

Fundamentals Level – Skills Module

Corporate and Business Law (Zimbabwe)

Monday 8 December 2014



Time allowed: 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and MUST be attempted

Section B – ALL FIVE questions are compulsory and MUST be attempted

Do NOT open this paper until instructed by the supervisor.

You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (ZWE)

ACCA

Section A – ALL 45 questions are compulsory and MUST be attempted

Please use the space provided on the inside cover of the Candidate Answer Booklet to indicate your chosen answer to each multiple choice question.

1 In relation to statutory interpretation, what meaning will a court prefer to give to a word when interpreting it?

- A Its ordinary meaning
- B Its dictionary meaning
- C Its mischief rule meaning

(1 mark)

2 Which of the following correctly describes a term implied by law?

- A One which is part of the contract whether the parties are aware of it or not
- B One which is a part of the contract if there is a dispute between the parties ending in litigation
- C One which is a part of the contract if it benefits both parties
- D One which the parties intend to be part of the contract, but do not explicitly include it in the agreement

(2 marks)

3 The Stock Exchange's listing rules require that all relevant information known to a company's directors which would be likely to lead to a substantial movement in its share price should be notified to the Stock Exchange without delay.

What is the intended purpose of these rules?

- A To prevent insider dealing and market abuse
- B To prevent money laundering
- C To prevent bribery and corruption
- D To prevent fraud

(2 marks)

4 Which of the following is correct in relation to a counter-offer?

- A It is a repudiation of the original offer
- B It is a temporary refusal of the original offer
- C It is a conditional acceptance of the original offer

(1 mark)

5 To whom do directors owe the duty of utmost good faith (*uberrimae fidei*)?

- A Employees of the company
- B Shareholders of the company
- C The company itself

(1 mark)

6 When does a company come into existence?

- A When it receives a certificate of incorporation
- B When it receives a certificate to commence business
- C When the articles and memorandum of association have been finalised

(1 mark)

7 Which of the following does the *ultra vires* doctrine apply to?

- A Delegated legislation only
- B Delegated legislation and judicial precedent
- C Judicial precedent only
- D Primary legislation and delegated legislation

(2 marks)

8 Which of the following statements about the doctrine of *volenti non fit injuria* is true?

- A It does not apply to the law in Zimbabwe
- B It applies to the law in Zimbabwe in appropriate situations
- C It only applies in Zimbabwe if combined with contributory negligence

(1 mark)

9 Which of the following remedies is appropriate to cases involving constructive dismissal?

- A Reinstatement
- B Damages
- C Punitive damages
- D Reinstatement and damages

(2 marks)

10 In relation to the Zimbabwean legal system, which of the following defines the *ratio decidendi* of a case?

- A The decision in a previous case.
- B The legal reason for deciding the case
- C The material facts of a case

(1 mark)

11 When does an offer with an unspecified time limit lapse?

- A On the death of the offeror
- B On the death of the offeree
- C On the expiry of a reasonable time

(1 mark)

12 A car driven by Ben veered off the road and hit a tree. Erica who was resting under the shade of the tree was injured and she sued Ben. In the law of delict, which of the following statements is correct?

- A Ben can rely upon contributory negligence
- B Erica can rely upon contributory negligence
- C Ben can rely upon res ipsa loquitor
- D Erica can rely upon res ipsa loquitor

(2 marks)

13 Dr Anna-Mary is a cancer specialist who treats her own patients admitted at three private hospitals in Harare. What is her legal position in relation to the three private hospitals?

- A She has a contract of service with the hospitals
- B She is an employee of the hospitals
- C She has a contract for services with the hospitals

(1 mark)

14 Which of the following describes termination of a contract of employment without notice by the employer?

- A Unfair dismissal
- B Summary dismissal
- C Retrenchment

(1 mark)

15 How must a contract be performed?

- A In the exact form specified by the contract
- B In the exact form specified by the contract or some other equally advantageous form
- C In an adequate form for both parties
- D In the most profitable and convenient form for both parties

(2 marks)

16 Which of the following differences between a private company and a public company is true?

- A A private company cannot have more than two directors
- B A public company has to have at least 50 shareholders
- C A private company cannot advertise or publicly invite people to buy shares
- D A private company needs a trading certificate to commence business

(2 marks)

17 In the Zimbabwean legal system, who is the head of the High Court?

- A The Master of the High Court
- B The Judge President
- C The Chief Justice
- D The Head of the Civil Division of the High Court

(2 marks)

18 In relation to the law of delict a finding of contributory negligence arises from the action(s) of which of the following?

- A The claimant
- B The respondent
- C A third party
- D Both claimant and respondent

(2 marks)

19 Who among the following is a creditor of the company?

- A Debenture holder
- B Preference shareholder
- C Ordinary shareholder
- D Redeemable preference shareholder

(2 marks)

20 What is the legal status of a partner in the context of the law of agency?

- A An agent of other partners if so agreed in writing or orally
- B An agent of other partners if so appointed in writing only
- C A principal but not an agent

(1 mark)

21 When can an employer and an employee terminate a contract of employment?

- A By mutual agreement either orally or in writing
- B By mutual agreement in writing only
- C By mutual agreement in writing confirmed by the Ministry of Labour
- D By mutual agreement orally only

(2 marks)

22 Which of the following statements reflects the correct legal position relating to the liability of an agent?

- A They will never attract personal liability if they have acted within the mandate
- B They will only attract personal liability if the principal cannot meet the terms of the contract
- C They will attract personal liability together with the principal irrespective of the circumstances relating to the legal dispute
- D They will only attract personal liability if they are acting as an agent of necessity

(2 marks)

23 In relation to company law which among the following is normally guaranteed a dividend?

- A Preference shares
- B Ordinary shares
- C Debentures secured by a fixed charge
- D Debentures secured by a floating charge

(2 marks)

24 Which of the following must be used to remove an auditor from office?

- A An ordinary resolution
- B An ordinary resolution with special notice
- C A special resolution
- D A written resolution

(2 marks)

25 When is a contract entered into during a telephone conversation concluded?

- A When the offeree states their acceptance
- B When the offeror hears the offeree's acceptance
- C When the offeror confirms that they have heard the offeree's acceptance

(1 mark)

26 In the context of Zimbabwean company law which of the following will happen if a company ceases to have any members?

- A Compulsory liquidation
- B Voluntary liquidation
- C Judicial Management
- D Investigation of the company's affairs as provided for under the Company's Act

(2 marks)

27 Alan offered to pay all Bob's debts. Among Bob's creditors was Clive who accepted Alan's offer and was owed \$2,500. Alan wanted to pay Clive only the \$2,000 which he thought Bob owed Clive rather than \$2,500.

Which of the following statements about Alan and Clive's legal situation is true?

- A There is no binding contract because there was no agreement
- B There can be a binding contract if the parties renegotiate
- C There is a binding contract on the basis of quasi-mutual assent
- D There is a gentleman's agreement which must be respected

(2 marks)

28 When Bill realised that his wallet had fallen out of his back pocket he put an advertisement in a local daily newspaper offering a \$100 reward for its return. Jim found the wallet, returned it to Bill and upon later seeing the advertisement in the newspaper he demanded the reward.

Is Jim entitled to the reward and for what reasons?

- A Yes, because he had complied with the terms of the offer
- B No, because he was not aware of the offer when he returned the wallet
- C Yes, because a unilateral contract can be formed retrospectively
- D No, because he acted like a good Samaritan who need not be paid

(2 marks)

29 What is the primary objective in placing a company under judicial management?

- A To protect the company and give it a second chance to operate as a going concern
- B To give shareholders a chance to acquire a dividend
- C To give employees their full salaries and benefits
- D To return the company to full profitability so that it can pay its taxes

(2 marks)

30 Which companies must convene statutory meetings?

- A Public companies only
- B All companies
- C Public companies and private companies limited by shares only

(1 mark)

31 In the context of the Zimbabwean legal system which of the following is the primary source of law?

- A Legislation
- B Customs
- C Judicial precedent
- D Common law

(2 marks)

32 John boarded a bus travelling from Harare to Victoria Falls. The bus ticket contained clauses limiting the liability of the bus company in the event of injury to passengers or loss of their goods. During the course of the journey, John lost his suitcase that was on the roof of the bus.

In relation to contract law, is the bus company liable?

- A Yes, because the company is responsible for passengers' property
- B No, because the exclusion clause limits their liability
- C No, because John was contributorily negligent in failing to look after his suitcase
- D Yes, because the exclusion clause was too broad to be enforceable

(2 marks)

33 Whilst operating a plant the employer, Chris, put pressure on a factory employee, Victor, to take abnormal risks. Chris did this four times in quick succession and each time Victor refused. Relations with management deteriorated to breaking point.

Which of the following reflects correctly the legal situation involving Victor?

- A He has been summarily dismissed
- B He has been constructively dismissed
- C He has not been dismissed
- D He has been unfairly dismissed

(2 marks)

34 Which of the following describes the standard of proof in a civil case?

- A On the balance of probabilities
- B Beyond reasonable doubt
- C Beyond any shadow of doubt

(1 mark)

35 Which of the following is the appropriate remedy for an employer whose employee leaves employment without giving the required notice?

- A Specific performance
- B Interdict
- C Damages

(1 mark)

36 Which of the following represents the damages that may be claimed for breach of contract?

- A Any loss suffered
- B Any loss suffered where the plaintiff has mitigated their loss
- C Any foreseeable loss suffered
- D Any loss suffered where there is no contributory negligence

(2 marks)

37 Which of the following courts has original unlimited criminal and civil jurisdiction?

- A The High Court
- B The Supreme Court
- C The Magistrates' Court

(1 mark)

38 Mary goes to the supermarket. She takes four bottles of cooking oil from the shelf and takes them to the till. When she tries to pay, the cashier says that it is the shop's policy to sell only one bottle per customer. Mary replies that there was no sign to this effect and demands all four bottles.

Has a contract been formed for the sale of the four bottles of cooking oil and for what reason?

- A Yes, because the shop was making an offer by placing the bottles on the shelf
- B Yes, because the shop's policy is not legally binding
- C No, because her offer to buy the four bottles has been rejected
- D No, because she was making an invitation to treat by taking the bottles to the till

(2 marks)

39 What is an option?

- A A contract to keep the main offer open
- B An offer
- C An invitation to treat

(1 mark)

40 Which statement is correct in relation to a limited liability partnership?

- A They must have a minimum of 3 members
- B They are limited to a maximum of 20 members
- C They must have at least one undisclosed member

(1 marks)

41 Faith takes a packet of cereal off a supermarket shelf and presents it to the cashier. The price of the cereal is marked on the box

Which of the following is the correct description of Faith's conduct?

- A She is accepting the supermarket's offer
- B She is making an offer to the supermarket
- C She is making an invitation to treat

(1 mark)

42 Who among the following CANNOT petition the court for the compulsory liquidation of a company?

- A Employees and executive directors
- B Creditors
- C The company itself
- D Any contributories

(2 marks)

43 The overall process of money laundering involves a number of phases and stages. Which of the following are recognised stages in money laundering?

- (1) Layering
- (2) Relocation
- (3) Distribution
- (4) Integration

- A (1) and (3)
- B (1) and (4)
- C (2) and (3)
- D (3) and (4)

(2 marks)

44 What is the minimum number of directors of a company?

- A One
- B Two
- C Three

(1 mark)

45 Which of the following statements about a contract of employment in Zimbabwe is true?

- A** It is enforceable against any person under 16 years of age
- B** It is not enforceable against a person under 16 years of age
- C** It is enforceable against a person under 16 years of age provided that person was assisted by their guardian in making the contract

(1 mark)

Section B – ALL FIVE questions are compulsory and MUST be attempted

Please write your answers to all parts of these questions on the lined pages within the Candidate Answer Booklet.

- 1 Christopher recently developed a new medical product that can cure baldness and wishes to set up a simple business venture to exploit economic opportunities offered by the new discovery. Christopher's mother Cathy is willing to invest \$20,000 into the business but does not want to be involved in any way either in the management of the business or its day to day operations. She wants her interest in the business to be kept confidential.

Christopher enters into another partnership with Victor and Limu, two college friends. All three invest \$5,000 and take an active part in the business. Unfortunately, Limu dies after the partnership has been operating for a few months.

Required:

(a) Explain whether a partnership *en commandite* would be appropriate to Cathy's circumstances. (4 marks)

(b) Explain the effect of Limu's death on the partnership between Christopher, Victor and Limu. (2 marks)

(6 marks)

- 2 In January 2013, Mukwa, a furniture manufacturer, contracted to supply \$500,000 worth of office furniture to Adam, an office furniture retailer. The furniture was to be supplied by 31 March 2014

On 20 March 2014, Mukwa informed Adam that he would be unable to supply the furniture because he was now exporting all of his products to fulfil an overseas contract.

Adam decided to order furniture from another supplier and it cost \$600,000 to secure the same order. Because this new order was late arriving, he lost \$40,000 profits on a missed order from a regular client. He was also unable to enter into a particularly lucrative contract with a new customer who wanted a large amount of furniture at short notice and was prepared to pay extra. This cost him \$100,000 in lost profits

Required:

(a) Explain whether or not specific performance would be available as a remedy for breach of contract. (2 marks)

(b) Explain whether Adam can recover the \$40,000 and the \$100,000 in lost profits. (4 marks)

(6 marks)

- 3 Ploughmead Ltd is a public company registered on the Stock Exchange. The company is a diversified agricultural group. Between 2011 and 2013 the company made profits which the directors declined to declare as a dividend and instead the profits were used to recapitalise the company for the purpose of buying state of the art plant and machinery. Two of the company's minority shareholders, Nelion who holds 500 ordinary shares and Limukani who holds 500 preference shares feel very disgruntled and they plan to petition the courts to force the company to declare dividends. A third investor Tino holds debenture stock worth \$5000.00 in the company at an interest rate of 10% per annum.

Required:

(a) Explain whether Nelion and Limukani can force Ploughmead Ltd to declare a dividend. (2 marks)

(b) Between Nelion and Limukani, who has a right to a cumulative dividend? (2 marks)

(c) What is the liability of the company towards Tino, the debenture holder? (2 marks)

(6 marks)

- 4 Samaita Investments Ltd issues a notice to members stating that a general meeting of members will take place to consider the following resolutions:
1. To increase the company's authorised share capital from \$20 million (made up of 20 million ordinary shares of \$1 each) to \$50 million, made up of 50 million ordinary shares of \$1 each.
 2. To increase the number of directors from seven to eleven.
 3. To change the name of the company to Tomohire Investments Ltd.
 4. To authorise the directors to enter into negotiations with ABC Ltd for the purchase of ABC Ltd's interest in XYZ Ltd.

Required:

(a) For each of the above resolutions, identify the type of resolution and the notice required. (4 marks)

(b) Explain what type of general meeting is taking place. (2 marks)

(6 marks)

- 5 George is a director of a listed company, Ashanti Diamond Mining Company Ltd (ADM Ltd). At its last meeting the board of directors received a report by the finance director, that the profits of the company would increase by 50% and that this would appear in the press reports of the annual results the following month.

The next day George told his friend Earnest that shares in ADM Ltd would be up by 50% from the previous year. Both George and Earnest immediately bought shares in the company through a stockbroking firm. Earnest said to his daughter Tanya, she really ought to have some shares in ADM Ltd because they seem to be a good thing.

When the results were announced the shares in ADM Ltd increased in price by \$2 per share.

Required:

Explain whether the various parties are guilty of insider dealing:

(a) George (2 marks)

(b) Earnest (2 marks)

(c) Tanya (2 marks)

(6 marks)

End of Question Paper