

Fundamentals Level – Skills Module

Corporate and Business Law (Lesotho)

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 Lesotho Institute of Accountants

Paper F4 (LSO)



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 plaintiffs CANNOT be accountable to defendants under the law of delict for their actions?

- A** A youth aged 15 years
- B** An intoxicated person
- C** A person who was provoked

(1 mark)

2 Which of the following is the correct period of notice to terminate an employment contract where the employee has been employed for one month?

- A** Two weeks
- B** No notice
- C** One week

(1 mark)

3 Which of the following statements about counter-offers are true?

- (1) They prevent subsequent negotiations of the offer
 - (2) They amount to a rejection of the original offer
 - (3) They can be accepted by the offeror
 - (4) They must be expressed in writing
- A** (3) and (4)
 - B** (2) and (4)
 - C** (1) and (4)
 - D** (2) and (3)

(2 marks)

4 What is the effect of the monetary union between Lesotho, South Africa and Swaziland?

- A** The currencies of the members are at par
- B** The members use a single common currency
- C** The members have a single common central bank

(1 mark)

5 In the context of companies in financial difficulty, which of the following are rights of a liquidator but NOT of a judicial manager?

- (1) To disclaim any onerous property
- (2) To administer an oath for the giving of information under oath
- (3) To apply to court to have any person examined under oath
- (4) To apply for search warrants

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

(2 marks)

6 In the law of partnerships, who is criminally liable for the wrongful conduct of a partner in the performance of the business of the partnership?

- A** The partnership alone
- B** Both the partner and the partnership
- C** The partner only

(1 mark)

7 In the context of the Lesotho legal system, where is the customary law codified?

- A** The Laws of Lerotholi
- B** The Laws of Masupha
- C** The Laws of Seeiso
- D** The Laws of Moshoeshoe

(2 marks)

8 Andy asks Derek whether he will sell him his farm for M60,000. Derek nods in response.

Which of the following is true regarding the enforceability of the agreement on the cost?

- A** It is not enforceable because it is unwritten
- B** It is not enforceable because there was no acceptance
- C** It is enforceable because there was tacit acceptance
- D** It is enforceable because of estoppel

(2 marks)

9 In the context of fundamental human rights and freedoms, which right is breached by an employer who refuses to allow their employees to form a trade union?

- A** Freedom of conscience
- B** Freedom of association
- C** Freedom from discrimination

(1 mark)

- 10** Kenneth sells popular cosmetic products called Renewed Youth. Andrew, Kenneth's former employee, starts selling cosmetic products which use Kenneth's trade mark and are called New Youth. Customers believe the products are associated. However, Andrew's products are not related to Kenneth's and are actually a cheaper and lower quality product.

Which of the following qualify Andrew's conduct as passing off?

- (1) Misrepresenting the quality of a product
- (2) Copying distinguishing signs
- (3) Stealing trade secrets
- (4) Exploiting the reputation of a competitor's product

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

(2 marks)

- 11** Lawrence appears before a Second Class Magistrate on a criminal charge. He is sentenced to pay a fine of M1,000 or serve a sentence of one year's imprisonment. He wants to appeal.

Which of the following will have jurisdiction to hear the appeal?

- A** First Class Magistrate
- B** Chief Magistrate
- C** High Court
- D** Court of Appeal

(2 marks)

- 12** Which of the following statements in relation to the operation of the doctrine of judicial precedent is true?

- A** The high court is bound to follow its own previous decisions
- B** The Court of Appeal is bound to follow its own previous decisions
- C** The subordinate courts are bound to follow the decisions of the high court

(1 mark)

- 13** In relation to the formation of a contract, which of the following statements about an offer made without *animus contrahendi* is true?

- A** It is not written
- B** It is not made unconditionally
- C** It is not legally enforceable

(1 mark)

14 Which of the following are NOT presumptions used by the courts when interpreting statutes?

- (1) Interpretation in consideration of international obligations
- (2) Interpretation according to the literal meaning of the words
- (3) Interpretation in consideration of the mischief to be remedied
- (4) Interpretation favouring reasonableness and justice

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

(2 marks)

15 Which of the following categories of people have the capacity to contract?

- A** Married women
- B** Insolvents
- C** Insane persons
- D** Minors

(2 marks)

16 Stacy asks John to sell her his car. John replies, 'I will sell you my car if I buy another one this month.' Stacy accepts.

Which of the following terms describes the contractual term involved in John's statement?

- A** Warranty
- B** Time clause
- C** Representation
- D** Condition

(2 marks)

17 Which of the following circumstances will NOT terminate an offer?

- A** Rejection of the offer by the offeree
- B** Lapse of the time fixed by the offeror for the offeree to accept the offer
- C** Death of the offeror after the offer has been accepted by the offeree
- D** Communication of the revocation of the offer by the offeror before it has been accepted by the offeree

(2 marks)

18 Which of the following describes a situation where a debtor subtracts money owed to them by a creditor from money owed by them to the same creditor?

- A** Set off
- B** Merger
- C** Novation

(1 mark)

19 Bill is Natalie's employer. The two have an employment contract with no termination date. Three years into the contract Bill wants to terminate the contract.

Which of the following may Bill do in order to render the termination lawful under the Lesotho Labour Code (1992)?

- (1) Terminate the contract with one month's notice
- (2) A contract with no termination date cannot be terminated
- (3) Terminate the contract with two weeks' notice and payment of two weeks' wages
- (4) Oral and written notice of termination

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

(2 marks)

20 James agreed to sell his land to Charles. Charles learns that James has since shown the land to Ingrid and now intends to sell the land to her instead.

What remedy should Charles pursue in order to prevent James from selling the land to Ingrid?

- A** Declaration of rights
- B** Damages
- C** Specific performance
- D** Interdict

(2 marks)

21 Which of the following actions offend capital maintenance rules?

- (1) Granting a discount for subscription of shares
- (2) Offering shares in lieu of dividends
- (3) Paying dividends out of capital

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

(2 marks)

22 Which of the following statements are duties of an employer to an employee?

- (1) Give incentives to the employee
- (2) Pay the employee wages
- (3) Must provide the employee with a reference
- (4) Must provide a safe working environment for the employee

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

(2 marks)

23 Which of the following is the correct minimum age for employment in Lesotho according to the Labour Code?

- A** 18 years
- B** 15 years
- C** 16 years

(1 mark)

24 According to the Companies Act (2011), which of the following describes the liability of company directors to a company and to its shareholders where their lack of skill and diligence causes losses to the company?

- A** Jointly liable
- B** Severally liable
- C** Severally and individually liable

(1 mark)

25 Which of the following is NOT a type of an implied contractual term?

- A** Those implied by the seller
- B** Those implied by trade usage
- C** Those implied by law

(1 mark)

26 Which of the following are legitimate grounds for terminating a contract of employment?

- (1) The inability of the employee to do the work they are employed to do
- (2) Changes in the operational requirements of the employer
- (3) The employee taking up trade union membership
- (4) Insolvency of the employee

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

(2 marks)

27 Which of the following is the correct order of payments made by a liquidator out of the cash realised from the sale of a company's assets?

- (1) Secured creditors
- (2) Employees
- (3) Shareholders
- (4) Expenses of liquidation

- A** (4), (2), (1), (3)
- B** (1), (2), (4), (3)
- C** (2), (1), (3), (4)
- D** (3), (1), (2), (4)

(2 marks)

28 What is 'constructive dismissal'?

- A** Dismissal of the employee by the employer without notice
- B** Resignation by the employee because of the conduct of the employer
- C** Termination of the employment contract by the insolvency of the employer

(1 mark)

29 Which of the following is correct in relation to the creation of an agency relationship through ratification?

- A** It is expressly created by instructions by the principal
- B** It is retrospectively created by confirmation by the principal
- C** It is inferred from the conduct of the principal

(1 mark)

30 Which of the following deductions may NOT be made by an employer from an employee's wages?

- A** The cost of damage to property by the employee
- B** A wage cut for unauthorised absence from work
- C** A handling fee for the advancement of wages

(1 mark)

31 Which of the following information is required in the application for registration of an external company?

- A** Licence to trade
- B** Nationality of the directors
- C** The company's financial statements

(1 mark)

32 Which of the following describes the type of fault required under the Apportionment of Damages Act (1970)?

- A** Intention only
- B** Negligence only
- C** Either intention or negligence

(1 mark)

33 In Lesotho's dispute settlement system, which forum uses arbitration to resolve disputes?

- A** The Ombudsman
- B** The Directorate of Dispute Prevention and Resolution
- C** District Land Courts

(1 mark)

34 Which of the following statements is NOT true about the nature of a partnership?

- A** The partners carry on business together
- B** The partners share profits made from their business
- C** There can be an unlimited number of partners
- D** The partners each contribute something to the business

(2 marks)

35 Which of the following are NOT regulated by the Companies Act 2011?

- (1) Co-operative societies registered under the Co-operative Societies Act 2000
- (2) Societies registered under the Societies Act 1967
- (3) Companies incorporated under the Companies Act 1967
- (4) Companies incorporated after the commencement of the Companies Act 2011

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

(2 marks)

36 In the context of company law, which of the following is NOT a requirement for the passing of a special resolution?

- A** A majority of three-quarters of votes cast
- B** Notice of not less than 21 days
- C** Voting in person, and not by proxy

(1 mark)

37 Which of the following grounds will render a contract void, rather than voidable?

- A** Misrepresentation
- B** Duress
- C** Undue influence
- D** Illegality

(2 marks)

38 What term describes the capital which is called up in the event of, and for the purpose of, a company being liquidated?

- A** Reserve capital
- B** Nominal capital
- C** Issued capital
- D** Paid-up capital

(2 marks)

39 With respect to the crime of money laundering, which of the following is NOT a duty of an accountable institution?

- A** To verify the customer's identity
- B** To investigate unusual transactions
- C** To establish and maintain customer records
- D** To report suspicious transactions

(2 marks)

40 In the context of company law, which of the following statements with respect to the rights of a company director who has declared an interest in a proposed transaction are true?

- (1) They may not vote on any matter relating to the transaction
- (2) They may not attend the meeting of directors in which any matter relating to the transaction is being discussed
- (3) They may sign documents relating to the transaction on behalf of the company

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

(2 marks)

41 In the context of the liquidation of a company, which of the following statements is ordinarily true?

- A** The liquidator shall not take custody and control of the company's assets
- B** The directors shall continue to have the same powers, functions and duties
- C** Legal proceedings against the company may be initiated or continued without restrictions
- D** The shares in the company shall not be transferred

(2 marks)

42 Which of the following bodies is responsible for issuing guidelines to banks on how to combat money laundering?

- A** Anti Money Laundering Authority
- B** Ministry of Finance
- C** Financial Intelligence Unit
- D** Central Bank

(2 marks)

43 Christine gives Janet, an estate agent, express authority to find a tenant for her house for M7,000 per month. Janet contracts with Esther to rent Christine's house for M5,000 per month.

Which of the following is correct?

- A** Christine may withdraw from the contract because Janet exceeded her authority
- B** Christine must let the house to Esther for M5,000 but can claim her losses from Janet
- C** Esther must rent the house from Christine for M7,000 but can claim the additional cost from Janet
- D** There is no binding contract between Christine and Esther because Janet exceeded her authority

(2 marks)

44 In the law of contract, which of the following terms describes a debtor transferring their liability to another debtor?

- A** Assignment
- B** Cession
- C** Delegation

(1 mark)

45 Which of the following remedies can a partner seek to compel division of jointly owned partnership assets?

- A** Declaratory order
- B** Actio pro socio
- C** Actio communi dividundo

(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 Lionmart Pty (Ltd) is a company incorporated under the Companies Act (2011). Ted is an ordinary shareholder who has fully paid up his shares. Alex holds redeemable preference shares which are not fully paid up. They are redeemable at the option of the company or of the shareholder.

Required:

- (a) Explain the distinction between an ordinary share and a preferential share. (2 marks)
- (b) Explain whether Alex can give notice to the company to redeem his shares if the company does not declare a dividend. (2 marks)
- (c) Explain the liability of Ted and of Alex for company debts upon the winding up of the company. (2 marks)

(6 marks)

- 2 Bethany received M5 million from dealing in stolen property. She opened a bank account with PBN bank and deposited M1 million of the illegal proceeds into the account. The bank did not request identification for the opening of the account, neither did it question her about the origin of the large deposit. Two weeks later, Bethany deposited a further M2 million into the account. After three weeks, she deposited the remaining M2 million into the account. After four weeks, she withdrew M1.5 million from the account and bought a house.

The bank manager learns of these transactions and immediately informs the Financial Intelligence Unit. Alfie, an employee of the bank, and Bethany's neighbour, informs her that she might be investigated for money laundering.

Required:

- (a) State the elements of the crime of money laundering. (2 marks)
- (b) State the obligations PBN bank failed to comply with as an accountable institution. (2 marks)
- (c) State the liability of Alfie for his actions. (2 marks)

(6 marks)

- 3 TPD Transport is a company operating a vehicle hire business. Gerald is the managing director of the company. The company wants to purchase five minibuses to add to its fleet of vehicles. Gerald authorises the purchase of five minibuses from his brother. All five minibuses have failed numerous road-worthiness tests by the Traffic Department. Within a year, four of the vehicles are inoperable.

Required:

- (a) State any TWO examples of the type of interest in a transaction which a director must disclose. (2 marks)
- (b) Explain the basis for Gerald's liability to the company for his decision regarding the purchase of the minibuses. (2 marks)
- (c) Explain the procedural requirements which would have to be followed for Gerald to be removed from directorship. (2 marks)

(6 marks)

- 4 De Jager is a registered partnership firm which operates a dairy farm. It consists of five partners who have each contributed money and machinery to the farm and all participate in the management of the business. When the business started to operate at a loss, De Jager took credit from Kroy Bank hoping to stay in business. However, the firm eventually became insolvent. Kroy Bank sued Ronnie, one of the partners, for the full amount of the loan.

Required:

- (a) **State the liability of the partners and of the partnership.** (2 marks)
- (b) **Explain what remedy Ronnie would have for payment of the debt.** (2 marks)
- (c) **State what the position would be if Ronnie were a special partner.** (2 marks)

(6 marks)

- 5 R.G.M Ltd is a mining company which requires certain mining equipment for its operations. It advertises an invitation for tenders for the supply of mining equipment. Ben had responded first to the advertisement, yet was unsuccessful. Maureen was found to have offered the best price and the company intended to award her the contract. However, due to a mistake by the secretary of the company, communication was erroneously sent to Laurie informing her that her tender had been accepted. Laurie gets a loan from a bank and orders the equipment to be supplied.

Ben claims that, as he had been the first to respond to the advertisement, his acceptance created a contract between himself and R.G.M Ltd and therefore the company was wrong to have awarded the contract to someone else. The company claims that there is no contract between itself and Laurie, since she received the communication by mistake.

Required:

- (a) **State the nature of an offer in the law of contract.** (2 marks)
- (b) **Explain whether Ben is correct in his claim.** (2 marks)
- (c) **Explain whether the company's argument is correct under the law of contract.** (2 marks)

(6 marks)

End of Question Paper