



Botswana Institute of Chartered Accountants

Law

Examination Paper

Date: 10 December 2020

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 supreme law of Botswana?
- A. Customary law
 - B. Legislation
 - C. The constitution of Botswana
 - D. Roma-Dutch law

2 Marks

2. Which of the following courts' decisions are judicial precedents?
- (i) Chief Magistrate Court
 - (ii) Industrial court
 - (iii) High Court
- A. (iii) only
 - B. (i) and (iii)
 - C. (ii) only
 - D. (ii) and (iii)

2

Marks

3. In the interpretation of statutes, which of the following addresses the problem the Act was passed to remedy?
- A. Golden rule
 - B. Eiusdem generis
 - C. Mischief rule
 - D. Aids for interpretation of statutes

2 Marks

4. An Act of Parliament permits the Minister to make regulations for the effective administration of the Act. The Minister makes the regulations within the procedural parameters specified in the Act. If some of the regulations made by the Minister exceed the powers given to the Minister:
Which of the following is correct?
- A. All the regulations are void because some are ultra vires the Act
 - B. Only the regulations that are ultra vires the Act are void
 - C. The regulations are lawful because they are made within the procedural parameters stated in the Act
 - D. The regulations that are ultra vires the Act cannot be challenged in court

2 Marks

5. Regarding void and voidable contracts, are the following statements true or false?
A material mistake makes a contract void

- A. True
- B. False

Duress and misrepresentation make a contract voidable

- C. True
- D. False

2 Marks

6. Diversify Commerce Ltd is a company based in Gaborone. Within one month, several business activities take place as follows:

- (i) The company holds a public auction
- (ii) The company bids at a public auction
- (iii) The company makes a tender for construction of a building

Regarding the above activities, are the following statements true or false?

Activities (i) and (iii) are invitations to treat

- A. True
- B. False

Activity (ii) is an offer

- C. True
- D. False

2 Marks

7. Which of the following does not terminate an offer?

- A. A counter-offer
- B. The offeree's request for additional information
- C. Revocation of an offer
- D. Failure of a precondition agreed by both parties

2 Marks

8. Anita would like to sell her television to Kago. She lives in Kang and Kago lives in Francistown. The two are good friends who regularly visit each other. Anita sends a letter to Kago in which she states all the terms of her offer to sell her television to Kago. In her offer letter, Anita requests Kago to post his acceptance if he is interested in the television. Upon receiving the offer letter, Kago posts the letter of acceptance immediately. However, Anita does not receive the letter of acceptance. The two friends are in a dispute about whether they have entered into a contract.

Which of the following is correct?

- A. There is no contract because as friends, Anita and Kago do not have intention to contract
- B. There is no contract because Anita has not received Kago's acceptance
- C. There is no contract between the parties
- D. There is a contract between the parties.

2 Marks

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

- A. In a bilateral contract, there is communication of both offer and acceptance
- B. In a bilateral contract, communication of acceptance is not required
- C. In a unilateral contract, the offer cannot be made to the public
- D. In a unilateral contract, intention to create legal relations is not necessary

2 Marks

10. Lame is a 22-year old student enrolled in the Botswana Institute of Chartered Accountants programme. She enters into an oral agreement with Bame in which Bame commits to purchasing Lame's laptop computer. Lame is hoping to get some money from her mother, Refilwe, so that she can top-up and buy Bame's laptop computer. Lame does not share this hope with Bame.

When Lame informs Refilwe about the matter, Refilwe tells Lame that she has no money to give her. Refilwe suggests to Lame that Lame should call off the agreement.

Regarding the above, which of the following statement(s) is or are correct?

- (i) There is no privity of contract between Refilwe and Bame
 - (ii) There is no contract because there is no document to that effect
 - (iii) Lame and Bame have entered into a bilateral contract
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) only
 - D. (i) and (iii)

2 Marks

11. City Sports Wear (Pty) Ltd is well-known sports-kit company. It has been in existence for twenty years. City Sports Wear (Pty) Ltd is claiming that Sports Line CC, a recently formed company, is using a logo and mark that is identical to its own logo and mark.

Which of the following remedies would City Sports Ltd sue Sports Line CC for?

- A. Specific performance and damages
- B. Rescission and interdict
- C. Interdict and damages
- D. Damages and specific performance

2 Marks

12. Which of the following means that the defendant must take reasonable steps to reduce its loss caused by plaintiff's breach of contract?
- A. Mitigation of damage
 - B. Measure of damages
 - C. Performance
 - D. Duty of care

2 Marks

13. Which of the following is not a requirement of agency by representation or 'holding out'?
- A. There must be a written agreement between the principal and his agent
 - B. The principal must expressly or by conduct make a representation to the third party that a particular person is his agent or representative
 - C. The third party acts on the principal's representation
 - D. The third party sustains a detriment or loss from relying on the principal's representation

2 Marks

14. Pilane has agreed with Matsela that he will construct a house for Matsela at a cost of Three Hundred Thousand Pula (P300,000.00). The parties further agree that in case Pilane does not complete the work within the agreed time, he will pay Matsela Five Hundred Pula (P500.00) per day until completion.

Which of the following refers to the type of compensation agreed by the parties?

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

2 Marks

15. In delict, which of the following means that the wrongful act must be linked sufficiently closely to the loss?
- A. Mitigation of loss
 - B. Factual causation
 - C. Legal causation
 - D. Privity

2 Marks

16. Regarding exclusion clauses, are the following statements true or false?
An exclusion clause in a signed contract binds both parties even when the clause was not read by its victim

- A. True
- B. False

Legislation can render the clause void

- C. True
- D. False

2 Marks

17. Pule owns a public service minibus. He takes the minibus to Naomi Garage in Gaborone West for repairs. He is informed by the manager of the garage to come back in the evening to collect the vehicle. When he arrives in the garage as advised, he is told to come after two days. The reason given to him is that there are government vehicles that must be repaired urgently and there is no mechanic to attend to his minibus. Pule had agreed with some BICA students that he would take them to Maun for a concert the following day. Pule has already been paid Four Thousand Pula (P4000.00) by the students for the Maun trip. As he is without a vehicle Pule must refund the money to the students or hire a minibus to meet his commitment to the BICA students. In the circumstances, which of the following is correct?

- A. Naomi Garage must pay Pule Four Thousand Pula (P4000.00) damages
- B. The Four Thousand Pula (P4000.00) is remote and not payable by Naomi Garage
- C. There is no breach of contract because of the urgency for Naomi Garage to repair the government vehicles
- D. The conduct of Naomi Garage amounts to anticipatory breach of contract

2 Marks

18. Regarding agency, are the following statements true or false?

An agent is not a party to the contract between the principal and the third party

- A. True
- B. False

Agency by ratification is also known as agency by holding out

- C. True
- D. False

2 Marks

19. Nkwe agrees orally with Tefo that Tefo will find someone to buy Nkwe's car at 10% commission for Tefo. Tefo finds a buyer, Tshiamo, who is his distant cousin. He informs Tshiamo that the car is in a perfect condition, and in case of any mechanical defect he (Tefo) will have it repaired. Tshiamo buys the car and takes possession immediately. After three days, the car develops a serious mechanical problem. In the circumstances, which of the following is correct?

- (i) The agency agreement between Tefo and Nkwe is voidable because it should have been in writing
- (ii) Tshiamo may sue Tefo for the mechanical defect
- (iii) Tshiamo has entered into an agreement with both Nkwe and Tefo

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

2 Marks

20. Which of the following is not a requirement of a delict?

- A. An act
- B. Fault
- C. Causation
- D. Strict liability

2 Marks

21. City Restaurants Ltd has employed a number of employees to operate its motor-cycles mainly for delivery of food to customers. Letso is one of such employees. The company has provided a helmet to each employee in-charge of a motor-cycle. While delivering food to a customer, Letso is forced off the road by a truck that is being negligently driven. Letso sustains serious injuries to his head. At the time of the injury, Letso had not put on his helmet. If Letso had been wearing his helmet, the injuries would not have been so severe.

Which of the following refers to Letso's injuries that were aggravated by his not wearing a helmet?

- A. Vicarious liability
- B. Res ipsa loquitur
- C. Contributory negligence
- D. Strict liability

2 Marks

22. Wetu is the auditor of Neat Travels Ltd. The strong financial statements and Wetu's unqualified opinion on those statements cause some shareholders of the company to increase their shareholding in the company.

It has now been found out that the financial statements and the opinion of Wetu contained substantial errors. The company had in fact made losses in the year under review. The shareholders would not have increased their investment in the company had they known of the actual financial position of the company.

Which of the following is correct?

- A. Wetu is liable to the shareholders for negligence
- B. Neat Travel Ltd is vicariously liable to the shareholders for Wetu's negligence
- C. The shareholders can sue Wetu for breach of contract
- D. Wetu is not liable to the shareholders

2 Marks

23. Regarding types of businesses, are the following statements true or false?

A partnership is not a separate legal entity

- A. True
- B. False

Every company must appoint at least one director

- C. True
- D. False

2 Marks

24. In which of the following business entities is the liability of the shareholder known at the time of registration of the business?

- A. An exempt private company
- B. A non-exempt private company
- C. A company limited by guarantee
- D. All the above

2 Marks

25. Which of the following companies must appoint a company secretary?

- A. Public company listed on the stock exchange
- B. Non-exempt private company
- C. Public company not listed on the stock exchange
- D. All the above

2 Marks

26. Which of the following is correct as regards a pre-incorporation contract?

- A. The contract can be made orally
- B. The contract can be made by any person on behalf of the company to be formed
- C. A person affected by the contract may apply to court for a remedy
- D. The contract may be submitted to the Registrar after registration of the company

2 Marks

27. Which of the following companies' annual financial statements must contain the aggregate amounts of contribution by the members of the company?

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

2 Marks

28. Anita has been the auditor of BK Ltd for the last eight years. BK Ltd intends to replace Anita as the company auditor during its annual meeting.

Are the following statements true or false?

Anita can sue the company to stop the intended removal

- A. True
- B. False

Anita is entitled to twenty (20) days' written notice of the intended removal

- C. True
- D. False

2 Marks

29. Which of the following statements is or are correct about a close company?

- (i) It cannot issue shares
- (ii) It may be required to appoint an auditor
- (iii) The members are fiduciaries of the company

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

2 Marks

30. Which of the following companies must appoint an accounting officer?

- A. EB (Pty) Ltd, an exempt private company
- B. MT (Pty) Ltd, a non-exempt private company
- C. PR, a close company
- D. All the above

2 Marks

31. Regarding the constitution of a company, are the following statements true or false?

Every company must have a constitution registered with the Registrar of Companies

- A. True
- B. False

The constitution of a company is a contract between the company and its members

- C. True
- D. False

2 Marks

32. The constitution of BVR Ltd states that the business of the company is exporting farm produce. Because of emerging new competition in that industry, the board of directors of BVR Ltd decide to engage the company in the importation and sale of solar power equipment in Gaborone. The solar power business is now the main source of revenue for the company.

Which of the following statements is correct?

- A. The board of directors of BVR Ltd do not have power to engage the company in any business other than exportation of farm produce
- B. The board of directors of BVR Ltd are personally liable for any loss arising from business other than the sale of farm produce
- C. A person dealing with BVR Ltd is presumed to know that BVR Ltd can only export farm produce to Europe and no other business
- D. Transactions on solar power equipment are lawful notwithstanding that they are outside the constitution of BVR Ltd

2 Marks

33. Which of the following is required for NMT Ltd to change its name?

- A. An ordinary resolution of the shareholders of NMT Ltd
- B. A special resolution of the shareholders of NMT Ltd
- C. Approval of debenture holders of NMT Ltd
- D. Approval of the auditor of NMT Ltd

2 Marks

34. Which of the following resolutions requires 75% votes at a meeting of BLP Ltd?

- A. Election of directors
- B. Approval of dividends
- C. Removal of a director
- D. None of the above

2 Marks

35. Kitso, Karabo and Kebatlile are the three directors of RTH Ltd. Kitso is the chief executive officer and chairperson of the Board. Karabo is the human resources manager. Kebatlile does not hold a position in the company. She only attends board meetings whenever invited by Kitso.

Are the following statements true or false?

Kebatlile does not owe the company fiduciary duties

- A. True
- B. False

Kitso and Karabo are the executive directors of RTH Ltd

- C. True
- D. False

2 Marks

36. Regarding the removal of a director, which of the following statements is or are true?
- (i) TYP (Pty) Ltd would remove a director by a special resolution
 - (ii) CNV Ltd would remove its director by an ordinary resolution
 - (iii) Removal of a director must obtain the approval of court
- A. (i) only
 - B. (ii) only
 - C. (i) and (ii)
 - D. (i), (ii) and (iii)

2 Marks

37. Tshekedi holds 5% shares at HNM Ltd. The majority shareholders pass a resolution that the money owed to the company by Lesetedi should not be recovered. Tshekedi is opposed to the resolution. He does not understand why the majority passed such a resolution at a time when the company is facing serious financial challenges.

Regarding the debt, which of the following is correct?

- A. Tshekedi can commence a personal action
- B. Tshekedi can commence a derivative action
- C. Tshekedi is bound fully by the resolution of the majority
- D. Tshekedi should commence an application for the judicial management of HNM Ltd

2Marks

38. Regarding the power of a director to bind the company, which of the following is correct?
- A. The power must be in the contract of appointment
 - B. The power is both express and ostensible/apparent
 - C. The power is given by a resolution of members
 - D. The power is given by the Registrar of Companies

2 Marks

39. YWQ Ltd owns several properties across Botswana. One of such properties is Plot number 2456 in Francistown on which it has put up its magnificent head office. The property represents 70% of the total assets of YWQ Ltd. The board intends to dispose of Plot 2456 in Francistown.

Which of the following statement is collect?

- A. The members of YWQ Ltd must pass an ordinary resolution
- B. The members of YWQ Ltd must pass a special resolution
- C. Only a resolution of the board of YWQ Ltd is necessary
- D. It would be unlawful for YWQ Ltd to dispose of the Plot

2 Marks

40. Which of the following is not an agenda of the statutory meeting of a company?
- A. Consideration and approval of financial statements
 - B. Receiving auditor's report
 - C. Consideration of annual report
 - D. New issue of shares

2 Marks

41. Regarding meetings of a company, are the following statements true or false?
An adjourned annual meeting cannot proceed without a quorum

- A. True
- B. False

An ordinary meeting can be held virtually

- C. True
- D. False

2 Marks

42. In which of the following types of businesses are the owners also fiduciaries of the business?

- (i) Close company
- (ii) Exempt private company
- (iii) Company limited by guarantee

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

2 Marks

43. As regards judicial management, are the following statements true or false?
Judicial management is intended to restore the solvency of a company

- A. True
- B. False

A creditor who had obtained judgment against the company before the judicial management order was made may attach the assets of the company without the leave of court

- C. True
- D. False

2 Marks

44. TRY Ltd was incorporated in Botswana in 2012. The company was recently converted from a private company into a public company. The company has applied to be listed on the Botswana Stock Exchange and is planning to issue different types of shares to the public.

Which of the following statements is correct?

- A. The company can issue ordinary shares only
- B. The company cannot issue par value shares
- C. The company cannot redeem redeemable preference shares issued before conversion into a private company
- D. The TRY Ltd is not liable for debts incurred before conversion into a public company

2 Marks

45. Which of the following types of dismissal is based on material breach of contract by the employee?

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

2 Marks

46. Regarding charges created by a company, are the following statements true or false?

Motor vehicle B 400 AKT can be used as security for the creation of a fixed charge

- A. True
- B. False

A floating charge can be created on movable assets only

- C. True
- D. False

2 Marks

47. The shareholders of PMD (Pty) Ltd would like to dissolve their company. The company does not have adequate assets to satisfy its liabilities. None of the directors is willing to provide security for the debts of the company.

Which of the following is correct?

- A. The shareholders can commence judicial management proceedings
- B. The shareholders can commence members voluntary winding up
- C. The shareholders can commence creditors voluntary winding up
- D. The shareholders cannot dissolve the insolvent company

2 Marks

48. Mpho is a manager at CMG Ltd. The chief executive officer, Lebogang, claims that Mpho has failed to meet her performance targets. Mpho contends that her failure to meet the set targets was beyond her control because of the Covid-19 Pandemic. No one in the company has met their set performance targets. To her surprise, she receives a letter from Lebogang dismissing her with immediate effect.

Regarding the dismissal, which of the following statement(s) is or are correct?

- (i) Mpho has been constructively dismissed
- (ii) Mpho has been retrenched
- (iii) Mpho's dismissal is substantively and procedurally unfair

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

2 Marks

49. Regarding corruption, are the following statements true or false?

Any person who enters into a contract for construction of a building without advertising for tenders for the work commits an act of corruption

- A. True
- B. False

A reward given by an individual to a public official after the performance of an official duty amounts to corruption

- C. True
- D. False

2 Marks

50. Regarding retrenchment, which of the following statements is or are correct?

- A. An employee being retrenched must receive a notice of retrenchment
- B. There should be no disciplinary hearing before retrenchment
- C. The company must issue a notice to the Commissioner of Labour
- D. All the above

2 Marks

END OF EXAMINATION PAPER