**NOVEMBER 2024 PROFESSIONAL EXAMINATIONS**

**BUSINESS & CORPORATE LAW (PAPER 1.3)**

**QUESTIONS AND MARKING SCHEME**

**QUESTION ONE**

1. Gyabaa is a Senior Staff at Manopor Company LTD. The Code of Ethics of the company prohibits drinking alcoholic beverage during working hours. As part of the company’s culture, assorted drinks including alcoholic beverages are made available to all staff once every two months for three hours before the closing hours with no limits on how much each member of staff can consume. After one of such drink ups, Gyabaa, whilst driving home, had an accident and injured another road user. The cause of the accident was attributed to excess intake of alcohol by Gyabaa. Ahorlu, the injured victim is claiming he will take the matter to the Supreme Court.

 **Required:**

1. Can the management of Manopor Company LTD be held liable for the accident caused by Gyabaa? **(5 marks)**
2. Explain if Ahorlu can sue the company at the Supreme Court. **(5 marks)**

 b) Alidu is a board member of Puduo Company LTD, a limited liability company with 5% shareholding by the Ghana Government. Alidu was appointed to the board three years ago by the Founder/Executive Chairman and majority shareholder of the company, Alhassan Morro. In accordance with the regulations of the company, he is entitled to appoint five of the nine-member board. Two of the board members represent worker groups and the other two come from other shareholders including the government. Alidu consented in writing to his appointment but the Minister for Trade just announced the revocation of Alidu’s appointment to the board. Alhassan Morro called Alidu to inform him that the government’s announcement was null and void and should be ignored.

**Required:**

1. Explain whether the Minister for Trade was justified in nullifying the appointment of Alidu.

 **(6 marks)**

1. What **TWO** remedies, if any, are available to Alidu in the circumstance of this case?

 **(4 marks)**

 **(Total: 20 marks)**

**QUESTION TWO**

1. On 26 February 2024, Shama PLC, a public limited liability company trading on the Ghana Stock Exchange sent a notice to its shareholders inviting them to an Annual General Meeting (AGM) on 2 March 2024. The notice simply states that the ‘purpose is to transact the ordinary business’.

Naami is a shareholder of Shama PLC and is very disturbed about the vagueness of the notice. She is also not satisfied with the performance of the company and is seeking to requisition for a special resolution to liquidate the company.

**Required:**

Advise Naami on the procedure for private liquidation. **(10 marks)**

1. Darkoa lives in the United States of America (USA) and asked his long-time friend, Gyankoroma to register a company for her in Ghana. Gyankoroma spent GH¢20,000 on documentation, filling and processing, (with the issuance of receipts being in Gyankoroma's name). Upon the request of Darkoa, Gyankoroma rented an office premises for one year at GH¢40,000 with the receipt in the name of the newly formed company.

Darkoa just returned from USA to start operations. Darkoa discovered that the rental agent gave GH¢4,000 to Gyankoroma as inducement for the office deal. Darkoa appointed Gyankoroma as head of operations and refused to pay the registration expenses on the basis that Gyankoroma's monthly salary as head of operations is more than GH¢20,000 and those expenses should be borne from the secret profits Gyankoroma had earlier enjoyed.

 **Required:**

Based on your knowledge in pre-incorporation contracts, advise the parties. **(10 marks)**

 **(Total: 20 marks)**

**QUESTION THREE**

1. Alahey, an employee of Gyammea Ventures has had his appointment terminated following allegations of financial impropriety. In his response to a query for the alleged offence, he admitted committing the offence and pleaded for leniency.

For the offence of financial impropriety, the corresponding penalty should have been dismissal, as per the “Employee Handbook” of the company.

On account of his plea, Management decided to terminate the relationship with loss of terminal benefits. Alahey is minded to sue Gyammea Ventures for unfair termination and has approached you for advice.

**Required:**

With your understanding of the Labour Act, 2003, (Act 651), explain to Alahey the basis for severance of the employment relationship that can constitute unfair termination.

 **(10 marks)**

1. Under what circumstances will the provision of financial assistance by a company for the purchase of its own shares be permitted? **(10 marks)**

 **(Total: 20 marks)**

**QUESTION FOUR**

1. Ozoozo is a cargo driving agent of Oforiwa, a trader. Ozoozo loaded a truck of yam from Kutunada for delivery to Oforiwa in Accra. In the course of the journey and at Butako township, a curfew was imposed as a result of chieftaincy issues in the traditional area. He tried to communicate with Oforiwa but he was unable to do so due to network challenges. Ozoozo found it useful to off-load the cargo of yam and dispose it of by sale. He accounted for the sale but Oforiwa became furious.

**Required:**

Advise Oforiwa. **(5 marks)**

1. As part of the arrangements in the home of the Ananses, the husband agreed to pay the school fees of the children. The wife decided to use part of her earnings to manage the house hold chores including provision of food. The wife had observed for some time that the husband had not performed his side of the obligation leading to arrears of school fees. She has therefore chosen to sue the husband in a court of law to compel her husband to perform his duty.

**Required:**

Advise her. **(5 marks)**

1. Amevo is a minor and a professional dancer. He entered into a contract to perform series of dances for GH¢5,000 an hour a night of performance. The rule as accepted was that failure to perform in one series without reasonable excuse will incur a percentage deduction from his earnings at subsequent performance. Amevo failed to perform at one of the series. His attention was drawn to the rule. He now thinks the deduction should not be made.

**Required:**

Advise Amevo. **(5 marks)**

1. Disclosure of material fact is important in insurance transaction.

**Required:**

What is utmost good faith in insurance? **(5 marks)**

 **(Total: 20 marks)**

**QUESTION FIVE**

1. Yaw Perbi, the CEO of your company, is preparing for a top management meeting scheduled for 1 December 2023. One of the issues to be discussed is the mode of holding the next shareholders' meeting. There are views that the Annual General Meeting (AGM) must be in-person so that members can vote on resolutions to be passed. Others believe that the AGM should be virtual or hybrid. Some Shareholders believe that the items on the agenda are too many and that they would need two days to have a meaningful discussion. Kwasi Mensa, a Shareholder has decided not to attend the AGM if it is organised virtually.

**Required:**

As a business law student, your boss has requested you to explain to him the following:

1. The requirement of the Companies Act, 2019 (Act 992) on the interval between which AGMs are to be held. **(3 marks)**
2. **THREE** things that should be covered in the notice for an AGM. **(3 marks)**
3. **TWO** consequences of not holding an AGM in accordance with the Companies Act.

 **(4 marks)**

1. Justify whether or not decisions taken at the AGM will be binding on Kwasi Mensa.

 **(5 marks)**

1. The Registrar of Companies may refuse to register a firm/partnership.

**Required**

Under what conditions will the Registrar of Companies in his opinion refuse to register a firm/partnership?  **(5 marks)**

 **(Total: 20 marks)**

**SUGGESTED SOLUTION**

**QUESTION ONE**

a)

1. Every individual is responsible for his own tort. However, in the employee/worker relationship, only the worker can make their employer vicariously liable for their torts. The privilege accrues to the worker in the course of lawful duty. The privilege does not avail a worker who is on the frolic of his own.

In the present case the code of ethics bars a worker from taking alcoholic beverage during working hours. Despite the provision of assorted drinks that included alcoholic beverages, the drink up privilege does not erode the code of ethics. The attribution of the accident to excess drink indicates his violation of the code of conduct. He cannot invoke the principle of vicarious liability to his advantage. Gyabaa drunk in excess on the frolic of his own.

The Management of Manopor Company LTD therefore, bears no liability for Gyabaa’s accident and injury to Ahorlu.  ***(5 marks)***

1. The Supreme Court is the apex court of Ghana. Under article 129 of the 1992 Constitution, the Supreme Court is the final court of appeal and shall have such appellate and other jurisdiction as may be conferred on it by the constitution or by any other law. While the Supreme Court has appellate jurisdiction, and exclusive jurisdiction in other matters, and judicial review, in the current case, Ahorlu cannot sue in this Supreme Court. ***(5 marks)***

b)

i)

* The Regulations of a company may provide for the appointment of a director or directors by a class of shareholders, debenture holders, creditors, employees or any other person.
* The regulations registered is a contract under seal and binds all members, officers and the company until amended.
* So far as Puduo Company regulations gives Alhassan Morro the right to appoint five directors including Alidu, then Alidu’s directorship cannot be revoked by government.
* Government has no sole authority under the regulations to dissolve the BOD or appoint or remove any BOD member except those that nominations made by government.
* Government’s right over appointment or removal of directors can only be exercised with other shareholders regarding the two slots allocated to them by the regulations.
* A person shall not be appointed a director of a company unless that person has, prior to the appointment, consented in writing to be appointed.
* By giving a written acceptance on his appointment, Alidu’s appointment complied with both Companies Act and Puduos’s regulations.
* The Companies Act provides for removal of directors which excludes announcement by government.
* In accordance with the Companies Act, a company may by ordinary resolution at a general meeting remove from office all or any of the directors despite anything in its Regulations or in an agreement with the director. A resolution to remove a director shall not be moved at a general meeting unless notice of the intention to move it has been given to the company not less than thirty-five days before the meeting at which it is to be moved.
* The Companies Act provides that if legal proceedings are instituted by a person, that person shall sue in a representative capacity on behalf of that person and any other members of a class.

 Alidu should believe Alhassan Morro as the government announcement is null and void and should be ignored. ***(4 points for 1.5 marks each = 6 marks)***

 ii)

• Alidu can resign, be removed, vacate his position if he becomes incompetent in any way under the Act (e.g., insane etc) or under the regulations (e.g. director’s share qualification, if required). Since his competence is not being challenged, Alidu and Alhassan Morro can enforce their rights if the government persist.

 • Alidu should believe Alhassan Morro as the government announcement is null and void and cannot be effective since procedurally his appointment has not been terminated as a director. The directive should therefore be ignored.

• The Companies Act provides that if legal proceedings are instituted by a person, that person shall sue in a representative capacity and on behalf of any other members of that class. A court action for prohibition can be also be sought by Alhassan Morro to stop the government from further attempts to unilaterally remove Alidu as a Director.

 • Alidu remains a director and can seek redress in court to nullify the government’s announcement. ***(2 points @ 2 marks each = 4 marks)***

 ***(Total: 20 marks)***

**QUESTION TWO**

1. **Procedure for private liquidation**
2. Affidavit for solvency.

The affidavit is deposed to by the directors of the company.

275. (1) Where it is proposed to wind up a company by way of a private liquidation, the directors of the company or, in the case of a company having more than two directors, the majority of the directors shall, at a meeting of the directors, make an affidavit to the effect that they have made a full enquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company will be able to pay its debts and liabilities in full within a period of not more than twelve months from the commencement of the winding up that may be specified in the affidavit.

An affidavit made does not have effect for the purposes of the Companies Act, unless,

a) it is made within five weeks immediately preceding the date of the passage of the resolution for the winding up of the company by way of private liquidation and is delivered to the Registrar for registration on or before that date; and

 b) it embodies a statement of the assets and liabilities of the company at the latest practicable date before the making of the affidavit.

1. Special resolution:

The company resolves by special resolution that it shall be wound up by way of private liquidation. 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.

1. Appointment of a liquidator.

The resolution for the private liquidation of a company shall include the appointment as liquidator of a person named in the resolution and the resolution is not valid for the purposes of this Part unless the person named has previously consented in writing to the appointment.

1. Dissolution or striking off the company’s name from the register.

Where the Registrar is satisfied that the winding up of the company is complete, the Registrar shall strike the name of the company off the register and publish the record of the strike off in the Companies Bulletin. The company is dissolved as at the date of the publication of the notification in the Companies Bulletin.  ***(10 marks)***

b)

Gyankoroma and Darkoa could be deemed promoters. They owe the company a fiduciary duty and good faith.

All transactions entered into prior to formations must be ratified by the company upon full disclosure to take the benefits until ratification or any agreement to the contrary, the person is bound by the transaction/benefits. The company can rescind such transactions, sue to recover any loss or damage etc. The documentation receipts should have appropriately been in the company name or at least in Darkoa's name. All documents/transactions should have been signed for and on behalf of or executed in the name of the company.

Gyankoroma is entitled to reimbursement of the GH¢20,000 documentation expenses. Unless by mutual agreement, the employment or monthly salary is not payment for legitimate incorporation expenses. The company can recover the GH¢2,000 paid to Gyankoroma by the rental agent. It is a secret benefit and breach of her fiduciary duty. Gyankoroma should have made a full disclosure to the company for an independent board to allow her to keep it.

The rental was done after incorporation hence not a pre-incorporation contract, but could be rescinded based on Gyankoroma’s inducement fee/profit. ***(10 marks)***

 ***(Total: 20 marks)***

**QUESTION THREE**

a)

Section 8 (a), 11 (e) and 9 (e) of Labour Act, 2003, (Act 651)

* The rights of an employer include the right to employ a worker, discipline, transfer, promote and terminate the employment of the worker;
* It is the duty of an employer to provide and ensure the operation of an adequate procedure for discipline of the workers;
* The duties of a worker in any contract of employment include the duty to obey lawful instructions regarding the organisation and execution of his or her work.

Section 15 (e) (iii) & 15 (a) of Labour Act, 2003, (Act 651)

A contract of employment may be terminated, by mutual agreement between the employer and the worker; and by the employer because of the inability of the worker to carry out his or her work due to

1. sickness or accident;
2. the incompetence of the worker; or
3. proven misconduct of the worker.

The contract was renegotiated between Alahey and the employer

Section 62 (b) of Labour Act, 2003, (Act 651)

A termination of a worker’s employment is fair if the contract of employment is terminated by the employer on the ground that there is proven misconduct of the worker. The termination was fair.

**Decided cases:**

***Aboagye v Ghana Commercial Bank, NLC v Ghana Telecommunication Ltd.***

 ***(10 marks)***

b)

Circumstances under which provision of financial assistance by a company for the purchase of its own shares may be permitted

* Commission or brokerage for subscription for shares if authorized by the constitution - not exceeding 10% of the price of shares
* Lending money as part of its ordinary business to a customer who uses the funds to purchase its shares.
* Provision of money pursuant to any scheme for the time being in force for share purchase for the benefits of persons genuinely in employment including salaried directors.
* The company may make loans to persons other than directors in the genuine employment.
* The use of lawful dividend by a shareholder to discharge any liability on his shares.

 ***(10 marks)***

 ***(Total: 20 marks)***

**QUESTION FOUR**

1. This scenario refers to agency of necessity (operation of law). For the agency to be operative, certain requirements have to be satisfied. There must be a pre-existing legal relationship of principal and agent. An emergency situation must have arisen. It is impossible for the agent to contact the principal to gain instructions. The act of the agent is done in the best interests/commercial interests of the principal.

In the current scenario, as a result of the curfew imposed at Butako, and the inability to communicate with the principal, Ozoozo found it expedient in the commercial interests of the principal to dispose of the tubers of yam by sale, which he accounted to Oforiwa.

Ozoozo’s action satisfies the ingredients required for the agency of necessity.  ***(5 marks)***

1. Agreements are made every day in domestic and social life, where the parties do not intend to invoke the assistance of the courts should the engagement not be honoured. The agreement between the Ananses is domestic arrangement. The general rule being the presumption that in domestic agreement the parties do not intend to establish legal relations. The presumption is however rebuttable. One of such agreements is between husband and wife which should not be attended by legal consequences**.** The wife of Ananse will not succeed if she chooseslegal action**. *(5 marks)***

1. The scenario refers to a minor who has entered into a contract of beneficial service or apprenticeship contracts. As a general rule, where a minor enters into a contract, the contract is not binding. However, under contract of necessaries, and that of beneficial service that includes education, training or instruction in a trade or profession that become binding. In the Amevo case the contract is of beneficial service. The contract is of benefit to Amevo and it being a contract of beneficial service to him as a professional dancer, the rule is binding. He must therefore, pay. ***(5 marks)***

1. The principle of utmost good faith, uberimae fidei, states that the insurer and the insured must disclose all material facts before the policy inception. Here the duty to disclose all material facts arises from the fact that many of the relevant circumstances are within the exclusive knowledge of one party and it would be impossible for the insurer to obtain the facts necessary for him to make a proper calculation of the risk he is asked to assume without this knowledge. The principle applies to both life insurance and general insurance policies. ***(5 marks)***

 ***(Total: 20 marks)***

**QUESTION FIVE**

a)

i) The First Annual General Meeting should be within 18 months of incorporation.

 Not more than 15 months shall elapse between the date of one annual general

 meeting and the next. ***(3 marks)***

ii) A valid notice of meeting for an annual general meeting requires that the notice:

* Must be in writing.
* Must be given to every person entitled to receive it.
* Must be adequate and properly given in accordance with the Company Constitution or the Act.
* Must be clear and explicit, and where a member is entitled to appoint a proxy to attend and vote in his/her stead, the notice must contain with reasonable prominence a statement to this effect and also that the proxy need not be a member of the company.
* Must specify the place, date, hour of the meeting, and the general nature of the business to be transacted at the meeting.
* Where the meeting is to consider a special resolution, the notice must set out the terms of the resolution. ***(Any 3 points @ 1 mark each = 3 marks)***

iii) The Registrar, per Section 157, when the AGM has not been held in the normal course and the Registrar, on his/her own motion, or application of any member or officer of the company, may call or direct the calling of an AGM and give ancillary or consequential directions as he deems fit. The court, under Section 162, may order that a general meeting be called, held or conducted and may give such ancillary or consequential directions as it thinks fit. ***(4 marks)***

iv) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by a person entitled to receive notice shall not invalidate the proceedings at that meeting. Kwasi Mensa therefore, stays bound by the decisions from the Annual General Meeting. ***(5 marks)***

b)

* The partnership is not one which is registrable under the Incorporated Private Partnerships Act, 1962 Act 152.
* Any of the businesses which the partnership has been carrying on, or is to carry on is unlawful.
* The name of the firm is misleading or undesirable.
* Any of the partners is an infant or of unsound mind or a person who, within the preceding five years has been charged with fraud or dishonesty whether convicted or not, in connection with trade or business or is an undischarged bankrupt OR
* Statement is incomplete, illegible, inaccurate, irregular or on paper insufficiently durable to be suitable for registration.

 ***(5 marks)***

 ***(Total: 20 marks)***