



Botswana Institute of Chartered Accountants

LAW

Date: 10 September 2020

Time: 14:00 am – 15:30 am

Time allowed: 1 hour 30 minutes

Instructions to Candidates

1. Your exam consists of 50 questions 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

2. Marks are indicated at the end of each question.

IMPORTANT

Question papers contain confidential information and must NOT be removed from the examination hall.

DO NOT TURN OVER UNTIL YOU ARE INSTRUCTED TO BEGIN WORK

1. As regards the Constitution of Botswana, which of the following statements is or are correct?
- (i) The Constitution states that it is the supreme law of Botswana
 - (ii) The Constitution cannot be amended without a referendum
 - (iii) The Constitution does not provide for social and economic rights
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) and (iii)
 - D. (iii) only

2 Marks

2. Which of the following is the second most important source of law after the Constitution of Botswana?
- A. Customary law
 - B. Roman-Dutch law
 - C. International law
 - D. Acts of Parliament

2 Marks

3. Regarding interpretation of an Act of Parliament, are the following statements true or false?
Because the Act is made by Parliament, the courts must interpret the Act plainly
- A. True
 - B. False

The purpose of interpretation is for the courts to derive the intention of Parliament

- C. True
- D. False

2 Marks

4. An Act of Parliament can give authority to a specific Minister to make regulations under that Act. If a part of those regulations exceeds the authority given by the Act, which of the following statements is or are not correct?
- (i) The part of the regulations which exceeds the Act is unlawful
 - (ii) The High Court cannot disregard the regulations in proceedings before it
 - (iii) Parliament can revoke the powers of the Minister by amending the Act
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) only
 - D. (iii) only

2 Marks

5. As regards an offer for a simple contract, which of the following statements is not correct?
- A. There must be intention to be bound

- B. It must be communicated
- C. It can be revoked any time before acceptance
- D. At no time can it be made by conduct

2 Marks

6. Mpho is owed Five Thousand Pula (P5, 000.00) by Kago. Mpho is leaving for Ethiopia. She tells Kago that when the agreed time for payment arrives, which is in a week's time, he should pay the money to Kagiso, her brother. Kagiso was promised the money by Mpho so that he can pay school fees for his child.

Are the following statements true or false?

Kago can refuse to pay Kagiso because he does not owe him the money

- A. True
- B. False

Kagiso cannot sue Kago in case of non-payment of the money

- C. True
- D. False

2 Marks

7. Which of the following is an offer?
- A. An advertisement for sale of a motor vehicle in a newspaper
 - B. An application for employment in response to an advertisement
 - C. An auction
 - D. Offer of shares to the public

2 Marks

8. Thabiso has sold his car to his sister, Dineo. Dineo takes possession of the car. A substantial amount is not paid. Which of the following statements is or are correct?
- (i) The agreement is not legally enforceable because it is a social agreement in that the parties are brother and sister
 - (ii) Thabiso has the right of forcefully taking possession of the vehicle
 - (iii) There is intention to create legal obligations between Thabiso and Kagiso
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) only
 - D. (iii) only

2 Marks

9. Regarding acceptance of an offer, which of the following is correct?
- A. In a bilateral contract, communication of acceptance is not necessary
 - B. In a unilateral contract, it is not necessary for the offeree to be aware of the offer provided the terms of the offer are fulfilled
 - C. The offeree must communicate acceptance in all situations
 - D. The 'mirror image' rule applies to acceptance of the offer

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10. Regarding the presumptions on intention to create legal relations, which of the following is correct?
- A. The presumptions are created by legislation
 - B. The presumptions were developed by the common law
 - C. The presumptions cannot be rebutted
 - D. In a commercial agreement, the parties always intend to create legal relations

2 Marks

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11. The following situations take place at different times:
- (i) Kelebogile requests Tshiamo to post the letter of acceptance
 - (ii) Lebo has made an offer to Tshepang. Tshepang lives in Maun and Lebo lives in Gaborone. Tshepang accepts the offer by telephone.
 - (iii) The Ministry of Finance makes an advertisement for employment of junior accountants. Thabo makes an application to the Ministry.
 - (iv) Thuto accepts Lorato's offer by facsimile (fax) as requested by Lorato

Which of the following is correct?

- A. Kelebogile cannot revoke the letter by telephone as long as Tshiamo has not posted the letter of acceptance
- B. The contract between Lebo and Tshepang is made in Gaborone
- C. Thabo is the offeree
- D. There is no contract between Thuto and Lorato.

2 Marks

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12. Regarding breach of contract, are the following statements true or false?
When faced with an anticipatory breach, the party who is anticipating the breach cannot get an order of specific performance before the time for the other party to perform has arrived.
- A. True
 - B. False

Breach of a material termsends the contract automatically

- C. True
- D. False

2 marks

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13. Pilime has verbally agreed to purchase a plot of land from Kitso. Pilime has paid half the purchase price. After receiving 50% of the purchase price, Kitso tells Pilime that he has found a better price for the property.
Which of the following statements is correct?

The agreement between Kitso and Pilime is not legally binding

- A. True
- B. False

Pilime and Kitso have made a unilateral agreement

- C. True

14. Which of the following remedies is not discretionary?

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

2 Marks

15. Anita is an accountant working for a commercial bank in Mochudi. The managing director of the bank accuses Anita of incompetence. As a result Anita is dismissed immediately. The contract of employment is silent on remedies for breach of contract. Fortunately Anita finds a better and well-paying job on the same day in Mochudi. Anita managed to secure the new the job so fast because of her wide experience and expertise in insolvency accounting.

Which of the following remedies would the court grant to Anita if she were successful?

- A. Liquidated damages
- B. Nominal damages
- C. Prohibitory interdict
- D. Rescission

2 Marks

16. Which of the following is an interim remedy?

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

2 Marks

17. Ditiro is a well-known mechanic in Tonota. At 8AM, a bus company takes one of its buses to him for maintenance. Ditiro tells the manager of the company that the bus will be ready at 6 PM the same day. When the company sends a driver to collect the bus at the agreed time, the driver finds that Ditiro has not started working on the bus. Ditiro explains to the driver that he had a lot of work pending from the previous day and he was under pressure to finish it. Unknown to Ditiro, the specific bus has been hired by a school to take students on a trip the following day. An amount of Ten Thousand Pula (P10, 000.00) has already been paid by the school. On average the bus company makes approximately two thousand Pula (P2, 000.00) per day. The school must now get its money back because the bus will not be available for the trip the following day and it must make alternative arrangements for transportation.

Which of the following statements is or are correct?

- (i) Ditiro has committed actual breach of contract
- (ii) Ditiro is liable for Ten Thousand Pula (P10 000.00)

(iii) Ditiro is liable for Two Thousand Pula (P2 000.00)

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

2 Marks

18. Which of the following contracts is most likely to attract an award of specific performance if there was a material breach?

- A. Contract of employment
- B. A contract of marriage
- C. A contract for education for subletting a room in an owner occupied house.
- D. A contract for sale of land

2 Marks

19. Which of the following is not a requirement for the granting of an interdict?

- A. A clear right
- B. The right is infringed upon or is about to be infringed upon
- C. Claimant is facing irreparable
- D. Compliance with appropriate legislation

2 Marks

20. Which of the following remedies can be employed to restore parties to the positions they were in before the contract?

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

2 Marks

21. Early Risers Ltd have employed Lame as an accountant. The contract is for a period of three years. The employer unlawfully terminates the contract. Lame is contemplating suing the company.

Regarding the dispute, which of the following is correct?

- (i) Lame should try to look for another job or source of income to reduce her loss
- (ii) Lame must be reinstated to her position
- (iii) The contract of employment is voidable

- A. (i) only

- B. (ii) only
- C. (ii) and (iii)
- D. (iii) only

2 Marks

22. Dikeledi has agreed with Itumeleng that she will find her a buyer for Itumeleng's laptop. If the sale goes through, Dikeledi is promised a commission of 10% of the sale price by Itumeleng.

Are the following statements true or false?

The parties have entered into an agreement of agency by estoppel

- A. True
- B. False

Dikeledi can buy the laptop using her brother as the buyer. She does not have to disclose this fact to Itumeleng because she thinks that all that Itumeleng is interested in is a suitable price for the laptop

- C. True
- D. False

2 Marks

23. Which of the following ways of ending a contract describes when parties have fulfilled their contractual obligations?

- A. Prescription
- B. Merger
- C. Discharge
- D. Possibility of performance

2 Marks

24. In which of the following scenarios would an agent be liable to a third party in case of loss or harm to the third party?

- A. If the agent acts without authority but the principal ratifies the contract
- B. If the principal is estopped from denying the existence of agency
- C. If the agent does an act that is incidental to express authority
- D. None of the above

2 Marks

25. During a game of football, a defender injures an attacking player. The tackle was carried out in line with regulations. Which of the following terms relates to the injury caused to the player?

- A. Volenti non-fit injuria
- B. Contributory negligence
- C. Remoteness of damage
- D. Res ipsa loquitur

2 Marks

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26. Regarding the authority of an agent, which of the following types of authority arises from what is assumed by third parties dealing with a person occupying a particular position in an organization?
- A. Express authority
 - B. Ostensible or apparent authority
 - C. Authority by ratification
 - D. Authority by necessity

2 Marks

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27. Kefilwe, Lesedi and Keletso were very good friends in the tertiary institution they attended. After their studies, they formed a small accounting and financial advisory firm called KLK & Partners by oral agreement. The firm name has been registered under the Business Names Act. Each of the partners participates in managing the business. Kefilwe comes from a wealthy background and most of the business of the firm comes from his family. The profit and loss sharing ratio is 40%; 30% and 30% for Kefilwe, Lesedi and Keletso respectively. The firm has been doing well since its inception. However, due to Kefilwe's family businesses going through financial problems because of the global COVID 19 pandemic, the firm is also facing severe financial challenges. The firm owes a supplier of computers and a few other creditors. The firm is now unable to pay its debts.

Which of the following statements is or are not correct?

- (i) Creditors can only recover their money from the firm KLK & Partners and not any of the partners
 - (ii) The supplier of computers can only recover 40% of the amount owed from Kefilwe
 - (iii) None of the partners can be declared insolvent for the debts of the firm
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) and (iii)
 - D. (i), (ii) and (iii)

2 Marks

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28. Masego and Onalenna would like to establish a business in which they have full control and are not individually or collectively liable for the company's debts. Which of the following should Masego and Onalenna form?
- A. An ordinary partnership
 - B. A close company
 - C. A public company having shares
 - D. A company limited by guarantee

2 Marks

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29. Which of the following does not distinguish between a private company and a public company?
- A. The minimum number of shareholders requirement
 - B. The issuing of shares to the public
 - C. The issuing of debentures to the public
 - D. Listing on the Botswana Stock Exchange

2 Marks

30. Which of the following must appoint an auditor?

- A. A public company; every private company
- B. Every company
- C. A public company; an exempt private company
- D. A non-exempt private company; a public company; and a close company that meets the financial threshold of a non-exempt private company

2 Marks

31. Oaitse, Sethunya and Tshepiso are members of a close company, a private company having shares and a public company having shares respectively.

Are the following statements true or false?

They all have a right to participate in the management of the company that each belongs to

- A. True
- B. False

The three are fiduciaries of the company they belong to

- C. True
- D. False

2 Marks

32. In the law of contracts, which of the following refers to indirect causation?

- A. Duty of care
- B. Breach of duty of care
- C. Mitigation of damage
- D. Foreseeability of damage/loss

2 Marks

33. Boikanyo is the auditor of Regional Supermarkets Ltd. Kenosi is a shareholder of the company. Boikanyo's audit report was presented to the shareholders at the annual general meeting. As a result of the good report by Boikanyo as the auditor and the strong financial statements of the company, many shareholders including Kenosi acquire more shares of the company through their stock brokers. However, it turned out that Boikanyo was grossly negligent in the preparation of the audit report. The company's financial statements were false and misleading. The value of the shares of the company has fallen by more than 40% since the negligence was discovered.

Which of the following statement or statements is correct?

- A. Kenosi can sue Boikanyo for pure economic loss
- B. Boikanyo is liable for fraud
- C. Shareholders of Regional Supermarkets Ltd can remove Kenosi and the board of directors by an ordinary resolution
- D. Kenosi can apply for creditors voluntary winding up

34. In which of the following is there no separation between ownership and control?

- A. King Enterprises CC; Fast-Forward Investments (a partnership)
- B. North-South (Pty) Ltd; King Enterprises CC
- C. Eastern Promoters Ltd; Fast-Forward Investments (a partnership)
- D. Eastern Promoters Ltd; North-South (Pty) Ltd

2 marks

35. Eastern Promoters Ltd was formed in 2009. The company has not registered a constitution with the Registrar of Companies. Which of the following is correct?

- A. The company has no constitution at all
- B. The constitution of the company is Part IXX (19) of the Companies Act
- C. The constitution of the company is its memorandum and articles of association
- D. The constitution of the company are the relevant provisions of the Companies Act that apply to companies the type of Eastern promoters Ltd

2 Marks

36. Regarding shares, which of the following is correct?

- A. A company incorporated in Botswana cannot issue par value shares
- B. A private company cannot issue redeemable shares
- C. A public company's shares cannot be held by one shareholder only
- D. Every public company qualifies to be listed on the Botswana Stock Exchange

2 Marks

37. Which of the following actions can be commenced by a shareholder for a wrong committed against the company?

- A. Personal action
- B. Members voluntary winding up
- C. Derivative action
- D. Judicial management

2 Marks

38. Regarding the issue of dividends, are the following statements true or false?

A company limited by guarantee does not issue dividends

- A. True
- B. False

Dividends can be issued out of share capital only

- C. True
- D. False

2 Marks

39. Which of the following is the most suitable method of voting for a shareholder who wants to exercise the full power of his or her shareholding?
- A. Voting by voice
 - B. Voting by a poll
 - C. Raising of hands
 - D. Voting through a proxy
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40. Regarding the exceptions to the capital maintenance rule, which of the following statement or statements is or are not correct?
- (i) A company can issue dividends from capital if the solvency test is met
 - (ii) A private company cannot issue redeemable shares
 - (iii) A public company can give financial assistance for acquisition of its capital if the solvency test is met
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) only
 - D. (iii) only

2 Marks

41. Khumo recently bought substantial shares in a public company. An experienced and ethical board of directors is managing the company. The annual general meeting of the company is due in the next two weeks.

Which of the following would you advise Khumo to do during the meeting?

- A. To inform everyone present that she will sue for any unpaid debts of the company
- B. To ask questions on the management of the company
- C. To request the meeting to reject the recommended dividends for ordinary shareholders
- D. To suggest a motion for immediate removal of the auditor of the company

2 Marks

42. Regarding loan capital, are the following statements true or false?

A company can only issue secured debentures

- A. True
- B. False

A company's motor vehicle registration B 567 PLO can be used as security for a floating charge

- C. True
- D. False

2 Marks

43. Who among the following cannot be removed by the shareholders of a public company?

- A. Executive directors
- B. The company secretary
- C. Auditor
- D. Non-executive directors

2 Marks

44. Regarding the winding up of a company, which of the following statement or statements is or are correct?

- (i) Members voluntary winding up is an outcome of a court process
 - (ii) Creditors voluntary winding up is an outcome of a court process
 - (iii) Winding up under the just and equitable rule is an outcome of a court process
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) only
 - D. (iii) only

2 Marks

45. Boago is employed as a bus driver. He is informed that with immediate effect, he will be a bus conductor because of his honesty and truthfulness in handling money. Boago does not want to take up the new role. He resigns after two days. Which of the following actions would you advise him to take against her employer?

- A. Members voluntary winding up
- B. Creditors voluntary winding up
- C. Unlawful retrenchment proceedings
- D. Constructive dismissal

2 Marks

46. Regarding summary dismissal, which of the following is correct?

- A. A hearing is not necessary in every dismissal
- B. The breach of contract by the employee must be material
- C. Summary dismissal can be unlawful dismissal
- D. All the above

2 Marks

47. Keamogetse and Tshegofatso are co-workers. While in the performance of their duties Keamogetse negligently injures Tshegofatso.

Are the following statements true or false?

The employer is not vicariously liable

- A. True
- B. False

Keamogetse has breached her contract of employment

- C. True
- D. False

2 Marks

48. Regarding retrenchment, which of the following is not correct?

- A. The employer must be give written notice to the affected employees
- B. Written notice must be sent to the Commissioner of Labour
- C. The affected employees cannot obtain an interdict
- D. The last-in-first out rule generally applies to the category of employees under retrenchment

2 Marks

49. Regarding the Industrial Court, which of the following statements is correct?

- A. Assessors decisions are not binding on the judges
- B. The court exercises general jurisdiction like the High Court
- C. Appeals are lodged in the High Court
- D. A matter before the court must have gone through mediation or arbitration first

2 Marks

50. Which of the following awards does the Industrial Court make only when the relationship between the employer and the employee has not irretrievably broken down?

- A. Damages
- B. Compensation
- C. Reinstatement
- D. Interdict

2 Marks

END OF EXAMINATION PAPER

