

Fundamentals Level – Skills Module

Corporate and Business Law (Scots)

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 (SCT)

The ACCA logo consists of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black square.

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 Assuming the parties are not in business, and the obligation does not relate to land, in which of the following must the obligation be created in writing?

- A** A collateral contract
- B** A unilateral gratuitous obligation
- C** A bilateral contract

(1 mark)

2 An agency relationship which is made retrospectively is referred to by which of the following terms?

- A** Agency by holding out
- B** Agency by ratification
- C** Agency by necessity

(1 mark)

3 In contract law, the ‘market price rule’ arises in relation to which of the following?

- A** Offer
- B** The price
- C** Remoteness
- D** Mitigation

(2 marks)

4 In relation to a debenture, which of the following is NOT true?

- A** It may be issued at a discount
- B** Interest on it may be paid from capital
- C** It is paid after preference shares
- D** It is freely transferable

(2 marks)

5 Tan writes to Yun stating that he will sell his car to him for £10,000. On the same day, Yun posts a letter to Tan stating that he will buy his car for £10,000. Both letters reach their recipients the following day.

Which of the following statements applies to this situation?

- A** There is a binding agreement due to the postal rule
- B** There is a collateral contract
- C** There is no agreement

(1 mark)

6 Which of the following statements about contracts of employment is true?

- A They can be made either orally or in writing
- B They must be made in writing
- C They must be evidenced in writing

(1 mark)

7 Where directors make a false statement of solvency prior to a members' voluntary liquidation, which of the following have they committed under the relevant legislation?

- A A breach of criminal law with criminal penalties
- B A breach of civil law with criminal penalties
- C A breach of civil law with civil liability
- D A breach of both civil and criminal law with liabilities under both

(2 marks)

8 Which of the following is the consequence when a patient signs a medical consent form before an operation?

- A The patient gives up any right of action for any injury suffered
- B Any action for any injury suffered during the operation is limited to negligence
- C The level of any potential payment for any injury suffered is reduced

(1 mark)

9 Where a contract states the sum to be paid in the event of a breach of contract, the stated sum is known as which of the following?

- A Unliquidated damages
- B Liquidated damages
- C Specific damages
- D Nominal damages

(2 marks)

10 Which of the following applies to the concept of enlightened shareholder value?

- A It is the price shares can be expected to raise if they were to be sold
- B It is the yardstick for assessing the performance of directors' duties
- C It is the standard of behaviour expected of shareholders in general meetings

(1 mark)

11 Which of the following involves a summary dismissal in relation to a contract of employment?

- A Both parties agree to end the contract immediately without notice
- B The employee breaks the contract without notice
- C The employer terminates the contract without notice

(1 mark)

12 What qualification is the company secretary of a private limited company required to have?

- A An appropriate legal qualification
- B An appropriate professional qualification such as ACCA
- C No qualification

(1 mark)

13 Statutory redundancy payment is calculated on the basis of which of the following?

- A Length of service and pay only
- B Age and length of service only
- C Age, length of service and pay

(1 mark)

14 In relation to wrongful trading, the standard against which the conduct of directors will be assessed is which of the following?

- A Purely subjective, depending on the actual skill of the director
- B Purely objective, depending on what is expected of a director in that position
- C A mixture of subjective and objective but only to increase potential liability
- D A mixture of subjective and objective but only to reduce potential liability

(2 marks)

15 Which of the following statements as regards an acceptance of an offer 'subject to contract' is true?

- A It binds the offeror
- B It binds neither party
- C It binds both parties

(1 mark)

16 Su had just passed her driving test when she negligently drove into a pedestrian.

What standard of care will Su be judged by?

- A The objective standard of a newly qualified driver, lack of experience will be taken into account
- B The objective standard of a competent driver, lack of experience will not be taken into account
- C The subjective standard of actual ability

(1 mark)

17 Which of the following are ordinary partnerships UNABLE to create in relation to their property?

- A Mortgages
- B Fixed charges
- C Floating charges

(1 mark)

18 Which of the following courts deal with civil law matters ONLY?

- A High Court of Justiciary
- B Justice of the Peace Court
- C The Court of Session

(1 mark)

19 Jo places an advertisement in the local paper, promising to pay a reward for the return of her lost phone. Mia finds the phone and returns it to Jo.

Which of the following describes the legal relationship between Jo and Mia?

- A A bilateral contract
- B A unilateral promise by Jo
- C A social arrangement

(1 mark)

20 Which of the following requires obtaining court approval for the appointment of an administrator?

- A Creditors
- B Holders of floating charges
- C The directors of the company
- D The company itself

(2 marks)

21 Which of the following is a Scottish civil court NORMALLY bound to follow?

- A An obiter statement of a higher court
- B A ratio of a lower court
- C A ratio of a higher court
- D An obiter statement of the Supreme Court

(2 marks)

22 Which of the following courts hear appeals from the Justice of the Peace court?

- (1) Sheriff court
- (2) High Court of Justiciary
- (3) Court of Session

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

(2 marks)

23 Which of the following is NOT an automatic consequence of a compulsory winding up order against a public limited company?

- A** Transfers of shareholdings are void
- B** Liquidation is deemed to start on the date of the issuing of the order
- C** Directors cease to exercise any management power
- D** Employees are immediately dismissed

(2 marks)

24 Which TWO of the following apply to shares of companies whose names end in 'Ltd'?

- (1) They may not be issued to non-members
- (2) They may not be offered to the public
- (3) They may not be transferred
- (4) They may not be traded on the stock exchange

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

(2 marks)

25 Which of the following statements regarding the age limits for serving as a director in a public limited company is true?

- A** Minimum age 16 years and no maximum age
- B** Minimum age 21 years and no maximum age
- C** Minimum age 21 years and maximum age 75 years
- D** Minimum age 16 years and maximum age 75 years

(2 marks)

26 Which TWO of the following are private law actions?

- (1) Those between individuals
- (2) Those between business organisations
- (3) Those between individuals and the state

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

(1 mark)

27 In which procedure does a liquidation committee operate?

- (1) Compulsory liquidation
- (2) A members' voluntary liquidation
- (3) A creditors' voluntary liquidation
- (4) Administration

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

(2 marks)

28 The category of treasury shares comes into existence under which of the following circumstances?

- A** They are issued as such by a private company
- B** They are issued as such by a public company
- C** They are purchased as such by the exchequer
- D** They are purchased as such by a private or public company

(2 marks)

29 Which of the following is NOT a source of Scots law?

- A** Custom
- B** Equity
- C** Public law

(1 mark)

30 Which of the following are owed a duty of care by auditors when preparing a company's audit report?

- A** A potential investor with no current holding
- B** An existing shareholder looking to increase their holding
- C** A company looking to make a takeover bid for the company
- D** The company and the company's existing shareholders as a body

(2 marks)

31 In a potential redundancy situation, an employee may lose the right to payment if they reject an offer of alternative employment within the business.

Which of the following will allow the employee to reject the employment offered and claim redundancy?

- A** The alternative was suitable but the employee reasonably felt that it was not of the same status
- B** The alternative was suitable but the employee refused to consider it
- C** The alternative was suitable but the employee's grounds for refusing to accept it were unreasonable

(1 mark)

32 Which TWO of the following are reasons for dismissal which must be justified as FAIR?

- (1) Capability or qualifications of the employee
- (2) Legal prohibitions relating to the employee
- (3) Refusal of the employee to join a trade union
- (4) Taking part in unofficial industrial action

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

(2 marks)

33 What type of contract does an employee have?

- A** A contract for service
- B** A contract of service
- C** A contract for services
- D** A contract of services

(2 marks)

34 Which of the following describes a pre-contractual statement which does NOT form a term of a contract but induces the contract?

- A** A condition
- B** A statement of opinion
- C** A representation
- D** An implied term

(2 marks)

35 In which form of partnership are all the partners potentially jointly and severally liable for the obligations of the partnership?

- A** An ordinary partnership
- B** A limited partnership
- C** A limited liability partnership

(1 mark)

36 Which of the following must a private company ALWAYS have?

- A** Shares
- B** Limited liability
- C** A company secretary
- D** A registration certificate

(2 marks)

37 A material breach of a contract enables the injured party to do which of the following?

- A** To sue for damages only
- B** To sue for damages or rescind the contract
- C** To sue for damages and rescind the contract
- D** To rescind the contract only

(2 marks)

38 In relation to the delict of negligence, which TWO of the following criteria are required to establish the existence of a duty of care?

- (1) The pursuer suffered a financial loss
- (2) The harm suffered was reasonably foreseeable
- (3) A relationship of proximity existed between the parties
- (4) The pursuer did not consent to cause the injury suffered

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

(2 marks)

39 In relation to defences to the delict of negligence, which of the following is the consequence of a finding of *volenti non fit injuria*?

- A** It removes the requirement to pay damages
- B** It reverses the burden of proof as to who can claim damages
- C** It increases the level of damages
- D** It decreases the level of damages

(2 marks)

40 Which of the following actions is open to a party who has only partly performed work under a contract?

- A** To seek recompense under unjustified enrichment
- B** Action for the price
- C** Damages
- D** Restitution

(2 marks)

41 Which of the following is an example of the purposive approach to statutory interpretation?

- A** The mischief rule
- B** The literal rule
- C** The golden rule

(1 mark)

42 Which is the correct minimum period of notice an employee is entitled to after five years' service?

- A** One calendar month
- B** Five weeks
- C** Ten weeks
- D** Five calendar months

(2 marks)

43 In relation to agency law, 'warranty of authority' is provided by which of the following?

- A** The agent
- B** The principal
- C** The third party

(1 mark)

44 Which of the following correctly applies to the burden of proof in a criminal case?

- A** It must be proved beyond reasonable doubt
- B** It must be proved on the balance of probabilities
- C** It lies with the prosecution
- D** It lies with the defence

(2 marks)

45 Where a business includes a term in a contract which excludes liability for death and personal injuries through negligence, which of the following states the effect of the term?

- A** It is invalid
- B** It is invalid unless it is reasonable in the circumstances of the case
- C** It is valid only if specifically brought to the attention of the other party
- D** It is valid if it is clearly included in the contract terms

(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 Ann owns a shop selling prints. She placed an advertisement in the Friday edition of her local paper stating:

‘Unique opportunity to own a Bell print for £500 cash. Offer valid for one day only – tomorrow Saturday.’

When Con saw the advert, he immediately posted a letter of acceptance.

On Saturday, Di asked Ann if she would take a cheque for £500, but she refused to accept the cheque and told her she could not have the print. Later that day Ann sold the print to Evi.

On Monday morning Con’s letter arrived.

Required:

In the context of the rules governing the creation of contracts:

(a) Describe the precise legal nature of Ann’s advertisement; (2 marks)

(b) Explain whether Con has any right of action against Ann; (2 marks)

(c) Explain whether Di has any right of action against Ann. (2 marks)

(6 marks)

2 Fred is a member of Glad Ltd, a small publishing company, holding 100 of its 500 shares. The other 400 shares are held by four other members.

It has recently become apparent that Fred has set up a rival business to Glad Ltd and the other members have decided that he should be expelled from the company. To that end they propose to alter the articles of association to include a new power to ‘require any member to transfer their shares for fair value to the other members upon the passing of a resolution so to do’.

Required:

(a) State the procedure which Glad Ltd must follow to alter its articles of association. (2 marks)

(b) Explain the effect of the requirement that any alteration to a company’s articles of association must be for the benefit of the company as a whole. (2 marks)

(c) Explain whether or not the articles of association of Glad Ltd can be altered as proposed. (2 marks)

(6 marks)

- 3** Three years ago Ho subscribed for shares in two companies: Ice Ltd and Jet plc. In relation to the shares in Ice Ltd, Ho was only required to pay 50 pence per £1 share when he took the shares and was assured that he would not be required to make any further payment on them to Ice Ltd and the company passed a resolution to that effect. Unfortunately, Ice Ltd has gone into insolvent liquidation owing a substantial sum of money to its creditors.

In relation to the shares in Jet plc, Ho was required to pay a premium of 50 pence per £1 share. The shares are currently trading at 75 pence per share.

Required:

(a) Describe any potential liability Ho may have with regard to the shares he holds in Ice Ltd and to whom any such liability would be owed. (2 marks)

(b) Explain the meaning and purposes of a share premium account. (2 marks)

(c) Explain whether Ho can gain access to the premium paid on the shares in Jet plc. (2 marks)

(6 marks)

- 4** Kut Ltd is a small private company. Although there are three members of its board of directors, the actual day-to-day running of the business is left to Leo, who simply reports back to the board on the business he has carried out. Leo refers to himself as the chief executive officer of Kut Ltd, although he has never been officially appointed as such.

In October 2014, Leo entered into a normal business contract on Kut Ltd's behalf with Max. However, the other members of the board have subsequently lost confidence in Leo and have refused to pay Max, claiming that Leo did not have the necessary authority to enter into the contract with him.

Required:

(a) State the usual authority of individual directors to enter into binding contracts on behalf of their company. (2 marks)

(b) Explain whether or not Kut Ltd is liable to pay Max. (4 marks)

(6 marks)

- 5** Nit is involved in illegal activity, from which he makes a large amount of money. He also owns a legitimate taxi company and passes off his illegally gained money as profits of that business. Nit employs Owen, who is aware of the illegal source of the money, to act as the manager of the taxi company, and Pat as his accountant to produce false business accounts for the taxi business.

Required:

In the context of the law relating to money laundering:

(a) Explain the meaning of layering. (2 marks)

(b) Explain whether any criminal offences relating to money laundering may have been committed by Nit, Owen and Pat. (4 marks)

(6 marks)

End of Question Paper