates. The majority treated question 2[a] as involving seller and buyer.

[B]this part was not well answered. It appears that most candidates did not avert their minds to section 62 of the sale of the goods Act. In future candidates are advised to read the provisions section B2 to show what is involved in FOB and CIF contracts as that section defines the two types of contract.

[C]The candidates who answered this part were able to identify that the property in the vehicle was in Kobby Ayensu and Tracy Achia obtained good title from Kobby Ayensu. Oko Lartey was therefore, wrong in having the vehicle impounded as he did not even specify nature of this interest.

## **QUESTION THREE**

**a) Four (4) modifications made to the doctrine of consideration by the Contracts Act, 1960, Act 25.**

- A promisor who has promised to keep his offer open for a specified period is not at liberty to withdraw the offer before the expiration of that period on the ground that the promisee has not provided any consideration for the offer.
- A creditor who promises, without receiving consideration for the whole or part of a debt or to waive the performance of some other contractual or legal obligation can be held to his promise. The promise of waiver shall not be invalid as a contract by reason only of the absence of any consideration for it.
- If one is legally bound to perform a legal duty, the performance, or promise to perform that act may be sufficient consideration.
- It is possible for consideration to be supplied by someone other than promisee. The beneficiary need not be the promisee. (S.10).

**4points at 1mark each (4marks)**

b)

- i) **Capacity:** a person is said to have capacity when he is of sound mind and has attained the age of majority (i.e. 18 years in Ghana). In order to form a wholly valid contract, parties must be over 18 years of age and be of sound mind. Under the section 2 of the Sale of Goods Act, capacity to buy and sell is regulated by this general law concerning capacity to contract and to transfer and acquire property.

**(2 marks)**

ii) **Acceptance:** In order to constitute a valid contract, there must be an offer and an unqualified acceptance. Acceptance may be oral, written or implied from conduct. Under Section 52 of the Sale of Goods Act, 1962 (Act 137), the buyer is deemed to have accepted the goods when-

- He intimates to the seller that he accepts them; or
- He does not, within a reasonable time after delivery of the goods, inform the seller that he rejects them; or
- He wrongfully refuses or neglects to place the goods at the disposal of the seller after notifying the seller that he rejects them.

**(4 marks)**

iii) **Misrepresentation:** A misrepresentation is (a) a false statement (b) of material fact (c) made by a party to a contract or his agent (d) inducing the other to enter into the contract. **(2 marks)**

iv) **Goods:** means “ movable property of every description, and includes growing crops or plants and other things attached to or forming part of the land which are agreed to be severed before sale by or under the contract of sale” - Section 81 of Sale of Goods Act, 1962 (Act 37). **(2 marks)**

v) **Quantum Meruit:** Where there is a breach of an essential condition in a contact, the injured may either (a) seek to enforce the contract and sue for damages; or (b) treat the contract as discharged in which case he cannot sue for damages for its breach. However, where he adopts course (b) above, and treats the contract as discharged, he is entitled to bring a quasi-contractual action for compensation for work done or services rendered, etc. This is called a Quantum Meruit action (literally “how much is it worth?") **(2 marks)**

**(12 marks)**

c) **Discharge of contract**

- By performance
- Agreement
- Frustration
- Breach of a condition.

**(4 points for 4 marks)**

**(Total: 20 marks)**

### **EXAMINER'S COMMENTS**

#### **Question 3**

[A]This part was not well answered with exception of a few candidates. Most candidates rather tried to give the ingredients of consideration. However the question wanted candidates to explain the changes that have been made by the contract Act in the law relating to the consideration

- [i] A promise or who has promised to keep his offer open for a specified period is bound to keep it open for that period notwithstanding no consideration has been provided.
- [ii] A creditor who waives the performance of an act or part of debt will be held to it notwithstanding the lack of consideration.
- [iii] The performance of an act may have been sufficient consideration notwithstanding that the person is legally bound to perform that act
- [iv] Consideration may be provided by a third party other than the promise. In future candidates should look at the provisions of sections 5, 8, 9 and 10 of the Contract Act 1960 Act 25.

[B]

- [i] This was well answered by candidates.
  - [ii] In a few isolated cases some of the candidates deviated and rather defined mistake. However mistake is not same as misinterpretation.
  - [iii] Most of the candidates were not able to give the legal definition of goods. In future candidates may have to refer to section 81 of the Sale of Goods Act which defines goods as movable property of every description and includes growing crops or plants and other things attached to or forming part of the land which are agreed to be severed before sale under the contract of sale.
  - [v] Quantum meruit literally means how much it is worth. This is a form of compensation that is paid to an injured party who has performed substantial part of the contract and that contract is breached by the other party.
- [c] This part was well answered by candidates.

## QUESTION FOUR

**a) See Section 39(7) of the Incorporated Private Partnership Act, 1962., Act 152**

Upon the retirement of a partner, certain steps should be taken

- The remaining partners must in accordance with Section 7 of the Act, within 28 days of the retirement, notify the Registrar of Companies of the fact.
- The Registrar in turn is bound upon such notification to amend the certificate of registration of the company and insert a notice in the Gazette signifying the change.
- The partners who remained after the letter of 18<sup>th</sup> February, 2014 did nothing about the letter.
- As a result the original certificate of Registration with the names of all the original four(4) partners remain unaltered
- That all the other partners seemed to have agreed that the letter of 18<sup>th</sup> February 2014, whether it constituted notice to the partners or not, should be ignored.

- The conduct of the partners, after the letter of 18<sup>th</sup> February 2014, overwhelmingly favours the view that the letter was treated by consent of all of them as of no effect.
  - That Mr. Kofi Nti and Mrs Obeng remained partners of Partnership after 18<sup>th</sup> February 2014, because the rest of the other partners did not comply with the statutory requirements of Section 39 (7) of the Incorporated Private Partnership, Act, 1962 (Act 152)
- (15 marks)**

**b) Applicable rules in Partnership in the absence of a contrary of a contrary agreement**

- All partners shall be entitled to share equally in the capital and profits of the firm and shall contribute equally towards the losses sustained by the firm.
- The firm shall indemnify every partner in respect of payments made and personal liabilities incurred by him in the ordinary and proper conduct of the business of the firm or in or about anything necessarily done for the preservation of the business or property of the firm
- Any actual payment or advance beyond the amount of capital which he has agreed to subscribe shall be entitled to interest at the rate of five per centum per annum from the date of payment of advance.
- Even though a partnership agreement may make provision for the payment of interest on capital subscribed by a partner, such a partner shall not be entitled to payment of such interest before the ascertainment of the profit of the firm.
- Every partner may take part in the management of the business of the firm
- No partner shall be entitled to remuneration for acting in the firm's business.
- No person shall be introduced as a partner without his consent and the consent of all the existing partners.
- Ordinary matters connected with the firm's business may be decided by a majority of the partners.
- No change may be in the nature of the firm's business without the consent of all the existing partners.
- The partnership books and accounts shall be kept at the place of business of the firm or the principal place of business if there is more than one.

**5 points at 1 mark each (5marks)**

**(Total: 20 marks)**

#### **EXAMINER'S COMMENTS**

[a] This question was not well answered with the exception of one or two candidates. Most of the candidates did not appreciate the statutory requirement of resignation from a partnership under section 39[7], of the incorporated private partnership Act 1952. Certain steps should be taken by remaining partners when a member retires.

[i] Within 28 days of retirement, the remaining partners must notify the Registrar of companies.

[ii] The Registrar in turn is bound to amend the certificate of registration of the partnership and insert a note in the Gazette signifying the change.

[iii] The partners who remained after the letter of 18<sup>th</sup> of February 2014 did nothing thus statutorily to remove the names.

[iv] In this context the remaining partners ignored the letter of resignation.

[v] Therefore Kofi Nti and Mrs. Obeng remained partners of the firm for now compliance with section 39[7]

[B] This part of the question was fairly well answered.

## QUESTION FIVE

**a) Particulars on Share Certificates**

- The number and class of shares held by the shareholder and the definitive numbers thereof, if any.
- The amount paid on such shares and the amount, if any, remaining unpaid.
- The name and address of the registered holder.

**3 points at 2 marks each (6marks)**

**b) Transactions in shares prohibited by law**

- Alter the number of its shares or the amount remaining payable thereon, except under certain conditions.
- Release any shareholder or former shareholders from any liability on the shares.
- Provide any financial assistance, directly or indirectly for the subscription or purchase of its shares, or the shares, of its holding company.
- Acquire by way of purchase or otherwise, directly or through nominees, any of its issued shares or any shares of its holding company.

**4 points at 1 marks each (4 marks)**

**c) Effects of a breach**

- The purported alteration or release become void and renders every officer of the company who is in default liable to a fine not exceeding one hundred Ghana cedis (GH¢ 100.00). **2 marks**
- As regards a breach involving provision of financial assistance and acquisition by way of a purchase or otherwise, the transaction becomes voidable by the company and any payment made by the company in respect thereof becomes immediately repayable with interest at the rate of 5% per annum or such higher rate as the court may deem fit to order. **2 marks**

**d) Liability of a member of a company prior to winding up**

- A member of a company with shares is liable, prior to the dissolution of the company, to contribute the balance, if any, of the amount payable in respect of shares held by him or her in accordance with the terms of the agreement under

which the shares were issued and acquired, or in accordance with a call validly made by the company in accordance with the company's regulations.

**3 marks**

- Where any contribution has become due and payable or where under the terms of any agreement with the company, a member has undertaken personal liability to make future payment in respect of shares issued to him/her.

**3 marks**

**(Total: 20 marks)**

#### **EXAMINER'S COMMENTS**

[A] It appears that candidates confined the requirements of this question with the requirement of registration of company. For the avoidance of doubt the requirements are as follows;

[i] The number and class of shares held by the shareholder.

[ii] The amount of money paid on such shares and the amount if any remaining unpaid.

[iii] The name and address of registered holder.

[B] The following transactions in shares are prohibited by law.

[i] Alter the number of its shares or the amount remaining payable there on, except under certain conditions.

[a] Release a shareholder from any liability on the shares.

[b] Provide any financial assistance, directly or indirectly for the subscription or purchase of its share or its holding company.

[c] Acquire by way of purchase or otherwise directly or through nominees any of the issued shares or any shares of the holding company.

[C] The effects of breach are;

[i] The proposed transaction is void and renders every officer in subject to a fine.

[ii] The transaction becomes voidable by the company and payment made by the company becomes immediately payable and attracts 5% interest.

[D] This part of the question was not well answered. On dissolution if the company is a limited liability company the shareholder is only liable to pay the amount remaining unpaid on the shares. Whereas if it is a company limited by guarantee then the member pays up the amount he guaranteed to pay in the event of dissolution.

## QUESTION SIX

**a) Capare Industries Ltd would be justified in taking action against the firm of auditors**

- The firm of auditors are to provide independent professional inquiry into financial matters of a company and to ascertain whether the financial records generated by management, and the financial statements prepared by the directors, disclose the true state of affairs of the company.
- That every audit report of a company has the membership of the company, as its primary audience, and, therefore, the auditors owe some duty of care to the members of the company.
- Capare Industries Co, Ltd, is a shareholder in the Logotex Co. Ltd, and had made a bid to take over the company.
- The firm of auditors, as professionals, are duty bound to be a candid and maintain high standards in its financial investigations into the activities of Logotex Co. Ltd, else it could be liable for professional negligence.
- Capare Industries Co. Ltd , acted on the wrong report submitted by the firm of auditors, and for which reason Capare Industries Co Ltd could take action against the firm of auditors for damages for professional negligence .

**(10 marks)**

**b) Professional negligence** has to do with a situation where someone or a group of people professing to have special skills and training, applies the skills for the assistance of another person who relies on such skill or skills to act, a resulting in a financial loss. The person or group of persons must exhibit the degree of skill which a member of the public would expect from a person in his or her position. The person or group of persons with the special skill or skills, owes a duty of care not only to his client, but also to all those whom he/it knows will rely on their statements, information and advice, in a transaction for which the statements, information or advice are provided.

Practitioners of professions such as lawyers, accountants and auditors, valuers and surveyors, medical doctors make statements, provide information and give advice, that are relied upon by their clients, and that where the reliance on advice of these practitioners occasion financial loss, they could be sued for professional negligence, because they owe their clients a duty of care. These practitioners are supposed to render their respective professional services with the skill, prudence and diligence by reason of the duty of care owed their clients.

**4 marks**

**c) Principles of Corporate Governance**

- Leadership
- Transparency

- Capability
- Accountability
- Compliance
- Sustainability
- Integrity.

**1 mark each (6 marks)**

**(Total: 20 marks)**

#### **EXAMINER'S COMMENTS**

[a] Even though most candidates were able to identify the problem as involving breach of professional duty they could not logically argue their case out.

As a firm of auditors, Dickman Ltd owed a duty of care to both the general public and the shareholders in particular. It knew or ought to have known that the audit report was going to be relied upon by the public and the members of the company in particular. That due of care was breached when Dickman gave the wrong information on the financial position of Logotex Co capare industries relived on the audit report to its detriment. Therefore Dickman Ltd is liable for breach of duty of care.

[b] This part was fairly well answered.

[c] Candidates appeared not to appreciate this part of the question well. In the running of the companies. The company officials are expected to act in good faith towards the company and its shareholders. Their interest should not conflict with the interest of the company. They are expected to disclose all secret profit. In short they are to live above reproach. The principles involved in this corporate governance are as follows:

- [i] Leadership
- [ii] Transparency
- [iii] Capability
- [iv] Accountability
- [v]Sustainability
- [vi] Compliance
- [vii] Integrity

#### **QUESTION SEVEN**

##### **a) Duties of an Employer**

- Provide work and appropriate raw materials, machinery, equipment and tools;
- Pay the agreed remuneration at the time and place agreed on in the contract of employment or collective agreement or by custom without any deduction except deduction permitted by law or agreed between the employer and the worker;
- Take all practicable steps to ensure that the worker is free from risk of personal injury or damage to his or her health during and in the course of the worker's employment or while lawfully on the employer's premises;

- Develop the human resources by way of training and retraining of the workers;
- Provide and ensure the operation of an adequate procedure for discipline of the workers;
- Furnish the worker with a copy of the worker's contract of employment;
- Keep open the channels of communication with the workers; and
- Protect the interests of the workers.

**1 mark each (8 marks)**

**b) Rights of a worker**

- Work under satisfactory, safe and healthy conditions;
- Receive equal pay for equal work without distinction of any kind;
- Have rest, leisure and reasonable limitation of working hours and period of holidays with pay as well as remuneration of public holidays;
- Form or join a trade union;
- Be trained and retrained for the development of his or her skills
- Receive information relevant to his or her work.

**4 points at 1 mark each (4 marks)**

**c) Duties of a worker**

- Work conscientiously in the lawfully chosen occupation.
- Report for work regularly and punctually.
- Enhance productivity.
- Exercise due care in the execution of assigned work.
- Obey lawful instructions regarding the organization and executions of his or her work.
- Take all reasonable care for the safety and health of fellow workers.
- Protect the interests of the employer
- Take proper care for the property of the employer entrusted to the worker or under the immediate control of the worker.

**1 mark each (8 marks)**

**(Total: 20 marks)**

**EXAMINER'S COMMENTS**

This question was well understood by candidates.