



Botswana Institute of Chartered Accountants

Law

Examination Paper

Date: 09 June 2017
Time: 13:30pm -15.00pm
Time allowed: 1 hour 30 minutes

Instructions to Candidates

There are 50 questions in this paper with equal marks, together adding up to 100 marks. You should complete them all.

The questions are of two types;

- Multiple choice- select 1 from 4 options A,B,C or D
- Multi-part multiple choice- select 1 from 2 or 3 options, for two or more question parts

Note: Do not open this paper unless you are told to do so by the invigilators.

1. As regards the Constitution of Botswana, are the following statements true or false?

Laws made by Parliament are subordinate to the Constitution

- A. True
- B. False

The Constitution cannot be amended

- A. True
- B. False

2 Marks

2. As regards judicial precedent, which of the following is correct?

- A. Obiter dicta is the most important part of a precedent
- B. The ratio decidendi of the Court of Appeal is not binding on the High Court
- C. The ratio decidendi of the High Court is binding on the Court of Appeal
- D. The ratio decidendi of the High Court is not binding on the Industrial Court

2 Marks

3. Which of the following statements is or are correct as regards subsidiary or delegated legislation?

- i. It should not seek to override or be inconsistent with the principal legislation or Act
 - ii. It is made by the Court of Appeal
 - iii. Courts can declare it unconstitutional
- A. (i) only
 - B. (i) and (ii)
 - C. (i) and (iii)
 - D. (i) (ii) and (iii)

2 Marks

4. Which of the following courts does not set judicial precedent?

- A. The High Court
- B. The Court of Appeal
- C. The Industrial Court
- D. The Regional Magistrates Court

2 Marks

5. In the interpretation of statutes, which of the following statements are correct?
- (i) The aim is to find the intention of Parliament
 - (ii) The golden rule removes the absurdity arising from of an application of the literal rule
 - (iii) The literal rule is the preferred method of interpretation unless it leads to an absurd result
- A. (i) only
 - B. (ii) only
 - C. (iii) only
 - D. (i), (ii) and (iii)
- 2 Marks
-

6. Kgosi is interested in buying what he calls an 'accident-free' car. Joseph sells his car to Kgosi fully aware that Kgosi is looking for an accident-free car. Joseph's car was once involved in a serious accident, a fact which Joseph does not disclose to Kgosi. Which of the following statements is or are correct?
- (i) The contract between Kgosi and Joseph is void
 - (ii) The contract between Joseph and Kgosi is voidable
 - (iii) Kgosi cannot sue for rescission of the contract
- A. (i) only
 - B. (ii) only
 - C. (i) and (ii)
 - D. (iii) only
- 2 Marks
-

7. Maria is an auctioneer. At an auction taking place in Mochudi, some of the goods have a reserve price while others do not. In this regard, which of the following statements is correct?
- A. Maria is the offeror of goods with a reserve price
 - B. Maria is the offeror of goods without a reserve price
 - C. Maria is the offeree of goods with a reserve price only
 - D. Maria is the offeree of all goods, with or without a reserve price
- 2 Marks
-

8. As regards terms of a contract, are the following statements true or false?

Express terms are terms agreed by the parties

- A. True
- B. False

Parties to a contract may be bound by terms they have not expressly agreed about

- C. True
- D. False

2 Marks

9. Thabile has agreed with Ahmed that she will purchase Ahmed's tractor. According to the agreement, delivery of the tractor by Ahmed and payment of the price by Thabile will take place in four months' time. Sometime before delivery and payment, Ahmed informs Thabile that he has found a better price for the tractor and that the agreement between the two parties is over. Under the circumstances, which of the following statements is the correct legal position?

- (i) Thabile can sue Ahmed for breach of contract immediately
- (ii) Thabile can only sue Ahmed after four months
- (iii) Ahmed is in actual breach of contract

- A. (i) only
- B. (ii) only
- C. (iii) only
- D. (i), (ii) and (iii)

2 Marks

10. Which of the following category of damages are assessed or quantified by the court?

- A. General damages and nominal damages
- B. Nominal damages only
- C. Liquidated damages only
- D. Liquidated damages and punitive damages

2 Marks

11. Which of the following remedies for breach of contract attempts to restore a party to their pre-contract position?

- A. Specific performance
- B. Interdict
- C. Rescission
- D. Damages

2 Marks

12. Which of the following terms means that a contract is binding on the parties to the contract?

- A. Exclusion clause
- B. Privity of contract
- C. Contra proferentem
- D. Consensus ad idem

2 Marks

13. Lesego has several farms in Kweneng District. She has agreed to sell one of her farms to Duduetsang. The parties have signed a written contract that was drafted by an attorney in Molepolole. For reasons unknown to Duduetsang, Lesego has refused to sign documents for the transfer of the property. Her refusal is clearly inconsistent with the agreement. Which of the following remedies would achieve the intention that the parties had when they entered into the contract?

- A. Damages
- B. Interdict
- C. Rescission
- D. Specific performance

2 Marks

14. As regards agency relationships, are the following statements true or false?

In agency by ratification, the contract between the principal and the third party is binding from the date of ratification.

- A. False
- B. True

In agency by estoppel, the principal is estopped from denying the validity of a contract with the third party

- C. True
- D. False

2 Marks

15. Moyo, Ntabeni and Mosime are members of a close company known as Global Tours CC. The three members are aware that they should only enter into contracts that are within the objects of the company. In his capacity as a member of the company, Ntabeni enters into a lawful contract with Molebatsi which is outside the objects of the company. Molebatsi is not aware of the violation of Ntabeni's authority. Under the circumstances, which of the following statements is correct?

- (i) The contract is binding on Global Tours CC
 - (ii) In the event of breach of contract, Molebatsi has no claim against Global Tours CC because Ntabeni knowingly acted outside the objects of the company
 - (iii) In the event of breach of contract, Molebatsi's has no claim against Ntabeni nor Global Tours CC
- A. (i) only
B. (i) and (ii)
C. (i), (ii) and (iii)
D. (iii) only
- 2 Marks
-

16. As regards the distinction between a delict and a breach of contract, are the following statements true or false?

The same conduct may lead to contractual liability as well as delictual liability

- A. True
B. False

A person may commit a delict without being aware of the unlawfulness of his conduct

- C. False
D. True
- 2 Marks
-

17. In the delict of negligence, which of the following refers to an enquiry of the remoteness of damages sustained by the claimant?

- A. Res ipsa loquitur
B. Legal causation
C. Contributory negligence
D. Factual causation
- 2 Marks
-

18. In which of the following commercial relationships may vicarious liability not arise?

- A. Employer and employee relationship
- B. A relationship between partners
- C. Banker and customer relationship
- D. Principal and agent relationship

2 Marks

19. Lefika is a shareholder of a company listed on the Stock Exchange. The auditor of the company prepares an audit report on the financial statements of the company. The financial statements suggest that the company is in a very sound financial position. The auditor's opinion is that the financial statements are free from material misstatements. On the basis of the audit report, Lefika increases his shares by buying an additional 1,000 shares. After three months, it turns out that the auditor was grossly negligent. Since that discovery, the shares of the company have lost 50% of their value. Under the circumstances, are the following statements true or false?

Lefika can successfully sue the auditor for the loss of 50% value of his shares

- A. True
- B. False

The auditor would rightly be sued for negligence by the company

- C. True
- D. False

2 Marks

20. In which of the following forms of businesses does a member have the right to participate in the management of the business?

- A. A partnership and a close company
- B. A close company and a public company limited by shares
- C. A private company limited by shares and a public company limited by shares
- D. A company limited by guarantee and a partnership

2 Marks

21. As regards companies incorporated under the Companies Act, are the following statements true or false?

The company, and not its members, has limited liability

- A. True
- B. False

In a close company, the liability of members is unlimited

- C. False
- D. True

2 Marks

22. Southern Carriers Ltd is the holding company of Good Times Travel Ltd. Dube, a former employee of Good Times (Pty) Ltd, is owed P 6,000 by the company. Notwithstanding many promises to pay Dube, Good Times (Pty) Ltd has failed to honour those promises. Dube cannot understand why the company is not paying him although it is making huge profits. Under these circumstances, are the following statements true or false?

The kind of claim Dube has against the company is not a ground for winding up the company

- A. True
- B. False

The veil of incorporation of Good Times Travel Ltd may be lifted so that Southern Carriers Ltd is compelled to pay Dube

- C. False
- D. True

2 Marks

23. Mpho and Katlego are executive directors of MPK (Pty) Ltd. In the recent past, the company has been going through acute financial difficulties. A creditor has applied for winding up of MPK (Pty) Ltd. The High Court has appointed Kabo as the liquidator of MPK (Pty) Ltd. In the course of his duties, Kabo has discovered that some weeks before the company was placed under liquidation, Mpho and Katlego had on behalf of the company entered into a contract with A-to-Z Ltd for the purchase of a motor vehicle by MPK (Pty) Ltd. Payment for the vehicle was in four (4) equal monthly instalments. When the contract was made, Mpho and Katlego knew that MPK (Pty) Ltd was in serious financial trouble. Following Kabo's appointment as liquidator, no payment has been paid to A-to-Z Ltd. On the basis of this information, which of the following is correct?

- A. Because MPK (Pty) Ltd is unable to pay A-to-Z Ltd, Kabo can do nothing in his capacity as the liquidator
- B. A-to-Z Ltd may repossess the vehicle because it has not been paid for in full
- C. Kabo may apply to court for Mpho and Katlego to be jointly and severally liable to A-to-Z Ltd
- D. The shareholders of MPK (Pty) Ltd are liable to A-to-Z Ltd

2 Marks

24. In which of the following will the veil of incorporation not be lifted?

- A. If a holding company is using its subsidiary company for fraudulent purposes
- B. When a company is formed for unlawful purposes
- C. Liability incurred by a company through the fraudulent conduct of its directors
- D. To make shareholders of an insolvent company liable for the debts of the company

2 Marks

25. As regards a company limited by guarantee and an ordinary partnership, are the following statements true or false?

In both forms of businesses, the members are jointly and severally liable for the debts of the entity

- A. True
- B. False

The amount of liability of a member in a company limited by guarantee is always known and certain but that is not the case in an ordinary partnership

- C. True
- D. False

2 Marks

26. Which of the following is not a requirement for the ratification of a pre-incorporation contract?

- A. The contract must be in writing
- B. The contract must be entered into by a person professing to act as agent or trustee of the company to be formed
- C. The contract must be witnessed by an attorney
- D. The contract or a certified copy of the contract must be delivered to the Registrar of Companies simultaneously with the application for incorporation of the company

2 Marks

27. As regards conversion from one type of a company or entity to another, which of the following is correct?

- A. A public company cannot be converted into a private company
- B. A private company cannot be converted into a public company
- C. A building society can be converted into a company
- D. A close company cannot be converted into a private company having shares

2 Marks

28. Which of the following distinguishes between financial statements and annual report in a public company having a share capital?

- A. Financial statements are compulsory but annual report is optional/discretionary
- B. Both are prepared by the company's accountants
- C. Both give a true and fair view of the company's financial position as at the balance sheet date
- D. An audit report must accompany the financial statements and not the annual report

2 Marks

29. As regards audit reports, are the following statements true or false?

The purpose of an audit report is to enable shareholders make individual decisions on what to do with their shares in the company

- A. False
- B. True

An audit report should be prepared for a company registered as Pens and Ink Ltd

- C. True
- D. False

2 Marks

30. Who among the following is disqualified from appointment as auditor of North-to-South Ltd, a company specialising in manufacturing of paint?

- (i) Tau, a business partner of one of the directors of the company
- (ii) Nomsa, a resident of Namibia
- (iii) Tuelo, who owes the company P 7,000 borrowed from the company

- A. (i) only
- B. (i) and (ii)
- C. (i) and (iii)
- D. (i), (ii) and (iii)

2 Marks

31. Mooketsi is employed as the company secretary of Gabz Resorts (Pty) Ltd. The constitution of the company states that only the managing director of the company can enter into contracts on behalf of the company. Senewang operates a taxi business in Gaborone. Mooketsi and Senewang enter into a written agreement (not witnessed by an attorney) that for the next four weeks, one of Senewang's taxis will be picking up Mooketsi from his work place to wherever he has a business appointment within Gaborone. The agreement further states that Senewang will be paid by Gabz Resorts (Pty) Ltd. After four weeks of picking up Mooketsi from and back to his workplace, Senewang presents an invoice of P3, 000 to Gabz (Pty) Ltd. Mooketsi is not disputing this amount. However, the managing director of Gabz Resorts (Pty) Ltd has informed Senewang that the company will not pay her because only she, the managing director, has the power under the constitution of the company to enter into contracts on behalf of the company.

In these circumstances, which of the following is correct?

- A. Gabz Resorts (Pty) Ltd is not liable to Senewang because the contract is not witnessed by an attorney.
- B. Mooketsi is personally liable because the constitution of the company does not permit him to enter into contracts on behalf Gabz Resorts (Pty) Ltd
- C. Gabz Resorts (Pty) Ltd is liable because Mooketsi has ostensible authority to bind the company in contracts such as the one with Senewang
- D. Gabz (Pty) Ltd is liable because Mooketsi has actual authority to enter into contracts such as the one with Senewang

2 Marks

32. As regards the constitution of a company, are the following statements true or false?

Every company has a constitution whether or not it has registered one with the Registrar of Companies

- A. True
- B. False

The constitution of a company can be altered by an ordinary resolution

- C. False
- D. True

2 Marks

33. As regards boards of directors, which of the following statements, if any, is or are correct?

- (i) The board can delegate any matter that it has authority to decide
- (ii) A shadow director occupies an elective position
- (iii) Non-executive directors are not bound by the constitution of the company

- A. (i) only
- B. (ii) only
- C. (i), (ii) and (iii)
- D. None of the above

2 Marks

34. As regards meetings of members of a company, are the following statements true or false?

An ordinary resolution passed for the change of the name of the company is unlawful

- A. False
- B. True

A private company may remove a director of the company by an ordinary resolution

- C. False
- D. True

2 Marks

35. Sebina, Oabona and Kutlwano are members of a close company in which they hold 15%, 10% and 75% interest respectively. The company has not registered a constitution with the Registrar of Companies. As regards decisions on the management of the company, which of the following statements is incorrect?

- A. The voting power of each member of the company is determined by the percentage of interest held by the member
- B. The three members of the company are agents of the company
- C. Without Kutlwano's consent, Sebina and Oabona cannot resolve to change the principal business carried on by the company
- D. If Sebina becomes insolvent, his interest will be held by Oabona and Kutlwano

2 Marks

36. For company having a share capital, which of the following statements is correct?

- A. Called up share capital is the same as paid up share capital
- B. Issued share capital may be partly paid
- C. Paid up share capital is always the same as issued share capital
- D. Uncalled capital is the same as unissued capital

2 Marks

37. In Green Energy Ltd, Temo and Olopeng are the only shareholders and Seepiso is a secured debenture holder of two thousand debentures. Because of the many challenges the company is facing, the company is unable to honour any of its financial obligations. Temo, Olopeng and Seepiso are wondering how their interests in the company can be safeguarded. Under the circumstances, are the following statements true or false?

The assets of the company may be sold to pay Temo and Olopeng the value of their shares

- A. False
- B. True

Seepiso may apply for the winding up of the company

- C. False
- D. True

2 Marks

38. As regards a floating charge created by a company, which of the following is correct?

- A. A floating charge is on a specific movable asset
- B. Land can be the object of a floating charge
- C. The holder of a floating charge may dispose of assets the subject of the charge in the ordinary course of business
- D. The chargee in a floating charge may attend meetings of the shareholders of the company/chargor

2 Marks

39. A close company has three members. If one of the members becomes insolvent, which of the following is correct as regards the disposal of the percentage interest of the insolvent member?

- A. The interest is made available to a third party chosen by the trustee of the insolvent member
- B. The interest is first made available to the member/s with the most percentage interest
- C. The interest is first made available to all members in proportion to their interest or as they may agree
- D. The interest is sold to the company

2 Marks

40. As regards judicial management, are the following statements true or false?

A company must first be placed under judicial management before it is wound up

- A. True
- B. False

The judicial manager is appointed by the court

- C. False
- D. True

2 Marks

41. Anita, Lizzy and Sam are the only members and directors of a company. Their company is in severe financial crisis. There is no hope that the company can be saved from collapse. The company does not have any security that its three directors can furnish to the Master of the High Court for the satisfaction of the debts of the company. The three members would like to bring their company to an end.

Which of the following is the most appropriate decision the three members should take?

- A. Apply to court for the company to be placed under judicial management
- B. Pass a resolution for winding up the company which shall end all liabilities against the company because it is a separate legal entity
- C. Wind up the company by what is known as "members voluntary winding up"
- D. Wind up the company by what is known as "creditors' voluntary winding up"

2 Marks

42. Which of the following is incorrect as regards directors and the auditor of a company who have colluded to mislead the shareholders of the company and the public about the company's financial position in order to protect their positions?

- A. Directors and the auditor are guilty of an offence
- B. Directors and the auditor can be removed from their positions and no further action can be taken against them
- C. The auditor is guilty of an offence and may also be punished by his professional body
- D. If the company is a private company, its shareholders may remove them (directors) by a special resolution

2 Marks

43. As regards corruption are the following statements true or false?

Valuable consideration received by a public officer after performance of a public duty by such officer is an offence under the Corruption and Economic Crime Act

- A. True
- B. False

A public servant who assists a friend of his to get a contract for the supply of goods to a government department is guilty of corruption

- C. True
- D. False

2 Marks

44 As regards the Proceeds and Instruments of Crime Act and the Financial Intelligence Act, which of the following statements is or are correct?

- (i) Layering is the initial disposal of the proceeds of illegal activity into apparently legitimate business activity or property
- (ii) Placement is the first phase of money laundering
- (iii) An accountant holding money on behalf of her client is under an obligation to enquire from the client the source of such funds

- A. (i) only
- B. (i) and (iii)
- C. (ii) and (iii)
- D. (i), (ii) and (iii)

2 Marks

45 Kagiso is a practising accountant and a member of the Botswana Institute of Chartered Accountants (BICA). Which of the following acts constitute a basis for disciplinary action against Kagiso by BICA?

- (i) Charging fees on a contingency basis
 - (ii) Gross negligence in the performance of his duties
 - (iii) Depositing clients' funds into his office bank account
- A. (i) only
 - B. (i) and (ii)
 - C. (iii) only
 - D. (i), (ii) and (iii)

2 Marks

46 As regards a contract of employment and a contract for employment, which of the following, if any, is correct?

- A. In a contract for employment, the general rule is that performance of the work can only be delegated with the consent
- B. In a contract of employment, the worker does not receive instructions from the person he is working for
- C. In a contract for employment, the worker is generally protected under the Employment Act
- D. None of the above

2 Marks

47 Khumo is working as a tax specialist with a leading firm of accountants. Khumo is unhappy because she has been moved from the tax department to the consultancy department. Her contract of employment states that she will be working in the tax department.

Which of the following statements, if any, is or are correct?

- (i) Khumo can successfully sue for constructive dismissal after working in the consultancy department for one (1) year
 - (ii) Khumo has been retrenched
 - (iii) Khumo has been summarily dismissed
- A. (i) only
 - B. (i) and (ii)
 - C. (i), (ii) and (iii)
 - D. None of the above

2 Marks

48 In which of the following reasons for employee dismissal is the employer not supposed to prove that the dismissal of the employee was fair?

- A. Employee's drunkenness while on duty
- B. Loss of qualifications through misconduct e.g. practising certificate
- C. Employee's refusal to comply with the employer's lawful instructions
- D. Employee's membership of a registered trade union that has been recognised by the employer

2 Marks

49 As regards redundancy of an employee, which of the following is incorrect?

- A. Written notice must be given to the employee
- B. The Commissioner of Labour must be notified in writing
- C. The employer has no obligation to re-employ the employee if within a few weeks after the retrenchment he requires services such as those that were offered by the retrenched employee
- D. The "last in first out" rule generally applies

2 Marks

50 As regards offences under the Cyber Crime and Computer Related Crimes Act, which of the following statements, if any, is correct?

- A. Implied consent of a person empowered to give assent of access to a computer system is not an offence
- B. Unauthorised modification of data is not offence
- C. The only sentence is payment of a fine
- D. None of the above

2 Marks

END OF QUESTION PAPER