

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

QUESTION ONE

- a) List the court structure in Ghana in the superior order of hierarchy. **(3 marks)**
- b) Abena Muka had been a client of Good Shepherd Savings and Loans Ltd (GSSL). On the month of June 2018 Abena Muka was at the office of GSSL to transact business. She entered the office at the time that business transactions for the day had ended. She had been to the office consecutively for the third time and was not served. She insisted that she will not leave the banking hall until she is served. Her insistence attracted officials of the GSSL who then instructed the policeman on security duty to walk her out of the premises. The policeman in obeying the official's instruction, severely beat up Abena Muka. The conduct of the official of GSSL and the policeman attracted the attention of the public.

Required:

Explain **TWO (2)** fundamental human rights of Abena Muka which the company and the policeman violated as per the constitution of the Republic of Ghana. **(6 marks)**

- c) AlRabico Chemists is the only pharmaceuticals in the northern region and Mr. Opong is one of the key Pharmacists who had worked with the company for 18 years and has special skills which can only be used at AlRabico. His net monthly salary was GH¢15,000 and he always goes to Kumasi to spend the weekends with his family. On 14th July 2016, during a staff meeting, the new head Pharmacist Alhaji Mahmoud announced Mr. Opong's dismissal with immediate effect for insubordination. Mr. Opong is deeply hurt and embarrassed by the action of Alhaji Mahmoud.

Required:

- i) Explain with reasons the type of service contract Mr. Opong's work fall. **(5 marks)**
- ii) What remedies are available for Mr. Opong? **(2 marks)**
- d) Explain the term "*Professional Negligence*". **(2 marks)**
- e) State **TWO (2)** elements of Professional Negligence. **(2 marks)**

(Total: 20 marks)

QUESTION TWO

- a) The Police Authorities on behalf of the Government of the Republic of Togo offers a reward of GH¢10,000 to any person who provides information leading to the arrest and conviction of two suspected armed robbers. The robbers who rode on a motor bike shot and killed a policeman directing traffic on one of busiest highway of the city of Lome.

Unaware of the reward, Kwaku Minsu gave the information that led to the arrest of the armed robbers. He was later prompted by his friend Minimini to make claim for the reward. He then went to make a claim for the reward but the Police Authorities refused.

Required:

Explain why the Police Authorities refused to give the reward to Kwaku Minsu?

(5 marks)

- b) Fiko in Cape Coast appointed Pinfa at Takoradi (Cape Coast and Takoradi all in the Republic of Ghana) as his agent. Pinfa had the authority to contract with farmers for the cultivation and supply of tiger nuts on his behalf. While the agency relationship exists, Pinfa contracted with Agya Anto for the supply of 10 bags of tiger nuts without disclosing the existence of the agency relation with Agya Anto.

Required:

- i) Has Fiko any right to step in the contract between Pinfa and Agya Anto? **(4 marks)**
ii) Has Agya Anto any available right in his contract with Pinfa while he (Pinfa's) agency with Fiko exists? **(3 marks)**
- c) In a contract of sale of goods, at what time will property in the goods pass from the seller to the buyer? **(8 marks)**

(Total: 20 marks)

QUESTION THREE

- a) State **THREE (3)** items that need to be in the register of members/shareholders of a company. **(6 marks)**
- b) As part of the duty, a director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in a transaction with it or on its behalf. He or She shall act at all times in what the director believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in a manner that a faithful, diligent, careful and skilful that ordinarily a Director would act in the circumstances. Besides, a Director is not to use for his own advantage the money or property of the company or a confidential information or special knowledge obtained in his capacity.

Required:

List **THREE (3)** civil liabilities that are to be brought against a director who commits a breach of duty and violates the rules regarding conflict of interest. **(6 marks)**

- c) Identify **FIVE (5)** situations in which a company can be ordered by court to wind up. **(8 marks)**
- (Total: 20 marks)**

QUESTION FOUR

- a) Explain **THREE (3)** privileges available to shareholders/members of a company limited by shares with cumulative preference shares. **(12 marks)**
- b) Apina is a partner in an accounting firm known as Dtd & Associates. On 3rd October, 2018 he went out to execute approved course of duty of the firm. Instead of being assigned with an official car, the supervising partner asked that he should use his own car and provision was made for his fuel. In the course of duty he bust a tyre. He brought the receipt of the replaced tyre bought to the supervising manager for refund. The supervising manager however refused to re-imburse Apina.

Required:

State **TWO (2)** reasons why the firm should re-imburse Apina. **(8 marks)**

(Total: 20 marks)

QUESTION FIVE

- a) In 2015, BIGO Ltd which carries on the business of exporting yam and pineapple from Ghana to Europe opened an account with Cal Bank at the Osu Branch. In 2016, the Finance Manager who is the sole accounts officer of the company forged the signature of the Managing Director (who was also the sole signatory to the bank account of the company) and made several withdrawals from the company to the tune of GH¢550,000. The bank in that same year requested that the Managing Director should within two weeks of the letter confirm the credit balance on the account which at the time stood at GH¢2,200,000. The Managing Director without any further checks signed the document thus confirming the credit balance presented by the bank. In 2017, the auditors raised queries on some of the fictitious withdrawals. The Chairman of the Board ordered the Human Resource Manager to dismiss both the Managing Director and the Finance Manager with immediate effect.

Required:

- i) Explain **FOUR (4)** issues in the case relating to governance and duties of directors. **(12 marks)**
- ii) Explain **THREE (3)** factors that disqualifies a person from being appointed as a director. **(6 marks)**

- b) A Negotiable Instrument is that document that includes a 'promise to pay' a certain amount of money to the bearer of the document.

Required:

State **TWO (2)** types of negotiable instrument.

(2 marks)

(Total: 20 marks)

QUESTION SIX

- a) Explain **THREE (3)** main effects of incorporation of a company under the Companies Act 1963 (Act 179). **(9 marks)**
- b) You have just completed level one of the ICAG Professional Examination and have been engaged by AB Daniels Ltd as an Administrative Assistant. The minutes of the previous meeting, a revised regulation, as well as notice for the next annual general meeting to be held on Tuesday 11th December 2018 had been distributed. A Board Member who recommended your appointment has called you to assist him to clarify certain terms in the meeting documents circulated.

Required:

Write short notes on the following:

- i) Annual General Meeting **(6 marks)**
ii) Annual Returns. **(5 marks)**

(Total: 20 marks)

QUESTION SEVEN

- a) State **THREE (3)** procedures to adopt in converting private liquidation to official liquidation. **(6 marks)**
- b) State **THREE (3)** options that a company limited by shares has in raising capital to finance its operational activities. **(6 marks)**
- c) Describe **TWO (2)** ways in which contracting parties can terminate their contract. **(8 marks)**

(Total: 20 marks)

SOLUTION TO QUESTIONS

QUESTION ONE

a) Court structure in the superior order of hierarchy

- Supreme court
- Court of Appeal
- High court/Regional tribunals
- Circuit courts
- District courts

(3 marks)

b) Chapter five of the 1992 Constitution provides for a large body of fundamental human rights and freedoms.

- The personal liberty of Abena Muka was violated in the sense that her movement was momentarily restricted-article 14 of the Constitution of the Republic of Ghana, 1992.

(3 marks)

- The dignity of Abena Muka was breached when the policeman subjected her to beatings and, the Company refused to serve her by disrespecting her dignity. Article 15 of the Constitution of the Republic of Ghana, 1992.

(3 marks)

c)

i) An employee-employer contract is a contract of service

- Permanent employees have a contract of service with their employer. By definition, if a worker has a contract of service with an organisation, they are an employee.
- The worker is controlled by their employer – they must perform the tasks they are instructed to by a line manager according to their job description
- The worker is expected to work at a specific place during specific hours on specific days (even flexi-time has core hours)
- The worker must present themselves for work and cannot send someone else as a substitute
- Employees have statutory rights to holiday pay, sick pay, maternity and paternity rights and redundancy payments
- Employees have statutory rights regarding how they can be asked to leave their employment

(Any 5 points for 5 marks)

ii) Remedies available to Mr. Oppong

- to make an order for reinstatement.
- to make an order for re-engagement.
- to make an order for compensation.

(Any 2 points for 2 marks)

d) *Professional negligence* is a breach of the duty of care between professionals and their clients. The duty of care is a common law arrangement where the client

expects a level of professionalism and standards commonly held by those in the profession.

(2 marks)

- e) Attorneys, architects, and engineers, like doctors, are skilled professionals who must meet certain minimum standards of care in the provision of professional services to their clients. The elements of a cause of action in tort for professional negligence are
- the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise;
 - a breach of that duty;
 - a proximate causal connection between the negligent conduct and the resulting injury; and
 - actual loss or damage resulting from the professional's negligence

(Any 2 points for 2 marks)

(Total: 20 marks)

QUESTION TWO

- a) The offer of a reward is a unilateral contract. In a unilateral contract, the acceptance consists of the actual performance of the required act and not making promise. Where the act for which the reward is promised is done in ignorance of the promise of the reward, the reward cannot be claimed because there can be no acceptance without the knowledge of the offer.

(4 marks)

Kwesi Minsu is not entitled to benefit from the reward because he had no knowledge of the reward.

(1 mark)

b)

i) This is a case of undisclosed principal

Fiko as a principal of Pinfa, and has the right to intervene in the contract between Pinfa and Agya Anto while the authority given to Pinfa lasts. Pinfa may make any claim on the contract and if necessary sue Agya Anto directly. If Fiko makes use of this right he will be personally liable to Agya Anto.

(4 marks)

- ii) Agya Anto has the option to either sue Fiko or Pinfa if he discovers that Fiko is the principal.**

(3 marks)

- c) Where there is a contract of sale of unascertained goods, the property in the goods are not transferred from the seller to the buyer unless the goods are ascertained. Section 25 of the Sale of Goods Act, 1962 ACT 137.

(5 marks)

Under a contract of sale of goods, property in the goods passes when they are delivered to the buyer. Section 26 of the Sale of Goods Act, 1962 ACT 137

(3 marks)

(Total: 20 marks)

QUESTION THREE

a) The company shall keep in Ghana a register of members/shareholders and enter in the register:

- The names and addresses of the members/shareholders and in the case of a company having shares a statement of shares held by each member/shareholder distinguishing each share by a number and of the amount paid or agreed to be considered as paid on the shares of each member and of the amount remaining payable on the shares.
- The date at which a person was entered in the register as a member.
- The date in which a person ceased to be a member.
- The stipulated time of entry shall be made 28 days of the conclusion of the agreement with the company to become a member and in the case of a subscriber to the Regulations within 28 days of the registration of the company.

**Section 32 of the Companies Act, 1963 ACT 179
(2 marks each for the 3 points stated=6 marks)**

b) Civil liabilities to a director for a breach of duty

- A director and any other person who knowingly participated in the breach is liable to compensate the company for the loss it suffers as a result of the breach;
- A director shall account to the company for a profit made by the director as a result of the breach;
- A contract or any other transaction entered into between the director and the company in breach of that duty may be rescinded by the company.

**Section 209 of the Companies Act, 1963 ACT 179
(2 marks each for 3 points stated=6 marks)**

c) Situations in which a company can be ordered to be wound up

- Suspension of authorized business for a whole year
- Company has no members
- Business or objects of the company are unlawful
- Company is operating an illegal purpose
- Company is unable to pay its debts
- If court determines that it is just and equitable

(4 points @ 2 marks = 8 marks)

(Total: 20 marks)

QUESTION FOUR

a) Privileges available to members with cumulative preference shares

- The dividend shall not be payable on any shares ranking subsequent to the cumulative preferential class of shares, until all the arrears of that dividend have been paid.
- Cumulative preferential dividend holders shall not have further right to participate in dividends.
- On winding up arrears of cumulative preferential dividend whether or not earned or declared shall be payable up to date of actual payment as well as with distribution of assets.
- A floating charge is an equitable charge over the whole or specified part of the company's undertaking and assets both present and future.

Section 87 of the Companies Act, 1963 ACT 179

(Any 3 points @ 4 marks each = 12 marks)

b)

- From the date of registration of the firm, the firm becomes a body corporate under the firm name, distinct from the partners of whom it is composed, and capable of exercising the powers of a natural person and of full capacity in so far as those powers can be exercised by a body corporate. **(3 marks)**
- Although the firm is a body corporate, each partner in the firm is liable, without limitation, for the debts and obligations of the firm; but is entitled to an indemnity from the firm and to contribution from the co-partners in accordance with the rights of that partner under the partnership agreement- Section 10 of the Incorporated Private Partnerships Act, 1962 ACT 152.

Apina is therefore, entitled to the reimbursement with contributions from the firm and co-partners.

(5 marks)

(Total: 20 marks)

QUESTION FIVE

a)

i) Governance and duties of directors

- Duties of Directors - to act in good faith, represent the company, fiduciary duties,
- Procedure for termination of appointment
- Board's authority and involvement in operational activities
- Fiduciary duty of the Finance Manager
- Fraud and criminal implications

(4 issues well explained @ 3 marks each = 12 marks)

ii) Disqualification of Directors (Section 182)

- Infants
- Persons found by a competent court to be of unsound mind
- Companies
- Undischarged Bankrupt
- Court Order except with leave of the court, or period court specified expired

(3 points @ 2 marks each = 6 marks)

b) Types of Negotiable Instruments

- Cheques,
- Promissory Notes,
- Bills of Exchange,
- Foreign Instruments,
- Share Certificates,
- Dividend warrant etc

(Any 2 types for 2 marks)

(Total: 20 marks)

QUESTION SIX

a) Effects of Incorporation of company

- Contract under seal between Company, Members and its Officers *inter se* when Regulations are registered
- Perpetual Succession
- Separate Legal status
- Legal person created and can sue and be sued

(3 points @ 3 marks each = 9 marks)

b)

i) Short notes on Annual General Meeting

- To be held every year and not longer than within 15 months. There's special dispensation for the first AGM of a company
- Notice of meeting sent out at least 21 days before AGM

Issues to ordinarily consider include:

- Director's report, Financial Statement, Auditor's Report,
- Electing Directors to replace those retiring
- Fixing of remuneration of the auditor
- Appointment and removal of Auditors

(Any 4 points @ 1.5 marks = 6 marks)

ii) Annual Returns

- Yearly statement which gives essential information about a firm's composition, activities, and financial position, and which must be filed by every active incorporated or registered firm with an appropriate authority.
- An annual return is not a financial document – it's a record of publicly available information about your company that appears on the Companies Register. That

information, which includes your address and details of directors and shareholders, must be updated each year through an annual return.

- Under the provisions of general corporate legislation, it must contain details such as particulars of the stockholders (shareholders), debenture holders, directors, and the firm's secretary,
- list of charges (judgments and lien) against the firm's assets,
- address of the registered office and location of the register of members, along with
- a copy of the latest financial statements.

(5 points for 5 marks)

(Total: 20 marks)

QUESTION SEVEN

a) Procedures for converting private liquidation to official liquidation.

- On notice being given by the liquidator under private liquidation to the Registrar (of Companies) that the company may not be able to pay its debts and liabilities in full within the period stated in the declaration of insolvency, the Registrar may make a winding-up order converting the private liquidation into an official winding-up.
- The allegation that the Company is unable to pay its debt in full within the stated period shall be accompanied by a statement in the prescribed form of the company's assets and liabilities.
- On the commencement of winding-up proceedings against a company, civil proceedings against the company shall be stayed and a transfer of shares of the company is void.

Section 5 of the Bodies Corporate (Official Liquidations) Act, 1963 ACT 180

(3 points @ 2 marks each = 6 marks)

b) Options to raise the capital

- Additional capital from shareholders
- Loan capital from banks, financing houses etc
- Funds from friends, private investors
- Investment from venture capital
- Invitation to the public - In respect of securities and invitation for the deposit of money
- Rights issue

(3 points @ 2 marks each = 6 marks)

c) Ways contracting parties can terminate their contract

- Performance (Delivery and discharge of obligations),
- Agreement (Through Variation or termination),
- Breach of Condition (that which goes to the root of the contract is broken),
- Frustration (Impossible to perform)

(2 points @ 4 marks = 8 marks)

(Total: 20 marks)