

Fundamentals Level – Skills Module

Corporate and Business Law (Botswana)

Monday 8 June 2015



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.

Do NOT record any of your answers on the exam paper.

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 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 Zibane sends a parcel to her sister in Johannesburg using Flamingo Couriers (Pty) Ltd. She is required to sign a receipt which contains the following clause in fine print: 'Flamingo Couriers will not be liable for any damage or loss suffered by the sender in excess of P100'. Zibane quickly signed the receipt and did not bother to read the fine print. The parcel never reached Zibane's sister in South Africa. Zibane then put in a claim for P500, being the value of the items in the package. Flamingo Couriers (Pty) Ltd refused to pay relying on the receipt. Zibane maintains that the print was too fine and that the courier company was under an obligation to point out the clause to her, which it never did.

Required:

(a) **State and define what type of clause Flamingo Couriers (Pty) Ltd is relying on.** (2 marks)

(b) **Advise Flamingo Couriers (Pty) Ltd on their chances of success in the claim filed against them.** (4 marks)

(6 marks)

- 2 Lindiwe and Ahmed run a partnership which trades under the name 'Office Supplies'. They decide to purchase P60,000 worth of stationery from Thabo. Lindiwe goes on holiday. Ahmed asks the office manager, Gillian, to purchase P60,000 worth of stationery from Thabo. Ahmed telephones Thabo to say that Gillian will negotiate the contract. Gillian learns from Thabo that he is offering significant discounts on orders of P100,000 or more.

Gillian enters into negotiations with Thabo and orders supplies worth P100,000 from Thabo in the name of Office Supplies. When Lindiwe returns from holiday, she discovers the invoice from Thabo for P100,000 and refuses to pay. She informs Thabo that Gillian had no authority to bind the partnership.

Required:

(a) **Explain whether Thabo can enforce the contract against Office Supplies.** (4 marks)

(b) **Explain Lindiwe's and Ahmed's potential liability for the additional P40,000.** (2 marks)

(6 marks)

- 3 Amantle lends P50,000 to High Returns (Pty) Limited. She is informed that the loan to the company is secured by a floating charge over the movable assets of the company.

Masego lends P30,000 to High Returns (Pty) Limited. She is informed that the loan is secured by a fixed charge over the land and buildings occupied by the company at Gaborone West Industrial.

Both loans mature after a period of five years. High Returns (Pty) Limited informs Amantle and Masego that it is unable to repay the capital or the interest because the company movables were sold to a third party and the building and land belong to the landlord. Amantle and Masego are aggrieved.

Required:

(a) **Explain if Amantle will be able to rely on the security of the floating charge.** (3 marks)

(b) **Explain if Masego will be able to rely on the security of the fixed charge.** (3 marks)

(6 marks)

- 4 Pascal is a director in Glass Manufacturing (Pty) Ltd. The company wishes to build a manufacturing plant and is looking for a suitable piece of land. Pascal is a shareholder in Multi Prop, a company which buys and sells properties. Pascal informs Multi Prop that Glass Manufacturing intends to purchase a property. Multi Prop then offers to sell Glass Manufacturing a piece of land at the price of P1,000,000. Glass Manufacturing later discovers that the actual value of the land is P500,000.

Required:

- (a) Explain whether Pascal's conduct is unlawful. (4 marks)
- (b) Describe the remedies available when a director has breached their duty to the company. (2 marks)

(6 marks)

- 5 Faizal is a public officer at the Botswana Water Corporation (BWC). He works as secretary to the tender committee. He is aware that BWC wishes to procure pipes for delivery of water to rural settlements all over the country. Faizal's wife, Dudu, is a shareholder and director in Plastics Pipes (Pty) Ltd.

Plastic Pipes (Pty) Ltd places its bid for the tender at an extremely competitive price as Faizal is aware of the budgetary constraints BWC faces. Faizal proceeds to attend the committee meeting considering the tender, to comment on the merits of the Plastic Pipes bid and to vote. The tender is awarded to Plastic Pipes. Another bidder, Water Connections (Pty) Ltd, protests the tender on the basis that Faizal's wife Dudu is a shareholder in Plastic Pipes.

Required:

- (a) Explain whether Faizal has committed any offence under the Corruption and Economic Crime Act, 1994. (3 marks)
- (b) If in his defence Faizal states that he had disclosed Dudu's shareholding in Plastic Pipes to the board, explain whether this defence will suffice. (3 marks)

(6 marks)

End of Question Paper