

**MAY 2019 PROFESSIONAL EXAMINATIONS
BUSINESS & CORPORATE LAW (PAPER 1.3)
QUESTIONS AND MARKING SCHEME**

QUESTION ONE

In two points each, write short notes on the following:

- a) High Court (4 marks)
- b) Jurisdiction of the Supreme Court (4 marks)
- c) Legislation as a source of law in Ghana (4 marks)
- d) Customary Law as a source of law in Ghana (4 marks)
- e) Principles of natural justice (4 marks)

(Total: 20 marks)

QUESTION TWO

Eric Afful was employed as the Chief Operations Officer of Deews Construction Company, in 2003. In 2015, the company undertook a major restructuring resulting in re-assignment of Eric to the role of Building Inspector. In this new role, his signing authorities were withdrawn and all subordinate staff transferred out of his department. His salary was reduced drastically and he was informed by the MD that the company's budget would not be able to meet his salary. When he complained, he was advised to keep quiet or have his appointment terminated.

Required:

- a) Comment on the *right of the employer* in the case. (5 marks)
- b) On what **THREE (3)** grounds can Eric's appointment be terminated? (9 marks)
- c) What **TWO (2)** remedies will be available to Eric in the event of unfair termination? (6 marks)

(Total: 20 marks)

QUESTION THREE

- a) Distinguish between a *legal* and *equitable* remedies in contract law. (2 marks)
- b) Identify and explain any **TWO (2)** equitable remedies under the law of contract. (8 marks)
- c) ABA Venture was set up recently and John is an independent electrical contractor working for ABA Ventures for the past 3months under a contract that requires him to ensure that all electrical facilities are well maintained. Abena is a fresh graduate who has also completed level one of the ICAG professional programme and has been given a one year contract as a Cashier of ABA Ventures. Your firm is designing the conditions of service for ABA Ventures

Required:

- i) List the **FOUR (4)** rights of employees. (4 marks)

- ii) Indicate whether ABA Ventures will have obligations to pay Social Security on behalf of John and Abena who are both working at ABA. **(6 marks)**

(Total: 20 marks)

QUESTION FOUR

On 1st January, 2018, Parentsgold Ltd, a new and promising company had its prospectus published and on 3rd January 2018, Frank Larry sent an application for GH¢100,000 worth of shares in Parentsgold Ltd. On the same 3rd January, Abena Manu submitted an application for GH¢50,000 worth of shares but on 8th January, 2018, she sent a mail revoking her application. Both applicants remitted the requisite application moneys on the day of their application.

Due to lack of a quorum, the Board of Directors of Parentsgold Ltd could not meet to consider the applications and allot shares until 15th September, 2018. Frank Larry was informed on 16th September, 2018 that his application had been accepted and that GH¢100,000 worth shares had been duly allotted to him but he wrote back refusing the allotment.

Required:

Advise the parties of their rights, if any.

(20 marks)

QUESTION FIVE

Yaa Konadu purchased a car from Kofi Apenteng, two months later, it was discovered that the car was a stolen property before it was acquired by Apenteng and both parties were innocent. Konadu had to give back the car through the police. Apenteng had no title to pass on and so Konadu sued him for the refund of the whole of her money despite the fact that she had used the car for two months.

Required:

- a) Explain if the object of the sale of the car was met for either Yaa Konadu or Kofi Apenteng. **(4 marks)**
- b) Advise the parties. **(6 marks)**
- c) Explain **FOUR (4)** duties of an agent to his principal **(10 marks)**

QUESTION SIX

- a) Explain the following:
- i) Floating charge (4 marks)
 - ii) Naked Debentures (4 marks)
 - iii) Income Surplus (4 marks)
- b) Identify **FOUR (4)** conditions to disqualify a person from being appointed as auditors in a private company (8 marks)

(Total: 20 marks)

QUESTION SEVEN

- a) Explain liquidation and state the different modes by which a company may be wound up. (8 marks)
- b) Describe **FOUR (4)** consequences of a winding up process? (12 marks)

(Total: 20 marks)

SOLUTIONS TO QUESTIONS

QUESTION ONE

a) **The High Court has**

- Jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the 1992 Constitution;
- **Supervisory Jurisdiction:** Supervisory jurisdiction over all lower courts and any lower adjudicating authority; The High Court also Exercise administrative jurisdiction over administrative bodies, issue prerogative writs, determines appeals from the lower courts.

Civil Matters: Appeals lie from the District Court to the High Court.

Criminal Matters: Appeals lie from the District Court to the High Court.

Civil Matters: Appeals lie from the Circuit Court to the High Court.

- Powers and authority to hear and determine appeals within its jurisdiction.
- The jurisdiction of the Court involves hearing all civil or criminal matters.
- It has the constitutional authority to hear appeals from the District Court or Juvenile Courts as well as criminal appeals that may come from the Circuit Court.
- **The High Court has the following divisions**
 - ✓ Commercial
 - ✓ Land
 - ✓ General Jurisdiction
 - ✓ Divorce and Matrimonial
 - ✓ Probate and Letters of Administration
 - ✓ Industrial/Labour
 - ✓ Criminal
 - ✓ Financial and
 - ✓ Human Rights

(2 points @ 2 marks each = 4 marks)

b) **The Supreme Court is**

- the final court of appeal;
- has authority under Article 130 to exercise all the powers, authority and jurisdiction vested in any court established by the Constitution or any other law;
- having exclusive original jurisdiction in the interpretation and enforcement of the Constitution;
- having exclusive original jurisdiction in all matters on whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution;

- The Supreme Court has exclusive jurisdiction to determine whether an official document shall be produced in court where its production or disclosure of the content will be prejudicial to the security of the State or will be injurious to the public interest.
- The Supreme Court has supervisory jurisdiction over all courts and over any adjudicating authorities. In situations where questions about the law are raised, the Supreme Court has the jurisdiction of expressing the final opinion on the matter.
- It is the only court with the right to hear appeals that may come from the National House of Chiefs.
- The Supreme Court has Original jurisdiction in elections, namely Presidential election petition, Appeals from the National House of Chiefs.

(2 points @ 2 marks each = 4 marks)

c) Legislation is

- Enactments made by or under the authority of the Parliament established by the Constitution. These are Acts of Parliament.
- Article 93 of the 1992 Constitution established Parliament and provided that the legislative power of Ghana is vested in Parliament and must be exercised in accordance with procedures specified in the Constitution.
- The power of Parliament to make laws shall be exercised by bills passed by parliament and assented to by the President. E.g. Include Public Financial Management Act, 2016 (Act 921), Public Procurement Act, 2003 (Act 663), Companies Act, 1963 (Act 179) - Legislative Instrument, Constitutional Instrument.

(2 points @ 2 marks each = 4 marks)

d) Customary law means

- The rules of law, which by custom are applicable to particular communities in Ghana.
- They are classified under common law in the 1992 constitution.
- E.g The customary law continues to regulate the affairs of many Ghanaians in issues of initiation to puberty, marriage, divorce, succession, inheritance, chieftaincy, land ownership and disposals

(2 points @ 2 marks each = 4 marks)

e) Principles of natural justice are

- Intended to ensure law with fairness and to secure justice.
- Considered the basic Human Rights because they attempt to bring justice to the parties naturally.
- Cover - Audi Alteram Partem and Nemo Judes In Causa Sua.
- Right to be heard,
- One cannot be a judge in his own cause or a matter of which he has an interest.
- Fairness-covers procedural fairness.
- Principles concerning procedural fairness and to ensure that a fair decision is reached by an objective decision maker.
- Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

(2 points @ 2 marks each = 4 marks)

(Total: 20 marks)

QUESTION TWO

- a) The rights of employer include the right to employ a worker, discipline, transfer, promote and terminate the employment of the worker – [Section 8(a) of Labour Act, 2003, (Act 651)]

Section 8 outlines the rights of the employer as among others to:

- Employ a worker, discipline, transfer, promote and terminate the employment of the worker.
- Formulate policies, execute plans and programmes, and set targets.
- Modify, extend or cease operations, and
- Determine the type of products to make or sell and the prices of its goods and services.
- It is not within the right of the employer to reduce the salary of the employee/worker.

(5 marks)

- b) **Per Section 15 of the Labour Act, a contract of employment may be terminated as follows:**

- By mutual agreement between the employer and the worker;
- By the worker on grounds of ill-treatment or sexual harassment;
- By the employer on the death of the worker before the expiration of the period of employment;
- By the employer if the worker is found on medical examination to be unfit for employment;
- By the employer because of the inability of the worker to carry out work due to sickness or accident; or the incompetence of the worker; or the proven misconduct of the worker.

(3 marks for each of the 3points = 9 marks)

- c) **Remedies for unfair termination (Section 64)**

- Re-instatement from the date of the termination of employment;
- Re-employment of the worker, in the work for which the worker was employed before the termination
- Damages or order the employer to pay compensation to the worker. (a) order the employer to re-instate the worker

(3 marks for each of any 2 points)

(Total: 20 marks)

QUESTION THREE

a) **Remedy** is the relief a Court may grant upon finding that a wrong has been committed. Remedies for breach of contract fall into two main classifications: “legal or common law” remedies (i.e., the right to be awarded monetary damages) and “equitable” remedies (i.e., the right to some relief from the Court other than damages).
(2 marks)

b) **The following are some equitable remedies:**

- **Specific performance** - is a judicial order to the promisor that he undertake the performance to which he obligated himself in a contract. The injured party asks the court to order the other party to perform the promise made. Specific performance is an alternative remedy to damages and may be issued at the discretion of the court.
- **Rescission** - Is an order that seeks to restore the parties to their original status before the contract was made. In an action for rescission, the injured party asks the court to declare the contract void and return the contacting parties as near as possible to the positions they had prior to entering the contract.
- **Injunction** - It is a court order directing a person to stop doing that which she should not do. In an action for injunction, the injured party asks the court to restrain or enjoin the party in breach from certain activities.

(1 mark each for correct identification of any 2 remedies; and 3 marks for explanation of each of the 2 remedies identified= 8 marks)

c)

i) **Section 10 provides the rights of workers to include the right to:**

- 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 a period of holiday with pay as well as remuneration for public holidays;
- form or join a trade union;
- be trained and retrained for the development of skills; and
- receive information relevant to the work of the worker.

(4 points for 4 marks)

ii) **Abena's Engagement**

- ABA Ventures has an obligation to pay Abena's social security because she is an employee by her working situation. The employee is controlled by their employer and regular salaries are paid, income taxes are deducted from source and social security is paid on behalf of the employee.
- Abena is expected to work at a specific place during specific hours on specific days and must present herself for work personally since she cannot send someone else as a substitute. Abena's engagement is a contract of service and entitles her to social security contributions and payment.

(2 points for 1.5 marks = 3 marks)

John's Engagement

- John's engagement is under contract for service. Contract for services relates to a working situation where a person works on his own, runs his own business and will work for a person who requires his services. Such a person pays his taxes on his own, files his taxes and is liable for his own social security and provision of his own tools.
- John is not expected to work at a specific place during specific hours and he can send someone else to do the work. By John's engagement, the only payment liability on ABA is to pay the contract sum per the terms of payment and deduct withholding tax.
(2 points for 1.5 marks = 3 marks)

(Total: 20 marks)

QUESTION FOUR

The parties are Frank Larry, Abena Manu and the Parentsgold Company

Abena

Abena withdrew her offer or revoked it within an allowed waiting period of ten days from the date of the publication of the prospectus.

- Section 281 (1) explains "the waiting period" to mean a period of ten days after the first publication of a registered prospectus or such longer period as may be stated in the prospectus as the period prior to the expiration of which applications, offers or acceptances in response thereto will not be accepted or treated as binding.
- Section 281(2) of the Companies Act, 1973 (Act 179) clearly lays it down that any application, offer or acceptance by any person in response to an invitation to the public in respect of any securities of any public company shall be revocable by such person at any time prior to the expiration of the waiting period. Abena acted within her rights and her withdrawal cannot be opposed by the company in any way.

(2 points @ 3.5 marks each = 7 marks)

Frank

- The case of Frank Larry is not straightforward but here, candidates should be guided by the principle of the law of contract which states that an offer must be accepted within a reasonable time, where no particular period is stipulated for acceptance. **Where an offer is not accepted within a reasonable period, it is deemed to have lapsed.**
- So the period taken by the company to accept Frank Larry's application was over 8 months and during that time, no effort seemed to have been made to get Frank to agree that his offer remained active. In the circumstance, Frank's application should be deemed to have lapsed. The fact that his application money remained with the company for over 8 months does not give the company rights against him and his refusal must hold.

(2 points @ 4 marks each = 8 marks)

Parentsgold Ltd

- It appears the company has no rights against either Frank or Abena.
- **The company is obliged to refund the application moneys paid by both applicants because Abena validly revoked her offer and there was a lapse in the offer made by Frank Larry.**
- The applicants may by court order demand some interest on the monies.

(2 points @ 2.5 marks each = 5 marks)

(Total: 20 marks)

QUESTION FIVE

a) The object of a sale of goods is to transfer the property from the seller to the buyer.

No property had been transferred to any of the parties.

Section 1 (I) of Act 137 states that:

“1 (1) A contract of Sale of Goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price, consisting wholly or partly of money.”

A combined reading of section 1 (I) and section 18 of Act 137 gives us a mandatory and essential requirements in every contract of sale of goods; that is, the seller must have agreed (with the buyer) to transfer ownership or title to the goods to the buyer.

(4 marks)

b) Advice to Konadu -

Under Section 8 of the Sale of Goods Act, 1962 (Act 137), the fundamental obligation of the seller is to deliver goods to the buyer after sale of specific goods. Where the goods agreed are specific goods, the seller must deliver them as agreed. Under Section 15 of the Sale of Goods Act, 1962 (Act 137), the seller must be ready and willing to deliver the goods in exchange for the price unless agreed otherwise by the parties.

But, in this case, there was total failure of consideration from Apenteng and Konadu was entitled to her money back. She was also entitled to damages for breach of condition.

c)

(3 marks)

Advice to Apenteng – No one gives a better title to property than he himself possess, hence the maxim, *nemo dat que non habet* (meaning no one gives who does not have). But the general rule is also that ‘Let the buyer beware’, He failed to confirm the legal ownership and equitably, he must make arrangements to repay Konadu her entitlements. Thereafter, he may sue the source from which he obtained the vehicle to demand his money back.

(3 marks)

d) Duties of an agent include:

- act on behalf of and be subject to the control of the principal,
- act in good faith and not to make undisclosed profits
- act within the scope of authority or power delegated by the principal,
- discharge his or her duties with appropriate care and diligence,
- avoid conflict between his or her personal interests and those of the principal, and
- promptly hand over to the principal all monies collected on principal's behalf.

(4 points @ 2.5 marks each = 10 marks)

(Total: 20 marks)

QUESTION SIX

a)

i) A *floating charge* is an equitable charge over the whole or a specified part of the company's undertaking and assets both present and future. This kind of charge does not preclude the company from dealing with such assets until the security becomes enforceable and the holder thereof, pursuant to a power in that behalf in the debenture or the deed securing the same, appoints a receiver or manager or enters into possession of such assets; or

- the Court appoints a receiver or manager of such assets on the application of the holder; or
- The company goes into liquidation.

On the happening of any of such events the charge shall be deemed to crystallize and to become a fixed equitable charge on such of the company's assets as are subject to the charge. **(4 marks)**

ii) *Naked Debentures* are unsecured debentures having no charge either fixed or floating (Section 86) **(4 marks)**

iii) Section 70 of Act 179 provides that *Income Surplus* of a company with shares is the net assets i.e. the total value of the assets less liabilities and the stated capital and less amounts attributable to:

- Any unrealized appreciation in the value of any asset of the company
- Any credit balance on the share deals account immediately before the ascertainment of the income surplus. **(4 marks)**

b) **Disqualification of auditors in a private company** (Section 270 of Act 179)

- an officer of the company in question or of any of its associated company;
- a person who is a partner of or in the employment of an officer of the company or of any associated company;
- an infant;
- any person found by a competent court to be a person of unsound mind;
- a body corporate, except that members of an incorporated partnership may be appointed in the manner provided by law;
- any one in respect of whom restraining orders had been made under on fraudulent practices so long as such order remains in force (section 186 of Act 179)
- an undischarged bankrupt, unless he shall have been granted leave to act as auditor of the company concerned by the court by which he was adjudged bankrupt;
- a person who is for the time being disqualified from acting as auditor of a company by order of the Registrar under subsection (4) of this section:

(2 marks for 4 points= 8 marks)

(Total: 20 marks)

QUESTION SEVEN

- a) Liquidation may be defined as a legal process by which a company or other body corporate is dissolved. The activities of the organization are wound up and its assets either distributed or converted into cash or other consideration and shared amongst the members and other persons having legally justified claims against the company.

(4 marks)

The winding up of a company may take two forms:

- By an official liquidation in accordance with provisions of the Bodies Corporate (Official liquidations) Act 1963 (Act 180) or
- By a private liquidation i.e. on the strength of a special resolution passed by the company

(2 marks each for 2points= 4 marks)

- b) **The winding up process may be described as the death of the company. It results in the following:**

- The striking of the company's name off the register by the Registrar and notifying the same in the Gazette under Section 260 of the Act as representing the burial of the Company.
- The company is obliged to cease operations from the commencement of the winding up except in so far as may be required for the beneficial winding up of the company.
- The corporate state of the company, its legal personality as well as its corporate powers continues until the company is dissolved.
- Where a company is being wound up by way of a private liquidation, every invoice, and order or business letter bearing the company name, issued by or on behalf of the company or any liquidator of the company or any receiver or manager of any property of the company must contain a statement that the company is being wound up. (Section 246)
- A private liquidation is deemed to commence at the time of the passing of the requisite resolution and within 14 days after the passing of the resolution, the Registrar must be furnished
- The appointment of a liquidator for the purposes of a private liquidation automatically implies the cessation of all powers and authority of the board of directors and the vesting of such powers and authority in the liquidator (Section 254) who is deemed to stand in a fiduciary relationship as if he were a director to stand in a fiduciary relation.

(3marks each point for 4 points= 12 marks)

(Total: 20 marks)