

**APRIL 2022 PROFESSIONAL EXAMINATIONS
BUSINESS & CORPORATE LAW (PAPER 1.3)
QUESTIONS AND MARKING SCHEME**

QUESTION ONE

- a) Backed by Statute and Constitution, case law comprises of decisions made in the courts.

Required:

- i) What is meant by *judicial precedent*? (6 marks)
ii) State **TWO (2)** rules used by the court in interpreting statute. (4 marks)

- b) Pepo Ghana Ltd operated three accounts at the Arena branch of Coin Bank Ltd. On 27 May 2020, the Financial Intelligence Centre (FIC) in a letter, directed Coin Bank Ltd to freeze all the accounts of Pepo Ghana Ltd.

Required:

- i) Explain *money laundering* and explain **TWO (2)** stages of money laundering. (6 marks)
ii) List **TWO (2)** anti-corruption institutions in Ghana. (4 marks)

(Total: 20 marks)

QUESTION TWO

- a) Kwesi Mensah agreed to write a series of articles for Akem Juvenile Library on costume and ancient armour, to be published by instalments in Junior Graphic. When the work was partly completed up to about 70%, Akem Juvenile Library abandoned the series, without justification and or notice. Two publications have been done in Junior Graphic.

Required:

- i) Explain whether Kwesi Mensah would be entitled to some remuneration in the circumstance of the facts of the case. (5 marks)
ii) Explain **TWO (2)** situations in which a contract can be discharged. (5 marks)

- b) Essuman is an Accountant, who agreed with Odumadze, a garage proprietor, that he will assist Odumadze with his annual tax returns if Odumadze would service his car for him. Essuman also agreed with Adjei, a landscape gardener, that he will advise him (Adjei), on the installation of a computerized financial management system if Adjei, in return, will carry out some landscape work at the house of Essuman's daughter, Njama.

Essuman assisted Odumadze and advised Adjei, but both (Odumadze and Adjei) refused to honour their side of their respective agreements. On his way to an important meeting, Essuman's car broke down and he was very late for the meeting. As a result, Essuman lost a deal worth GH¢250,000 per annum to another Accountant. On the other hand, Njama was very anxious to have the landscape work done on her garden by Adjei because of his reputation for doing quality work. Essuman is very worried and hurt.

Required:

- i) Explain what is meant by *breach of contract*. (4 marks)
- ii) Explain the nature of **TWO (2)** contractual remedies available to Essuman and Njama, in the context of the facts of this scenario. (6 marks)

(Total: 20 marks)

QUESTION THREE

- a) Kojo Adams was employed by Zinto Breweries Ltd to drive the company's van. Without permission, Kojo Adams took the van from his employer's garage in order to deliver a child's coffin at the home of a relative. While he was returning the van to the garage, he picked up some empty beer barrels, and was afterwards involved in an accident which injured one Kosaa. Kosaa took legal action in court against Kojo Adam's and Zinto Breweries Ltd.

Required:

- i) Identify **TWO (2)** issues that arise from this case. (4 marks)
- ii) Explain the chances of Kosaa in her action against Zinto Breweries Ltd. (4 marks)
- iii) Advise Kojo Adams. (2 marks)

- b) AirQuick is one of the world's leading aerospace companies. AirQuick and the Ghana Civil Aviation Authority have conducted a feasibility study in Ghana with the intent of setting up a subsidiary in Ghana. The study which ran for two years has been concluded and a new subsidiary office of AirQuick has just been established in Ghana to serve the West African hub. You have been given a two-year contract in the legal department.

Required:

- i) As a business law expert, you have been asked to suggest **TWO (2)** ways to finance or sustain the activities of the AirQuick Ghana office. (6 marks)
- ii) Explain **ONE (1)** advantage and **ONE (1)** disadvantage of each financing source identified in i) above. (4 marks)

(Total: 20 marks)

QUESTION FOUR

- a) One of the key officers of a company who keeps the books and records, is the company secretary. The **Companies Act, 2019 (Act 992)** compels the appointment of a company secretary on certain qualifications.

Required:

- i) State **THREE (3)** qualification requirement for the appointment of company secretary as stipulated in the Companies Act, 2019 (Act 992). (6 marks)
- ii) List **THREE (3)** offences and related legal wrongs that automatically disqualifies a fraudulent person from appointment as a director of a company. (6 marks)

- b) Kojo Mintah is a partner in a firm of surveyors. While travelling in the course of an approved duty in the firm's car, he bought GH¢500 worth of fuel for the use of the car. He submitted the receipt of purchase to the managing partner for refund. The managing partner has refused to pay.

Required:

- i) State **TWO (2)** liabilities imposed on partners and **TWO (2)** liabilities imposed on the firm by the Incorporated Private Partnership Act, 1962 (Act 152). **(4 marks)**
- ii) Advise Kojo Mintah on his claim. **(4 marks)**

(Total: 20 marks)

QUESTION FIVE

- a) The Krachi Assembly having an Airport in its locality grants a single concession to operators for pleasure flight from the airport. For a period of ten years that licence had been held by the Njoku club. When the concession came up for renewal, the Assembly decided to invite competitive tenders for it. Tenders were to be submitted by 12:00 pm on a given day. The Assembly's letter box was not cleared between the time of the club posting its tender and the closing time for the bids, with the result that the club's tender was not considered.

The club claimed that the Assembly was in breach of a contract as it has not considered all tenders received before the deadline.

Required:

The Njoku club, in the case above, claimed that the Assembly was in breach of a contract for not considering all tenders received before the deadline. Explain. **(5 marks)**

- b) The promoters of Adzeku Company, made a contract on its behalf with Ansah Oko before the company came into existence. The company once formed, purported to ratify the contract, but then went into liquidation, and the promoters themselves were sued on the contract. The promoters argued that they had been contracted as agents, and that the liability on the contract had passed to the company by ratification.

Required:

- i) From the facts of the scenario above, explain if the defence set-up by the promoters is valid. Advise the promoters. **(8 marks)**
- ii) State briefly, if it is lawful for a company limited by guarantee to be incorporated with the object of carrying on business for the purpose of making profits. **(2 marks)**
- c) Distinguish between Annual General Meeting and Extraordinary General Meeting of a company. **(5 marks)**

(Total: 20 marks)

SOLUTION TO QUESTIONS

QUESTION ONE

a)

- i) **Judicial precedent** is based on the principle of stare decisis: this doctrine states that previous judicial decisions are binding on a judge who seeks to give judgment on a similar case especially at the lower court.

Judicial precedent is as a result of case law and is the application of previous ruling or decisions or judgment of the court of law on a point of law in a legal dispute. It is based on the underlying principle of consistency and fairness so that judgments, decisions, and orders of the court or adjudicating bodies must follow precedent.

The doctrine of judicial precedent means that a judge is bound to apply a decision from an earlier case to the facts of the case before him, provided, among other conditions, that there is no material difference between the cases on hand and the previous case.

In accordance with Article 129 (2) of the 1992 Constitution, the Supreme Court shall not be bound to follow decisions of any other court. Lower courts in adjudicating a case before it must however apply a 'binding' precedent developed by a Superior Court.

The Supreme Court may review, vary or overturn any earlier decision made by any court including its own decision as per Article 133 (1)(2) of the 1992 Constitution.

(6 marks)

ii) **Rules used in interpreting Statute**

The construction must be interpreted based on the mind and intention of the author as law may permit. Interpretation must be drawn from the written document itself, technical information surrounding the document and the context of the document as a whole so as to arrive at the intention of the author.

The Golden Rule

The Mischief Rule

The literal Rule

The ejusdem generis rule

(Any 2 points @ 2 marks each = 4 marks)

b)

- i) Money Laundering is the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced. Offence of money laundering is established if the person knows or ought to have known that a particular property is or forms part of the proceeds of an unlawful activity and the person.
- converts, conceals, disguises or transfers the property,

- conceals or disguises the unlawful origin of the property, or
- acquires, uses or takes possession of the property.

It is also a crime to aid and abet money laundering activities where a person, knowing that another person has obtained proceeds from an unlawful activity.

Circumstances to freeze bank accounts

- ✓ When FIC suspects that transactions on the account of a bank account holder is suspicious and could be a conduit for money laundering.
- ✓ When investigations on the account holder's dealings require that the assets in the accounts must be safeguarded and protected from being dissipated during the pendency of the case.
- ✓ When regulatory sanctions are being applied eg. SEC, National Communication Authority, Gaming Commission etc

Stages of anti-money laundering

- Placement – This is the first stage in money laundering. At this stage, 'dirty' money is placed into the legal financial systems. The movement of cash from its source & placing it in circulation through financial institutions, casinos, businesses, disguised shops, forex bureau, transfers both local and abroad, etc.
- Layering – This is meant to make the trailing of illegal proceeds difficult for the law enforcement agencies, making it difficult to detect and uncover laundering activity. This is a complex web of transactions to move money into the financial system. This is done by obscuring the audit trail through the strategic layering of financial transactions and fraudulent bookkeeping. Its purpose is to create multiple financial transactions to conceal the original source and ownership of the illegal funds.
- Integration – This is the movement of previously laundered money into the economy mainly through the banking system thus legitimising it. The money is now absorbed into the economy. Once the money has been placed and layered, the funds will be integrated back into the legitimate financial system as legal tender.

(6 marks)

ii) Anti-Corruption Institutions:

- Economic and Organized Crimes Office (EOCO)
- Financial Intelligence Centre (FIC)
- Security Exchange Commission (SEC)
- Internal Audit Agency (IAA)+
- Public Procurement Authority (PPA)
- Office of the Special Prosecutor
- Commission for Human Rights and Administrative Justice (CHRAJ)

(Any 2 points @ 2 marks each = 4 marks)

(Total: 20 marks)

QUESTION TWO

a) i) The facts in the question relate to compensation by way of payment of Quantum Meruit.

- There is the need for the candidate to briefly define the term Quantum meruit.
- Quantum meruit means “ as much as it is worth”. It is not a claim for damages under a contract, but an award to compensate a person in some circumstances where a contract either never existed or, subsequently ceased to exist or, where the contract has been breached, thereby, preventing a party from performing under it. The scenario borders on prevention of performance by the promise. The performing party may sue to recover reasonable remuneration on quantum meruit for the work done. **(1 mark)**
- In the circumstances of this case, Kwesi Mensah, the claimant, agreed to, and wrote a series of articles for the Akem Juvenile Library.
- The work was partly completed before Akem Juvenile Library abandoned the series.
- Kwesi Mensah is entitled to recover reasonable remuneration for the work he did not complete, on a quantum meruit basis. **(1 mark)**
- In the circumstance of this case, the Akem Juvenile Library, unjustifiably prevented the completion of the contract. **(1 mark)**
- In other words, Kwesi Mensah can be rewarded for his work or his goods as much as they are worth on the sense of a reasonable value. **(2 marks)**

Quantum meruit being ‘as much as it is worth’. It is a claim not for damages but arises where a party to a contract who has only partially performed his obligation under an astute.

(Total: 5 marks)

ii) **Situations in which a contract may be discharged**

A contract may be discharged by:

- Agreement
- Performance
- Breach
- Frustration

(Any 2 points @ 2.5 marks each = 5 marks)

b)

i) Breach of contract occurs where there is violation of contractual obligation by failing to perform one’s own promise, by repudiating or by interfering with another performance.

Where the party in default repudiates the contract before performance becomes due, the repudiation amounts to anticipatory breach.

A breach is said to be fundamental if the promise that is violated goes to the root of the contract and is of relatively major importance to the contract.

(4 marks)

- ii) The issue identified in the scenario relates to two (2) separate contract made by Essuman, with Odumadze and with Adjei for the benefit of Njama.
- Both contracts appear to be valid contracts as they meet the requirements of the Common Law; agreement, capacity, intention, consideration and legality.
 - As regards of Essuman's contract with Odumadze, Odumadze is clearly in breach, after failing to honour his promise to service Essuman's car.
 - The breach has not only damaged Essman's car and caused him inconvenience, it also resulted in Essuman losing a valuable client.
 - With regard to Essuman's contract with Adjei, Essuman has a contract with Adjei, although the benefit is not to Essuman, but to Njame, Essuman's daughter.
 - It is Njama who is suffering the loss from Adjei's failure to do the landscaping work at the house where Essuman's daughter Njama lives.
 - It is to be noted that Essuman and Njama, need to establish that Njama has a special status in the contract, as for example, as a beneficiary of a trust, or in quasi contract, in view of the common law position, that only contracting parties, in this case Essuman and Adjei may enforce it.
 - It must, however, be noted that in Ghana, the relationship goes beyond the classical common law position which limits the enforcement of contract to parties only.
 - In Ghana two categories of persons may sue to enforce a contract, namely (a) a party to a contract, and (b) a person on whom a contract expressly reserves a benefit, a third category is a person who is directly affected by a contract although not a party to it, may rely on the grounds of public policy to have the contract declared void or unenforceable.
 - The statutory intervention that has modified the strict common law is **section 5(1)** of the **Contract Act, 1960, Act 25**, which confers the right on a person not a party to contract, to enforce same as though he were a party to the contract.

(3 marks)

Available remedies:

- In the circumstance of this case, the appropriate remedy for Essuman is to sue Odumadze for damages. Damages are a financial award designed to place Esuman in the position he would have enjoyed had the breach not occurred.
- In the case of breach of contract by Adjei, Njama will not be able to bring action against Adjei on the basis of the common law position that only contracting parties may enforce a contract.
- Damages in contract is usually to place the innocent party into a position he would have been in were the contract properly performed. Damages are compensatory and are not usually affected by the motive or intention behind the breach of contract.
- Reliance losses (reliance damages) are damages awarded for losses incurred by the injury party on the contract. Reliance damages restore the injured party to the economic condition the injured party enjoyed before the contract was formed.
- However, Njama, on the basis of **Section 5(1)**, of **Act 25**, the contract Act, Njama, may, subject to the provisions of Act 25, sue Adjei for damages for the breach of the contract between Esuman and Adjei, because the contract was for her benefit.

(3 marks)

(Total: 20 marks)

QUESTION THREE

a)

- i) The principle of law identified in the question relates to vicarious liability.
- The vicarious liability principle simply states that an employer is liable for damage caused to another person by his employee, while the employee was carrying out his work (or while the employee was in the course of employment).
 - The scenario relates to employment contract. The issues for determination are:
 - a. Whether or not Zinto Breweries are vicariously liable for the tort of Kojo Adams namely the injury to Kosaa
 - b. Whether or not Kojo Adams must bear his own tort for being on the frolic of his own.
 - The principle applies whether the injury was to an outsider or to a fellow employee. The employer is liable even though he was not in any way at fault.
 - So far as the law is concerned, the employer and employee are regarded as associated parties in the business in which both are engaged.
 - The policy basis of the legal principle is to provide the injured person with a defendant who is likely to be able to pay damages which the court may award.
 - The principle does not become applicable if the employee acts outside of the contractual duties.
 - There are, however, instances such as the employer being liable in spite of the fact that the employee was acting improperly, if the act was, even so, part of his contractual duties.

(4 marks)

ii) In the circumstance of the facts of the scenario in the question, the following matters arise:

- Kojo Adams is an employee of the Zinto Breweries Ltd. and he drives the company's van.
- From the facts of the case, the journey during which he carried a child's coffin to a relative was not authorized.
- That the journey was not converted into an authorized journey merely because Kojo Adam performed some small act for the benefit of his employer by picking those beer barrels.
- It, therefore, means that injury to Kosaa when the van was involved in the accident cannot make the employer liable.
- That the chances of Kosaa succeeding in her action against the employer, Zinto Breweries Ltd., are slim because Kojo Adams acted outside of his contractual duties.

(4 marks)

iii) Kojo Adams will be personally liable for the injury of Kosaa. He could be liable to both specific and general damages. The company Zinto cannot be vicariously liable in this circumstances.

(2 marks)

b)

i) Ways of financing a company

- Companies are financed using either share capital or loan capital
- Shares are measured in terms of interest. A shareholder is not a creditor of the company for the money he has invested in the company
- Shares are of no-par value. (Section 43 of Act 992), meaning the shares have no particular amounts or value attached to it in the Constitutions of the company.
- A company may raise a loan capital and, or long-term funds by the issue of a debenture or of a series of debentures or of debenture stock in order to finance the business without increasing its share capital.
- A company shall, within two months after the allotment of any of its debentures, or after the registration of the transfer of any debentures, deliver to the registered holder of the debentures, the debentures or a certificate of the debenture stock under the common seal of the company or as certified by two directors and the Company Secretary of that company.
- Debentures may be secured by a charge over the company's property or may be unsecured by any charge.
- With recent Public-Private-Partnership arrangements, government is encouraging private sector investments and sometimes subsidies or tax reliefs are granted.
- Section 60 of the Central Securities Depository Act, 2007 (Act 733) provides as follows:
 - a) Debentures, shares bonds or notes issued or proposed to be issued by a corporate body and any right, warrant or option in respect of them
 - b) Bonds, treasury bills or other loan instrument of the Government of Ghana or any country
 - c) Rights or interest, whether described as units or otherwise under a collective investment scheme.
 - d) Other rights or instruments as the Minister responsible for Finance may, by notice in the Gazette, prescribe.

(6 marks)

ii) Advantages and Disadvantages of financing methods

Financing Method	Advantages	Disadvantages
Shares	<p>Flexibility over the use of its finance.</p> <p>The use of shares makes the company determine the type of shares to float.</p> <p>Shareholders ordinarily want the company to continue into the foreseeable future and will reluctantly be driven to press for bankruptcy.</p> <p>Makes the company appealing and saves it from the payment of initial investment or interest.</p> <p>Reduces the likelihood of the company becoming bankrupt.</p>	<p>Issuing shares calls for the disclosure of critical financial and non-financial information to the public.</p> <p>Initial stages of offering shares involve elaborate proceedings which can shift the focus of the company.</p> <p>Management of the company determines dividend payout to shareholders.</p> <p>Need to constantly update shareholders on the activities and performance of the company.</p> <p>Management can hide behind any negative events and decisions not to declare dividends.</p>
Debentures	<p>Encourages long-term funding of the company.</p> <p>It's cost-effective compared to other funding options.</p> <p>Holder can secure their investment by securing a charge.</p> <p>Control of shareholders and profit share ratios are maintained.</p>	<p>Can reduce growth as there is no flexibility in the payment of interests.</p> <p>Reduces management's control and use over assets used as charges.</p>
Bank Loans	<p>Opportunity to negotiate for a repayment holiday.</p> <p>Company knows the rate of interest as it is fixed for the term of the loan.</p> <p>Loans do not affect the shares in the company.</p>	<p>Difficult requirements that companies need to satisfy.</p> <p>Strict repayment schedules.</p> <p>Payment of penalties by defaulting companies.</p> <p>Huge processing fees.</p>

	Loans are not repayable on demand.	
Bonds	<p>Helps retain more cash in the company.</p> <p>Does not dilute the value and holdings of existing shareholders.</p> <p>Offers are means of stabilizing the finances of the company at a fixed interest rate.</p> <p>Flexible way of raising debt capital.</p>	<p>Constant payment of interests even if the company makes a loss.</p> <p>Potential reduction in the company's share value if net profit declines.</p> <p>Liking imposition of strict and unfavorable covenants by investors</p> <p>Rigid compliance with listing rules and regulations.</p>

(4 marks)

(Total: 20 marks)

QUESTION FOUR

a)

- i) Section 211(3) Companies Act, 2019 Act 992 provides that directors shall appoint a person as a Company Secretary who possesses the following qualifications:
- Has obtained a professional qualification or tertiary level qualification (with an offering in company law practice and administration) that enables that person to have the requisite knowledge and experience to perform the functions of a Company Secretary.
 - Has held office, before the appointment, as a Company Secretary trainee or has been articulated under the supervision of a qualified Company Secretary for a period of at least three years.
 - Is a member in good standing of;
 - The Institute of Chartered Secretaries and Administrators or
 - Institute of Chartered Accountants, Ghana
 Having been enrolled to practice, is in good standing as a barrister or solicitor in the Republic or
 - By virtue of an academic qualification, or as a member of a professional body, appears to the directors as capable of performing the functions of a secretary of the company.

(3 points @ 2 marks each = 6 marks)

- ii) Under **section 177 Companies Act, 2019 Act 992** a fraudulent person is restrained from appointment as a director of a company where:
- A person is convicted, whether in the Republic or elsewhere of
 - ✓ an offence involving fraud or dishonesty
 - ✓ an offence in connection with the promotion, formation or management of a body corporate,
 - ✓ an offence involving insider dealing or
 - ✓ any other criminal offence which is not a misdemeanor
 - A person is adjudged bankrupt whether in the Republic or elsewhere
 - A person has been culpable of a criminal offence, whether convicted or not, in relation to a body corporate or of fraud or breach of duty in relation to a body corporate
 - It appears a person is debarred by a competent authority from being a member of a recognized professional body as a result of a disciplinary inquiry; or
 - There is an ongoing investigation by a criminal investigation body or by the Registrar of Companies or the equivalent in a foreign jurisdiction regarding (above)
 - A person is automatically disqualified of a period of 5 years if that person;
 - ✓ Has been convicted within the last five years of an offence involving fraud or dishonesty or relating to the promotion, formation or running of a company
 - ✓ Has been a director or senior executive of a company that has become insolvent within the last five years on account of or partly as a result of culpable activities of that director or
 - ✓ Has been disqualified to act as company secretary, receiver, manager or liquidator of a company.

(Any 3 points @ 2 marks each = 6 marks)

b)

i) The references are to sections 4, 10 and 14 of the Incorporated Private Partnership Act 1962, (Act 152)

- Section 4(1): On registration the Registrar shall certify under seal that the firm has been registered and is incorporated and the certificate shall state the names of the partners and that their liability is not limited.
- Section 10(1): From the date of registration, the firm is a body corporate under the firm name, distinct from the partners of whom it is composed of.
- Section 10(3): Although the firm is a body corporate, each partner in the firm is liable without limitation for the debts and obligations of the firm. However each partner 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 14: A partner in a firm is jointly and severally liable with the firm and the other partners for the debts and obligations of the firm incurred while that partner remains a partner.
- The firm's liability to indemnify partners for just expenses made to support the business.

(2 points @ 2 marks = 4 marks)

ii) Section 13 of Act 152

An Act or instrument related to a business of a firm and done or executed in firms name or in any other manner showing an intention to bind the firm by a person so authorised whether a partner or not is binding on the firm.

Kojo Mintah could be advised to claim on the basis of Section 152.

Section 15 subsection 1, the partner in the firm is jointly and severally liable with the firm and the other partners for the debt and obligations of the firm incurred while that partner remains a partner.

(4 marks)

(Total: 20 marks)

QUESTION FIVE

a)

The question deals with the issue of contract by tender.

- Tender is a negotiating device common in the world of major commercial contracts.
- A company seeking to purchase a major item or service, such as a piece of equipment or some construction work, will invite tenders from those interested in supplying goods or services sought.
- Such invitations may be published generally, or in a trade journal, or circulated to companies likely, to be interested.
- Under normal circumstances, the invitation for tender is not treated as an offer, since the company issuing it may have other criteria other than the price which they take into account in awarding the contract.
- However, it is always possible that a request for tender be both specific and intended to be turned into a contract by mere acceptance, in which case, it will be an offer. The usual case is where the expression, " Highest bidder" or "lower bidder is used, indicating a system of competitive tendering, mode which the person issuing the invitation to tender has declared himself willing to be bound by the most competitive bidding.
- The first issue to be addressed is to determine whether there was a contract in view of the position taken by the Njoku club.
- In the circumstance of this case the Njoku club is saying that the Krachi Assembly was in breach of contract to consider all tenders received before the deadline.
- The complaint of Njoku club is justified because there was a contract governing the conduct of the tendering process, and it was an implied term of the contract the all bids arriving before the deadline would be considered, even though contracts are not lightly to be implied.
- Even though contracts are not lightly to be implied in this particular case, it is in the interest of doing substantive justice that the complaint of Njaku club, that one would agree with it that the Krachi Assembly was in breach to have considered all tenders received before the deadline, because the Assembly's letter box was not cleared between the time the clubs tender was posted and the closing time for the bids.

- A notice from requesting institutions to submit tender in whichever form is not deemed as an offer to procure or supply but invitation to treat. Thus tender notices are merely intended to invite tenders and ascertain whether an acceptable offer can be obtained. It is the tender which constitutes the offer which may or may not be accepted. To say that there is breach of contract is to say in that the elements that lead conclusively. **(5 marks)**

b)

i) The question has to do with pre-incorporation contract or other transaction.

- Any contract or other transaction purported to be entered into prior to its formation, or by any person on behalf of the company before its formation may be ratified by the company after its foundation, whereupon the company shall assume rights and liabilities under the contract or transaction as if it had been in existence at the date of such contract or transaction, and had been a party to it. **(2 marks)**

- Before the ratification, the promoter(s) or other persons purporting to act on behalf of the company remains personally liable in the absence of any express agreement to the contract and is entitled to any benefit accruing under the contract or transaction. **(1 mark)**

- It may be added that the reason for the promoter's inability to be regarded as an agent in respect of the pre-incorporation contracts or transaction derives from general legal principle that a person cannot derive the powers and authority of an agent from non-existent principal. **(1 mark)**

- In the circumstance of this, the promoters of Adzeku Company contracted with one Ansah Oko prior to the formation of the company.

- From the facts, the company upon coming into existence ratified the contract the Adzaku Company entered into with Ansah Oko, but immediately went into liquidation. **(1 mark)**

- It must be stated that the ratification of the transaction with Ansah Oko took place after the formation of Adzenku Company.

- It is clear that the promoters after contracting with Oko Ansah had the contract ratified by the company when it finally came into existence, and can, therefore, not be personally liable.

- The ratification of the contract after the formation exonerated the promoters of any personal liability upon the liquidation of the Adzaku Company Ltd.

(3 marks)

ii) A Company limited by guarantee is a non-profit making legal entity. A company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profit other than making profit for the furtherance of its objects.

- **Section 10** of the Companies Act makes it unlawful for a company limited by guarantee to be incorporated with the object of carrying on business for the purpose of making profits.
- Where a company limited by guarantee engages in or carries a business for the purpose of making profit, **Section 10 (2)** of the Companies Act provides as follows:
 - (a) *“all officers and members of the Company who are aware of the fact that the company is so carrying on a business shall be jointly and severally liable for the payment and discharge of all the debts and liability incurred by the company as a result of carrying on such business.*
 - (b) *every such officer and members shall be liable to a fine*”
- It is, therefore, unlawful for a company limited by guarantee to be incorporated with the object of carrying on business for the purpose of making profits.

(2 marks)

c) Annual General Meeting vs Extraordinary General Meeting

Annual General Meeting

A company shall in each year hold an annual general meeting of the company in addition to any other meetings in that year. Annual General Meetings are to be held each year by every company and the meeting is to be held not more than 15 months between the dates of an earlier general meeting. Where a company hold its first annual general meeting within 18 months of its incorporation, it need not hold an Annual General Meeting in the year of its incorporation or in the following year.

Extraordinary General Meeting

An extraordinary general meeting of a private company may be requisitioned in accordance with section 299 and an extraordinary general meeting of a public company may be requisitioned in accordance with section 324.

Under section 299, the persons identified to convene an extraordinary general meeting were the directors and where the directors in Ghana are not to form a quorum, a director may convene a meeting. Extraordinary general meetings may be convened by the directors whenever they think fit. The section provides that the directors of a private company, despite a provision in its Constitution, shall duly convene an extraordinary general meeting of the company on the requisition of two or more members of the company or a single member holding not less one-tenth of the shares of the company or in the case of a company limited by guarantee, one-tenth of the total voting rights of the members of the company.

Per section 324 of Act 992, the directors of a public company, despite anything in its constitution, shall, on the requisition of members of the company holding not less one-twentieth of the shares of the company or in the case of a company limited by guarantee, members of the company representing not less than one-twentieth

of the total voting rights of all the members of the company, forthwith proceed duly to convene an extraordinary general meeting of the company.

(5 marks)

(Total: 20 marks)