

DECEMBER 2022 PROFESSIONAL EXAMINATIONS
BUSINESS & CORPORATE LAW (PAPER 1.3)
CHIEF EXAMINER'S REPORT, QUESTIONS AND MARKING SCHEME

QUESTION ONE

- a) Paa Nii who resides in the UK sent an amount equivalent to GH¢1,500,000 to his nephew, Dennis, as part payment for the purchase of a house at Trassacco Springs. Paa Nii further sent regular installments to Dennis' personal account to be given to the vendors. Paa Nii confirmed that Dennis failed to transfer the monies paid to him to the vendors. Paa Nii out of anger organised for Dennis' vehicle to be burnt to ashes. Paa Nii, proceeded to sue to void the agreement and recover the amount paid.

Required:

- i) List **FOUR (4)** doctrines of equity. **(4 marks)**
ii) In relation to the scenario above, is there any equitable remedy Paa Nii can rely on? **(3 marks)**
iii) Identify **THREE (3)** basic presumptions for statutory interpretation. **(3 marks)**
- b) Adjo is a director of Boxo Company Ltd. She has insider information that the profits of the company when announced in ten (10) days' time, could lead to a rise in the share value of the company. She, therefore, bought shares in the company herself and also advised her friend, Michael to buy shares in Boxo Company Ltd, but did not tell him why.

Required:

In the context of the facts stated in the question, explain the conduct of Adjo and Michael with regard to the shares of Boxo company Ltd. **(10 marks)**

(Total: 20 marks)

QUESTION TWO

- a) A firm of chartered accountants prepared the financial statements of Highskies Ltd knowing that the company was going to use the report to persuade Dr. Kwesi Antwi a prospective investor to invest money in Highskies Ltd. Relying on the accounts, Dr. Kwesi Antwi invested two Million Ghana Cedis (GH¢2,000,000) in the company. However, a year later the company collapsed. Dr. Kwesi Antwi, therefore, decided to take legal action against the firm of chartered accountants.

Required:

- i) Advise whether Dr. Kwesi Antwi's legal action in court will be successful. **(3 marks)**
ii) State **THREE (3)** effects of an agent acting without authority. **(6 marks)**
iii) Explain the phrase "*term of Contract*". **(3 marks)**
- b) As part of efforts in catering for Ghanaians who were displaced by the Russian war on Ukraine, the Government of Ghana erected tents in Poland. These tents are no longer in use because all Ghanaians were evacuated back to Ghana. As a result, the Government set up

a disposal board to sell these tents. The board agreed to sell the tents to Dominika who left an amount of GH¢10,000,000 as a security deposit for her purchases. According to the written agreement between the disposal board and Dominika, the price for the tents and the dates on which payment was to be made were to be agreed between the parties as and when the tents became available. On July 2022, a new disposal board took over and refused to sell the tents to Dominika. They stated that they no longer considered themselves bound by the contract.

Required:

Identify **FOUR (4)** issues in the contract of sale of goods in the above scenario. **(8 marks)**

(Total: 20 marks)

QUESTION THREE

- a) Arko Kumi was contracted for the delivery of chippings to Ashville Estates. The contract identified him as an “independent contractor” with agreed wages and expenses. Arko Kumi was to use his own vehicle, yet with a requirement that the vehicle be sprayed in the company colours of Ashville Estates. He was to drive the vehicle himself but under compliance with certain company’s rules including, the nature of vehicle repairs and maintenance.

Required:

- i) Describe the type of employment Arko Kumi is engaged in. **(2 marks)**
ii) State **TWO (2) terms and essential clauses** that can be used to differentiate the various types of employment. **(2 marks)**
iii) Explain **TWO (2)** rights and duties of both the employer and the employee. **(6 marks)**
- b) Identify and explain **TWO (2)** circumstances in which a company can acquire its own shares. **(6 marks)**
- c) Explain the following:
- i) Retained earnings **(2 marks)**
ii) Unclaimed dividend **(2 marks)**

(Total: 20 marks)

QUESTION FOUR

- a) Adamu Larbi was an Officer Cadet in the Ghana Prisons Service. His conditions of service included a provision that in cases of misconduct or unsatisfactory service, disciplinary proceedings shall be conducted against him. On 24 July 2022, while Adamu Larbi was at a parade at Wa Prisons, his superintendent gave him a letter of dismissal signed by the Director of Prisons. He claimed that before receiving this letter, he had not been summoned to appear at any disciplinary proceedings to answer any charges preferred against him.

Required:

Explain the rights of Adamu Larbi in the context of **TWO (2)** principles of natural justice.
(10 marks)

- b) Lucy Kondomire and Adele Amaney have been engaged in the formation of a private company limited by shares to engage in a curtain business. They are very eager to win a contract to supply the new Parliament House with 3,000 yards of curtains as part of a planned refurbishment of the Chamber of Parliament. They are optimistic of being awarded the contract in view of the President's campaign to promote locally produced and manufactured goods. They have already proposed the name of the company to be "Nyamenehene Curtains Plaza." The company is to be registered with 1,000,000 ordinary shares of no-par value and fully subscribed 600,000 and 400,000 shares respectively. In view of this, they have approached you as a Consultant to take over the process of incorporating their company as quickly as possible to enable them win the contract. They have expressed their desire to pay any fee possible if the process is completed within five days.

Required:

- i) State **EIGHT (8)** requirements for the incorporation of a company to Lucy Kondomire and Adele Amaney. **(6 marks)**
- ii) If it turned out later that Adele Amaney did not pay fully for the shares she subscribed to, and have not been issued with a share certificate, what would be the implication of this occurrence? **(4 marks)**

(Total: 20 marks)

QUESTION FIVE

- a) Kofi Manu set up a company and had a scholarship to pursue his PhD in Australia. He then transferred part of his share to Abena Mansa with special rights in their agreement including rights on new shares, transfer restrictions unless with consent and right to appoint a Director if holding is at least 10%. Now Kofi Manu is back and wants to cancel the special rights of Abena Mansa but Abena Mansa has argued that the special rights she had were class rights that could only be varied with her consent and she was not ready to vary it.

Required:

- i) What is meant by class rights? **(3 marks)**
- ii) Under what **TWO (2)** circumstances can class rights be varied. **(4 marks)**
- iii) Advise Kofi Manu. **(3 marks)**
- b) Certain class of persons are prohibited by the companies Act, 2019 (Act 992) from acting as liquidators.

Required:

- i) State **FOUR (4)** conditions that prohibits a person from being appointed as a liquidator. **(4 marks)**
- ii) Explain **FOUR (4)** powers that can be exercised by a liquidator. **(6 marks)**
- (Total: 20 marks)**

SUGGESTED SOLUTION

QUESTION ONE

a)

i) **Doctrines of equity**

- Equity regards as done what ought to be done.
- Equity will not suffer a wrong to be done without a remedy.
- Equality is equity.
- He who seeks equity must do equity.
- Equity aids the vigilant not the indolent.
- Delay defeats equity.
- Equity imputes an intent to fulfil an obligation.
- Equity acts in personam.
- Equity abhors forfeiture.
- He who comes to equity must come with clean hands.
- Equity does not require an idle gesture.
- Equity delights to do justice and not by halves.
- Equity follows the law.
- Equity will not assist a volunteer.
- Equity will not complete an imperfect gift.
- Where equities are equal, the law will prevail.
- Equity looks to the intent rather than of form.

(Any 4 points @ 1 mark each = 4 marks)

ii) There are two equitable remedies that Paa Nii may choose to rely on in this contractual scenario, namely specific performance and rescission.

Specific Performance

The remedy of specific performance is purely equitable in origin and acts in personam. Specific performance is a discretionary remedy. It means that the remedy is not available as a matter of right to the person seeking relief but is subject to the discretion of the court. It follows that specific performance is only given where it is just and equitable to do so.

The conditions under which specific performance is granted include the following:

- Specific performance will be given only where damages is inadequate to compensate a party to the contract (plaintiff).
- Specific performance will not be granted where it will cause undue hardship.
- Specific performance will only be given on the basis of mutuality, namely where both parties could if necessary, seek the protection of the court.
- Specific performance will not be granted to a party who has acted unfairly or improperly.

Rescission

Rescission of a contract is an equitable remedy, enabling 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.

The rule on rescission include the following:

- Where the property under which the remedy is being sought has passed to a third party who took it in good faith and for value.
- Where the party seeking the remedy delays in acting on his rights.

(3 marks)

iii) Presumption on interpretation of statutes

- Same words are to bear the same meaning in the same statute.
- A statute does not have any retrospective effect.
- No one should profit from his own wrong.
- The legislature does not intend to limit vested rights further than clearly appears from the enactment.
- An enactment does not create new jurisdiction or enlarge an existing jurisdiction in the absence of an express language to that effect.

(Any 3 points @ 1 mark each = 3 marks)

- b) Under section 177(14)(a) of the Companies Act, 2019 Act 992 “insider dealing” means buying or selling securities in a company by persons who have access to non-public information about the company.

Section 177 of the Act restrains fraudulent persons from managing companies:

(1) Where, (a) a person is convicted, whether in the Republic or elsewhere, of (i) an offence involving fraud or dishonesty, (ii) an offence in connection with the promotion, formation or management of a body corporate, (iii) an offence involving insider dealing...

A person involved in insider dealing or insider information, under Section 177(14)(a) clearly qualifies as a fraudulent person to be restrained from managing a company.

In the present case, Adjo as the director of the Boxo Company limited stands in fiduciary relationship to the company and must be seen to be expressing uttermost good faith in her dealings with the company.

Adjo as a director of Boxo Company Ltd commits insider dealing which is a criminal conduct by the definition given under the Act. He is thus categorised under fraudulent persons restrained under managing companies. She also violates the inherent fiduciary rule as the director of the company. She further stands automatically disqualified as director of the company.

Michael is not a senior executive of the company but a friend. Michael may be an accomplice to the criminal act of insider dealing.

(10 marks)

(Total: 20 marks)

QUESTION TWO

a)

- i) The rule is that for a party to succeed in the tort of negligent statement there must be a relationship. That relationship must be professional relationship/special relationship between the person making the statement and the party receiving it. This relationship is the means of establishing to whom a duty is owed. That the maker of the statement should know the purpose for which it is to be used and that the recipient/ party will rely on the statement and act upon it without making any other enquiries.

In the present case, in preparing the financial statement for Dr Kwesi Antwi, the firm of chartered accountants of Highskies knew that Dr Antwi would rely on it and he indeed did rely on it. The resulting effect was financial loss to Dr Kwesi Antwi. Thus Highkies Ltd owed a duty of care to Dr Antwi. Dr Antwi therefore, succeeds in his legal action.

(3 marks)

ii) **Effect of agent acting without authority**

- The alleged principal will not be bound by the contract unless the principal ratifies, expressly or implied through his conduct.
- There is no contract between the agent and the third party because the third party did not intend to deal with the agent personally.
- The agent will have impliedly guaranteed or warranted to the third party that;
 - ✓ The principal exists
 - ✓ The principal has the contractual capacity to make the contract
 - ✓ He has authority to make the contract.
- If the agent is acting outside his authority, he will be liable to the third party for breach of warranty of authority.

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

- iii) “The *terms of contract* defines the scope and extent of the obligations undertaken by the parties to the contract. Thus after a contract has been made, it is necessary to examine the contents of the contract to determine what the terms of the contract are. Generally, a contract may be wholly oral, wholly in writing or partly oral and partly in writing. In exceptional circumstances, a statute may demand that particular kind of contract must be in writing to be enforceable. A statement made in the negotiations leading up to making of a contract which does not qualify as contractual term is said to be mere representation.

A mere representation is one which induces the other party to enter into the contract, but does not form part of the contract itself. **The terms of a contract, therefore, are the statements, promises or propositions, which form part of the contract and which define the respective rights and obligations assumed by the parties under the contract.**

Even though all terms of a contract have to be performed, they do not have equal significance. Some terms are **of more significance than others especially when it comes to the consequences of their breach**. Some terms are considered to be major significance to the contract such that when they are breached by one party, the innocent party is entitled to terminate the contract altogether. Thus, after ascertaining the terms of the contract there is the need to consider their relative importance, and in this regard, the law classifies the terms of contract into **conditions, warranties and innominate terms.**"

(3 marks)

(Source: The Law of Contract of Ghana by Christine Dowouna Hammond)

b) Issues in the contract of sale of goods

- Whether or not there is a contract of sale of the tents between the Board (representing the Government of Ghana) and to Dominika.

Section 1(1) of Sale of Goods Act, 1962 Act 137

- Whether or not the GH¢10,000,000 as deposit security is to be considered as consideration under the contract of sale.

Section 1(1) of Sale of Goods Act, 1962 Act 137

- Whether or not under the contract of sale of goods price is allowed to be fixed in a manner agreed on by the parties.

Section 6 Sale of Goods Act 1962 Act 137

- Whether the new Board representing the Government is guilty of his fundamental obligation to sell and deliver the tents to Dominika.

Section 8(1) of the Sale of Goods Act, 1962 Act 137

(4 points @ 2 marks each = 8 marks)

(Total: 20 marks)

QUESTION THREE

a)

- i) Although the contract took the form of Arko Kumi being under the control of a company because his vehicle was sprayed in company colours, and the compliance with certain company rules, the fact that he was to use his own vehicle does not place him completely under control of the company. Mr Arko Kumi is therefore, an independent contractor.

(2 marks)

- ii) In order to differentiate the various types of employment, two primary terms are in use, namely that of Contract of Service and Contract for Services.

Contract of Service

The worker (employee) is under the Control of the employer: the employer tells him what to do, how to do it and when to do it; and/or

The skill of the worker/employee is integral part of the business or work.

Contract for Services

The worker works on his own account; he is in his own person in business.

Clauses to differentiate the type of employment.

Contract of Service

In Contract of Service (i) the income tax of the worker is deducted at source. (2) Social Security deductions are made at source (3) Benefit of sick leave, sick pay, medical refund, maternity leave etc. (4) Worker can make the employer vicariously liable for his torts. (5) Worker may have the privilege of employees share in a company limited by shares. (6) Tools are provided for work with the possible privileges of allowances in their absence.

Contract for Services

The worker pays (1) his own taxes as income tax and vat. (2) Responsible for payment of his own social security. (3) Responsible for his own torts. (4) Procures his own tools for work.

(2 marks)

- iii) **Two Rights and Duties of Both the Employer and the Employee**

Rights of the Employer

- Employ a worker, discipline, transfer, promote and terminate the employment of the worker;
- Formulate the policies, execute plans and programmes to 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

Duties of Employer

- Provide work and appropriate raw materials, machinery, equipment and tools

- Pay the agreed remuneration at the time and place agreed on in the contract of employment or collective agreement or by custom without a deduction except permitted law or agreed between the employer and the worker;
- Take practical steps to ensure that the worker is free from risk of personal injury or damage to health during and in the course of the worker's employment or while lawfully on the employer's premises;
- Develop the human resources by way of training and retraining of the workers;
- Provide and ensure the operation of an adequate procedure for discipline of the workers;
- Furnish the worker with a copy of the worker's contract of employment;
- Keep open the channels of communication with the workers; and
- Protect the interests of the workers.

Rights of the workers (Employee)

- 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 retained for the development of skills, and
- Receive information relevant to the work of the worker.

Duties of Workers (Employees)

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

(6 marks)

(Source: Sections 8, 9 and 10 of the Labour Act, 2003 Act 651)

b) Purchase by a company of its own shares

63. Despite a provision of the constitution of the company to the contrary, a company shall not purchase any of the shares of the company except where

(a) shares are only purchased out of a credit balance on the share deals account referred to in section 65, or out of transfers to that account in the manner referred to in that section from retained earnings;

(b) redeemable preference shares are not purchased at a price greater than the lowest price at which they are then redeemable or will be redeemable at the next date at which they are due or liable to be redeemed; or (c) the purchase is not made in breach of section 64.

Limit on number of shares acquired

64. (1) A transaction shall not be entered into by or on behalf of a company by which the total number of its shares, or of its shares of any one class, held by persons other than the company or its nominees becomes less than eighty-five per cent of the total number of shares, or of shares of that class, which have been issued.

(2) For the purposes of subsection (1), redeemable preference shares shall be disregarded.

(3) Where, after shares of a class have been issued and the number of those shares has been reduced, subsection (1) shall apply as if the number originally issued, including shares of the class cancelled before the reduction took effect, had been the number as so reduced.

Share deals account

65. (1) When a company first redeems or purchases any of its shares, otherwise than on a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph (b) of subsection (1) of section 62, it shall open a share deals account and shall credit to that account a sum of money not less than the amount of money to be expended on the redemption or purchase by transferring that sum from retained earnings as defined in section 71.

(2) There shall be debited to the share deals account the sums of money which the company shall from time to time expend on the Companies Act, 2019 64 Act 992 redemption or purchase of any of the shares of the company, otherwise than on a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph (b) of subsection (1) of section 62.

(3) The net price or the value of the consideration received by the company on the re-issue of any of the treasury shares of the company shall be credited to the share deals account.

(4) If at any time the total amount of money to be debited to the share deals account under subsection (2) exceeds the amount of money credited to that account in accordance with subsections (1), (2) and (3), an amount of money equal to the excess shall be transferred to the credit of that account from retained earnings, and a purchase or redemption, otherwise than a redemption of redeemable preference shares out of the proceeds of a fresh issue of shares in accordance with paragraph (b) of subsection (1) of section 62, shall not be made by the company unless its retained earnings is sufficient to enable the transfer to be made.

(5) An amount of money shall not be debited or credited to the share deals account, otherwise than in accordance with subsections (1), (2), (3) and (4) except on a transfer to share capital in accordance with section 68 or under an order of the Court under section 80 or 239.

(6) A true copy of the share deals account, showing the class and number of shares involved in each transaction and the price paid or received for those shares, shall be kept in a separate book at the registered office of the company and shall during business hours, be open to the inspection of a member without charge and of any other person on payment of a fee prescribed by the company for each inspection unless otherwise subject to reasonable restrictions expressed in the constitution of a company.

(7) Not less than two hours in each day, other than a Saturday, Sunday or a public holiday shall be allowed for the inspection.

(8) A member or any other person is entitled to be furnished, within ten days after the member or that person has made a request in that behalf to the company, with a copy of the share deals account or a part of the share deals account at a fee prescribed by the company.

(9) Where an inspection required under subsection (6) is refused, or where a copy required to be sent under subsection (8) is not sent within the proper time, the company and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of Companies Act, 2019 65 Act 992 twenty-five penalty units for each day during which the default continues, and the Court may order an immediate inspection or furnishing of a copy.

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

c)

i) **Meaning of “retained earnings”**

71. The retained earnings of a company with shares is the reserves, as defined in section 70, less the amounts of money attributable to

(a) an unrealised appreciation in the value of an asset of the company, other than an appreciation in the value of an asset as would, under normal accounting principles, be credited to the income statement, unless the amount of the appreciation has been transferred to share capital; and

(b) a balance standing to the credit of the share deals account immediately before the ascertainment of the retained

Meaning of “reserves”

70. The reserves of a company with shares is the amount of money by which the assets of the company, other than unpaid calls and other sums of money payable in respect of the shares of the company and not including treasury shares, less the liabilities of the company, as shown in the accounts of the company prepared and audited in accordance with sections 127 to 142, exceed the share capital of the company.

(2 marks)

ii) **Unclaimed dividends accounts**

73. (1) Where any dividend declared by a company cannot be paid by reason of the dividends being unclaimed by the member entitled to the dividend and remains unclaimed for a period of three months, the company shall forthwith

(a) open an interest bearing unclaimed dividend account, and (b) credit to that account the total amount of the unclaimed dividend of its shareholders unless that account has already been opened.

(2) Where payment of the dividend cannot be made or is not claimed within a further period of twelve months after the transfer made under paragraph (b) of subsection (1), the company shall pay to Companies Act, 2019 69 Act 992 the Registrar the total amount of the unclaimed dividend plus interest accrued on the amount.

(3) The Registrar shall pay into the account under subsection (4) (a) the amount received under subsection (2), and (b) the amount received under subsection (3) of section 74.

(4) The Registrar shall with the approval of the Board open an interest bearing bank account for the safe keeping of moneys received from any company under subsection (2).

(5) The Registrar is responsible for the moneys lodged and disbursed from the interest bearing account.

(6) The company shall on the date of the payment under subsection (2), notify the respective shareholder or the estate of the shareholder at the last address known to the company of the payment made in respect of the dividend.

(7) The shareholder or the estate of the shareholder shall on providing satisfactory evidence, be entitled to make a claim for the dividend and any accrued interest during the period that the (a) company had possession of the dividend under subsection (1); and (b) Registrar had possession of the dividend under subsection (3).

(8) The Registrar shall publish annually in the Companies Bulletin and in a daily newspaper of national circulation, details of shareholders whose dividends have been transferred to the Registrar for safe keeping.

(2 marks)

(Total: 20 marks)

QUESTION FOUR

- a) The traditional view of natural justice is that it comprises two procedural rules:
- Audi alteram partem: the rule that no man is to be condemned without a hearing or to hear the other party.
 - Nemo iudex in causa sua: No man should sit as a judge in his own cause or no man should be a judge in a matter of which he has an interest or no man should be a judge in his own case. This is the rule against bias, namely conflict of interest.
 - There is a third limb of natural justice, namely the duty to act fairly.

The principles of natural justice are constitutional provisions, regulations made by the courts or parliament as being the least protection of the person's rights against rights against arbitrary policy of judicial, and quasi-judicial rules.

In the present scenario the relevant rules of applications are' *Audi alteram partem rule* and the *Duty to act fairly*.

Audi Alteram Partem (The right to a fair hearing)

Audi alteram partem means "hear the other side". In practice this means that a person or body taking a decision must consider both sides of the case before taking that decision. No man is to be condemned without a hearing. Where a decision is one to which natural justice applies, or where the decision involves the duty to act fairly, then the person or body taking the decision must observe certain procedural requirements. The nature and degree of those procedural requirements will however vary from one situation to another, depending upon context, subject matter and the rights of those affected.

The right to a fair hearing requires that a person who is to be affected by the decision of an administrative authority should be given:

- 1) Notice of the case he has to meet;
 - i) A person should get prior notice (adequate), so he knows about all the charges against him in advance and prepare accordingly. The charges then should be specific.
Providing adequate or prior notice requires indication of venue/place of sitting and time.
 - ii) The person to be affected should be provided with some information as to the nature of the case to be answered. This allows the affected person to prepare his case properly.
 - iii) Where a specific matter affecting the person to which a hearing is to be heard, the decision making body cannot consider other matters unless adequate notice is given.
- 2) A fair opportunity to answer the case against the affected person and to present his own side of the case.

Merely because natural justice or duty to act fairly applies to a procedure does not automatically give an individual the right to be heard. It all depends on the

circumstances of the particular case. Where a person's livelihood is at stake, or allegations have been made which amount to attacks on his integrity, then representations will almost certainly have to be allowed.

The affected person has the right to cross-examine those who give evidence against him. He equally has the right to legal representation.

In our present case, Adamu Larbi has the right to be heard as provided under Audi alteram rule of natural justice.

Article 23 of the Constitution of the Republic of Ghana, 1992 provides that;
"Administrative bodies and administrative officials shall act fairly and reasonably and comply with requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."

On the bases of the rules on Duty to act fairly (even in the absence of natural justice), and the constitutional provision, the Ghana Prison Service in this scenario did not act fairly and reasonably in its quasi-judicial decision. Adamu Larbi therefore, has the right to seek redress before the court.

(10 marks)

b)

i) **Requirements for Incorporation**

Section 13 of the Companies Act 2019 Act 229

(1) An application for incorporation shall be made in the prescribed form and delivered to the Registrar.

(2) The application shall include (a) the name of the company as required by section 21;

(b) an indication of the type of proposed company;

(c) the nature of the proposed business in the case of a company registered with an object;

(d) the address of the proposed registered office and principal place of business of the company in the Republic, telephone number and the post office box, private mail bag or digital address of the registered office of the company;

(e) the electronic mail address and website of the company, if available;

(f) The following particulars of each subscriber:

(i) the date and place of birth;

(ii) the present full name and any former name;

(iii) the residential, occupational, postal and electronic mail addresses and telephone contact; and

(iv) the nationality;

(g) the following particulars of each proposed director of the proposed company:

(i) the present full name and any former name;

(ii) the particulars of any business occupation and other directorships held by the director as provided by section 215; and
(iii) the residential, occupational, postal and electronic mail addresses and telephone contact;

(h) a statutory declaration by each proposed director of the proposed company indicating that within the preceding five years, that proposed director has not been
(i) charged with or convicted of a criminal offence involving fraud or dishonesty;
(ii) charged with or convicted of a criminal offence relating to the promotion, incorporation or management of a company; or
(iii) declared insolvent or if that proposed director has been insolvent, the date of the insolvency and the particulars of that company;
(iv) the consent of each proposed director;

(j) the following particulars of the proposed Company Secretary of the proposed company:
(i) the present full name and any former name;
(ii) the usual postal, occupational and electronic mail address;
(iii) the residential address in the case of an individual; and
(iv) the business occupation as provided by section 215; Companies Act, 2019 32 Act 992

(k) The following particulars of the proposed auditor of the proposed company:
(i) the present full name and any former name;
(ii) the postal and electronic mail addresses and telephone number;
(iii) the residential address in the case of an individual; and
(iv) the consent of the auditor;

(l) The following particulars of each subscriber for a proposed company with shares:
(i) the full name and any former or other name;
(ii) the date and place of birth;
(iii) the telephone number;
(iv) the nationality and proof of identity;
(v) the residential, postal or email address, if any;
(vi) place of work and position held;

(m) The following particulars in respect of each beneficial owner of the proposed company:
(i) the full name and any former or other name;
(ii) the date and place of birth;
(iii) the telephone number;
(iv) the nationality, national identity number, passport number or other appropriate identification and proof of identity;
(v) the residential, postal or email address, if any;
(vi) place of work and position held;

- (vii) the nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
- (viii) confirmation as to whether the beneficial owner is a politically exposed person;

(n) The following details in the case of a company that has shares:

- (i) the amount of proposed stated capital, as defined in section 68;
- (ii) the number of authorised shares of the company for each class; and Companies Act, 2019 33 Act 992 (o) in the case of a proposed company limited by guarantee the specified amount up to which the member undertakes to contribute to the assets of the company, in the event of the company being wound up while that person is a member or within a stipulated period after ceasing to be a member, for payment of the costs, charges and expenses of winding up, and the adjustments of the rights amongst members.

(3) The application shall be signed by the subscriber or each subscriber if more than one, for shares of the company by writing opposite the name of the subscriber, the number of shares the subscriber takes and the cash price payable for the shares and the subscriber shall take at least one share.

(4) The provisions of subsection (3) shall apply to an application for incorporation of a company that proposes to register a constitution.

(5) The application for incorporation may be effected by (a) the delivery of the completed application form as required by subsection (2); or

(b) the delivery of the completed application form as required by subsection (2) accompanied with a proposed constitution.

(6) Without limiting the provisions of subsection (2), the applicant shall furnish the Registrar with appropriate evidence of the identity and place of residence of the applicant at the time of the delivery of the completed application form for incorporation. Incorporation 14.

(Any 8 points @ 0.75 marks each = 6 marks)

- ii) The absence of share certificate deprives Adele Amaney money of the status of shareholder/member and such accrued benefit of dividends. **(4 marks)**

(Total: 20 marks)

QUESTION FIVE

a)

i) Class rights are rights that attach to a clearly defined class of share (e.g. preference shares) or are conferred upon a person for so long as he is a holder of a share. In the latter case shareholders become a class in their own right. Typical class rights would relate to dividends, return of capital on winding-up, or the right to attend annual general meeting, appointment of director etc.

(3 marks)

ii) **Variation of class rights**

50. (1) Where at any time the shares of a company are divided into different classes, the rights attached to a class shall not be varied unless otherwise expressly provided for in the constitution of a company.

(2) Where the constitution of a company expressly forbids a variation of the rights of a class, or contains provisions regarding that variation and expressly forbids an amendment of the provision, in respect of the variation of rights, the rights shall not be varied and the provision for variation shall not be amended except with the sanction of the Court under a scheme of arrangement in accordance with section 239.

(3) Except as provided in subsection (2), a company may, by special resolution, amend its constitution by inserting in the constitution provisions regarding the variation of the rights of a class, or by modifying the terms of those provisions.

(4) An amendment under this section requires the prior written consent of the holders of at least three-fourths of the issued shares of each class or the sanction of a special resolution of the holders of the shares of each class and shall be deemed, to be a variation of the rights of each class.

(5) Despite a provision in the constitution of a company to the contrary, the rights attached to a class of shares shall not be varied except with the written consent of the holders of at least three-fourths of the issued shares of that class, or the sanction of a special resolution of the holders of the shares of that class.

(6) A resolution of a company the implementation of which would have the effect of

(a) diminishing the proportion of the total votes exercisable at a general meeting of the company by the holders of the existing shares of a class, or

(b) reducing the proportion of the dividends or distributions payable at any time to the holders of the existing shares of a class, is for the purposes of this Act, a variation of the rights of that class.

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

iii) Kofi Manu must advert his mind to either the constitution of his company or to the Companies Act, 2019 Act 992. In accordance with the Act,

- Section 61, sanctions of the court

- Section 50 (4), special resolution to amend constitution
- Section 50 (5), written consent of $\frac{3}{4}$ of the issued shares
- Section 50 (2), sanction of the court

(3 marks)

b)

i) **Disqualification of liquidator**

280. (1) The following persons are not eligible to be appointed or to act as liquidators of a company under this Act:

- (a) an infant;
- (b) a person found by a court of competent jurisdiction to be a person of an unsound mind; Companies Act, 2019 225 Act 992 (c) a body corporate;
- (d) a person convicted, whether in Ghana or elsewhere, of an offence involving fraud or dishonesty, or of an offence in connection with the promotion, formation or management of a body corporate; and
- (e) an undischarged bankrupt or any other person subject to insolvency proceedings under the Insolvency Act, 2006 (Act 708).

(2) Despite subsection (1), a person convicted of an offence under paragraph (d) of subsection (1) is eligible to be appointed as a liquidator or to act as a liquidator of a company if ten years or more have passed since the end of the sentence.

(3) A director of a company shall not be eligible for appointment as a liquidator of that company.

(4) An auditor of a company shall not be eligible to be appointed as a liquidator in a private liquidation of that company.

(Any 4 points @ 1 mark each = 4 marks)

ii) **Powers of liquidator 283.**

(1) A liquidator in a private liquidation may exercise the power of the liquidator in an official winding up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) and any other relevant enactment.

(2) Where several liquidators are appointed, a power given by this Act may be exercised by any one or more of the liquidators as may be determined at the time of their appointment, or, in default of that determination, by a number not less than two.

(3) The Court shall have the same powers in relation to the liquidator in a private liquidation as are by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) conferred on the Court in relation to official liquidation.

(4) The liquidator may apply to the Court for directions in relation to a matter arising in connection with the performance of the functions of office or to exercise all or any of the powers which the Court might exercise if the company were being wound up under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) and on that application, the Court may give appropriate directions or make an appropriate order

Section 338

(6) A liquidator of an external company or a person exercising the powers and functions of such a liquidator shall

(a) before any distribution of the assets of the external company is made, by advertisement in a newspaper circulating generally in each country where the external company had been carrying on business before the liquidation and where no liquidator has been appointed for that place, invite all creditors to make their claims against the external company within a reasonable time before the distribution;

(b) not, subject to the provisions of the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), without leave of the Court, pay out any creditor to the exclusion of any other creditor; and

(c) unless the Court otherwise directs, only recover and realise the assets of the external company in Ghana and shall subject to paragraph (b) and to the provisions of the Bodies Corporate (Official Liquidations Act) 1963, (Act 180) pay the net amount so recovered and realised to the liquidator of that external company for the place where the external company was formed or incorporated after paying any debts and satisfying any liabilities incurred in Ghana by the external company.

(7) Where an external company has been wound up so far as the Companies Act, 2019, Act 992 assets of the external company in Ghana are concerned and there is no liquidator for the place of the incorporation or origin of the company, the liquidator may apply to the Court for directions as to the disposal of the net amount recovered under paragraph (c) of subsection (6).

(8) Where a report has been made by an inspector under this Act regarding an external company, the Registrar may apply to the Court for an order for the winding-up of the affairs of the company in so far as they relate to the assets of the company in Ghana.

(9) Where on an application, an order is made for the affairs of the company to be wound up, so far as assets in Ghana are concerned, the company shall not carry on business or establish or keep a place of business in Ghana unless the Court directs otherwise.

(Any 4 points @1.5 marks = 6 marks)

(Total: 20 marks)