



Botswana Institute of Chartered Accountants

Law

Examination Paper

Date: 9 December 2021
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 statutory law, are the following statements true or false?
Parliament can repeal an Act

- A. True
- B. False

Delegated legislation is superior to the enabling Act

- C. True
- D. False

2 Marks

3. Which of the following courts does not have jurisdiction in criminal matters?
- A. Court of Appeal
 - B. High Court
 - C. Regional Magistrate Court
 - D. Industrial Court

2 Marks

4. Which of the following laws is not codified?
- A. Customary law
 - B. An Act of Parliament
 - C. Delegated legislation
 - D. The Constitution

2 Marks

5. Mpho owes Pule Five Thousand Pula (P5,000) for goods sold and delivered. Which of the following courts does not have any jurisdiction over the matter?
- A. The Court of Appeal
 - B. The High Court
 - C. The Industrial Court
 - D. The Small Claims Court

2 Marks

6. Regarding the interpretation of legislation, are the following statements true or false?

In the golden rule, words are given their ordinary and grammatical meaning

- A. True
- B. False

The mischief rule removes the absurdity of the literal rule

- C. True
- D. False

2 Marks

7. Which of the following describes a "voidable" contract?
- A. A contract that is not legally binding
 - B. A contract made by a person who does not have contractual capacity
 - C. A contract made based on misrepresentation
 - D. A contract that is valid but can be declared invalid at the request of one of the parties

2 Marks

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

(i) The precedents of the High Court are binding on the Court of Appeal

(ii) The obiter dicta of the Court of Appeal is binding on the High Court

(iii) The ratio decidendi of the High Court is not binding on the Industrial Court

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

2 Marks

9. Refilwe is a successful farmer. She owns about two hundred heads of cattle of different breeds. Katlego visits her farm with the intention of buying one of several bulls Refilwe is selling. He does not find Refilwe at the farm. However, he identifies a big black bull. There are several big black bulls at the farm. Katlego makes a telephone call to Refilwe stating he would like to buy "the big black bull". The two agree on a price. Refilwe delivers a big black bull to Katlego. Katlego refuses to take the bull because it is not the one he had described to Refilwe. Refilwe insists that that is the bull she had in mind when they discussed the matter.

In the circumstances, which of the following is correct?

- A. The contract is void for illegality
- B. There is no contract for lack of consensus ad idem
- C. The contract is not enforceable because it is not written
- D. Katlego is the offeree

2 Marks

10. Regarding the formation of a contract for sale of goods, are the following statements true or false?

The seller is always the offeror

- A. True
- B. False

If the goods sold are described in a newspaper, the buyer is the offeror

- C. True
- D. False

2 Marks

11. Kitso borrowed Ten Thousand Pula (P10,000) from a financial institution many years ago. She has not paid any part of the debt because she lost her job immediately after getting the loan. After explaining her situation to the financial institution, no action was taken against her. However, there is new leadership at the financial institution and legal action has been taken against Kitso. Kitso's attorney is raising the defence that the claim has been extinguished by the lapse of time.

Which of the following is the attorney referring to?

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

2 Marks

12. Regarding contracts, which of the following terms is derived from agreement between the parties?

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

2 Marks

13. Regarding the remedy of damages, are the following true or false?

Liquidated damages are assessed by the court

- A. True
- B. False

Punitive damages are compensatory damages

- C. True
- D. False

2 Marks

14. Which of the following remedies is not an equitable remedy in that it is not granted at the discretion of the court?

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

2 Marks

15. Phiri has used his house as security for a loan. A dispute regarding payments has arisen and the bank is intending to sell the house at a public auction. Which of the following remedies would you advise Phiri to sue the bank for to stop the sale?

- A. Interdict
- B. General Damages
- C. Specific performance
- D. Liquidated Damages

2 Marks

16. Until recently, Teemane was employed by Eastern Logistics (Pty) Ltd. An amount of Seven Thousand Pula (P7,000.00) is owed to Teemane by the company from the employment relationship. Teemane has in writing instructed the former employer to pay the entire amount to Molwa. Molwa had supplied Teemane with some goods for Teemane to start a small business.

In the circumstances, are the following statements true or false?

The authorization given to Eastern Logistics (Pty) Ltd by Teemane is called a "cession".

- A. True
- B. False

Teemane cannot sue Eastern Logistics (Pty) Ltd if it declines to pay Molwa.

- C. True
- D. False

2 Marks

17. Regarding intention to create legal relations as a requirement of a contract, which of the following is correct?

- (i) In a commercial agreement, there is always intention to create a legal relationship
- (ii) In a social or domestic agreement, there is always no intention to create a legal relationship
- (iii) There may be no intention to create legal relations in a commercial agreement whereas there may be intention to create legal relations in a social or domestic agreement.

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

2 Marks

18. Botho is a licensed auctioneer. She is instructed by a bus company to sell three of its used buses by public auction. She advertises the buses for sale in two national newspapers. The advertisements clearly state the company she is acting for and the condition of each bus. Only one of the buses has a reserve price. Which of the following statements is correct?
- A. A bidder of a bus without a reserve price is the offeree
 - B. A bidder of the bus with a reserve price is the offeree
 - C. Botho is liable to potential bidders if she calls off the auction
 - D. The auction of the three buses is an invitation to treat

2 Marks

19. Which of the following forms of authority is a representative of a company deemed to have by a third party because of the position held by such a representative in the company?
- (i) Express authority
 - (ii) Implied authority
 - (iii) Ostensible/apparent authority
- A. (i) only
 - B. (ii) only
 - C. (iii) only
 - D. (ii) and (iii)

2 Marks

20. In February 2020, Rahube agreed to rent Letang's house in Gaborone until December 2022. Letang informs Rahube that he would like to sell the house and relocate to his village. They agree on a price. Four months after the agreement, the house is transferred to Rahube. Are the following statements true or false?
- The agreement of lease will end in December 2022.
- A. True
 - B. False
- The agreement of lease has terminated by prescription
- C. True
 - D. False

2 Marks

21. Which of the following forms of agency formation has retrospective validity caused by the actions of the principal?

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

2 Marks

22. Leo, Gape and Mogapi are board members of North-South Carriers Ltd. Leo is the Managing Director while Gape and Mogapi are non-executive directors. Which of the following statements is correct?

- A. The board cannot exercise power unless its expressly given by the shareholders
- B. Leo is the only agent of the company
- C. Gape and Mogapi do not owe the company any fiduciary duties
- D. The board's actions are only bound by the constitution of the company

2 Marks

23. Who among the following is or are agent(s) of the respective business?

- (i) Kabo, a shareholder of B-J Enterprises (Pty) Ltd
 - (ii) Atlegang, a member of A-G, a close company
 - (iii) Masala, a shareholder of E-K Ltd, a company listed on the Botswana Stock Exchange
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) only
 - D. (ii) and (iii)

2 Marks

24. Regarding delictual and contractual obligations, are the following true or false?

A contractual obligation is imposed by law

- A. True
- B. False

Delictual and contractual obligations can arise from the same facts or circumstances

- C. True
- D. False

2 Marks

25. If damage caused to the plaintiff is not foreseeable, the claimant has failed to prove which of the following?

- A. Legal causation
- B. Factual causation
- C. Conduct
- D. Harm

2 Marks

26. Thero is the external auditor of Real Property Construction Ltd. Matshego, Obakeng and Tsiu are shareholder, debenture holder and director of the company respectively.

Who is owed a duty of care by Thero?

- A. Real Construction Ltd
- B. Matshego
- C. Obakeng
- D. Tsiu

2 Marks

27. In delict, which of the following would lead to the apportionment of damages between the plaintiff and the defendant?

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

2 Marks

28. Regarding partnerships, are the following statements true or false?

The minimum number of persons are two

- A. True
- B. False

Some partnerships are limited liability businesses

- C. True
- D. False

2 Marks

29. Which of the following cannot issue shares to its members?

- (i) A private company whose name ends with "Pty Ltd".
 - (ii) A company limited by guarantee
 - (iii) A close company
- A. (i) only
 - B. (ii) only
 - C. (ii) and (iii)
 - D. (iii) only

2 Marks

30. A minority of the shareholders of Go Green Ltd have passed a resolution that directs their board of directors to refund the company money lost through their negligence in concluding a company transaction. Which of the following explains the decision taken by the shareholders?

- A. Limited liability
- B. Perpetual succession
- C. Shareholder derivative action
- D. Lifting the veil

2 Marks

31. Regarding a company having shares, which of the following is the correct meaning of a "limited liability company?"

- A. The liabilities of the company belong to the company and not its shareholders
- B. The company is not liable to its shareholders for dividends not paid
- C. Shareholders are liable to the company only to the extent of unpaid but issued shares
- D. The company is liable to creditors only for the total value of its shares

2 Marks

32. Regarding exempt and non-exempt private companies, are the following statements true or false?

An exempt private company may appoint an auditor

- A. True
- B. False

Both companies must appoint a company secretary

- C. True
- D. False

2 Marks

33. Matenge is intending to form a company. She would like to enter into some contracts for the benefit of the company before the company is formed. Which of the following statements is or are NOT correct for the company to ratify the contracts after its formed?

- (i) The contracts must be in writing
- (ii) The contracts must be signed by Matenge or his representative
- (iii) The contracts can be submitted to the Registrar of Companies together with the application for registration of the company or immediately after the incorporation of the company

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

2 Marks

34. Regarding names of companies proposed for registration, are the following statements true or false?

- (i) If a name has been reserved for a company, another person may propose a similar or identical name and the Registrar may register their company without reference to the owner of the reserved name

- A. True
- B. False

The Registrar has the power to change the name of a company provided the laid down procedure is adhered to

- C. True
- D. False

2 Marks

35. Which of the following must ensure that accounting records are kept?

- (i) Public companies
 - (ii) All companies having a share capital
 - (iii) Close companies and companies limited by guarantee
- A. (i) only
 - B. (ii) only
 - C. (i) and (ii)
 - D. (i), (ii) and (iii)

2 Marks

36. Which of the following is not under an obligation to prepare an annual report?

- A. XB (Pty) Ltd owned by two shareholders
- B. BN Ltd owned by four shareholders
- C. KT, a close company owned by two members
- D. JLP (Pty) Ltd owned by one shareholder

2 Marks

37. Which of the following is or are disqualified from appointment as auditor?

- (i) A public company
- (ii) A private company
- (iii) A partnership owned by members of BICA

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

2 Marks

38. Seema and Lebang have formed SELE close company. They have not registered a constitution for the company. Under the circumstances, which of the following is correct?

- A. The constitution of the company is the Companies Act
- B. The constitution of the company is the First Schedule of the Companies Act
- C. The constitution of the company is Part XIX of the Companies Act
- D. The company does not have a constitution whatsoever

2 Marks

39. Which of the following must appoint an accounting officer?

- A. CRT (Pty) Ltd
- B. RYP Ltd, a listed company
- C. QRV Ltd, a company limited by guarantee
- D. BTR, a close company

2 Marks

40. The constitution of VDT Ltd stipulates three types of businesses the company can engage in. With a view to generating more revenue for the company, the board passes a resolution for the company to engage in a fourth type of business. The necessary licences for this business are issued by the relevant government authority.

Are the following statements true or false?

All transactions based on the fourth type of business are not binding because they are ultra vires the constitution of the company

- A. True
- B. False

A shareholder can approach the court for the resolution of the board to be set aside

- C. True
- D. False

2 Marks

41. Which of the following is the primary source of the duties of directors?

- A. The constitution of the company
- B. The letter or contract of appointment of a director
- C. Board resolutions on directors' duties
- D. The Companies Act

2 Marks

42. In which of the following meetings are the shareholders given a statutory right to ask questions on the management of the company?

- A. Special meeting
- B. Class meeting
- C. Annual meeting
- D. Board meeting

2 Marks

43. The directors of QER (Pty) Ltd have borrowed a significant amount of money from the company. They have failed to pay back the money as agreed. A shareholder is aggrieved and would like to take action.

Which of the following is the correct action by the shareholder?

- A. A personal action
- B. Derivative action
- C. Judicial management of QER (Pty) Ltd
- D. Winding up of QER (Pty) Ltd

2 Marks

44. Regarding dividends, which of the following is or are correct?

- (i) Preference shareholders are entitled to dividends irrespective of the financial position of the company
- (ii) Ordinary shareholders receive dividends before preference shareholders
- (iii) The rate of dividends for preference shareholders is known throughout the life of such shares

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

2 Marks

45. Which of the following cannot issue a prospectus?

- A. ABN Ltd
- B. SDH (Pty) Ltd
- C. RPM close company
- D. All the above

2 Marks

46. Regarding crimes committed by the company, are the following true or false?

A director who is to blame for the crime is criminally liable although the crime is committed in the name of the company

- A. True
- B. False

If the offence committed is money laundering, the company and the agent of the company involved are both guilty of a crime

- C. True
- D. False

2 Marks

47. In contracts that are not clear whether a person doing work for a company is an employee or is self-employed, which of the following is or are correct?

- (i) The control test determines fully whether the worker is an employee or self-employed
- (ii) If a worker is integrated in the business of the person he or she is working for, the parties are in an employer-employee relationship
- (iii) The multiple test is the most satisfactory approach in determining whether a worker is an employee or self-employed

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

2 Marks

48. Game and Nonfo both work for Rradipitse. Game does some work for Rradipitse as and when called upon to do so which is usually two days a week. Nonfo works every day except on Sundays and public holidays. She is paid monthly. Which of the following statements is or are correct?

Game is in a contract of service while Nonfo is in a contract for services

- A. True
- B. False

Rradipitse is vicariously liable for the acts of Nonfo

- C. True
- D. False

2 Marks

49. Regarding dismissal, which of the following is correct?

- A. Procedural fairness is not required for summary dismissal
- B. Notice in writing is necessary before constructive dismissal
- C. Every employee who is wrongfully dismissed is entitled to reinstatement
- D. None of the above

2 Marks

50. Which of the following is or are the requirements of redundancy?

- (i) Notice to the employee in writing
 - (ii) FILO
 - (iii) Notice to the Commissioner of Labour
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) only
 - D. (i), (ii) and (iii)

2 Marks

END OF EXAMINATION PAPER