

Fundamentals Level – Skills Module

# Corporate and Business Law (Botswana)

Monday 12 December 2011

**Time allowed**

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

**Do NOT open this paper until instructed by the supervisor.**

**During reading and planning time only the question paper may be annotated. 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 Botswana Institute of Accountants

# Paper F4 (BWA)

**ACCA**



**ALL TEN questions are compulsory and MUST be attempted**

- 1 In relation to the Botswana legal system:**
- (a) discuss judicial precedent as a source of law; and (4 marks)
  - (b) explain the advantages and disadvantages of judicial precedent. (6 marks)
- (10 marks)**
- 2 In relation to the law of contract:**
- (a) Define 'terms'. (3 marks)
  - (b) Explain and distinguish between the three classifications of contractual terms. (7 marks)
- (10 marks)**
- 3 In relation to company law:**
- (a) discuss the procedure of appointing company auditors; and (4 marks)
  - (b) explain the powers and duties of company auditors. (6 marks)
- (10 marks)**
- 4 In relation to company law, compare and contrast administration and winding up of companies.**
- (10 marks)**
- 5 In company law, illustrate the effects of incorporation.**
- (10 marks)**
- 6 In relation to company law:**
- (a) Define a share. (4 marks)
  - (b) Discuss the meaning of share capital. (6 marks)
- (10 marks)**
- 7 Explain the meaning of delict; and distinguish a delictual act from a breach of contract or a criminal act.**
- (10 marks)**

- 8 Thapelo and Mmusi form a company, TM Developments, for the purpose of developing a residential complex in Gaborone. Thapelo contributes half of the capital but plays no further active role in the business. Thapelo and Mmusi are both directors of the company. Each one of them nominates another director bringing the number of directors on the board to four.

Although the constitution of the company provides that the directors may appoint one of their number as managing director, the four directors of TM Developments do not appoint a managing director. Instead, the directors leave the day-to-day management of the company to Mmusi.

Mmusi engaged Horizon Architects to prepare plans for the residential development. Once the plans were completed, Horizon Architects demanded payment from TM Developments. TM Developments declined to pay Horizon Architects claiming that Mmusi had no authority to engage Horizon Architects.

Horizon Architects approaches you for advice on TM Developments' possible liability for the work done.

**Required:**

**Advise Horizon Architects.**

**(10 marks)**

- 9 Modisakgotla runs a bakery. He has employed Tiro as a baker. Since Tiro took up employment, he frequently absents himself from work and he is rarely punctual. When confronted about his poor timekeeping and frequent absences from duty, Tiro blames his conduct on traffic jams, foul weather and occasional visits to the clinic. Modisakgotla has since discovered that the real reason behind Tiro's regular absences and lack of punctuality is that Tiro is working as a baker in Tiro & Tiro Bakery, a business owned and managed by Tiro's wife.

Modisakgotla recently suffered a financial setback resulting from the fact that his main customer, Moeding School, is purchasing half the number of loaves that it did on a daily basis. Modisakgotla has discovered that Tiro & Tiro Bakery are now supplying Moeding School with bread. Modisakgotla dismissed Tiro. Tiro has challenged his dismissal at the Industrial Court. Modisakgotla has approached you seeking advice as to whether the termination was substantively unlawful.

**Required:**

**Advise Modisakgotla.**

**(10 marks)**

**10** Maria is a shareholder and director in MainTel, a public cell phone company operating in Botswana, which has recently experienced severe losses in profits. She is aware that MainTel is engaged in confidential negotiations to take over a smaller public cell service provider in the market, Mogalacom. Should the takeover be successful, MainTel's market share in Botswana will increase to 70% resulting in greater returns for shareholders.

Kopano is a shareholder in MainTel and has approached Maria for advice on whether he should keep or sell his shares, given a recent drop in the MainTel share price. Kopano is concerned about suffering more losses. Maria informs him that he should sell his shares and offers to buy the shares from him.

Shortly after selling his shares to Maria, Kopano reads about MainTel taking over Mogalacom in the local press. Kopano also notes a significant increase in MainTel's share price. Kopano eventually realises that Maria was aware of the impending takeover when she purchased the shares from him.

Kopano wishes to know if Maria's conduct is wrongful and if there are any remedies available to him in law.

**Required:**

**Advise Kopano.**

**(10 marks)**

**End of Question Paper**