



Botswana Institute of Chartered Accountants

Law Examination Paper

Date: 09 June 2022

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. Regarding the Botswana legal system, are the following statements true or false?

The jurisdiction of a customary court is established by the Constitution.

- A. True
- B. False

Judgments of the Industrial Court are judicial precedents.

- C. True
- D. False

2 Marks

2. Assume that an Act that strengthens anti-money laundering laws has just been passed by Parliament. The Act contains a provision that repeals an existing piece of legislation. It also gives power to the Minister to make regulations for the enforcement of some of the provisions of the Act. The Act will become effective on a date to be determined by the Minister.

Which of the following statements is or are correct?

(i) For the Act to become effective, it must receive approval of the House of Chiefs.

(ii) The regulations made by the Minister must be intra-vires the Act.

(iii) If there is a provision of the Act that is inconsistent with the Constitution, the entire Act is void.

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

2 Marks

3. Which of the following courts has unlimited original jurisdiction in civil and criminal matters?

- A. The Court of Appeal
- B. The High Court
- C. The Regional Magistrate Court
- D. The Industrial Court

2 Marks

4. Regarding judicial precedent, which of the following statements is correct?
- A. The *ratio decidendi* of the High Court is binding on the Court of Appeal
 - B. The *obiter dicta* of the High Court are binding on Magistrates Court
 - C. The *ratio decidendi* of the Industrial court is persuasive on the Court of Appeal
 - D. The *ratio decidendi* of the Court of Appeal is binding on itself (Court of Appeal)

2 Marks

5. Which of the following provides that an Act must be interpreted purposively?
- A. The mischief rule
 - B. The Golden rule
 - C. The literal rule
 - D. Interpretation Act

2 Marks

6. An Act states that “ unauthorised possession of a firearm is an offence”. Which of the following rules of interpretation would ensure that a police officer who disarms a person who is in unauthorised possession of a firearm is not guilty of the unauthorised possession of the same firearm?
- A. Literal rule
 - B. Golden rule
 - C. Mischief rule
 - D. Eiusdem generis rule

2 Marks

7. Kabo is intending to buy a car. Oteng is a good friend of his. Oteng informs Kabo that his neighbour, Kitso is selling a good car at a reasonable price. Oteng facilitates a meeting between Kitso and Kabo at which Kabo views and test-drives the car. Kabo asks Kitso whether the car has ever been involved in an accident; Kitso asserts that the car has never been in an accident . Based on the meeting events and representations, Kabo and Oteng enter into an agreement for sale of the car. A few days after taking ownership and possession of the car, Kabo discovers that the car was once damaged badly in a road accident while being driven by Kitso. He also finds out that Oteng knew about the accident.

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

There is no privity of contract between Kitso, Kabo and Oteng

- A. True
- B. False

The agreement is void for intentional misrepresentation

- C. True
- D. False

2 Marks

8. Regarding offer and acceptance, which of the following is correct?

- A. Communication of acceptance is not a requirement in a bilateral contract
- B. Acceptance must be communicated in a unilateral contract
- C. An offer can only be made to a specific person or group of persons
- D. The general rule is that silence does not amount to acceptance

2 Marks

9. Remofilwe is an exporter of handicrafts to country Y. Y has invaded one of its neighbours. Due to sanctions imposed against Y, Remofilwe cannot export any handicrafts to her customer in Y as agreed.

Which of the following is correct?

- A. Remofilwe can be sued for breach of contract
- B. The contract has ended by discharge
- C. The contract is terminated by frustration
- D. The contract is terminated by set-off

2 Marks

10. X Ltd has lost valuable goods in a robbery at one of its storage facilities. The company makes an advertisement in which it promises a reward of twenty thousand Pula (P20 000.00) to anyone who provides information that would lead to the recovery of the goods. Molefe comes across the goods. However, Molefe has not seen the advertisement. He shares the information with a police officer who contacts X Ltd. Molefe learns about the reward from the police officer.

In the circumstances, which of the following is or are NOT correct?

(i) There is *consensus ad idem* (meeting of the minds) between X Ltd and Molefe

(ii) The police officer is entitled to the reward

(iii) The advertisement is an invitation to treat

A. (i) only

B. (i) and (ii) only

C. (ii) and (iii)

D. All the above

2 Marks

11. Which of the following is about the transfer of contractual rights to a third party?

A. Delegation

B. Set-off

C. Merger

D. Cession

2 Marks

12. Regarding presumptions on intention to contract, are the following statements true or false?

There is intention to contract between sisters who enter a commercial transaction

A. True

B. False

At no time can a social agreement be binding

C. True

D. False

2 Marks

13. Khumo is employed as a supermarket manager at Eastern Supermarkets Ltd. The contract of employment is in writing. It has been witnessed by Lone and Moilwa for Khumo and the supermarket respectively.

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

- (i) The parties are only bound by the terms in the contract
 - (ii) The parties have intention to contract even if it is not stated in the contract
 - (iii) The parties have entered a unilateral contract
- A. (i) only
 - B. (i) and (ii)
 - C. (ii) only
 - D. (ii) and (iii)

2 Marks

14. Regarding breach of contract, are the following statements true or false?

Material breach does not necessarily cause termination of the contract

- A. True
- B. False

If the non-breaching party anticipates a contractual breach, he cannot commence legal action before the time for performance has arrived

- C. True
- D. False

2 Marks

15. Which of the following types of damages is about a specific amount of compensation agreed before the occurrence of the breach?

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

2 Marks

16. Thuto buys used furniture in Gaborone and sells it in Maun. He agrees with Wame that Wame will transport her furniture from Gaborone to Maun. Wame is fully aware of the kind of business Thuto deals in. She is also aware that Thuto sells the furniture on Saturdays from 11am. The agreement states that the furniture will arrive on Saturday by 9am. Due to Wame's busy schedule, the furniture arrives on Saturday evening. Thuto must hire a warehouse in which to store the furniture until the following Saturday.

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

- A. Thuto can sue Wame for special damages
- B. Thuto can sue Wame for specific performance
- C. Thuto can sue Wame for liquidated damages
- D. Thuto should not sue Wame because there is no damage or loss to the furniture

2 Marks

17. Which of the following is impacted by mitigation of loss?

- A. Quantum of damages to the claimant/plaintiff
- B. Whether the claim will succeed
- C. The standard of proof
- D. The burden of proof

2 Marks

18. Apprehension of irreparable harm is a requirement in which of the following remedies?

- A. Damages
- B. Interim interdict
- C. Specific performance
- D. Rescission

2 Marks

19. Country-Wide Logistics Ltd specialises in transporting vaccines. The vaccines are transported at specific temperatures to maintain efficacy. Country-Wide Logistics Ltd enters an agreement in writing with the Ministry of Health for the delivery of vaccines valued at Three Hundred Thousand Pula (P300 000.00). The agreement specifically states that the vaccines must be transported at 10°C temperature. The contract contains a limitation clause stating that Country-Wide Logistics Ltd would be liable for Five Hundred Pula (P500. 00) only in case the vaccines are destroyed, "in any manner whatsoever including the negligence of its employees". The vaccines are destroyed in transit on a hot day after the cooling system of the vehicle stops working. A dispute arises about the loss to the Ministry. The Ministry argues that its representative did not read the contract.

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

The Ministry of Health shall receive Five Hundred Pula (P500.00) for breach of contract

- A. True
- B. False

The limitation clause is void for promoting negligence of the employees of Country-Wide Logistics Ltd

- C. True
- D. False

2 Marks

20. Kelebogile is an accountant at a manufacturing company in Francistown. She decides to resign prior to the end of her contract of employment so that she can concentrate on her small business. The contract of employment was for a period of two years. The employer would like her to stay until the end of the contract.

Which of the following statements is or are correct?

- (i) Kelebogile must face disciplinary action
- (ii) Kelebogile cannot be forced by a court to serve the rest of the contract
- (iii) Kelebogile is not liable to her employer whatsoever

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

2 Marks

21. Estoppel stems from an agency relationship established in which of the following ways?

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

2 Marks

22. Are the following statements true or false regarding a contract entered into between a director of a company who exceeds his mandate and where the third party was not aware at the time of contracting?

The company is not bound by the contract

- A. True
- B. False

The third party must take legal action against the director after becoming aware that the director exceeded his mandate in order to enforce the contract

- C. True
- D. False

2 Marks

23. Who among the following is an agent of the entity they belong to?

- A. Mpho, the only shareholder in Mpho (Pty) Ltd
- B. Mmusi, a 5% interest-holder in City Travels CC
- C. Maduo, a debenture holder in Busy Line Tours Ltd
- D. Nonofu, the auditor of MBN Enterprises Ltd

2 Marks

24. Which of the following distinguishes between a delict and a breach of contract?

- (i) Damages are awarded in delict only
- (ii) A delict is an unlawful act whereas breach of contract is not
- (iii) The concept of remoteness of damage applies to delict only

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

2 Marks

25. A judgement of the High Court states that the claimant is not entitled to one of the orders sought because the loss was 'remote' under the circumstances of the case.

The term 'remote' refers to which of the following?

- A. Harm

- B. Conduct
- C. Legal causation
- D. Immaterial loss

2 Marks

26. Regarding shareholders and the auditor, are the following statements true or false?

The auditor does not owe a duty of care to the shareholders in delict

- A. True
- B. False

A contractual relationship exists between the auditor and the shareholders

- C. True
- D. False

2 Marks

27. While shopping in a supermarket, Maduo is seriously injured on the left shoulder by a falling packet of sugar. The supermarket refutes allegations of negligence made by Maduo. In court, the supermarket contends that Maduo is supposed to prove that the supermarket is liable for negligence. In the circumstances, which of the following would Maduo rely on?

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

2 Marks

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

The concept is about apportionment of damages

- A. True
- B. False

An employer who is vicariously liable can recover the loss from the employee

- C. True
- D. False

2 Marks

29. Who among the following are fiduciaries and owners of the same enterprise?

- (i) Shareholders in MRV (Pty) Ltd
- (ii) Members of VMN close company
- (iii) Pelaelo and Eteng, partners in an audit firm

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

2 Marks

30. Which of the following explains the legal basis underlying the preparation of an audit report for a group of companies instead of an audit report for each company in the group?

- A. Limited liability
- B. Perpetual succession
- C. The company is a separate legal entity
- D. Lifting the veil

2 Marks

31. Regarding companies formed under the Companies Act, are the following statements true or false?

A close company is not a limited liability company

- A. True
- B. False

In a company limited by guarantee, there is a minimum amount of liability for every member of the company if the company is wound up for insolvency

- C. True
- D. False

2 Marks

32. Which of the following must appoint a company secretary?

- (i) A non-exempt private company
- (ii) A public company
- (iii) An exempt private company

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

2 Marks

33. Which of the following does not have perpetual succession?

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

2 Marks

34. Seako, Tsamma and Tebogo are shareholder, director, and debenture holder of HTL (Pty) Ltd respectively.

Are the following statements true or false?

The constitution of HTL (Pty) Ltd establishes a contract between the company and Seako only

- A. True
- B. False

Tsamma and Tebogo have voting rights in the general meetings of HTL (Pty) Ltd

- C. True
- D. False

2 Marks

35. Which of the following features is found in both public and private companies having a share capital?

- A. At least one shareholder
- B. At least two directors
- C. Issuing debentures to the public
- D. Registration of a constitution with the Registrar

2 Marks

36. Katlo, Osego and Lefa are shareholders of DRT (Pty) Ltd which was formed in 2018. Katlo holds 60% shares, Osego holds 15% shares and Lefa holds 25% shares. The company has not registered a constitution with the Registrar of Companies.

Which of the following is correct?

- (i) As the majority shareholder, Katlo can pass special resolutions alone
- (ii) The company is governed by the Third Schedule in the absence of its own constitution
- (iii) Katlo and Lefa can pass a binding resolution to stop any dividends to Osego

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

2 Marks

37. Which of the following is NOT correct regarding a company secretary and the auditor?

- A. They are elected by the shareholders
- B. They have ostensibly authority in the administrative affairs of the company
- C. A partnership that is the company secretary can be the auditor of the company
- D. All the above

2 Marks

38. Nelo and Peo are the only shareholders and directors of NP (Pty) Ltd.

Which of the following is or are correct?

- (i) They are liable as directors if they act beyond the constitution of the company
- (ii) They can change the constitution of the company as directors
- (iii) Peo can become the company secretary of NP (Pty) Ltd

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

2 Marks

39.Regarding the division of power between the board of directors and shareholders, are the following statements true or false?
Shareholders can alter the dividends recommended by the board of directors

- A. True
- B. False

A major transaction requires a special resolution of the shareholders

- C. True
- D. False

2 Marks

40.Which of the following is NOT a compulsory agenda item at the annual meeting of every private company?

- A. Consideration and approval of financial statements
- B. Consideration of the annual report
- C. Appointment of the auditor
- D. Shareholders' opportunity to comment on or ask questions about the management of the company

2 Marks

41.Which of the following meetings is adjourned to the following week in the absence of a quorum?

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

2 Marks

42.Thato is a shareholder and a director of KTN (Ltd). The other members of the board of directors have consistently rejected his proposal for the company to sue certain debtors of the company. Thato is of the view that action must be taken without any further delay.

Are the following statements true or false?

Thato can institute a derivative action as a shareholder

- A. True
- B. False

Thato can commence a personal action against the other members of the board

- C. True
- D. False

2 Marks

43. Which of the following are exceptions to the capital maintenance rule?

- (i) Redeemable shares
- (ii) A company's acquisition of its shares
- (iii) Paying dividends from profits

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

2 Marks

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

Motor vehicle B 600 AKM owned by BXC Ltd can secure a fixed charge

- A. True
- B. False

The term 'crystallization' would apply to piece of land, plot number 1235 that has secured a debt

- C. True
- D. False

2 Marks

45. Amantle, Tshepo and Dineo are good friends and the only directors and shareholders of ATD (Pty) Ltd. The three persons intend to wind up the company. The company has some debts. However, the company does not have sufficient assets to settle the debts before the winding up of the company. Which of the following should be commenced by the three friends?

- A. Judicial management
- B. Members voluntary winding up
- C. Creditors voluntary winding up
- D. Winding up by the court under the just and equitable rule

2 Marks

46. Regarding termination of employment, which of the following are not a result of a disciplinary proceeding?

- (i) Retrenchment
- (ii) Constructive dismissal
- (iii) Summary dismissal

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

2 Marks

47. Thuso has been dismissed with immediate effect as an executive director of a government-owned entity. He is aggrieved because the organization does not have sufficient evidence to prove its claim against him. In this regard, are the following statements true or false?

Thuso can sue at the High Court without first referring the matter to the labour office for mediation

- A. True
- B. False

Thuso may be reinstated by the Industrial Court if the claim is successful

- C. True
- D. False

2 Marks

48. Which of the following is NOT a requirement of redundancy?

- A. Notice to the employee
- B. Notice to the Commissioner of Labour

- C. First-in-last out
- D. Counselling

2 Marks

49. Which of the following is or are NOT applicable to an independent contractor?

- A. Protection under the Employment Act
- B. Vicarious liability of the master or principal
- C. Procedural fairness before the termination of contract
- D. All the above

2 Marks

50. Regarding criminal behaviour, are the following statements true or false?
The Financial Intelligence Agency investigates and prosecutes suspects of financial crime

- A. True
- B. False

Layering is a stage of money laundering

- C. True
- D. False

2 Marks

END OF PAPER