

Fundamentals Level – Skills Module

Corporate and Business Law (South Africa)

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 (ZAF)

The ACCA logo, consisting 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 In the context of sources of law, which of the following is a persuasive source of law?

- A Legislation
- B Old authorities
- C Foreign law

(1 mark)

2 Which type of share gives the holder a right to both the arrears and current dividends?

- A Preference shares
- B Cumulative preference shares
- C Redeemable shares

(1 mark)

3 When does a company acquire legal personality?

- A Conclusion of the contract
- B Registration
- C Lodging of the founding statement

(1 mark)

4 Which of the following about the *ratio decidendi* is true?

- A It has strong persuasive authority
- B It is the most important part of a judgement
- C It is the first part of the judgement

(1 mark)

5 Which of the following is NOT a statutory requirement to be appointed as a business rescue practitioner?

- A Must be licensed by the Companies Commission
- B Must be a turnaround expert
- C Must be a member of good standing in the legal, accounting or business management professions
- D Must not be subject to a probation order

(2 marks)

6 John wants to close down a section of his business due to the section making a loss for the third consecutive year. This will result in ten employees not being needed any more.

In view of these facts, which of the following statements about the dismissal of the employees is correct?

- A John is not allowed to dismiss these employees as they have valid contracts of employment
- B John is allowed to retrench these employees, but he has to give them four weeks' notice
- C If John dismisses these employees, this will be an example of an automatically unfair dismissal
- D The procedure which John should follow will depend on the number of employees employed and to be dismissed

(2 marks)

7 **In relation to the capacity to perform juristic acts, what age does legislation state as the age of majority?**

- A 16 years old
- B 18 years old
- C 21 years old

(1 mark)

8 **In the context of employment law and the contract of employment, which of the following statements are correct?**

- (1) The *essentialia* of a contract of employment are work and remuneration
- (2) Labour legislation applies to all workers
- (3) An employment contract must be in writing to be valid

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

(2 marks)

9 **Which of the following statements regarding offer and acceptance is true?**

- A An advertisement is an example of a valid offer
- B An offer may be made explicitly or tacitly
- C Acceptance of an offer has to be in writing

(1 mark)

10 **Which of the following functions do *essentialia*, as contractual terms, have?**

- A Determining the rights and duties of contracting parties and the effects and consequences of their contracts
- B Classifying a contract to a particular class or category
- C Providing additional terms in a contract

(1 mark)

11 Which of the following statements regarding the Consumer Protection Act, 2008 is NOT correct?

- A A 'consumer' includes a juristic person
- B Franchise agreements are regulated in the Act and must be in writing
- C It makes provision for the application of transactions for the supply or promotion of goods or services to the State

(1 mark)

12 Not all acts which are harmful to others are delicts. In certain instances an otherwise unlawful act can be considered lawful.

Which of the following statements regarding grounds of justification is NOT correct?

- A There are only a certain number of possible grounds of justification to rely on
- B Necessity is an example of a ground of justification
- C Consent to injury is a possible ground for justification
- D Consent may be given expressly or tacitly

(2 marks)

13 In the context of case law and the *stare decisis* rule, which of the following statements is NOT correct?

- A A court is bound by its own decisions unless and until overruled by a more superior court
- B Every court is bound by the decisions of the superior court in its area of jurisdiction
- C One High Court must follow the decisions of another High Court

(1 mark)

14 In the context of employment law, which of the following types of dismissals is automatically unfair?

- A A dismissal based on capacity
- B A dismissal based on the participation in a protected strike
- C A dismissal for operational reasons

(1 mark)

15 Which of the following statements regarding customary law as a source of law is correct?

- A It consists of very ancient, written rules
- B A customary rule must be observed by at least 30% of the community
- C It is also referred to as trade usage
- D It must be confirmed by statute

(2 marks)

16 Daniel lets his farm to Evan. The parties agree that the contract will be dissolved if Daniel marries.

Which of the following is this an example of?

- A Resolutive condition
- B Suspensive condition
- C Time clause

(1 mark)

17 The Basic Conditions of Employment Act, 1997 lays down the minimum levels of certain terms and conditions of employment.

Which of the following statements about terms and conditions of employment is/are correct?

- (1) An employee may generally not work more than 45 hours per week
- (2) Overtime work is limited to 10 hours a week
- (3) An employer is obliged to give a pregnant employee four months of paid maternity leave

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

(2 marks)

18 Ann concludes a contract of sale with Ben. She sells her car to him for R50,000. Ann's estate is, however, sequestrated before delivery of the car.

Which remedy is available to Ben?

- (1) Specific performance
- (2) Damages
- (3) An interdict

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

(2 marks)

19 Three tests have been used by the courts to distinguish between an employment contract and other contracts relating to the provision of work.

Which of the following tests is NOT used by the courts?

- A The control test
- B The organisation test
- C The contract test

(1 mark)

- 20 A person's will is directed towards bringing about a certain event, but it is foreseen that there is a reasonable possibility that another event may come about. If, regardless of this foreseeable possibility, the person proceeds to act, then they have the legal intention in relation to the other event.

What is this known as?

- A Dolus eventualis
- B Dolus directus
- C Dolus indirectus

(1 mark)

- 21 Susy is a hardworking secretary at a large engineering company. The company has 300 employees. Susy has three children. She was on maternity leave, for the birth of her third child, during 2013. Eleven months later she is pregnant again and wants to take maternity leave. Her employer dismisses her on the basis that she had maternity leave in the past year.

What type of dismissal is this an example of?

- A Automatically unfair dismissal
- B Fair dismissal
- C Unfair dismissal
- D Constructive dismissal

(2 marks)

- 22 The Basic Conditions of Employment Act, 1997 stipulates certain notice periods for the termination of employment.

If an employee was employed for more than one year, what is the length of the notice period prescribed by the Act?

- A Two weeks
- B Four weeks
- C Six weeks

(1 mark)

- 23 **Which of the following statements about partnership agreements is correct?**

- A One of the essentialia of a partnership is that the partnership agreement must be in writing
- B A partnership agreement will only be valid if it contains all the essentialia of a partnership
- C If any one of the essentialia of a partnership is not present, but the parties intended to conclude a partnership agreement, the agreement will still constitute a partnership agreement

(1 mark)

24 Peter purchases a motor vehicle from Good Cars Garage in Johannesburg. The garage is represented by John, the sales person. He tells Peter that the car costs R120,000, it will be delivered on 15 December 2014 and it is definitely the most economical car in the price range.

Which of the following statements is correct?

- A** All of the statements made by John are contractual terms
- B** None of the statements made by John will have any legal effect
- C** John's statement that the car is economical is mere sales talk
- D** John's statement that the car is economical is a warranty

(2 marks)

25 What type of company's name must end with the abbreviation 'Ltd'?

- A** Personal liability company
- B** Public company
- C** State owned company

(1 mark)

26 In terms of the Companies Act, 2008, which of the following statements about close corporations is correct?

- A** Close corporations which existed before its enactment immediately lost their legal personality
- B** Close corporations which existed before its enactment cannot be converted into companies
- C** It is no longer possible to incorporate new close corporations

(1 mark)

27 Which of the following statements about directors' duties is NOT correct?

- A** Directors' duties are now fully codified in legislation
- B** Non-executive directors stand in a fiduciary relationship to the company of which they are directors
- C** The test to determine whether or not a director acted with the required degree of care and skill is objective with subjective elements

(1 mark)

28 Which one of the followings statements about the Constitution of South Africa is NOT correct?

- A** The Constitution is the most important source of law in South Africa
- B** Chapter 2 of the Constitution deals with the Bill of Rights, the cornerstone of South African democracy
- C** None of the rights in the Bill of Rights are absolute; rights can be limited in certain circumstances
- D** Second generation rights include the right to equality, human dignity and life

(2 marks)

29 The margin between an ordinary resolution and a special resolution should always be a certain percentage.

What is that percentage?

- A 10%
- B 15%
- C 5%

(1 mark)

30 **How are partnerships formed?**

- A Through a testament or trust deed
- B By registration in terms of companies legislation
- C Through the conclusion of a valid contract

(1 mark)

31 **Which of the following subject areas fall under private law?**

- (1) The law of persons
- (2) Family law
- (3) Constitutional law
- (4) Criminal law

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

(2 marks)

32 **Which of the following statements regarding the capacity to perform juristic acts is/are correct?**

- (1) The assistance of the guardian of a minor is insufficient for the conclusion of a contract for the alienation of immovable property belonging to the minor
- (2) An emancipated minor can conclude all contracts without the assistance of their guardian
- (3) If a minor concludes a contract without the necessary assistance, the contract will always be void

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

(2 marks)

- 33 Chris makes a representation that his business, Print-a-Copy, is associated with his competitor: Quick Copy. Quick Copy now wants to proceed with an action against Chris on the basis that he is unlawfully competing.

On what specific delict will they base their claim?

- A Secondary boycotting
- B Piracy
- C Leaning on
- D Passing off

(2 marks)

- 34 Fred and George conclude an agreement in terms of which they agree to run an illegal business. They borrow money from Henk for the construction of a building for their business. This is done in terms of a separate agreement.

Which of the following statements about the agreement between Fred, George and Henk is/are correct?

- (1) It is an indirect attempt to enforce an unenforceable agreement
- (2) It is a separate, but connected transaction
- (3) It may be voidable at the instance of Henk

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

(2 marks)

- 35 Irina sells a dog to John. Unfortunately, before he receives it, the dog dies.

Which of the following statements about the contract between Irina and John is NOT correct?

- A This is an example of objectively impossible conduct
- B The contract between Irina and John will be void
- C The contract between Irina and John will be voidable
- D In order to have a valid contract, the agreement must both be legally and physically possible

(2 marks)

- 36 The Companies Act, 2008 regulates the situation where a company provides financial assistance for the acquisition of the company's securities.

Which of the following statements about the provision of financial assistance is/are correct?

- (1) It does not include the lending of money in the ordinary course of business, if the lending of money is the primary business
- (2) It includes a loan but not a guarantee
- (3) The distribution of a dividend will not qualify as financial assistance
- (4) Buying an asset which the company does not need can be financial assistance to the seller

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

(2 marks)

37 Which of the following parties is NOT defined as an affected person in the context of business rescue proceedings?

- A** The company secretary
- B** An employee
- C** A shareholder
- D** A creditor

(2 marks)

38 Which of the following statements regarding business rescue proceedings are correct?

- (1) It can be initiated by way of a board resolution with a 65% majority vote
- (2) Its first consequence is a general moratorium on any legal proceedings
- (3) A company has to be 'financially distressed' for it to commence

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

(2 marks)

39 In terms of the contract of employment between Zama Ltd and Thabo, Thabo is appointed as a director of the company for life. However, after a prolonged period of poor financial results by the company, the shareholders want to have Thabo removed from office as a director.

Which of the following statements about Thabo's removal from office are correct?

- (1) Thabo can only be removed by a special resolution
- (2) Thabo must first be given notice of the intention to remove him
- (3) Thabo is entitled to make representations before his removal
- (4) Thabo will not be entitled to compensation for his removal

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

(2 marks)

40 Which of the following statements about the incorporation of a company is correct?

- A** A private company and a non-profit company must have at least three directors
- B** Upon incorporation of a new company, each incorporator is considered to be a director
- C** If a company initially has too few directors as a result of disqualification of one of its directors, the Commission may choose to reject the company's notice of incorporation
- D** A public company may in its memorandum of incorporation determine that fewer than three directors may be appointed and such a clause would be valid

(2 marks)

41 Judy lost her wedding ring at the public swimming pool. She placed an advertisement in the local newspaper offering an award of R10,000 to the person who found her ring. Thomas, a regular swimmer at the public pool, found the ring on the pavement in front of the ladies rest room.

Which of the following statements about the facts above is NOT correct?

- A** Judy made a unilateral offer to the world at large when she placed the advertisement in the paper
- B** Thomas was able to accept the offer by performing the required act
- C** Judy can still revoke her offer, even after acceptance by Thomas
- D** Thomas does not have to inform Judy that he is accepting her offer

(2 marks)

42 Which of the following statements in relation to the law of agency is/are correct?

- (1) The identity of the principal must always be disclosed by the agent to the third party
- (2) Authorisation to conclude a contract on behalf of another by way of an agreement does not have to be express, it can also arise tacitly
- (3) If a person purports to act on behalf of another, without the necessary authority, the principal will not be liable

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

(2 marks)

43 Which of the following statements in relation to conditions are correct?

- (1) A condition and a term are the same legal concepts
- (2) A condition does not include all the terms generally found in a contract
- (3) A condition is a specified future event and there must be no doubt as to which event reference is made in the contract
- (4) A condition can be suspensive or resolutive

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

(2 marks)

44 Financial institutions now have various obligations in terms of recent enacted legislation dealing with financial intelligence.

Which of the following is NOT a statutory obligation placed on financial institutions?

- A** To identify clients
- B** To provide full access to information
- C** To keep records of transactions
- D** To train employees on financial intelligence

(2 marks)

45 South Africa has recently enacted a number of statutes which may intrude upon a banker's duty of confidentiality towards its clients. Many of these provisions aim at curbing money laundering activities.

In view hereof, which of the following statements is/are correct?

- (1) Money laundering is the process through which illegal money is 'washed'
- (2) A single prosecuting authority has been established consisting of various prosecuting and investigating directors
- (3) The international 'know-your-client' anti-money-laundering standard is not yet applicable in South Africa

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

(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** Lucy is a keen photographer. She entered into a contract with Marius to build a special 12-metre high observation tower which would enable her to take spectacular photos. She indicated that the tower must be at least 12 metres high to give her an unobstructed view. Unknown to Marius, Lucy also entered into an agreement with Mobile-Phone Ltd to permit them to use the tower to transmit their cellular phone signals. The agreement provided that Lucy would be paid R10,000 on installation, and an annual rent of R5,000 per year.

When the tower was finished it was only 10 metres high which was too low for Mobile-Phone Ltd to make use of it. The tower cost R25,000. Had Marius built it to the specified height it would only have cost a further R1,000. However, because of the special construction its height cannot now be increased.

Required:

- (a) Identify the possible remedies available to Lucy in relation to the law of contract.** (2 marks)
- (b) Explain the extent to which Lucy can rely on any potential remedies.** (4 marks)

(6 marks)

- 2** Ten people decide to form a partnership to build a shelter for abandoned children. One of them will provide the labour of a painter who works in his construction business. Another one will provide building material at a reduced price. The other eight will contribute money to cover building costs. To cover the operational costs of the shelter, they will allow outsiders to rent the dining room for small functions.

Required:

- (a) State the *essentialia* of a partnership agreement.** (2 marks)
- (c) Explain whether a valid partnership has been established in view of the facts provided.** (4 marks)

(6 marks)

- 3** Nina wants to purchase shares in Open-Desk (Pty) Ltd. She does not have money available, but she offers to sell some computer equipment, available from a previously unsuccessful business, to the company. She will then use that money to purchase shares in Open-Desk (Pty) Ltd.

Required:

- (a) Explain whether the above set of facts will constitute financial assistance if the company agrees to buy the equipment.** (2 marks)
- (b) Explain whether the above set of facts will constitute financial assistance if Nina wants to buy shares in the subsidiary of Open-Desk (Pty) Ltd.** (2 marks)
- (c) State the circumstances under which a company may validly provide financial assistance for the acquisition of its shares.** (2 marks)

(6 marks)

4 Joe is a non-executive director of a public company called Woody Works Ltd listed on the Johannesburg Stock Exchange Limited. The business of Woody Works Ltd is to develop electronic components to facilitate the quick and proper functioning of various woodworking machines.

Joe never attends any meetings and does not understand the business of Woody Works Ltd. He is a financial expert with little understanding of issues relating to electronic engineering.

Required:

(a) State the duties of non-executive directors. (2 marks)

(b) Explain whether Joe can be held liable by the company for damages suffered as a result of bad financial decisions taken in his absence by the other directors. (2 marks)

(c) Explain whether the situation would have been different if Joe were an executive director and not a non-executive director. (2 marks)

(6 marks)

5 Ruth is the company secretary of a listed public company called EasySell Ltd. At the annual general meeting various problems concerning EasySell Ltd were discussed. Possible litigation by one of its suppliers was specifically mentioned and it could result in EasySell Ltd making huge losses. After the meeting, Ruth phoned her stockbroker, Sam, and instructed him to sell 50% of the shares held by Ruth in EasySell Ltd. Based on this decision of Ruth, Sam decided to phone some clients and advised them to sell their shares in EasySell Ltd. A few days later, the supplier instituted litigation proceedings with a claim of more than R25 million and the share price of EasySell Ltd dropped by 20%.

Required:

(a) Explain whether the information Ruth possessed qualifies as inside information. (2 marks)

(b) Explain whether Ruth and Sam were insiders before the institution of the litigation proceedings. (2 marks)

(c) State whether Ruth committed a criminal offence. (2 marks)

(6 marks)

End of Question Paper