TAXATION PROGRAMME EXAMINATIONS

CERTIFICATE LEVEL

C6: LAW FOR TAX PRACTITIONERS

FRIDAY 19TH JUNE 2015

TOTAL MARKS – 100; TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS TO CANDIDATES

1. You have fifteen (15) minutes reading time. Use it to study the examination paper carefully so that you understand what to do in each question. You will be told when to start writing.

2. This question paper consists of FIVE (5) questions of twenty (20) marks each. You MUST attempt all the FIVE (5) questions.

3. Enter your Student number and your National Registration Card number on the front of the answer booklet. Your name must **NOT** appear anywhere on your answer booklet.

4. Do **NOT** write in pencil (except for graphs and diagrams).

5. The marks shown against the requirement(s) for each question should be taken as an indication of the expected length and depth of the answer.

6. All workings must be done in the answer booklet.

7. Present legible and tidy work.

8. Graph paper (if required) is provided at the end of the answer booklet.

ANSWER ALL FIVE (5) QUESTIONS

QUESTION ONE

(a) Identify any three (3) sources of law in Zambia and explain how they take effect as sources of law . (6 marks)

(b) Explain the doctrine of ultra-vires. (5 marks)

(c) Discuss how liability in the law of torts and in the law of contract arises. (5 marks)

(d) Differentiate between a Hire-Purchase agreement and a Credit Sale. (4 marks)

[Total: 20 marks]

QUESTION TWO

(a) The legal principle is that only a party to a contract can sue and be sued upon it. Third parties do not acquire rights or obligations, but acquire such rights in exceptional situations to mitigate the harsh outcomes of the strict rule. Explain any four (4) exceptions to the doctrine of privity. (8 marks)

(b) A company at law is said to be a separate and distinct entity from its owners. Explain the principle of law on separate legal personality with reference to the case of **Salomon v Salomon.** (4 marks)

(c) Making reference to insurance law, elaborate on the following terms:

(i) Utmost good faith (3 marks)

(ii) Indemnity (3 marks)

(d) Explain the purpose of awarding damages in the law of contract. (2 marks)

[Total: 20 marks]

QUESTION THREE

(a) Explain any four (4) types of invitations to treat. (8 marks)

(b) Under a contract of Sale of Goods, the parties are deemed to be in a mutual understanding with duties and remedies for any problem that may come.

(i) List the four (4) remedies available to the buyer (4 marks)

(ii) State the two (2) duties of the buyer and one duty of the seller . (3 marks)

(c) List the five (5) obligations of a hirer under a hire-purchase agreement. (5 marks)

[Total: 20 marks]

QUESTION FOUR

(a) Define the word "law". (2 marks)

(b) State the four (4) main duties of an employer towards his employee and four (4) duties of an employee towards his employer in employment law. (8 marks)

(c) With reference to intention to create legal relations as an element of a contract, distinguish between commercial and domestic agreements. (10 marks)

[Total: 20 marks]

QUESTION FIVE

(a) Define the following types of negotiable instruments:

(i) Bill of Exchange (2 marks)
(ii) Cheque (2 marks)
(iii) Promissory Notes (2 marks)

(b) Explain the characteristics of not-for-profit companies, companies limited by guarantee and companies limited by shares. (10 marks)

(c) The Workers' Compensation Act Cap 271 of the Laws of Zambia defines a worker as "any person who has entered into, or works under, a contract of service or of apprenticeship." Certain persons are exempted from the definition of worker.

List down any four (4) examples of such persons. (4 marks)

[Total: 20 marks]

END OF PAPER

C6 Law for Tax Practitioners Solutions

SOLUTION ONE

(a) **The Constitution in Zambia is the supreme law of the land. It derives its sources from the people and therefore revered as the grand norm. All other laws in country are bound to constitutional interpretation. Article 1(3) provides that any law inconsistent to the law of the constitution, that other law shall be void to extent of inconsistency**.

(ii)**Acts of Parliament in Zambia are laws made by the country's parliament. The constitution has conferred powers on the country's legislature to make laws. However, when laws are made by parliament, they are required to conform to the provisions of the constitution otherwise they are declared null and void should they not. An Act of parliament takes effect after being signed by the President.**

(iii)**Delegated legislation is another source of law in Zambia. Delegated legislation is law made pursuant to Acts of Parliament. When parliament has passed legislation, it further gives power to other institutions pursuant to article 80(i) of the constitution, to make laws. Delegated legislation is made by local authorities (by-laws) and ministers (statutory instruments) and the law they make is supposed to conform to the laws in the enabling Act.**

(iv) **Case law is equally another source of law in Zambia. Case law also known as precedents is judge made law. This guides society especially in the practice of law on what the law basically is. Case law is therefore as important as source of law in Zambia as the others considered above.**

(v)**Zambia is divided into two legal systems. The first and oldest form of law in Zambia like most other countries of the world has in fact been customary law. Customary law has existed from the time man existed. These are customs that guide the manner in which a society is required to exist. For example, in Zambia we practice customary and civil law. All customary matters are dealt with in the local courts. The customs must be generally accepted**.

(b)**When a company is formed, it can do anything allowed by the Articles of Association.**

If the directors or the company is limited by the Articles, any acts done in excess of the powers conferred by the Articles;

is considered to be ultra vires and to that extent invalid.

(c) **In contract liability arises by agreement of the parties. Here parties agree to bind themselves to the terms and conditions of the contract where, if a breach arises the aggrieved party is entitled to sue for damages arising from the breach. In contract damages are always liquidated meaning, the aggrieved party is able to determine how much they have lost due to the breach and are therefore able to sue on the liquidated damages.**

In tort liability arises by imposition of the law. The law of torts through **negligence has imposed a general duty of care** that all individuals owe others to ensure they do not do something that would bring about injury to others or omit to do something which **omission**, would lead to **others suffering damage**. In tort damages are **unliquidated meaning** it is not readily ascertainable or **quantifiable how much damage has been suffered until determined by the courts.**

(d) The difference between a and a credit sale is that a **Hire Purchase agreement is an agreement where the purchaser agrees buy goods through instalment payments**. The goods bought on hire purchase always remain the property of the sellers until the purchaser has **completely made the payments due on the hire purchase agreement**. In a hire purchase agreement the seller is **therefore entitled to the sold goods**.

Whereas credit sale **agreement is an agreement where the seller sales** goods on promise by the buyer to pay at a later date. In a **credit sale agreement the seller is entitled to recovery of the credit sale price and not the sold goods.**

SOLUTION TWO

(a) The doctrine of privity has a number of exceptions and these are:

- **Under collateral contracts-if there is an agreement made for the benefit of a third party, then the third party can enforce that contract.**
- **Under agency relationships-where an agent has express authority from the principal, he can enforce a contract on behalf of his principal.**
- **Under statute-statutes may in certain circumstances give a third party the rights to sue under a contract.**
- **Under trusts-this is an arrangement made for the benefit of another person known as the beneficiary. The third party can enforce the contract.**
- **Third party insurance contracts-are made between the insurance company and the owner of the property. But the third party can enforce the contract because it is made for his benefit.**

(b) The principle of the law established in the case is that, **when a company is incorporated it company stands alone from its sponsors** and **has legal capacity to sue or be sued in its own name.** Upon incorporation, the company is **liable for its debts and sponsors cannot be answerable for the company's debts and cannot be treated as one with the company**.

The brief facts in **Salomon v Salomon [1897]** is that Salomon sold his leather business to a company he formed and was the principle shareholder. He was paid for the shares, in part, by a debenture on the company. Within a year the company went bankrupt and, as a secured creditor he was entitled to be paid first. Other creditors sued contending that Salomon and the company were one and could therefore not be entitled to be paid for the debenture. The court held that Salomon and the company were separate legal personalities and Salomon as a secured creditor could be paid first. `

(c)The explanation is below:

- Utmost good faith – **requires that an insured gives all the information to the insurance company.** It involves extensive **duties of disclosure of true information** at common law. The information helps the insurance company **determine how much premium should be charged and the likelihood of the risk insured** against happening.

- Indemnity – requires that an **insured person should neither be made poorer or wealthier** upon a claim but that **should just be brought to where they would have been had the**

risk insured against not materialized but that the **insured may not be fully compensated.**

(d) The purpose of damages is **to restore the injured party** to the pre-contractual position they would have **been if the breach had not occurred**.

SOLUTION THREE

(a) An invitation to treat is an invitation to another person to make an offer and it cannot be accepted. The following are the types of invitation to treat:

i. **Mere supply of information**. **In Harvey v Facey (1893) P telegraphed D:** 'Will you sell us Bumper Hall Pen? Telegraph lowest cash price.' D telegraphed the reply. 'Lowest price for Bumper Hall Pen £900 and P then telegraphed. 'We agree to buy Bumper Hall Pen for £900. D then decided that he did not wish to sell Bumper Hall Pen to P for £900, and P claimed that a contract had been made, the second telegraph being an offer. The court held that there was no contract, the second telegram being merely an indication of what D would sell it for, if and when, he decided to sell. It was supplying of information in response to a question.

Hence, the mere supply of information should not be taken as an offer but an invitation to treat.

ii. The exhibition of goods for sale in a shop. For example **Fisher v Bell (1961),** also **Pharmaceutical Society of Great Britain v Boots Chemists (1953)** whereby statute required certain drugs had to be sold in the presence of a qualified pharmacist. Boots operated a self-service shop, with a qualified pharmacist present at the check-out, but not at the shelves on which the drugs were displayed. The precise location of the place of sale was therefore, relevant to determine whether or not an offence had been committed. It was held that the display was an invitation to treat. The customer's tender of the drugs was the offer and the taking of the money by the pharmacist was the acceptance. The sale therefore, took place at the check-out and Boots therefore did not commit an offence.

iii. General advertising of goods. Thus a newspaper advertisement that goods are for sale is not an offer. In **Grainger v Gough (1996),** it was held that the circulation of a price list by a wine merchant was only an invitation to treat.

iv. An invitation for Tenders. A tender is an estimate submitted in response to a prior request. An invitation for tenders **does not generally amount to an offer to employ the person quoting the lowest price.** In **Blackpool and Fylde Aero Club v Blackpool Council (1990):** the council, who manage Blackpool Airport, intended to grant a concession to operate pleasure flights from the Airport. It sent invitations to tender to P and 6 parties, all of whom were known to the council. The invitation stated that tenders received after the last date would not be considered. P posted their tender in good time in the town hall letter-box, but this was not opened when it was supposed to be, consequently P's tender arrived late and was excluded from consideration. P sued in contract and negligence. P succeeded, the Court of Appeal holding that it was possible to have exceptions to the rule that invitation to tender was not contractual offers.

vi. An Auctioneer's request for bids*.* An advertisement stating that an auction is to be held, or request for bids is an invitation to treat and not an offer to sell to the highest bidder. The bid is the offer and the fall of the auctioneer's hammer is the acceptance. Until this happens the bidder may retract his bid. **A statement that an auction sale will be held is not actionable if a person travels to the place of sale only to find the auction has been cancelled**. **Harrison v. Nickerson (1893).**

vii. A Company Prospectus. A prospectus or advertisement inviting the public to subscribe for shares or debentures is an invitation to treat, even if (as is the custom) it's described as 'an offer for sale'.

(b) (i)The buyer's remedies are:

- **Reject the goods**
- **Rescission for innocent misrepresentation**
- **Damages; and**
- **Specific performance.**

(ii) The duties of the buyer are:

- **Accepting the goods**
- **Make payments for the goods**

One duty of the seller

- **To deliver the goods to the buyer**

(c) **-to pay the hire-purchase instalments as they fall due**

-to take reasonable care of the goods in his possession if the hirer damages the goods by using them in a non-standard way, he or she must continue to pay the instalments and, if appropriate, compensate the owner for any loss in asset value

-to inform the owner where the goods will be kept, and not to remove or permit the removal of the goods from the premises where they are ordinarily located without the consent of the owner.

-To take delivery of the goods

-To continue hiring the goods for the agreed period and not to re-let, sell or part with possession.
Any five of the following

SOLUTION FOUR

(a)) Law is a **collection of rules of human conduct** prescribed by human beings **for the obedience of human beings**.

(b) Employers duty towards employees:

(i) Duty to pay wages
(ii) Duty to exercise reasonable care towards employees
(iii) Duty to provide grievance procedure
(iv) **Duty of mutual trust and confidence towards employees.**

Employees duty towards employers:

(i) Duty to obey instructions
(ii) Duty to adapt to working conditions stipulated by employer
(iii) Duty to exercise due care when performing employment duties
(iv) **Duty of good faith in executing employment duties.**

(c) **Commercial Agreements 'subject to contract'** where there is **commercial agreement** it is presumed that parties intend to create legal relations. However, if the parties **expressly deny intention by stating** that negotiations are 'subject to contract. Or that any agreement is to be **'binding in honour only'** then there is no contract.

In Jones v Vernons Pools (1938) P claimed that he had sent D a football coupon on which the draws he had predicted entitled him to dividend. D denied having received the coupon. They relied on a clause printed on a coupon, **which states that the transaction should not 'give rise to any legal relationship … but …be binding in honour'. It was held that this clause was a bar to an action court.**

Domestic Agreements-Where there is a domestic agreement the presumption is that legal relations are not intended. For **example an agreement by a man to pay his wife** £50 per week 'housekeeping' money. However it is possible for a man to make a binding contract with his wife, **for example as part of a separation agreement.**

In **Merritt v Merritt (1970)**. A husband left his wife and when pressed by her to make arrangements for the future agreed that if he would pay the outstanding mortgage installments, when all the payments had been made, transfer the house into her name. It was held that there was a binding contract since the presumption that legal relations are not intended does not apply if husband and wife are separated or about to separate.

In **Balfour v Balfour (1919),** Mr. Balfour promised to pay his wife £30 per month if she stayed in England while she was working in Ceylon. Mrs. Balfour was to remain in England for medical reasons. The couple later separated. Mrs. Balfour claimed £30 per month pursuant to Mr. B's promise. The legal issue in question was whether or not this promise by a husband to his wife amounted to a contract. Held-in its ruling the court considered the view that an agreement to pay £30 per month existed because at the time they were living in amity and there was no intention to create legal relations.

SOLUTION FIVE

(a) **A bill of exchange is an unconditional order in writing**, addressed by one person (the drawer) **to another (the drawee)**, signed by the person giving it (the drawer) requiring the person to whom it is addressed (the drawee, who when he signs becomes the acceptor**) to pay on demand or at a fixed or determinable** future time a sum certain in money to, or to the order of, a specified person or to the bearer (the payee).

-A cheque a cheque is a **form of bill of exchange drawn** on a specified banker (drawee bank) and **payable on demand.**

-A promissory note is a **written undertaking signed** by the maker to pay a fixed sum of money **only to or to the order of another person** (the payee) or bearer on demand or at a specified future time.

(b) A **company is an association of a number** of people for some common objects. It is registered under the Companies Act Cap 388 of the Laws of Zambia and assumes a separate legal identity.

Not-for-profit company this is **an association formed with the provision in the constitution prohibiting the distribution of profits to the members of the company**. The purpose of such companies may be charitable for public or private interests.

Companies limited by **guarantee these are companies normally** set up for charitable **purposes and quasi-charitable purposes**. The members are under no liability as they do not have to put in **any money at its formation**.

Companies **limited by shares these are companies set up** for profit-making purposes with the members' liability being limited **to the amount payable on their shares.**

(c) The following persons are exempted from the definition of "worker".

Members of military forces in Zambia; members of the Zambia Police Force, **Public service workers, casual employees**, any outworker, **members of the defence force, and any member** of the Unified African Teaching Service.

END OF SOLUTIONS