

Fundamentals Level – Skills Module

Corporate and Business Law (Botswana)

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

The Botswana Institute of Chartered Accountants



Paper F4 (BWA)

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 Which of the following is a duty of a company auditor?

- A The duty to mitigate damage
- B The duty of care
- C The duty of reasonable care and skill

(1 mark)

2 Which of the following is a court of general jurisdiction?

- A Magistrates' court
- B Industrial Court
- C Land tribunal

(1 mark)

3 Which of the following persons does NOT act as an agent of their respective business associations?

- A A partner in a partnership
- B A director of a company
- C A shareholder of a company
- D A member of a close company

(2 marks)

4 Pako visits Gaborone Amusement Park. There is a clear warning on the roller coaster which reads 'Safety for persons whose height falls under 1·4 metres cannot be guaranteed on the Roller-Coaster'. Although Pako is 1·39 metres tall, he decides to take the ride on the roller coaster. Unfortunately, he falls off the roller-coaster and suffers a broken leg. He has instituted an action against the Park owners for damages.

What defence can be raised against Pako?

- A Undue influence
- B Contributory negligence
- C Volenti non fit injuria
- D Duress

(2 marks)

5 Which of the following statements about a company under liquidation is true?

- A Members of the company under liquidation may transfer their shares in the company in order to recoup their losses
- B All actions against the company are stayed once the liquidation order is made
- C The liquidator must authorise any action being commenced against the company
- D Any attachment of company assets for execution which occurs after the liquidation order has been granted may proceed

(2 marks)

6 'Although Mopipi Bus Service takes steps to ensure the safety of baggage of its passengers, Mopipi Bus Service takes no responsibility for any loss or damage to baggage.'

What type of contractual clause is this?

- A An exclusion
- B A condition
- C An excision
- D A modus

(2 marks)

7 Which of the following is NOT true regarding contractual agreements?

- A They can be bilateral
- B They can be unilateral
- C They can be multilateral
- D They can be reciprocal

(2 marks)

8 Which of the following forms of termination of employment requires resignation by the employee?

- A Unfair dismissal
- B Constructive dismissal
- C Redundancy

(1 mark)

9 Which of the following is NOT an element of the offence of insider trading?

- A Knowingly dealing in a security
- B Relying on generally available information on securities
- C Relying on unpublished price sensitive information
- D Relying on stolen information on securities

(2 marks)

10 Donna Boutique has placed a sign on its shop display window which states 'Sale: 50% off selected items'. Nametso enters the Donna Boutique and selects several Items. At the till, she demands to pay half price for each item. The shop manager declines.

What is the legal nature of the statement on the shop display window?

- A A conditional offer
- B An invitation to treat
- C An offer
- D An invitation to tender

(2 marks)

11 In the context of the Botswana legal system, which of the following is NOT a division of law?

- A District law and canon law
- B Common law and civil law
- C Public law and private law

(1 mark)

12 In the context of company law, which of the following is NOT a function of the promoter of a company?

- A To open the company's bank accounts
- B To prepare the company's constitution
- C To procure initial capital

(1 mark)

13 Which of the following is a crime in relation to judicial management?

- (1) Failure by shareholders to attend a company meeting
- (2) Undeclared knowledge of false entries in company records
- (3) Concealment of company assets

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

(2 marks)

14 Bala Books Ltd won a tender from the Ministry of Education to deliver mathematics text books to 600 primary schools nationwide before 3 January 2014. Bala Books Ltd manages to deliver books to only 100 schools instead. The Ministry wishes to cancel its contract with Bala Books Ltd and to sue for breach of contract.

What kind of breach has occurred?

- A Positive malperformance
- B Negative malperformance
- C Repudiation
- D Anticipatory breach of contract

(2 marks)

15 Which of the following characteristics of a company gives it the right to sue or be sued in its own name?

- A Separate legal personality
- B Limited liability
- C Perpetual succession

(1 mark)

16 Which of the following in relation to a contract of employment is NOT correct?

- A It must be voluntary
- B It must be in writing
- C The employer agrees to pay a specified or ascertainable remuneration to the employee
- D The employer has the right to give instructions to the employee

(2 marks)

17 What is the name given to terms which are implied by law into a contract?

- A Incidentalialia
- B Essentialialia
- C Naturalialia

(1 mark)

18 In the context of employment law, which of the following is a ground for automatic dismissal of an employee?

- A Wilful disobedience of lawful or reasonable orders
- B Inability to carry out work due to illness
- C Membership of a trade union

(1 mark)

19 Which of the following is NOT a duty of the company auditor?

- A Report any irregularities in the conduct of company affairs to the shareholders
- B Avoid any conflict of interest
- C Exercise reasonable care and skill in the exercise of their duties

(1 mark)

20 In the context of insolvency law, under which of these circumstances may a company be put under compulsory liquidation?

- A When it is just and equitable to wind up the company
- B When the company has by ordinary resolution resolved that it should be wound up by the court
- C When the company is unable to raise capital
- D Where the constitution of the company provides that it should be wound up.

(2 marks)

21 Bangu is aware that Tiger Products Pty Limited produces a well-known and popular brand of potato chips called Tiger chips. She begins producing potato chips under the brand name Tiga chips.

Which of the following delicts has she committed?

- A Passing off
- B Professional negligence
- C Injurious falsehood

(1 mark)

22 Which of the following statements about express terms and tacit terms of a contract is NOT true?

- A Express terms are written whilst tacit terms are unwritten
- B Express terms require direct evidence whereas tacit terms are inferred from the circumstances surrounding the contract
- C Express terms and tacit terms indicate the common intention of the parties
- D Express terms include expression of intention by conduct

(2 marks)

23 Which of the following characteristics do public and private companies share with close companies?

- A Directors
- B Unlimited members
- C Limited liability

(1 mark)

24 Which of the following terms describes a defence to liability for unlawful activity where the conduct cannot be avoided or where it will result in a greater harm?

- A Contributory negligence
- B Necessity
- C Self defence

(1 mark)

25 Which of the following is an essential requirement in a partnership?

- A A written partnership agreement
- B Between 2 and 50 persons in the partnership
- C All partners contribute to the common stock of the company
- D The partners divide the profits between them and all losses are borne by the business

(2 marks)

26 In the context of the Botswana legal system, which of the following is an essential feature of law?

- A It regulates human conduct
- B It is based on the general will of the Government
- C It is binding on those who accept it

(1 mark)

27 Phillip offers to sell his car to Maria for P45,000.

Which of the following is a valid acceptance of Phillip's offer?

- A 'I will take the car so long as it is washed before delivery'
- B 'I will take the car for P45,500'
- C 'The car is acceptable, however, the tyres need replacing'
- D 'I will pay P10,000 for the car and deliver my plot in Serule to you to cover the difference'

(2 marks)

28 Which of the following is NOT an obligation of the employer under the duty to receive the employee into service?

- A The duty to provide work at all times
- B The duty to provide work where remuneration depends on volumes of work done
- C The duty to provide work where the employer has contracted to train the employee

(1 mark)

29 In the context of the Botswana legal system, what is the name of a clause in a statute which preserves existing rights?

- A Preservation
- B Schedule
- C Savings
- D Preamble

(2 marks)

30 In the context of company law, which of the following are NOT requirements which must be met before a corporate distribution is made?

- (1) The distribution must be authorised by the board
- (2) The distribution must be approved by the shareholders by special resolution
- (3) The board must be satisfied that the company will pass a solvency test immediately after the distribution
- (4) The shareholders determine the amount of the corporate distribution

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

(2 marks)

31 Bonnie buys a vehicle from Ngwedi Motors in Gaborone. The vehicle is a popular make worldwide called 'Dragonfly' manufactured in South Africa by Fly Engineering SA. After driving the vehicle for about ten days, he discovers that it has a faulty gearbox. He institutes an action for breach of contract against Fly Engineering SA, claiming the return of his purchase price.

Why will the action against Fly Engineering SA fail?

- A No warranty
- B No written agreement
- C No damages
- D No privity of contract

(2 marks)

32 Which of the following statements about company meetings is NOT true?

- A Notice must be served on every shareholder and every director at least seven days before the meeting
- B The chairman has no casting vote
- C The meeting is quorate if all shareholders attend in person or by proxy

(1 mark)

33 Which of the following is NOT a requirement in a claim for damages?

- A Proof of damages suffered
- B Contributory negligence
- C Factual causation

(1 mark)

34 Paul plays professional football. He is injured in a rough tackle by John, a player from the opposing team. He breaks his nose. He is rushed to hospital in an ambulance. On the way, the ambulance is involved in an accident and Paul suffers an injury to his back.

Which of the following will John seek to rely on if Paul sues him for the back injury?

- A Res ipsa loquitur
- B Novus actus interveniens
- C Actio injuriarum
- D Volenti non fit injuria

(2 marks)

35 In the context of the Botswana legal system, which of the following regarding the distinction between law and morality are true?

- (1) Moral rules require action whilst legal rules do not
- (2) Legal rules are backed by official state sanctions while moral rules are not
- (3) Legal rules are binding on every person while moral rules are not
- (4) Moral rules sometimes form the basis of legal rules

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

(2 marks)

36 In the context of the Botswana legal system, which of the following will a court prefer when applying the golden rule of statutory interpretation?

- A An interpretation which remedies the harm the act is directed towards
- B The plain meaning of the words of the statute
- C An interpretation which will render a statute effective rather than ineffective

(1 mark)

37 Which of the following is NOT prohibited under the Employment Act?

- A Payment of wages in kind except for payment in liquor
- B Payment of wages with deductions for tools and equipment
- C Payment of wages on condition that the employee makes purchases from the employer
- D Payment of wages outside working hours without the prior consent of the employee

(2 marks)

38 Betty has a routine operation to remove an unhealthy tooth. The operation goes badly wrong and she ends up losing five teeth.

What level of skill was to be expected of her dental surgeon?

- A** That required of a reasonable person engaged in that profession
- B** That required of a highly skilled person engaged in that profession
- C** That required of a reasonable person engaged in any profession.

(1 mark)

39 Which of the following statements in relation to an independent contractor is NOT true?

- A** They have a contract for services
- B** They have the right to control the manner in which the work is performed
- C** They must render a personal service
- D** They must produce a specified result within a specified or reasonable time

(2 marks)

40 In the context of the law of employment, which of the following is NOT a requirement for a lawful retrenchment?

- A** First in first out
- B** Notice to all employees who are likely be affected
- C** Notice to the Commissioner of Labour

(1 mark)

41 In the context of the Botswana legal system, which of the following correctly lists the hierarchy of the courts?

- A** The South African Development Community tribunal, The Court of Appeal, the High Court, the Magistrates' Court
- B** The Court of Appeal, the High Court, the Magistrates' Court
- C** The Court of Appeal, the High Court, the Industrial Court
- D** The Court of Appeal, the Customary Court of Appeal, the Customary Court

(2 marks)

42 In the context of insolvency law, which of the following is NOT a duty of the judicial manager?

- A** To undertake the management of the company
- B** To keep books of accounts and prepare financial statements of the company
- C** To dispose of company assets with authorisation from the board
- D** To call an annual general meeting in compliance with the companies legislation

(2 marks)

43 In the context of company law, which of the following persons may NOT make a solemn declaration upon registration of a company?

- A** A legal practitioner
- B** A member of the Botswana Institute of Accountants
- C** A member of the Botswana Institute of Bankers

(1 mark)

44 Which of the following statements about directors is NOT true?

- A** They are charged with management of the company's affairs
- B** They are agents of the company
- C** They are agents of other directors in the company
- D** They must declare their interest in any transactions with the company

(2 marks)

45 In the context of company law, stated capital is a combination of which of the following?

- A** Paid-up capital and uncalled capital
- B** Issued capital and uncalled capital
- C** Paid-up capital and allotted capital
- D** Allotted capital and uncalled capital

(2 marks)

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 Dimpho places an advertisement in the newspaper to sell her house. It reads as follows: ‘Lovely property in Gaborone West, three bedrooms, two bathrooms. Please call 7170000’. Lame sees the advertisement. She has been searching for a house in Gaborone West for more than three months. She calls Dimpho and immediately informs her that she accepts the offer. Dimpho proposes that they meet the following day for a more detailed discussion. At the meeting, Dimpho informs Lame that the house has been sold to someone else earlier that day. Lame is upset and wishes to sue for damages for breach of contract.

Required:

(a) Advise Lame. Explain whether Lame may sue for damages for breach of contract. (4 marks)

(b) Explain the legal consequences of an offer. (2 marks)

(6 marks)

- 2 David and Peo have decided to open a general dealer. Before obtaining the certificate of incorporation for their company from the Registrar of Companies, they decided to secure premises and David concluded a contract of lease with Horizon Properties for a suitable building. David prepares an offer letter in the name of the proposed company, DP Foods Ltd. He also signs the lease for and on behalf of DP Foods Ltd after presenting a resolution purporting to be from DP Foods Ltd authorising him to append his signature to the lease.

After concluding the lease agreement and taking occupation, DP Foods Ltd receives its certificate of incorporation from the Registrar of Companies. Business is slow and Horizon Properties has not received any rentals. Horizon Properties institutes an action against David for the overdue amounts. David insists that he is not liable and that DP Foods Ltd is liable for the amounts due.

Required:

(a) Explain whether David is liable for the contract with Horizon Properties. (3 marks)

(b) Explain the prerequisites for a pre-incorporation contract, and whether DP Foods Ltd is liable on the contract. (3 marks)

(6 marks)

- 3 Kitso is a board member of Happy Holidays (Pty) Ltd. He learns that Happy Holidays has received enquiries from a group of 20 tourists from Europe who are interested in touring the Okavango Delta. He and his wife Sally are directors and shareholders in Sally Tours (Pty) Ltd, a small safari company. Kitso advises Sally to contact the European tourists and to offer them a cheaper holiday package with Sally Tours (Pty) Ltd. The tourists accept Sally Tours’ package.

Required:

(a) Explain whether Kitso’s conduct is lawful. (3 marks)

(b) Explain what remedies are available to Happy Holidays (Pty) Ltd. (3 marks)

(6 marks)

- 4 Jack has recently retired and wishes to invest the pension lump sum payment which he has just received upon his retirement. He has been advised to consider securities. He is considering debentures secured by a fixed charge, debentures secured by a floating charge and ordinary shares.

Required:

(a) Explain to Jack which of the three investment options is the most secure and which is the least secure. (3 marks)

(b) Explain to Jack what is meant by a floating charge. (3 marks)

(6 marks)

- 5 Zainab is a shareholder and director in Zainab Future Tech (ZTF), a start-up company listed on the Botswana Stock Exchange (BSE). She is aware that ZTF will be reporting a significant loss at the end of the year, and sells her shares to Dumelang without disclosing that ZTF is in financial difficulties. Dumelang invests P10,000 in ZTF shares and loses his entire investment.

Required:

(a) State what offence(s) Zainab has committed. (2 marks)

(b) Explain what legal recourse Dumelang has against Zainab. (4 marks)

(6 marks)

End of Question Paper