

Fundamentals Level – Skills Module

Corporate and Business Law (Malta)

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 Malta Institute of Accountants



Paper F4 (MLA)

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 terms of the European Convention Act, 1987, which of the following regarding petitions is true?

- A** Maltese citizens may bring forward a petition before the European Court of Human Rights
- B** Only non-EU nationals residing in Malta may bring forward a petition before the European Court of Human Rights
- C** Maltese citizens may only bring forward a petition before the local courts

(1 mark)

2 The issued share capital of ABC Ltd is divided into ordinary shares and preference shares.

Which of the following statements about shares is correct?

- (1) Preference shares can be redeemed
- (2) Preference shares normally entitle the holder to a fixed dividend
- (3) Ordinary shares can be redeemed

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

(2 marks)

3 When an employer terminates employment during probation, what is the employer's duty?

- A** They must inform the employee verbally of the reason for termination
- B** They must inform the employee in writing of the reason for termination
- C** They need not give the employee the reason for termination

(1 mark)

4 What is *negotiorum gestio*?

- A** Quasi-tort
- B** Quasi-contract
- C** Tort
- D** Contract

(2 marks)

5 Which of the following requirements must a person meet in order to practise in the accountancy profession in Malta?

- A** They must be part of a firm
- B** They must have successfully completed their studies
- C** They must hold a warrant

(1 mark)

6 Which of the following statements in respect of the local courts in the Maltese legal system is correct?

- A** They are bound by the doctrine of precedent
- B** They never adhere to the doctrine of precedent
- C** They can choose when to abide by an earlier judgement

(1 mark)

7 What does the *causa* of a contract refer to?

- A** The lawful consideration
- B** The subject-matter
- C** The object

(1 mark)

8 Mr and Mrs Smith wish to sell a house they inherited. They wish to know why the sale of immovable property must be formalised by means of a public deed.

Which of the following describes a public deed?

- A** It is an internal requisite to conclude a valid contract of sale
- B** It is an external requisite, which is only required if a property is inherited
- C** It is an external requisite to conclude a valid contract of sale

(1 mark)

9 The Companies Act, 1995 stipulates those cases where the courts shall dissolve a company.

Which of the following is NOT a case where the courts must dissolve a company?

- A** The number of shareholders is reduced to less than two and remains so for more than six months
- B** The court is of the opinion that there are grounds of sufficient gravity to warrant dissolution
- C** The company is unable to pay its debts
- D** The number of directors is reduced below the prescribed minimum and remains so for more than six months

(2 marks)

10 Which of the following statements about length of employment is NOT correct?

- A** An employee can be employed on a indefinite basis
- B** All employees must be employed by an employer for no less than one year
- C** An employee can be employed for a definite period

(1 mark)

11 In a partnership *en nom collectif*, what is the liability of the partners?

- A** Limited liability towards third parties
- B** Unlimited liability towards third parties
- C** Unlimited liability only towards the tax authorities

(1 mark)

12 In terms of the Prevention of Financial Markets Abuse Act, 2005, what is 'inside information'?

- A** Information which has not been published
- B** Information which is only known to the officers of the company
- C** Information which has not been divulged to the media
- D** Information which is not in the public domain

(2 marks)

13 In terms of the provisions of the Civil Code, what does the following define?

'an agreement or an accord between two or more persons by which an obligation is created, regulated or dissolved'

- A** Tort
- B** Contract
- C** Quasi-contract

(1 mark)

14 A firm of accountants provides advice in connection with the issue of a prospectus by a Maltese public limited company.

In terms of the provisions of the Companies Act, 1995, who shall be liable for any damage sustained by a person subscribing for shares or debentures on the basis of that prospectus, by reason of any untrue statement contained therein?

- (1) The issuer
- (2) The firm
- (3) The third party

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

(2 marks)

15 When is a contract of sale deemed terminated?

- A** An offer is made by the vendor to the purchaser
- B** An offer is made to and accepted by the purchaser
- C** The object is taken possession of by the purchaser
- D** The item has been paid for

(2 marks)

- 16** Parliament is being convened with urgency to discuss and approve an Act of Parliament amending the Constitution of Malta.

What majority is required to approve the Act?

- A** Two-thirds majority
- B** A simple majority
- C** Unanimous approval by all Members of Parliament
- D** All the Members of Parliament from the Government side

(2 marks)

- 17** Where a public limited company has at least 50 shareholders, which of the following must it also have?

- A** €25,000, fully paid up by way of share capital, and at least one Maltese director
- B** €20,000, 20% paid up by way of share capital, and at least one director
- C** €20,000, fully paid up by way of share capital, and at least one Maltese director and one non-Maltese resident director
- D** €25,000, 20% paid up by way of share capital, and at least two directors

(2 marks)

- 18** Which of the following is NOT a maxim of doctrinal interpretation of Maltese law?

- A** All the clauses of a contract shall be interpreted with reference to one another
- B** When a clause is susceptible of two meanings, it must be construed in the meaning in which it can have some effect
- C** The existence of defects in law is presumed
- D** Exceptions should not be presumed unless clearly stated or implied in the law

(2 marks)

- 19** Which of the following is correct in relation to Maltese citizens who consider that their fundamental human rights and freedoms have been infringed?

- A** They may bring an action before the local courts
- B** They may bring an action before the international courts
- C** They may bring an action before both the local and the international courts

(1 mark)

- 20** What is the principal difference between a self-employed individual and an employee?

- A** A self-employed individual has to register with the Employment and Training Corporation
- B** A self-employed individual has no contract of employment
- C** A self-employed individual is not employed

(1 mark)

21 Damages resulting from breach of a contract can be liquidated in one of three ways.

Which of the following is NOT a form of liquidated damages?

- A Conventional
- B Legal
- C Judicial
- D Moral

(2 marks)

22 Jack is appealing against a judgement recently delivered by the Court of Magistrates.

Before which court should he lodge his appeal?

- A Superior Court
- B Inferior Court
- C Court of Magistrates
- D Constitutional Court

(2 marks)

23 What is meant by a 'gratuitous' contract?

- A A contract where the consideration is not paid
- B A contract where judicial proceedings are filed
- C A contract where there is no consideration
- D A contract where the consideration is to be paid to a third party

(2 marks)

24 Who are responsible for appointing a company secretary, other than the first company secretary?

- A Shareholders
- B Directors
- C Promoters

(1 mark)

25 Which of the following may NOT be used by an employer as a good and sufficient cause for terminating the employment of a female employee?

- A The employee always arrives late to work and always uses different excuses for arriving late
- B The employee is a bad influence on fellow workers, especially on the younger co-workers
- C The employee is soon to be married and hence it is assumed that she will soon be out on maternity leave
- D The employee is not of the same political creed as the employer and often starts heated discussions with fellow employees during working hours

(2 marks)

26 Which parties does the doctrine of privity bind to a contract?

- A** Only the parties to the contract are bound
- B** Third parties and the parties to the contract
- C** Third parties can be bound to the contract even though they are not parties to it

(1 mark)

27 To what extent is the liability of the shareholders of a private limited liability company, limited?

- A** To the extent of the value of their personal assets
- B** To the extent of the unpaid part of the initial share capital of the company
- C** To the amount of the initial share capital, both paid and unpaid contributed by each shareholder respectively

(1 mark)

28 What constitutional documents are the promoters of a company bound to file with the Registrar of Companies?

- A** The memorandum and articles of association
- B** The memorandum of association only
- C** The articles of association only

(1 mark)

29 Which of the following is NOT deemed to constitute an offer to the public?

- A** Items on sale in a catalogue or advertisement
- B** Display of goods in shops
- C** Private exhibition
- D** Items on sale in a vending machine

(2 marks)

30 In a mandate relationship, which of the following is a power NOT vested in the mandatory?

- A** Ability to institute legal proceedings on behalf of the mandator
- B** Ability to make demand for the issue of precautionary acts on behalf of the mandator
- C** Ability to make demand for the personal arrest of the debtor of the mandator
- D** Ability to sue or be sued, on behalf of the mandatory

(2 marks)

31 When are general partners of a partnership liable for the debts of the partnership?

- A** They are liable for all instances of debt
- B** They are never liable for any debts incurred
- C** They are only liable when debts are caused by their own negligent acts

(1 mark)

- 32** Jack bought a tablet after being informed by the salesman that it was the latest model on the market. He soon found out that this was not the case.

On what ground was this contract of sale vitiated?

- A** Defect of consent
- B** Lack of capacity
- C** Unlawful consideration
- D** Absence of subject-matter

(2 marks)

- 33** When directors of a public company are faced with a serious loss of capital, what should they do?

- A** Inject additional capital into the company
- B** Meet the company's bankers about obtaining financial assistance
- C** Convene a general meeting to bring the matter to the attention of the shareholders
- D** Inform the company's creditors of the company's poor financial situation

(2 marks)

- 34** Julian is employed by an American i-gaming company operating in Malta. The employer is insisting that he be paid in United States Dollars as that is their operating currency.

In terms of the Employment and Industrial Relations Act, 2002, what is the company's duty regarding the payment of salaries?

- A** The employer must pay salaries in legal tender in Malta
- B** The employer may choose to pay salaries in the operating currency
- C** The employer must pay the salaries in any one of the currencies in which the company's bank accounts are designated
- D** The employer must pay salaries in the currency in which the operating company's share capital is designated in

(2 marks)

- 35** Which of the following does NOT fall within the definition of a 'company officer'?

- A** Company secretary
- B** Manager
- C** Chief financial officer

(1 mark)

- 36** Which of the following does NOT fall within the powers of a liquidator?

- A** Transferring shares in the company as part of the winding up process
- B** Entering into new transactions with third parties
- C** Settling creditor claims
- D** Closing off all bank accounts

(2 marks)

37 John has just started looking for a job and has sought advice about the duration of employment relationships in Malta.

What notice period must be given if employment, which has lasted for more than one month, is terminated?

- A** One week
- B** None
- C** Two weeks

(1 mark)

38 Which of the following does NOT describe the powers of a special controller in a corporate recovery procedure?

- A** To take over and manage the business of the company for a period specified by the court
- B** To take into their custody and control all the assets of the company
- C** To examine the assets, affairs and business performance of the company
- D** To administer the business of the company for an indefinite period

(2 marks)

39 What does breach of contract arise from?

- A** Failure by both parties to abide by the terms
- B** Non-performance by one of the parties
- C** Absence of a valid acceptance

(1 mark)

40 Which of the following is NOT an order issued in terms of the Prevention of Money Laundering Act, 1994?

- A** Confiscation order
- B** Investigation order
- C** Freezing order
- D** Reporting order

(2 marks)

41 The court may issue a disqualification order against a director of a company in certain circumstances.

Which of the following statements in respect of the issue of a disqualification order is NOT correct?

- A** An order may be issued against any person who is found guilty of an offence under the companies legislation
- B** The person against whom the order is issued is, or must have been, a director of a company which at any time has become insolvent
- C** An order may be issued against a director who has been found guilty for a maximum of five years
- D** The conduct, of the person against whom the order is issued, as a director makes him unfit to be involved in the management of a company

(2 marks)

42 Which of the following is a primary source of Maltese law?

- A** Act of Parliament
- B** Bye-law
- C** Legal Notice

(1 mark)

43 Within what period, from commencement of employment, must the employer send the employee an engagement letter containing the basic conditions of employment?

- A** Fourteen working days
- B** Two working days
- C** Eight working days
- D** Seven working days

(2 marks)

44 In terms of the provisions of the Accountancy Professions Act, 1980, what can a warrant holder do?

- A** They may enter into an arrangement with a client to exempt him from liability
- B** They may not enter into an arrangement with a client to exempt him from liability
- C** They can do no wrong
- D** They are not subject to the provisions of the Accountancy Professions Act, 1980

(2 marks)

45 From when can a company commence activity?

- A** From the date when the Registrar issues the Certificate of Registration
- B** From the date on the Certificate of Registration
- C** From the date on which the memorandum of association is deposited at the Registry of Companies
- D** From the date on which the first contract is entered into

(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** John is employed as a finance manager with ABC Ltd. He is employed on an indefinite basis but has now decided to terminate his contract after a period of 5½ years and set up his own business.

His brother, Jack, is employed with the same company as an IT programmer, also on an indefinite contract. He has been working for three years but management wishes to terminate his contract as part of a restructuring process due to a recent slow-down in business.

Required:

- (a) Describe the procedure John needs to follow to resign from his post.** (2 marks)
- (b) State whether management may terminate Jack's employment and on what grounds.** (2 marks)
- (c) State what procedure management must follow to terminate Jack's employment.** (2 marks)

(6 marks)

- 2** Michael set up a company in 1987 and was sole director and shareholder until 2012 when his son joined the business. Michael transferred 50% of his shares to his son and appointed him director in his place. Michael, however, continues to take all decisions and never consults his son. Despite a downturn in business, Michael continues to commit to creditors knowing full well that the company cannot meet its obligations.

Required:

- (a) Explain whether an action for wrongful or fraudulent trading can be taken against Michael.** (2 marks)
- (b) Explain whether an action for wrongful or fraudulent trading can be taken against Michael's son.** (2 marks)
- (c) State what orders may be issued against the directors in the event that they be found guilty of fraudulent trading.** (2 marks)

(6 marks)

- 3** Philip, James and Simon are in the process of setting up a limited liability company.

- Philip is to subscribe to 2,000 preference shares,
- James to 1,000 ordinary B shares, and
- Simon to 1,000 ordinary C shares.

Only the holder of the ordinary C shares has the right to appoint a representative on the board of directors.

Philip and James wish to alter the rights of Simon and vest the right of board representation on each shareholder. As a director, Simon has been arranging for the company to give him loans.

Required:

- (a) State who must decide and approve an alteration in shareholder class rights and describe the process which must be followed.** (2 marks)
- (b) Explain whether it is possible for Philip NOT to subscribe to ordinary shares.** (2 marks)
- (c) Explain whether Simon, in his capacity as a director, may obtain a loan from the company.** (2 marks)

(6 marks)

- 4 Ajax Ltd has a board of directors composed of four directors. The founding shareholder was appointed director for life; two executive directors were appointed for an indefinite period while the non-executive director was appointed for a period of three years. The founding director would like to resign. The board have selected a new executive director and a meeting has been fixed to explain to him the scope of his role, his duties and responsibilities. Immediately prior to the meeting, one of the board becomes aware that the new director is a director of a competing company.

Required:

- (a) In terms of law, explain how a director must exercise their duties. (2 marks)
- (b) Explain whether it would be possible for the new director to actively participate and vote in all board meetings of Ajax Ltd. (2 marks)
- (c) Explain whether the founding director can resign, given that he was appointed for life. (2 marks)

(6 marks)

- 5 Stephen is 13 years old and has agreed to purchase a mobile phone from his friend's father, David, for the price of €300. Stephen was hoping to obtain the money from his father but when he refuses to lend him the money to purchase the mobile phone, Stephen informs David of this. However, David is insisting on payment.

Stephen's older sister, Sophie, aged 16 went to her local bank branch to open a bank account but the bank clerk said she was still too young to do so. Since she has just turned 16, her grandfather has transferred to her 100 shares in a family-owned company but she has decided to sell these shares in order to raise funds to start up an on-line business.

Required:

- (a) Explain whether Stephen is legally bound to purchase the phone and pay David the price agreed upon. (2 marks)
- (b) Explain whether or not Sophie should have been allowed to open a bank account. (2 marks)
- (c) Explain whether Sophie can sell her shares to start up a business. (2 marks)

(6 marks)

End of Question Paper