



Botswana Institute of Chartered Accountants

Law

Examination Paper

Date: 13 June 2019
Time: 14:00pm -15.30pm
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. Which of the following is the main source of human rights law in Botswana?

- A. Customary law
- B. Case law
- C. The Constitution of Botswana
- D. International law

2 Marks

2. Regarding Acts of Parliament, are the following statements true or false?

The amendment of an Act requires the passing of another Act

- A. True
- B. False

An Act can override the Constitution of Botswana

- C. True
- D. False

2 Marks

3. Which of the following is an example of delegated legislation?

- A. The Employment Act
- B. Customary law
- C. Case law
- D. Gaborone City Council By-laws

2 Marks

4. Regarding case law or judicial precedent, which of the following is correct?

- A. Decisions of the High Court are binding on the Court of Appeal
- B. Decisions of the High Court are binding on itself (High Court)
- C. Decisions of Magistrates Courts are not precedents
- D. Decisions of Magistrates Courts are precedents

2 Marks

5. Regarding the interpretation of legislation, are the following statements true or false?
Under the plain or literal rule, words are given their ordinary and grammatical meaning

- A. True
- B. False

The mischief rule is intended to avoid absurdity in the law

- C. True
- D. False

2 Marks

6. Which of the following make(s) a contract voidable?

- A. Duress
- B. Undue influence
- C. Misrepresentation
- D. All of the above

2 Marks

7. Which of the following laws is not codified?

- A. The Companies Act
- B. Delegated legislation
- C. Case law/judicial precedent
- D. All of the above

2 Marks

8. Mpho offers to sell her car to Kago for P40,000. Kago informs Mpho that he will pay P35,000 in full settlement. Mpho rejects this amount. Kago changes his mind and approaches Mpho with P40,000. Mpho rejects the amount. Which of the following is correct?

- A. A contract has been entered into between Mpho and Kago
- B. By offering P35,000, Kago is rejecting Mpho's offer
- C. Mpho is wrong in declining to sell the car for P40,000
- D. All of the above

2 Marks

9. Regarding the formation of a contract, which of the following statements is or are correct?

- (i) The offeree must be aware of the offer
- (ii) Acceptance of the offer must be communicated by the offeree only
- (iii) In unilateral contracts, communication of acceptance is not necessary

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

2 Marks

10. Mmbatho is a 24-year old student in her final stages of the BICA qualification. She is enrolled at a well-known tertiary institution in Botswana where she is pursuing her studies.

Which of the following legal concept confirms that Mmabatho's mother, who pays her daughter's school fees, is not a party to the contract between the tertiary institution and Mmabatho?

- A. Cession
- B. Privity of contract
- C. Delegation
- D. Prescription

2 Marks

11. Which of the following terms are established by acceptance of an offer?

- A. Terms implied by legislation
- B. Terms implied by custom
- C. Express terms
- D. Terms implied by the Court

2 Marks

12. Moremi and Lekoba have entered into a contract in which Moremi will purchase Lekoba's truck. A few days before the delivery date, Lekoba informs Moremi that the deal is off because he has found a better price. Moremi is aggrieved and would like to stop the sale between Lekoba and the other buyer. Which of the following is the appropriate remedy for Moremi to request from the court?

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

2 Marks

13. Which of the following types of damages is about expenses incurred arising from a breach of contract?

- A. General damages
- B. Nominal damages
- C. Special damages
- D. Liquidated damages

2 Marks

14. Which of the following is about the transfer of rights in a contract?

- A. Duress
- B. Undue influence
- C. Misrepresentation
- D. Cession

2 Marks

15. Mpho has offered to buy dinner for her best friend Pearl in one of the best hotels in Shakawe. There will also be a live performance by a well-known artist in Botswana. Pearl is so excited about the offer and prepares herself appropriately. An hour before the event, she receives a call from Mpho, informing her that the money she was expecting has not been paid into her account. Pearl is quite unhappy about the turn of events. Are the following statements true or false?

There is no agreement between the parties because their communication is not in writing

- A. True
- B. False

Pearl cannot enforce the agreement because the presumption of the absence of intention to contract in social agreements has not been rebutted

- C. True
- D. False

2 Marks

16. Who among the following is an offeree within the meaning of contract law?

- A. The bidder at a public auction
- B. An applicant for shares made available to the public
- C. A contractor who tenders for the construction of a highway
- D. None of the above

2 Marks

17. Which of the following ways of terminating a contract is found in legislation?

- A. Agreement
- B. Merger
- C. Set-off
- D. Prescription

2 Marks

18. Katlego is going on a trip to a neighbouring country. He instructs Lebo, an auctioneer, to sell ten (10) of his cows at a public auction while he is away. During the auction at Katlego's farm, Lebo sells twelve (12) of Lebo's cows. She thinks that since the prices are quite attractive, Katlego, will be grateful. When Katlego learns about the auction which includes two (2) more cows, he becomes very appreciative.

Which of the following forms of agency refers to the sale of the two (2) cows?

- A. Agency by agreement
- B. Agency by estoppel
- C. Agency implied by the law
- D. Agency by ratification

2 Marks

19. Tshepang is the Managing Director of a public company limited by shares. Regarding her role in the company, are the following statements true or false?

Tshepang is not an agent of the company

- A. True
- B. False

The authority of Tshepang to act on behalf of the company must be given expressly

- C. True
- D. False

2 Marks

20. Regarding liability in an agency relationship, which of the following statement(s) is or are not correct?

- (i) An agent cannot be liable to the third party
- (ii) In certain circumstances, the agent and the principal may be jointly and severally liable
- (iii) In a close company, a member of the company is not an agent of the company

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

2 Marks

21. Under legislation, strict liability is an exception to which of the following requirements in delict?

- A. Conduct
- B. Fault
- C. Causation
- D. Harm

2 Marks

22. Who among the following is owed statutory duties by the external auditor of a company?

- A. Potential shareholders of the company
- B. Existing shareholders of the company
- C. Directors of the company
- D. The company

2 Marks

23. Monei is an employee of Mbangiwa. Are the following statements true or false?
Mbangiwa is not liable to a third party for delictual acts of Monei if she was 'on a frolic' of her own

- A. True
- B. False

Monei may under certain circumstances be considered Mbangiwa's agent

- C. True
- D. False

2 Marks

24. Which of the following is not a feature of a general or ordinary partnership?

- A. Perpetual succession
- B. Joint and several liability of the partners
- C. A partner is an agent of the partnership
- D. All of the above

2 Marks

25. Molefhe and Tumi would like to establish a business in which they will not be answerable to any person irrespective of the financial growth of the business. Which of the following is suitable for their intention?

- A. A public company having shares
- B. A private company having shares
- C. A close company
- D. A company limited by guarantee

2 Marks

26. Which of the following is an example or are examples of lifting the veil of incorporation of a company?

- (i) Liability of the company for its debts
- (ii) Liability of a director for the wrongs of a company
- (iii) Liability of an auditor for negligent misstatements

- A. (i) only
- B. (i) and (ii)
- C. (ii) only
- D. All of the above

2 Marks

27. Regarding companies having shares, are the following statements true or false?

A non-exempt private company can offer its shares to the public

- A. True
- B. False

An unlisted public company may offer debentures to the public

- C. True
- D. False

2 Marks

28. In which of the following types of businesses do members not share profits?

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

2 Marks

29. Anita would like to form a company but she does not know what is required of her under the law. She instructs Tshepo, a member of BICA who is in private practice to prepare the necessary documents on her behalf.

Are the following statements true or false?

Anita is the promoter

- A. True
- B. False

Tshepo is not an agent of the company to be formed

- C. True
- D. False

2 Marks

30. Regarding the ratification of a pre-incorporation contract, which of the following statements is or are correct?

- (i) The contract must be in writing
- (ii) The contract must be made by a person professing to act as agent or trustee of the company to be formed
- (iii) The contract or a certified copy of the contract must be submitted simultaneously with the application for registration of the company

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

2 Marks

31. Which of the following is not a requirement for the registration of a close company?

- A. The full name and address of each applicant
- B. The full name and residential address of the secretary of the company
- C. The registered office of the company
- D. All of the above

2 Marks

32. Which of the following companies is or are not required to appoint an auditor?

- A. A public company
- B. A non-exempt private company
- C. An exempt private company
- D. A non-exempt private company and a public company

2 Marks

33. Eastern Logistics Ltd is a newly established company which needs to appoint an auditor. Who among the following qualifies for appointment as the auditor?

- (i) Kelebogile, a business partner of one of the directors of the company
- (ii) Nametso, the company secretary of the company
- (iii) Kitso & Lebang (Pty) Ltd

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

2 Marks

34. Good Hosts (Pty) Ltd was formed in 2017. The company has not submitted a constitution with the Registrar of Companies.

Which of the following is the constitution of the company?

- A. The relevant sections of the Companies Act
- B. The First Schedule of the Companies Act
- C. Part XIX of the Companies Act
- D. Part XX of the Companies Act

2 Marks

35. Which of the following are requirements for Greens & Grains Ltd?

- (i) Annual report
- (ii) Annual Returns
- (iii) Auditor's report

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

2 Marks

36. Regarding the objects of a company as may be stipulated in its constitution, are the following statements true or false?

The company cannot lawfully engage in business which is *ultra vires* its constitution

- A. True
- B. False

Directors can lawfully borrow beyond the amount stated in the constitution of the company

- C. True
- D. False

2 Marks

37. As regards directors, are the following statements true or false?

A non-executive director does not owe the company fiduciary duties

- A. True
- B. False

A shareholder can become a director of a company

- C. True
- D. False

2 Marks

38. Which of the following is a statutory meeting of a company?

- A. Special meeting
- B. Class meeting
- C. Annual meeting
- D. None of the above

2 Marks

39. Early Bird Close Company intends to amend its constitution. Which of the following statements is correct?

- A. The company must pass an ordinary resolution
- B. The company must pass a unanimous resolution
- C. The company cannot amend its constitution
- D. The company must pass a special resolution

2 Marks

40. Sports Line Ltd is owed P300,000. The debtors are companies associated with one of the directors of the company. However, the company is in a sound financial position. There has not been any effort by Sports Line's board of directors to recover the money.

Which of the following is the correct action that can be taken by an aggrieved shareholder of Sports Line Ltd?

- A. Personal action
- B. Judicial management
- C. Derivative action
- D. All of the above

2 Marks

41. Which of the following companies has no separation between ownership and control?

- A. Fauna Ltd
- B. Flora (Pty) Ltd
- C. Live-Well Close Company
- D. Environment Protect, a company limited by guarantee

2 Marks

42. Regarding shares, which of the following statements is correct?

- (i) Every company having shares must issue them at par value
- (ii) Preference shares can make a demand for payment of dividends
- (iii) Shareholders do not pay for a capitalization issue of shares

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

2 Marks

43. Which of the following is shown in the application for registration of a company having shares?

- A. Issued share capital
- B. Issued and allotted share capital
- C. Called up share capital
- D. Stated share capital

2 Marks

44. Which of the following does not require a resolution of shareholders of a company?

- A. Change of the name of the company
- B. Distribution of final dividends
- C. Distribution of interim dividends
- D. Appointment of the auditor at the annual meeting

2 Marks

45. Which of the following is an exception of the capital maintenance rule?

- A. Paying dividends from profits
- B. Issuing the stated capital
- C. Redeeming preference shares according to the terms of issue
- D. None of the above

2 Marks

46. In Capital Investments Ltd, Dimpho is a secured creditor by way of a certain immovable property. Thabiso is an unsecured creditor of the company. There are many other unsecured creditors. The company is in a serious financial crisis and an application to wind it up could be made any time. In the affairs of the company, there are no allegations of wrong-doing made against the directors or shareholders of the company. Under the circumstances, are the following statements true or false?

Dimpho must apply for the winding up of Capital Investments Limited so that she can be authorized by the court to sell the immovable property

- A. True
- B. False

Thabiso and other unsecured creditors can recover from the directors and shareholders of Capital Investments Ltd if the company is unable to pay its debts

- C. True
- D. False

2 Marks

47. Who among the following is in charge of the management of a company which is being wound up for inability to pay its debts?

- A. The Managing Director of the company
- B. The Master of the High Court
- C. The board of directors of the company
- D. The liquidator of the company

2 Marks

48. A financial institution registered under the Companies Act has asked its customers to submit their national identification documents and proof of residence. This is what the institution is calling 'Know Your Customer (KYC)'.

Which of the following legislation is the institution complying with?

- A. The Companies Act
- B. The Financial Intelligence Act
- C. The Income Tax Act
- D. Valued Added Tax Act

2 Marks

49. Which of the following types of dismissal may arise if an employee has been grossly negligent causing severe injuries to a colleague of his at the work place?

- A. Summary dismissal
- B. Constructive dismissal
- C. Wrongful dismissal
- D. Unfair dismissal

2 Marks

50. Regarding employment, in which of the following would there be no substantive or procedural fairness?

- A. Constructive dismissal
- B. Summary dismissal
- C. Redundancy
- D. All of the above

2 Marks

END OF PAPER