

**MAY 2018 PROFESSIONAL EXAMINATIONS
BUSINESS & CORPORATE LAW (PAPER 1.3)
QUESTIONS AND MARKING SCHEME**

QUESTION ONE

- a) Briefly explain the concept of “*rule of law*”. **(4 marks)**
- b) Ama entered into an agreement with Kojo and in the draft contract, there was a clause that common law and equitable principles will apply. Ama is confused whether this forms part of sources of law in Ghana.

Required:

Explain your position to Ama with reference to the 1992 Constitution. **(3 marks)**

- c)
- i) State **TWO** matters the High Court has jurisdiction in. **(4 marks)**
- ii) Can the Circuit Court overturn the decision of the High Court? **(2 marks)**
- d) William and Apenteng have put their resources together to build a hostel. William had an accident and is badly injured. His legs are amputated and he has lost both arms. Apenteng is now claiming that William has lost his right to own property and as the Accountant of the project, you should make the necessary transfers to him Apenteng.

Required:

- i) Identify **TWO** fundamental human rights (if any) per the 1992 Constitution of Ghana that William has. **(4 marks)**
- ii) Explain to William if his fundamental human rights can be changed by an Act of Parliament. **(3 marks)**

(Total: 20 marks)

QUESTION TWO

- a) When Ozozo was about to travel out of the country, he promised his wife Julie that he would remit her the equivalent of GH¢2,000 every month for the upkeep of the house. However, when he got to his destination, after sending money for two months he failed to honour the promise. He has just returned after two years stay outside the country. Julie has approached you to advise her whether she can claim the arrears in the contract with Ozozo.

Ozozo promised his daughter Anita before travelling that, he would buy a car for her on his return. Anita insisted that her father put that promise into writing and sign, which he did. On his return, Ozozo is dragging his feet in respect of his promise.

Required:

- i) List **FOUR** elements of a valid contract. **(4 marks)**
ii) Explain to Julie whether the agreement with Ozozo constituted a valid contract. **(3 marks)**
iii) Advise Anita on the effect of putting the agreement in writing. **(3 marks)**
- b) Explain the meaning of the following in the law of contract.
i) Term of Contract **(2 marks)**
ii) Rescission **(2 marks)**
- c) Bizee Company Limited is a wholesaler storing large quantities of goods in the port city of Takoradi. Kofi Gee an employee of the Company is a well-trained and skilled driver in a specialty truck. As part of the Company's routine retraining, the need for Kofi Gee to take time, drive the truck carefully and safely, taking into consideration always people on the premises was over-emphasized. One day in a hurry to complete the day's scheduled duty, Kofi Gee drove back the truck so quickly through the partition of the client part of the wholesale department. Two clients on the sales section of the Company at the time were injured.

The Board of Directors of the Company foresaw the potential consequence to compensate the injured. At their meeting therefore, you were consulted for your idea on the compensation.

Required:

Explain to the Board the possible liability of the Company and Kofi Gee to the two injured clients. **(6 marks)**

(Total: 20 marks)

QUESTION THREE

- a) Cho instructs his agent Doo to sell his car. Cho decided to pay GH¢5,000 as commission to Doo on completion of the sale. Doo sold the car and was accordingly paid the commission of GH¢5,000. Cho then immediately found that the purchaser of the car had also paid a bribe of GH¢2,500 which Doo did not disclose.

Required:

Explain the principle in *law of agency* applicable to this scenario. **(4 marks)**

- b) Komosa Limited entered into a Hire- Purchase agreement with Mr. Gyeabour over a car. The agreement was to last for a period of 4 years of monthly instalment. The instalment arrangements went on for three and half years till Mr.Gyeabour decided to terminate the arrangement and stopped paying the instalment. For the remaining period, the Company had no news of Mr. Gyeabour or the car. When the car was later found, the air conditioning compartment was in a bad state of disrepair. The Company now intends to sue Mr. Gyeabour who has resurfaced. Mr. Gyeabour is now pleading with the Company for mercy.

Required:

- i) Describe **TWO** basic requirements that should be outlined in a Hire Purchase Agreement. **(4 marks)**
- ii) Explain to Mr. Gyeabour **TWO** steps he should have taken in respect of the termination and the damaged car under the Hire-Purchase Act, 1974 NRCD 292. **(6 marks)**
- c) Define *General and Special Crossing* under section 75 of the Bills of Exchange Act, 1961 ACT 55. **(6 marks)**

(Total: 20 marks)

QUESTION FOUR

- a) Explain the following terms related to employment law: “*Contract of Service*” and “*Contract for Services*”. (8 marks)
- b) You are confronted with a case where two employees’ appointments had been terminated in a private company. One of the employee was sacked for participating in labour agitations against the employer having worked for 2 months under an oral engagement by the company.

The other employee’s appointment in the same company was terminated because the employee absented himself from work for a day since he was severely injured and his hospital attendance was duly certified by a recognized medical practitioner.

Required:

- i) State **TWO** orders that the Labour Commission may give to the private company, in favour of the affected employees/workers. (6 marks)
- ii) Will both employees have the same cause of action? (2 marks)
- c) State **FOUR** rights of an employer under the Labour Act, 2003 ACT 651. (4 marks)

(Total: 20 marks)

QUESTION FIVE

- a) Azonto, Seamajolly and Araba registered a firm of quantity surveyors under the name King & Associates.

Required:

Explain the position of the firm after registration and the rights and liabilities of the members of the firm towards each other. (8 marks)

- b) Bugi, Palas, Togi pulled their resources to form an incorporated company named Kaskala Company Limited. In later years, differences arose among the three. All of them claimed ownership of the Company.

Required:

Explain whether any of them can claim ownership of the company. (6 marks)

- c) State **FOUR** advantages of registration of a company. (6 marks)

(Total: 20 marks)

QUESTION SIX

- a) Explain how a company acquires interest in *pre-incorporation contract*. (4 marks)
- b)
- i) Define a debenture. (2 marks)
- ii) State the time when a debenture holder on a floating charge will deem it necessary to apply to the court for the appointment of a receiver/manager? (4 marks)
- iii) At what time will an annual general meeting of a company limited by shares be dispensed with in any year? (2 marks)
- iv) State **FOUR** persons who qualify to receive notices of general meetings in a company limited by shares. (8 marks)

(Total: 20 marks)

QUESTION SEVEN

- a) State **FOUR** persons who are incompetent to be appointed liquidators. (4 marks)
- b) Define special resolution. (4 marks)
- c) Kum is the Executive Director of Okitimiw Company Limited. Kum ordered that three-fourths of monies received weekly by the Company should be paid into the Company's account and the remaining into his personal account for his travels, boarding and lodging within and outside the country. Auditing of the accounts of the Company revealed that the lodging of the monies in the personal account of the executive director was not only unlawful but was done to perpetuate fraud.

On the official winding up of the Company, it was revealed that the business was carried out for fraudulent purpose and the directors and other officers of the Company were aware of what went on.

Required:

- i) Identify **TWO** conditions that can be used to restrain fraudulent persons from managing companies. (6 marks)
- ii) State **TWO** actions the Registrar-General will take where the process of inspection reveals criminal liability of the Executive Director. (6 marks)

(Total: 20 marks)

SOLUTION TO QUESTIONS

QUESTION ONE

a) The concept of rule of law

- The principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced; the principle of government by law. In a broader sense Rule of Law means that Law is supreme and is above every individual. No individual whether if he is rich, poor, rulers or ruled etc. are above law and they should obey it. In a narrower sense the rule of law implies that government authority may only be exercised in accordance with the written laws, which were adopted through an established procedure.
- The principle of Rule of Law is intended to be a safeguard against arbitrary actions of the government authorities. The rule of law centrally comprises "the values of regularity and restraint, embodied in the slogan of "a government of laws, not men". **(4 marks)**

- b) **The common law of Ghana** shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature. **(3 marks)**

c)

i) Matters the High Court has jurisdiction in

The High Court shall, subject to the provisions of this Constitution, have jurisdiction in all matters and in particular, in civil and criminal matters and such original, appellate and other jurisdiction as may be conferred on it by this Constitution or any other law. **(4 marks)**

- ii) The Circuit court cannot overturn the decision of the High court because the former ranks below in terms of the hierarchy of the law courts. **(2 marks)**

d)

i)

- Equality and Freedom from Discrimination
- Protection of Privacy of Home and other Property
- Protection from deprivation of property
- Rights of Disabled Persons

(Any 2 points for 4 marks)

- ii) **No, Fundamental Human Rights are enshrined and can only be changed by a referendum.** **(3 marks)**

(Total: 20 marks)

QUESTION TWO

a)

i) The following are the basic requirements in a legally enforceable contract:

- An offer.
- An acceptance.
- Competent parties who have the legal capacity to contract.
- Lawful subject matter.
- Mutuality of obligation.
- Consideration.
- Intention to create legal relations.

(Any 4 points for 4 marks)

ii) Julie will not succeed (*Balfour v Balfour*). The parties in domestic or social arrangements are generally presumed not to intend legal consequences." "For a contract to exist the parties to an agreement must intend to create legal relations. Usually, the presence of consideration will provide evidence of this – if the promisor has specified something as the price for the promisee this – in most cases – carries with it an intention that the parties be bound. Intention remains, however, an independent requirement and must be separately demonstrated and there are cases in which consideration has been present but no contract found to exist because this pre-condition has not been fulfilled. In determining if there is contractual intent and objective approach is taken. **(3 marks)**

iii) Anita will succeed on the rebuttable presumption that they intend to claim legal relationship although it is the same social/domestic agreement **(3 marks)**

b)

i) **Term of Contract**

In the course of negotiations that should lead to the formation of a contract, the parties to the contract may make a number of statements. These statements may or may not form part of the contract. If a statement becomes a core part of a contract, it is a term of the contract. A term of a contract then creates a legal obligation for which it entitles the innocent party to sue for damages for breach of contract.

(2 marks)

ii) **Rescission**

Rescission of a contract is an equitable remedy that allows the parties to a voidable contract to treat it as if it had never been made and to recover from one another any money or property that had changed hands before the defect came to light. It is a standard remedy in case of breach of a condition. The remedy requires that the

person has acted equitably himself. It will not be available if the person claiming it delays in acting on his right and a third party's rights have arisen, the person claiming (third party) has affirmed the contract and property being reclaimed has passed to a third party. **(2 marks)**

- c) The question involves vicarious liability of Bizee Company Limited for the tort of its employee.

Every individual is liable for his own tort. However employers are vicariously responsible/liable for the tort of their employees while the employees are acting in the course of employment. The employer ceases to be liable only where the employee is on the frolic of his own.

Kofi Gee was employed to drive the specialty truck and was doing that when the accident occurred. Therefore, the Company becomes vicariously liable for the tort of Kofi Gee in the tort of negligence, despite the instructions and despite providing him with the needed training. **(4 marks)**

The law imposes a duty on everyone and to everyone to take care, in particular professionals. Kofi Gee breached that duty by failing to apply the skill and expertise in driving the specialty truck. Kofi Gee will also be liable in the tort of negligence. **(2 marks)**

(Total: 20 marks)

QUESTION THREE

- a) The law of agency provides for the rights and duties between the principal and agent. An agent owes various duties to his principal and the foremost is fiduciary duty. This means that the agent must act on utmost good faith and be sincere and honest in his dealings with his principal. The agent does not have to make secret profit beyond the commission or other remuneration paid by his principal. Thus the agent is accountable for every profit which he makes without the principal's consent.

As the purchaser of the car had paid Duu a commission, Duu is in breach of his fiduciary duty that he owes to Cho. Cho stands to recover the GH¢5,000 he paid to Duu and the GH¢2,500 received as bribe paid by the purchaser. **(4 marks)**

b)

i) Basic Requirements that should be outlined in a Hire Purchase Agreement Every agreement shall contain-

- a statement of the cash price and the hire-purchase price or total purchase price, as the case may be, of the goods;
- the amount of each instalment by which the price is to be paid and the date or the mode of determining the date upon which each instalment is payable;
- a description or list of the goods to which the agreement relates sufficient to identify them;
- a notice, which is at least as prominent as the rest of the contents of the agreement, in the terms set out in the First or Second Schedule to this Decree.

Section 3 of NRCD 292

(Any 3 points for 6 marks)

ii) Gyeabour should have taken the following steps as a hirer:

- The hirer under a hire-purchase agreement is entitled at any time before the final payment under a hire-purchase agreement falls due, to terminate the agreement by giving notice of the termination to the person entitled to receive payments under the agreement.
- Where the hirer terminates the hire-purchase agreement he is liable to pay the difference between the total of the sums of money paid and one-half of the hire-purchase.
- Where the agreement is terminated, the hirer shall return the goods at the expense of the hirer to the premises from which they were originally supplied or to any other place as the owner may direct.
- Where the agreement is terminated the hirer who has failed to take reasonable care of the goods is liable to compensate the owner for the loss or damage caused by his failure.

Section 6 NRCD 292

(Any 3 points for 3 marks)

c)

General Crossing:

Where a cheque bears across its face an addition of the words "and company" or an abbreviation of those words, between two parallel transverse lines, with or without the words "not negotiable" or

Two parallel transverse lines simply, with or without the words "not negotiable", that addition constitutes crossing, and the cheque is crossed generally.

(3 marks for either point)

- **Special Crossing**
Where a cheque bears across its face an addition of the name of a banker with or without the words “not negotiable”, that addition constitutes a crossing and the cheque is crossed specially, and to that banker.

(3 marks)

(Total: 20 marks)

QUESTION FOUR

a)

- **Contract of Service**

The Labour Act, 2003 ACT 651 defining “Contract of Employment” means it to be Contract of Service whether express or implied, and if express whether oral or in writing. Contract of service relates to a working situation where one is an employee or a worker working for an institution in which that worker or employee is either told what to do and how to do it or the institution employs a skilled professional worker or employee into his service. The employee/worker has certain advantages such as being paid salary, taxes are deducted from source and his employer will be liable for his tort arising from the normal course of duty.

(4 marks)

- **Contract for Services**

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 tort and provision of his own tools.

(4 marks)

b)

i) **Section 64 of the Labour Act, 2003 ACT651 provides for the following solutions:**

- The employer will be ordered to re-instate the employee from the date of the termination of the employment.
- The employer will be ordered to re-employ the employee in the work for which the worker was employed before the termination, or
- Re-employ the employee in any other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination, or
- The employer will be ordered to pay compensation to the employee.

(Any 2 points at 3 marks a point- 6 marks)

ii) Both workers will have the same cause of action as they acted within their rights.

(2 marks)

c) Section 8 of ACT 651 provides for the rights of the employer as follows:

- Employ a worker, discipline, transfer, promote and terminate the employment of the worker;
- Formulate policies, execute plans and programmes to set targets;
- Modify, extend or cease operations;
- Determine the type of products to make or sell and the prices of its goods and services.

(4 points for 4 marks)

(Total: 20 marks)

QUESTION FIVE

a)

- Section 10 of the Incorporated Private Partnerships Act, 1962 ACT 152 recognises the fact that a firm is a body corporate, distinct from the partners of whom it is composed and capable of exercising the powers of a natural person. **(2 marks)**
- Despite the corporate nature of the firm however, each partner of the firm is liable, without limitation for the debts and obligations of the firm. A partner of the firm is entitled to an indemnity from the firm and to contribution from the co-partners in accordance with the rights of the partners under the partnership agreement. **(3 marks)**
- The limitless nature of the liability of the firm is indeed captured from the onset of registration of the firm- section 4 of Act 152. This is further buttressed by section 14 that states that a partner in a firm is jointly and severally liable with the firm and other partners for the debts and obligations of the firm incurred while that partner remains a partner. **(3 marks)**

b)

- An incorporated company may be, a company limited by shares, a company limited by guarantee, and unlimited company. Kaskala Company Limited under the Companies Act, 1963 ACT 179 (section 16(a) becomes a Company limited by shares with the word Limited as the last word of the name. **(1.5 marks)**
- An incorporated company- a company limited by shares is a company with separate legal personality, distinct from its members with powers of a natural person (Salomon V Salomon), a body corporate (section 14(5) of ACT 179) and all the powers of a natural person of full capacity (section 24 of ACT 179). **(1.5 marks)**
- Bugi, Palas and Togi are at best members/shareholders/subscribers to the Regulations of the Company (section 30 of ACT 179). **(1.5 marks)**

- None of them can claim ownership of the Company since the Company by its legal personality exists on its own. **(1.5 mark)**

c)

- Perpetual succession.
- Ownership of property.
- Limitation of liability.
- Separation of ownership and management.
- It can sue and be sued
- Contractual capacity
- Transferability of shares with public companies

(1 mark each for four points-6 marks)

(Total: 20 marks)

QUESTION SIX

- a) The promoters of a business may enter into contracts for that business before they complete the incorporation process. In such a situation, the following principles apply.

Section 13 of the Company's Act 1963 (Act 179)

(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of the company prior to its formation may be ratified by the company after its formation; and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of such contract or other transaction and had been a party thereto. **(2 marks)**

(2) Prior to ratification by a company the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and shall be entitled to the benefit thereof. **(1 mark)**

Generally, the promoters will be personally liable for performance obligations under the pre-incorporation contract. Because the corporation does not exist, it cannot perform those obligations. **(1 mark)**

b)

- i) A debenture is a written acknowledgement of indebtedness by a company setting out the terms and conditions of the loan (section 80 (2) of ACT 179). **(2 marks)**

- ii) A receiver/manager in that context is appointed where the security of the debenture holder on floating charge becomes enforceable and the holder of the

security pursuant to the power in that behalf in the debenture or the deed securing the same...or

Where the company goes into liquidation (section 87 of ACT 179)

(4 marks for either point stated)

iii) Where the auditors of the company and the members of the company entitled to attend and vote at an annual general meeting agree in writing that an annual general meeting shall be dispensed with in any year (section 149 of ACT 179).

(2 marks)

iv)

- every member,
- every person on whom the ownership of the a share devolves by reason of that person being a legal personal receiver or a trustee in bankruptcy of a member,
- every director of the company
- every auditor for the time being of the company

(4 points for 8 marks)

(Total: 20 marks)

QUESTION SEVEN

a) Section 252 of ACT 179 lists out the following persons as being incompetent to be liquidators:

- An infant;
- A person found by a court of competent jurisdiction to be a person of an unsound mind;
- A body corporate;
- A person convicted on indictment, whether in the Republic or elsewhere of an offence involving fraud or dishonesty or of an offence in connection with the promotion or management of a body corporate;
- An undischarged bankrupt or any other person subject to insolvency proceedings under the Insolvency Act, 1962 ACT 153
- A director of a company is not qualified for appointment as a liquidator of that company.
- An auditor of a company shall not be appointed as liquidator in a private liquidation unless on the appointment, a special resolution is duly passed dispensing with the auditing of the accounts of that auditor.

(1 point each for 4 marks)

b) A resolution is a special resolution under section 168 of ACT 179 is when it is passed by not less than three-fourths of the votes cast by the members of the company who being entitled so to do vote in person or, where proxies are allowed

by proxy at a general meeting of which, notice specifying the intention to propose the resolution as a special resolution, has been duly given **(4 marks)**

c)

i) Section - 186 of the Companies Act Restraining Fraudulent Persons from Managing Companies

Where,

- a person is convicted on indictment, whether in Ghana or elsewhere, of any offence involving fraud or dishonesty or any offence in connection with the promotion, formation or management of a body corporate, or
- a person is adjudicated bankrupt whether in Ghana or elsewhere, or
- it appears that a person has been guilty of any criminal offence, whether convicted or not, in relation to anybody corporate or of any fraud or breach of duty in relation to a body corporate,

(3 points for 6 marks)

ii) In the keeping of the books and accounts of a company, where it appears to the Registrar of Companies that there are circumstances suggesting that the business of the company is being conducted for a fraudulent or unlawful purpose among other things (section 219 of ACT 179), the Registrar of Companies after completion of the process of inspection of the books of accounts, and it appears to him that a person may have committed an offence for which that person is criminally liable, the Registrar shall refer the matter to the Attorney-General and if the Attorney -General considers that the case is one in which a prosecution ought to be instituted, shall institute proceedings section 225 of ACT 179).

(6 marks)

(Total: 20 marks)