

**JULY 2024 PROFESSIONAL EXAMINATIONS
BUSINESS & CORPORATE LAW (PAPER 1.3)
QUESTIONS AND MARKING SCHEME**

QUESTION ONE

- a) The hierarchical structure of the courts in Ghana make judicial precedents both binding and perhaps persuasive.

Required:

Explain *binding* and *persuasive* precedents. **(4 marks)**

- b) In interpreting statutes, the courts rely significantly on rules of interpretation.

Required:

Explain the following rules of interpretation:

- i) Golden rule **(2 marks)**
ii) Mischief rule **(2 marks)**
iii) Eiusdem generis rule **(2 marks)**

- c) Kwame Yayra is a customer of the Prime Commercial Bank and has since 20 March, 2024, maintained account number 070338675 with the Bank. Kwame Yayra opened the account as a Vodafone Call Center Agent. The only transaction on Kwame Yayra's account was the initial deposit amount of fifty Ghana cedis (GH¢50). On 8 June, 2024, without any significant activity on his account, an amount of two hundred and seventy thousand six hundred and ten Ghana cedis (GH¢ 270,610) was transferred into Kwame Yayra's account. When questioned by the Bank, as part of its due diligence, Kwame Yayra could not provide any documentation to back his claim that the money was proceeds realised from his investment in Diamond Securities.

Required:

- i) Explain the conduct of Kwame Yayra, in the light of the provisions of the Anti-Money Laundering Act, 2020 (Act 1044). **(4 marks)**
ii) Explain the **THREE (3)** main stages of money laundering. **(6 marks)**

(Total: 20 marks)

QUESTION TWO

- a) Tanga agreed to supply Ntow artisan goods. The contract was reduced into writing. Before signing the agreement, the parties made reference to various trade customs relating to their trade. The parties noted that the supply of goods was dependent on weather conditions. Other relevant factors were also discussed.

When Tanga supplied the goods under the written terms, Ntow drew Tanga's attention to the fact that the goods had been supplied at the rainy season when sales for the goods were unattractive and hence rejected the goods. Tanga refused to listen to Ntow and intended to sue for breach of contract.

Required:

- i) State the *parole evidence rule* in law of contract. (3 marks)
ii) What defence(s) are available to Ntow? (7 marks)
b) Poto advertised her car for sale in the "Bosoo" newspaper and then went on a holiday. While Poto was away, Adjo having seen the advertisement went to look at the car and decided to make an offer for it. Poto's neighbour, Akweley, pretending to act with Poto's authority, entered into negotiations with Akweley and eventually accepted Adjo's offer on Poto's behalf. Akweley has no authority to act in this way. When Poto returned from her holiday, she wrote to Adjo and said she has ratified Akweley's act.

Required:

Advise Adjo whether she is bound by the contract. (10 marks)

(Total: 20 marks)

QUESTION THREE

- a) Banvi made an offer to Zolko for the supply of electrical wares. Within the time frame of the offer Banvi decided to cancel the offer.

Required:

State **THREE (3)** circumstances under which an offer can be deemed to have been terminated such that a purported acceptance cannot convert it into a binding contract.

(5 marks)

- b) In 2020, Mrs. Fakyee, was employed by Sanko Ltd whose head office was in Accra, as a Manageress of the Company's travel agency in Nkawkaw. There was no proper drawn up contract of employment. However, Mrs. Fakyee was to have for her services fifty percent (50%) of the commission income earned by the establishment after deduction of expenses. By October, 2022 she had received nothing by way of remuneration. Meanwhile, she was offered employment by another travel agency. Mrs. Fakyee, therefore, wrote to her employers to terminate her employment with them and to close down the office at Nkawkwa unless she was offered a new and more satisfactory contract. As a result of this threat, the General Manager of the company, who was acting as the Managing Director in the absence of the substantive holder of the post, entered into a new agreement with Mrs. Fakyee.

Required:

In terms of the provisions of the Companies Act, 2019 (Act 992), explain whether the acting Managing Director acted ultra-vires in entering into a new agreement with Mrs. Fakyé.

(10 marks)

- c) You have recently incorporated a company. Per the Companies Act requirements, a person who meets certain requirements need to be appointed as auditor within 3 months. If the person appointed does not qualify, the Registrar may appoint an auditor for that company.

Required:

State **FIVE (5)** conditions under which a person can be disqualified from being appointed as auditor of an incorporated company.

(5 marks)

(Total: 20 marks)

QUESTION FOUR

- a) The rights and duties under the contract of employment are both express and implied. Implied terms are those which are not written but which implied by statute, by conduct or inferred by the court.

Required:

In reference to the Labour Act 2003, (Act 651):

- i) State **THREE (3)** rights of employees. **(3 marks)**
ii) State **THREE (3)** of the statutory duties of employees. **(3 marks)**
iii) State **THREE (3)** duties of employers. **(4 marks)**

- b) The Ghanaian law has modified the rule in **Foss V Harbottle**.

Required:

- i) Under what conditions are members of a Limited Liability Company vested with the right to sue the company? **(4 marks)**
ii) State the persons (officials) of the company with the right to sue for remedy against oppression. **(6 marks)**

(Total: 20 marks)

QUESTION FIVE

- a) Max Nyaa set up a company and had a scholarship to pursue his PhD in Australia. He then transferred part of his share to Alby Ofosu 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 Max Nyaa is back and wants to cancel the special rights of Alby Ofosu but Alby Ofosu 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 Max Nyaa. **(3 marks)**
- b) Briefly explain the stage at which a company is deemed to be finally dissolved in the light of the provisions of the Companies Act, 2019 (Act 992). **(5 marks)**
- c) Explain the liability of Receiver or Manager in respect of contracts entered into by him in the performance of his duties pursuant to the provisions of the Companies Act, 2019, (Act 992). **(5 mark)**

(Total: 20 marks)

SUGGESTED SOLUTIONS

QUESTION ONE

a)

In legal terminology, precedents refer to previous court decisions that serve as a basis for deciding similar cases. There are two types of precedents, namely binding and persuasive.

Binding Precedents:

- Also known as mandatory precedents
- Must be followed by lower courts in the same jurisdiction.
- Set by higher courts in the same jurisdiction e.g. Supreme Court
- Lower courts are obligated to apply the legal principles established in binding precedents to ensure consistency and predictability in the application of the law.

(2 marks)

Persuasive Precedents:

- Also known as non-binding or influential precedents.
- Not mandatory but rather influential in guiding decisions.
- Set by higher court in different jurisdiction or by the same court in different context.
- Lower courts may consider persuasive precedents, but are not obligated to follow them.

(2 marks)

b)

i) Golden Rule

The golden rule of interpretation is a principle used in legal interpretation which states that: A statute or legal document should be construed in a way that gives effect to the intention of the legislature or the parties involved, rather than simply following the literal meaning of the words.

In other words, the Golden rule directs the interpreter to consider the purpose, context and spirit of the law, rather than just its literal wording. This approach helps to:

- Avoid absurdity to or unjust outcomes
- Consider the legislative intent behind the law
- Take into account the context and circumstances surrounding the law's creation.

By applying the Golden Rule, judges, lawyers, and interpreters can ensure that the law is applied in a way that is fair, reasonable and in line with the original intent.

(2 marks)

ii) Mischief rule

The mischief rule is used to determine the exact scope of the “mischief” that the statute in question has set out to remedy, and to guide the court in ruling in a manner which will “suppress the mischief and advance the remedy”.

The rule considers not only the exact wording of the statute but also the legislators’ intention in enacting it. In applying the rule, the court is essentially asking whether parliament in enacting the statute intended to rectify a particular mischief, even though it might not be covered by literal reading of the statute’s wording, namely that if a law prohibits a particular behaviour “in the street” the legislators might or might not have intended the same behaviour on a first floor balcony overlooking the roadway to be covered.

(2 marks)

iii) Eiusdem generis rule

The eiusdem generis rule simply put is: where in a statute or document there are general words following particular and specific words, the general word or words must have their meaning restricted or confined to the meaning as conveyed by the specific words. Thus where the expression like, “hats, underwear, overcoat, gown, shoes, shirts, tie or any other thing.” The general words, “any other thing” following those specific cannot be giving their natural meaning as any material or thing but must be construed as restricted to things such as clothing which is the class or genus suggested by the specific words.

(2 marks)

c)

a) Conduct of Kwame Yayra

- The scenario in this question has to do with suspicion of money laundering on the part of Yayra with respect to account number **070338675** domiciled at the Prime Commercial Bank.
- The sudden and unexpected rise in the money in Yayra’s account even though the initial deposit was Fifty Ghana cedis (GH¢50) was suspicious because Yayra a Vodafone Call Centre Agent only transacted on his account with an initial deposit of Fifty Ghana cedis (GH¢50).
- Since that transaction, and without any significant activity on the account Two Hundred and Seventy Thousand, Six Hundred and Ten Ghana cedis (GH¢270,610) was on 8th June, 2024, almost two and a half months after his initial deposit was deposited into his account.
- When the Bank, which is an accountable institution by virtue of Section 28 of the Anti-money Laundering, 2020 (Act 1044) questioned Yayra in line with Yayra’s due diligence. Yayra could not convince the Bank with any supporting documents even though he claimed the money was proceeds from his investment.

- From the scenario Yayra could have obtained the money from the proceeds of crime that has been laundered into his account since he could not properly explain when questioned by the Bank
- Having conducted its due diligence pursuant to Section 30 of the Anti-Money Laundering Act, 2020 (Act 1044) the Bank is required by law to submit a suspicious transaction report pursuant to Section 38(1) of the Act, 2020, (Act 1044) to the Financial Intelligence Centre for action.
- Generally, the conduct of Yayra in terms of the provisions of the Anti-money Laundering Act gives cause for suspicion of Money Laundering.

(4 marks)

ii) The three stages are; Placement, Layering and Integration

- **Placement** is when “dirty money” is introduced into the financial system. This is often done by breaking up large amounts of cash into less conspicuous smaller sums to deposit directly into a Bank account or by purchasing monetary instruments such as cheques or money orders that are collected and deposited into accounts at other locations. Other placement methods include:
- Adding illicit cash from a crime to legitimate takings of a business, particularly those with little or no variable costs.

False invoicing.

Smurfing, where amounts of money below the anti-money laundering threshold are inserted into bank accounts or credit cards and used to pay expenses among others.

- Taking small amounts of cash below the customs declaration threshold abroad and lodging it in foreign bank accounts before being re-sent.

(2 marks)

Layering

- In the layering stage, the launderer moves money through a series of financial transactions with the goal of making it difficult to trace the original source.
- The funds could be channeled through the purchase and sale of investments, a holding company, or simply moved through a series of accounts at banks around the globe.
- Widely scattered accounts are most likely to be found in the jurisdictions that do not cooperate with Anti Money Laundering investigations. In some instances, the launderer could disguise the transfers as payments for goods or services or as private loan to another company, giving them a legitimate appearance.

(2 marks)

Integration

- The integration stage of money laundering is the final step in the laundering process. This is when the launderer attempts to integrate illicitly obtained funds into legitimate financial system. To use the funds to buy goods and services without attracting attention from law enforcement or tax authorities, the criminal may invest in real estate, luxury assets or business ventures.

- Common integration tactics include:

Fake employees, namely a way of getting the money back out. Usually paid in cash collected.

Loans, namely to directors or shareholders which will never be repaid.

Dividends, namely paid to shareholders of companies controlled by criminals.

(2 marks)

(Total: 20 marks)

QUESTION TWO

a)

- i) **Parole evidence:** The parole evidence rule as a general rule is to the effect that where parties have formally recorded the whole of their agreement in writing, the written document is prima facie taken to be the whole contract and everything beyond the written document is excluded. Thus no extrinsic evidence will be admitted to prove that some particular term, which had been verbally agreed upon, had been omitted from a written instrument constituting a valid and operative contract between the parties.

(3 marks)

ii)

- That Ntow's rejection of the goods by virtue of the fact that it was supplied during the rainy season, which could undermine sales of the goods, is untenable because the oral demands being made by Ntow amounts to varying, contradicting, adding to the terms of the written agreement.
- Ntow has no defence because there is no breach of the written terms of agreement.

(7 marks)

b)

- Agency by ratification is a legal principle that deals with the creation of an agency relationship through the acceptance or ratification of the unauthorized act done by a person who is not an agent.
- Where a person without being authorized, purports to act as agent, or a duly authorized agent acts beyond his/ her authority, the principal may elect to ratify or disown such acts. A ratification by the principal binds the principal

Rules Governing Agency by Ratification

- An act will be regarded as a ratification only if the principal had a free choice whether to do it or not.
- The agent must purport to act as an agent.
- The person ratifying must have contractual capacity to make the contract both at the time the contract is made and at the time of ratification.
- The principal must be identified by a third party at the time the contract is made
- Ratification must be express or implied.

From the above scenario Poto having ratified the contract is bound by the contract.

(10 marks)

(Total: 20 marks)

QUESTION THREE

a) Circumstances under which an offer can be deemed to have been terminated

- Revocation
- Rejection
- Lapse of time
- Conditional offer
- Operation of law
- Death
- Acceptance
- Illegality

(Any 3 points @ 1.33 marks each = 5 marks)

b)

- The first leg of the ultra-vires doctrine happens if a company acts outside its authorised object or business. If there is a provision of that in the company's constitution
- The second leg of the ultra-vires doctrine is what happens if an organ, officer or agent of the company acts outside the powers granted him/her as the case may be by the constitution to that organ, officer or agent even though the act that was done was performed within the object or authorised business of that company
- In this scenario Mrs. Fakye was employed as a Manageress of the company's travel agency even though Mrs. Fakye was to have for herself 50% of the commission income earned by the agency she never received any remuneration
- Having been offered a new job Mrs. Fakye wrote to her employers to terminate her employment and close down the office unless she was offered a new or more satisfactory contract.
- The General Manager who was acting as the Managing Director in the absence of the substantive holder of the post intervened and entered into a new contract with Mrs. Fakye
- The action of the acting Managing Director was performed within the object or authorised business of the company and for that reason he did not act ultra-vires because as the General Manager acting for the time being as the Managing Director he had the authority to enter into the agreement with Mrs. Fakye.
- As a pro-term acting Managing Director, the General Manager had the general authority to act in the best interest of the company to prevent the company's business from being closed.

(10 marks)

- c) A person is disqualified for appointment as an auditor, if that person is
- (a) an officer of the company or of an associated company;
 - (b) a partner of, or in the employment of, an officer of the company or of an associated company;
 - (c) an infant;
 - (d) found by a court of competent jurisdiction to be a person of unsound mind;
 - (e) a body corporate, except that a member of an incorporated partnership may be appointed in the manner provided by subsection (2) of section 139;
 - (f) one in respect of whom an order has been made under section 177 so long as the order remains in force unless leave to act as an auditor of the company concerned has been granted by the Court in accordance with that section;
 - (g) an undischarged bankrupt, unless that person has been granted leave to act as an auditor of the company concerned by the Court by which the adjudication as bankrupt was made; or
 - (h) for the time being disqualified from acting as an auditor of a company by order of the Registrar under subsection (4).

(5 marks)

Source: Section 138(2) of the Companies Act, 2019 Act 992

(Total: 20 marks)

QUESTION FOUR

a)

i) Section 10 of the Labour Act, 2003 (Act 651) states as follows:

Rights of a Worker

The rights of a worker/employee include the right to

- Work under satisfactory, safe and healthy conditions;
- Receive equal pay for equal work without distinction of any kind;
- Have rest, leisure and reasonable limitation of working hours and a period of holiday with pay as well as remuneration for public holidays;
- Form or join a trade union;
- Be trained and retrained for the development of skills; and
- Receive information relevant to the work of the worker.

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

ii) Section 11 of the Labour Act, 2003 Act (651) provides as follows;

The **duties** of a worker in a contract of employment or collective agreement, include the duty to

- Work conscientiously in the lawfully chosen occupation;
- Report for work regularly and punctually;
- Enhance productivity;
- Exercise due care in the execution of assigned duty;
- 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.

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

iii) Section 9 of the Labour Act, 2003 (Act 651) spells out the **Duties** of the Employer:

- To provide work and appropriate materials, machinery and tools, equipment
- To pay agreed remuneration per the contract of employment
- To take all practical steps to ensure that the worker is free from risk and injury
- Furnish the worker with a copy of the contract of employment and also to protect the interest of the workers
- To train and retrain the worker.

(Any 3 points @ 1.33 marks each = 4 marks)

b)

i) Conditions under which members of a Limited Liability Company are vested with the right to sue the company.

Ghana has modified the rule in *Foss v Harbottle*. Under the common law the rule in *Foss v Harbottle* is considered in two parts

1) **The proper plaintiff rule** - Under that rule, where a wrong is committed against a company the only person having capacity to sue is the company itself.

- 2) **Internal Management rule** – This is where there are irregularities in the company which can be cured by the majority through an ordinary resolution in that case the court will not interfere.
- However, in the case of *PS Investment Ltd v Central Regional Development Corporation* the board went ahead amidst protestation from members of the company and sold 40% of its shares to Unilever.
 - The plaintiff in that case protested because they thought the shares of TOPP should have first been offered to them as required by TOPP.
 - In an action brought by the plaintiff the HC relied on the rule in *Foss v Harbottle* and dismissed the plaintiff action
 - However, the SC speaking through JSC Dotse, stated as follows “the rule in *Foss v Harbottle* or majority rule is one of the common law principles that have been incorporated into our Companies Code, Act 179 by Section 7 of the Companies Code, the rule as a common law principle is to continue in operation in Ghana except where it is inconsistent with the operations of the Act.”
 - So the overall effect of the statutory provision is that the proper plaintiff leg has been whittled away significantly.
 - However, a member is allowed to bring an action where it is alleged that a member’s right have been violated.
 - The Act allows members to bring representative action
 - Under the Act members at a general meeting have the power to institute an action in the name of the company if the directors refuse to do so.

Conditions under which members are vested with right to sue.

- Action by a member for wrong affecting the member
- Action by a member for wrong affecting the company
- Action to enforce breach of duties by directors
- Action against illegal or irregular activity
- Action against oppression

(4 marks)

ii) Right to sue for the remedy of oppression

Remedy against oppression

Section 219 of Act 992. (1) A member or debenture holder of a company or, in a case falling within section 234, the Registrar may apply to the Court for an order under this section on the ground that

- (a) the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders or in disregard of the proper interests of those members,

shareholders, officers, or debenture holders of the company; or Companies Act, 2019, Act 992

- (b) an act of the company has been done or is threatened or that a resolution of the members, debenture holders or a class of them has been passed or is proposed which unfairly discriminates against, or is otherwise unfairly prejudicial to, one or more of the members or debenture holders.

(6 marks)

(Total: 20 marks)

QUESTION FIVE

a)

i) **Class rights** is rights that attach to a clearly defined class of share of share (e.g. preference shares) or are conferred upon a person for so long as he is a holder of any shares.

(3 marks)

ii) Circumstances under which class rights can be varied

- 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.
- 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.
- 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.
- 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.
- 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.

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

iii) Max Nyaa cannot only vary the right of Alby Ofosu based on the consent but such variation calls for other provisions in section 50 of Act 992.

(3 marks)

b) **Procedure on resolution for liquidation 276.**

- A company may be wound up by way of private liquidation if,
 - (a) the company resolves by special resolution that it shall be wound up by way of private liquidation, and
 - (b) before the date of the resolution, an affidavit declaring that the company is solvent is made in accordance with section 275.
- The private liquidation commences at the time of the passing of the resolution.
- Where a company passes a resolution for a private liquidation the company shall, within fourteen days after the passage of the resolution, send to the Registrar a

copy of the resolution and the Registrar shall publish the resolution in the Companies Bulletin.

- After publication in the bulletin the Registrar proceeds to strike the name of the company from the company registrar, and gazetting.

(5 marks)

c) Liabilities of receivers and managers on contracts Section 269 of Act 992.

- A receiver or manager of a property or an undertaking of a company is personally liable on a contract entered into by the receiver or manager except as the contract otherwise expressly provides.
- As regards contracts entered into by the receiver or manager in the proper performance of the functions of office, the receiver or manager, subject to the rights of a prior incumbrance, is entitled to an indemnity in respect of liability on those contracts out of the property over which the appointment was made to act as receiver or manager.
- A receiver or manager appointed out of Court is entitled, as regards contracts entered into by the receiver or manager with the express or implied authority of those making the appointment, to an indemnity in respect of liability on those contracts from those making the appointment to the extent to which the receiver or manager is unable to recover in accordance with subsection (2).

(5 marks)

(Total: 20 marks)