



# **Botswana Institute of Chartered Accountants**

## **Law Examination Paper**

Date: 10 June 2021

Time: 14:00 am -15.30 am

Time allowed: 1 hours 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

**DO NOT TURN OVER UNTIL YOU ARE INSTRUCTED TO BEGIN WORK**

1. Which of the following sources of law is not codified?
- A. Roman-Dutch law
  - B. The Constitution
  - C. Delegated legislation
  - D. Acts of Parliament

2 Marks

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2. Regarding the court structure, are the following statements true or false?  
The Industrial Court does not have appellate jurisdiction

- A. True
- B. False

All Magistrates' courts have original jurisdiction

- C. True
- D. False

2 Marks

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3. While delivering a judgment, the judge states that the duty of the court is to give the words of a statute their grammatical and ordinary meaning.

Which of the following techniques of interpretation of statutes is the judge referring to?

- A. Golden rule
- B. Literal or Plain meaning rule
- C. Presumptions
- D. Mischief rule

2 Marks

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4. Regarding judicial precedent, which of the following statement or statements is or are correct?

- i. Obiter dicta are judicial remarks that do not form law
- ii. Ratio decidendi is principles of law upon which the judgment rests
- iii. Judgements or decisions of a Chief Magistrate do not form judicial precedent

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

2 Marks

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5. Regarding the power and role of Parliament in law-making, which of the following is correct?

- A. Parliament cannot amend an existing legislation
- B. Parliament can revoke delegated law-making power

- C. Parliament can disregard the Constitution
- D. Parliament cannot repeal any Act

2 Marks

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6. Regarding customary law, which of the following statements is correct?
- A. Customary law is found in Acts of Parliament
  - B. Customary law cannot override the Constitution
  - C. Customary law is enforced by customary courts only
  - D. Customary law is a type of delegated legislation

2 Marks

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7. Which of the following courts will consider a matter only after a mediation or arbitration process?
- A. Industrial Court
  - B. High Court
  - C. Court of Appeal
  - D. Regional Magistrate Court

2 Marks

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8. Laone would like to sell her car. She places an advertisement in a newspaper which reads as follows "Offer for sale of Toyota Vitz 2006 Model. Price P 45 000.00. As good as new. Contact Laone on telephone number 3945678." Kaone sees the advertisement. Kaone is familiar with the car, he informs Laone that he is on his way to see her with a banker's cheque of P45 000.00 in her name. Laone tells Kaone that she has sold the car for P45 000.00 to Queen. Queen had seen the advertisement and contacted Laone first.

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

The advertisement is an offer

- A. True
- B. False

As regards Laone and Queen, Queen is the offeror

- C. True
- D. False

2 Marks

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9. Aone and Babedi have entered a contract. Babedi is in breach of the contract, but Aone is not taking any action against Babedi. Charlie is Aone's brother. Charlie would like to sue Babedi on behalf of his brother.

In the circumstances, which of the following statements is or are correct?

- (i) There is no privity of contract between Babedi and Charlie
  - (ii) Aoane has indefinite time to sue Babedi for breach of contract
  - (iii) Aone can give power of attorney to Charlie for Charlie to sue Babedi on his behalf
- A. (i) only
  - B. (i) and (iii)
  - C. (iii) only
  - D. (i), (ii) and (iii)

2 Marks

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10. Regarding intention to contract, are the following true or false?

There is no presumption of intention to contract between siblings entering a commercial agreement

- A. True
- B. False

Pako and Yaone agree that Yaone will reward Pako with P1,000.00 if Pako passes his examination. Pako requests Yaone to write down the agreement, which Yaone does. The agreement is signed by both parties. In the circumstances:

Presumption of no intention to contract is rebutted

- C. True
- D. False

2 Marks

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11. Which of the following types of damages is awarded when the plaintiff or claimant has suffered limited or no loss from breach of contract?

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

2 Marks

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12. Resego has agreed in writing to sell a piece of land to Gaone. Gaone has paid the agreed price. Gaone is surprised when Resego informs him that he will refund his money because he has found a better price from someone else. Gaone wants the land he has paid for. He is afraid that Resego may transfer the land to the new buyer.

Which of the following would prevent Resego from transferring the land to the new buyer pending the final determination of the case between Gaone and Resego?

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

2 Marks

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13. Which of the following describes the process by which a creditor transfers his rights against a debtor?
- A. Privity of contract
  - B. Cession
  - C. Contractual capacity
  - D. Unilateral contract

2 Marks

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14. Regarding exclusion clauses, are the following true or false?

The clause cannot override mandatory provisions of a legislation

- A. True
- B. False

A party to a contract who has not read a particular clause but nevertheless signs the agreement is not bound by the clause

- C. True
- D. False

2 Marks

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15. Which of the following means the terms agreed by the parties to a contract?

- A. Express terms
- B. Material terms
- C. Terms implied by the court
- D. Immaterial terms

2 Marks

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16. On 4<sup>th</sup> January 2003, Pono and Harry entered a contract of lease. The lease came to an end after three years. By then, Pono owed Harry P20 000.00 in unpaid rent. Harry sued Pono in February 2019. The court has decided that the claim by Harry was filed out of time. Which of the following is the court referring to?

- A. Merger
- B. Prescription
- C. Breach
- D. Waiver

17. Donald has been sued by Saone for damage arising from Donald's negligence. Donald concedes that the damage suffered by Saone is directly linked to his conduct. However, Donald contends that the damage was not foreseeable. In the circumstances, are the following statements true or false?

Saone has sued Donald in delict

- A. True
- B. False

By stating that the damage to Saone is not foreseeable, Donald is asserting the absence of legal causation in the claim against him

- C. True
- D. False

2 Marks

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18. Which of the following means that the plaintiff must take reasonable steps to reduce his loss caused by the defendant?

- A. Measure of damages
- B. Quantum of damages
- C. Mitigation of damage
- D. Repudiation

2 Marks

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19. Regarding specific performance, which of the following statements is or are correct?

- (i) The remedy is available in all claims
- (ii) Performance must be possible
- (iii) The remedy prevents further breach of contract

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

2 Marks

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20. Regarding agency by ratification, which of the following is incorrect?

- A. The principal must have been in existence when the agent transacted with the third party
- B. The principal must ratify the whole contract

- C. Ratification by the principal must be within a reasonable time
- D. The principal must grant a power of attorney to the agent

2 Marks

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21. The constitution of X Ltd states that the Board of Directors must appoint the managing director. It permits the managing director to enter into contracts on behalf of X Ltd. There has been a delay in appointing a managing director. With the full knowledge and authority of the board of directors, Thato has been representing the board in meetings with third parties. In one of the meetings, Thato enters into a contract with Enele, a quantity surveyor, the contract is for Enele to provide professional advice. Enele completes the task and submits his fee note for settlement. To his surprise, Enele receives a letter from the chairperson of the board that he will not be paid because Thato had not been appointed the managing director of X Ltd.

In this regard, are the following statements true or false?

The contract between X Ltd and E is void

- A. True
- B. False

X Ltd is estopped from denying that T has authority to represent the company

- C. True
- D. False

2 Marks

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22. Regarding agency and the members of a close company, which of the following is correct?

- A. Members of the company must appoint a manager who becomes the agent of the company
- B. Every member of the company is an agent of the company
- C. Members are individually and separately liable for the debts of the company
- D. The members are the principals, and their company is the agent

2 Marks

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

- A. Conduct
  - B. Fault
  - C. Causation
  - D. Strict liability
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24. Who among the following is owed a duty of care by the auditor?

- A. The board of directors
- B. The company
- C. Shareholders
- D. Employees

25. Regarding the delict of negligence, are the following statements true or false?

Contributory negligence is a complete defence to the claim

- A. True
- B. False

Volenti non fit injuria can be raised or pleaded by the plaintiff or by the claimant

- C. True
- D. False

2 Marks

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26. Masego and Gosego would like to start a business known as M G which they will control and be the only shareholders. In addition, the entity must be a separate personality. Which of the following would you recommend to them?

- A. M G Partnership
- B. M G close company
- C. M G (Pty) Ltd
- D. M G company limited by guarantee

2 Marks

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27. The term 'limited liability' refers to limitation of liability of which of the following?

- A. The company
- B. The founders of the company
- C. Paid up shareholders
- D. Unpaid shareholders

2 Marks

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28. Waone is intending to form a company. She unexpectedly finds office space that she thinks would be suitable for the new company. The landlord tells her that she must enter into a lease agreement immediately else the premises will be taken up by someone else. Are the following statements true or false?

Waone cannot sign the lease agreement on behalf of the company until the company is formed

- A. True
- B. False

Waone can sign the lease agreement as an agent of the company to be formed

- C. True

D. False

2 Marks

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29. In which of the following do the owners of the business have joint and several liability?

- A. AB, an ordinary partnership
- B. CD (Pty) Ltd
- C. EF Limited
- D. GH, a company limited by guarantee

2 Marks

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30. Regarding the constitution of a company, which of the following statements is or are correct?

- (i) Every company must have a constitution registered with the Registrar of Companies
  - (ii) The constitution is a contract between the members and the company
  - (iii) The constitution can be amended by an ordinary resolution
- A. (i) only
  - B. (i) and (ii)
  - C. (ii) only
  - D. (ii) and (iii)

2 Marks

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31. TYP Ltd was incorporated recently. The company buys and sells new water pumps. The board of directors have passed a resolution for the appointment of an auditor. The following registered and qualified persons apply for the appointment:

- (i) Dineo, an employee of one of the directors
- (ii) Lorato, the company secretary of TYP Ltd
- (iii) Rethabile, who has borrowed P10,000.00 from TYP Ltd to repair his car. The amount remains outstanding.

Who among the above, if any, is qualified for appointment?

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

2 Marks

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32. Regarding directors, which of the following is correct?

- A. Every company must have at least two directors
- B. According to the Companies Act, a director must be a shareholder of the company
- C. Directors can amend the constitution of a company

- D. Directors can engage the company in business that is outside the constitution of the company

2 Marks

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33. In which of the following are all the owners of the business also its fiduciaries?

- A. ZB (Pty) Ltd
- B. PR, a close company
- C. BN, a company limited by guarantee
- D. VJ Ltd.

2 Marks

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34. Violet, Modise and Harry are the directors of VMH Ltd. In 2018, Modise borrowed P80 000.00 from the company. The agreement states that payment must be made within six months. Violet and Harry are not keen in demanding payment notwithstanding reminders from the account's office. Rethabile is a shareholder of the company. She has become aware of the debt owed by Modise. Rethabile writes to the board of the company to recover the money from Modise. The board has failed to respond to the request. In the circumstances, are the following true or false?

Rethabile can institute a personal action against Modise

- A. True
- B. False

Rethabile can institute a derivative action against Modise

- C. True
- D. False

2 Marks

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35. NMY is a close company. Yandile holds 80% interest while Nandi and Mompoloki hold 10% interest each.

In this regard, which of the following statements is correct?

- A. Yandile can pass special resolutions opposed by Nandi and Mompoloki
- B. Nandi and Mompoloki cannot change the principal business of the company
- C. Nandi and Mompoloki are fiduciaries of the company
- D. All the above

2 Marks

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

- A. Preference shareholders must receive dividends as agreed

- B. The amount of dividends is known at the same time as dividends payable to ordinary shares
- C. If the shares are redeemable, they cannot be redeemed unless they are paid in full
- D. Their rights are identical to those of other shares

2 Marks

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37. Regarding share capital, which of the following is the total capital of a company as described in the application for registration?

- A. Issued capital
- B. Paid up capital
- C. Stated capital
- D. Unpaid capital

2 Marks

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38. CVM Ltd is a leading company in the hospitality industry. Due to the Covid-19 pandemic, the company is facing major financial problems. The board of directors intends to borrow money using some of the company's movable and immovable assets as security for the loan.

In this regard, which of the following is correct?

- A. The board must obtain a resolution of the shareholders before borrowing the money
- B. The two buses owned by the company can be used to secure a fixed charge
- C. If the company borrows the money but it does not pay back, the directors of the company would be jointly and severally liable even if they have not given any personal guarantee for the debt
- D. The company's immovable assets can be used as security for a floating charge

2 Marks

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39. Regarding the consequences of crystallisation of a floating charge, which of the following is correct?

- A. The company as the debtor/chargor continues to use the class of assets as before
- B. The affected class of moveable assets can be sold at a public auction
- C. New assets belonging to the class of assets securing the debt become part of the floating charge
- D. The chargee/creditor cannot sue for any shortfall arising from the proceeds received after crystallisation.

2 Marks

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40. Mpho is a member of REM close company. The other members of the company are Rita and Emang. Mpho is facing some financial difficulties and would like to dispose of his interest in the company.

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

Under no circumstances would REM close company acquire Mpho's interest in the company

- A. True
- B. False

The company may give financial assistance to Emang for him to acquire Mpho's interest in the company

- C. True
- D. False

2 Marks

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41. Regarding private companies having shares, which of the following statement or statements is or are correct?

- (i) An exempt private company must appoint a company secretary
- (ii) A non-exempt private company may appoint any person as a company secretary provided he or she meets the criteria set by the board of directors
- (iii) An exempt private company is registered as an exempt private company

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

2 Marks

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42. The shareholders of BNM Ltd would like to wind up their company. The company has a very effective board of directors. However, the company owes its bank a substantial amount of money. If the company's assets are sold, the proceeds of sale can only settle about 30% of the debts.

In the circumstances, which of the following is correct?

- A. The company must be placed under judicial management before its wound-up by the members
- B. The members can commence members' voluntary winding up of the company
- C. The members can commence creditors' voluntary winding up of the company
- D. The members cannot wind up their company

2 Marks

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43. Regarding the offence of insider dealing, are the following statements true or false?  
Insider dealing relates to published price-sensitive information of securities of a company
- A. True
  - B. False

The offence relates to all companies

- C. True
- D. False

2 Marks

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44. Regarding the role of a specified party under the Financial Intelligence Agency Act, which of the following statements is incorrect?
- A. Undertaking due diligence before establishing a business relationship with a customer
  - B. No duty to voluntarily provide suspicious information to the Financial Intelligence Agency
  - C. To co-operate with the Financial Intelligence Act whenever required
  - D. To keep the identity records of any person acting on behalf of a customer

2 Marks

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45. In distinguishing between an employee and an independent contractor, which of the following tests consist of the following questions:

- (i) When and at what intervals remuneration is paid
- (ii) Whether the worker is provided with the necessary tools
- (iii) Whether there is supervision of the worker by the person he is working for
- (iv) Whether the worker is disciplined by the person or entity he is working for

- A. Control test only
- B. Control test and integration test
- C. Multiple or economic test only
- D. Organization test only

2 Marks

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46. Queen has been working as an accountant for TRZ Ltd for the last three years. His supervisor has accused him of defrauding the company. Without being asked any question, his supervisor recommends to the managing director that Queen should be dismissed instantly. Under the circumstances, are the following statements true or false?

Because of the seriousness of the allegation, Queen is not entitled to procedural fairness

- A. True
- B. False

If Queen is dismissed, the dismissal is known as constructive dismissal

- C. True
- D. False

2 Marks

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47. Which of the following is prima facie unlawful grounds for dismissing an employee?
- A. Lateness for duty
  - B. Drunkenness
  - C. Joining a recognised trade union
  - D. Insubordination

2 Marks

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48. The following separate events have taken place:  
Saone owns a construction firm. She agrees to build a house for Tlotlo. Zandile is an employee of Saone. Work-related disputes arise between Saone and Tlotlo and between Zandile and Saone.

Which of the following is correct?

- A. Tlotlo can sue Saone at the Industrial Court
- B. Zandile can sue Saone at the Industrial court only
- C. Tlotlo can lodge the dispute with a labour officer for mediation
- D. Zandile and Saone have entered into a contract for services

2 Marks

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49. Kaone is employed by Jasmine as a driver. Kaone is informed that he will become a conductor on one of the buses with immediate effect. There will not be any change of remuneration paid to Kaone. Kaone politely declines the new role. He is informed that he either accepts the role or he can terminate employment.

Are the following statements true or false?

Kaone has been summarily dismissed

- A. True
- B. False

Kaone has been wrongfully dismissed

- C. True
- D. False

2 Marks

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50. Regarding retrenchment, which of the following statement or statements is or are correct?  
The employer must conduct a disciplinary hearing

- A. True
- B. False

Written notice must be given to the employee and the Commissioner of Labour

- C. True
- D. False

2 Marks

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**END OF THE EXAMINATION**