TAXATION PROGRAMME EXAMINATIONS

CERTIFICATE LEVEL

C6: LAW FOR TAX PRACTITIONERS

MONDAY 15TH DECEMBER 2014

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.

Attempt all FIVE (5) questions.

QUESTION ONE

(a) With reference to case law, explain how agency relationship is created by necessity. (10 marks)

(b) Identify and explain at any **five (5)** main characteristics of liability in criminal and civil law. (10 marks)

[Total: 20 marks]

QUESTION TWO

(a) Distinguish the aim of damages in the law of torts from that of contract. (5 marks)

(b) Write brief notes on the characteristics of the following shares:

(i) Ordinary shares (3 marks)

(ii) Preference shares and (3 marks)

(iii) Redeemable shares (4 marks)

(c) Write the characteristics of a hire purchase contract and credit sale contract. (5 marks)

[Total: 20 marks]

QUESTION THREE

(a) Identify and explain any **five (5)** main duties of an employer towards an employee. (10 marks)

(b) What is the principle of law established in the case of Salomon v Salomon and what is the importance of that legal principle? (6 marks)

(c) In banking law, what is meant by an endorsement? (2 marks)

(d) Explain what bankruptcy is. (2 marks)

[Total: 20 marks]

QUESTION FOUR

(a) Explain the negotiability of a negotiable instrument. (6 marks)

(b) Write short notes on the following insurance terms:

(i) Utmost good faith

(ii) Indemnity

(iii) The doctrine of subrogation (6 marks)

(c) Explain what a Partnership is and how it differs from an incorporated company.

(4 marks)

(d) Explain the main ingredients of wrongful dismissal. (4 marks)

[Total: 20 marks]

QUESTION FIVE

(a) Making reference to case law, discuss the effects of article 1(3) of the Zambian Constitution vis-à-vis other sources of law. (10 marks)

(b) Explain any three (3) ways that would give rise to the court making a bankruptcy order.

(3 marks)

(c) The law of torts is said to be an area where liability is primarily fixed by law whereas or while the law of contract as an area where liability accrues to parties by agreement.

Briefly discuss the statement. (5 marks)

(d) What is the importance of Insurance? (2 marks)

[Total: 20 marks]

END OF PAPER

C6 SUGGESTED SOLUTIONS

SOLUTION ONE

a. Agency relationships can be created in a number of ways. Among them, agency by necessity, through ostensible authority and implied authority. Agency by necessity was considered in S***pringer v GWR*** (1919) where the defendant sold tomatoes belonging to the plaintiff without the plaintiff's authority upon fearing that they would go bad due to delays arising from a detained ship due to bad weather. The plaintiff sued for breach of contract but the defendants justified their actions under agency of necessity. The court however held that for there to be agency of necessity there must have been no way the defendant could have communicated with the principle. Because there were means for communicating with the principle but did not communicate, there was therefore no agency created. If therefore the elements for agency of necessity established in Springer were present then there was agency relationship otherwise not.
Therefore, the elements are:
   i. A person must have responsibility for the property of another under a pre-existing contract.
   ii. There must be some emergency which arises in connection with the property of that person
   iii. The person charged with responsibility for the property must be unable to get instructions from the owner of the property.
   iv. The person charged with responsibility must act in the good faith in respect of the property in the interest of the owner.

b. In civil cases, especially law of contracts and tort, liability arises mainly through the parties themselves agreeing in cases of contract to enter into a contract with terms and conditions agreed upon by themselves where, a breach entitles the aggrieved party to sue in the courts of law for damages. In tort, liability arises by general imposition of the law. The law imposes a duty of care on every individual to act in a manner that would not cause injury to others. A breach if that duty resulting in damage entitles the aggrieved party to sue in the courts of law.

Criminal liability however arises by operation of the law. In Zambia the Penal Code is the main source of criminal law. The Penal Code has described certain acts and omissions to be criminal and has also prescribed the penalty for them. Liability in criminal law is to the state and the state on behalf of society prosecutes all criminal acts or omissions.

SOLUTION TWO

(a) The principle of damage in tort is for unliquidated or liquidated and the plaintiff sues to be taken to the position they would have been had they not suffered the damage. In tort therefore the plaintiff always looks to being restituted to their original position before suffering damage.

Conversely in contract the principle of damage operates on expectation of benefit from the contract where the plaintiff would be aware of how much they were to realize, had the contract been performed without breach. In contract therefore, the plaintiff is suing to be taken to where they would have been had the contract been performed.

(b) Ordinary shares

Ordinary shares are the default category of shares at formation of a company. These are stated in the Articles of Association and all shares are equal with the only difference owing to the difference classes or series of shares. Ordinary shareholders participate in the company's distribution of profits on their investment but only after payment has been made to preference shareholders. In the event of winding-up, the ordinary shareholders will only be able to claim from the residue after other shareholders have been paid. This class of shares carries voting rights. They may also be entitles to bonus payments and also enjoy pre-emption rights.

Preference Shares

The essential characteristic of any preference shares is that it can carry a prior right to receive an annual dividend to fixed amount, say a six percent dividend. The right is merely to receive a dividend at the specified rate before any other dividend may be paid or declared. The rights to receive a preference dividend is deemed to be cumulative unless the contrary is stated . They are not to carry a right to vote or only in specified circumstances such as failure to pay the preference dividend, variation of their rights or a resolution to wind up. Unless otherwise stated the holders of the preference shares are not entitled to share in surplus assets when the ordinary share capital has been repaid.

Redeemable Shares

A company with a share capital may if authorized by its articles, issue shares that are redeemable S 59 (1) CA 388.

The conditions for the issue and redemption of redeemable shares are set out in s 59 CA 388.

-The articles must give authority for the issue of redeemable shares. S 59 CA 388.

-Redeemable shares may only be issued if, at the time of issue, the company also has issued shares which are not redeemable – a company's capital may not consist entirely of redeemable shares: s 59 (2)

-Redeemable shares may only be redeemed if they are fully paid and the terms of redemption must be provided for payment on redemption: s 59 (3)

(c) Hire Purchase agreement is an agreement where the purchaser agrees buy goods through installment 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. ***Helby v Matthews*** (1895) in the case the court held that a hire purchaser could not transfer title of goods bought on hire purchase before making full payment as the good were still the seller's.

A 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. ***Branwhite v Worcester Works Finance Ltd*** [1968] is instructive where the court held the initial payment to have been part of the total payment entitling the credit purchaser to the goods.

SOLUTION THREE

(a) 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.
   (v) Duty to provide safety gear
   (vi) Duty to provide a safe working environment

(b) Incorporation of a company is where two or more people apply through the prescribed forms under section 6 of the Company's Act Cap 388 of the Laws of Zambia to have their company registered by the Registrar of Companies at PACRA. Section 6 of the Act prescribes forms to be completed by applicant and stipulates the documents to be lodged together with the application. Upon approval by the registrar, the company then stands registered and is born as an artificial person. Effects of incorporation are that the 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. ***Salomon v Salomon*** is instructive on this. In the case the court held that once incorporated, a company becomes a separate legal personality and can be held liable for its actions and not the sponsors. Even where the company is a sole trader as long as it is incorporated the sole owner cannot be held liable for the acts of the company.

(c) An Endorsement is where a negotiable instrument is signed by the drawer either at the front or back of the instrument thereby making it payable to the bearer. Examples being special endorsement, restrictive endorsement e.t.c.

(d) Bankruptcy is defined as; the state of a person who has been adjudged by a court to be insolvent. Meaning, having more debts than assets.

SOLUTION FOUR

(a) Negotiability refers to a situation where a person can transfer title to another person by mere delivery as long as the transferee does it in good faith without notice of any defect in the title and for value.

(b) Write notes on the following insurance terms:

(i) Utmost good faith – requires that an insured gives all the information to the insurance company. The information helps the insurance company determine how much premium should be charged and the likelihood of the risk insured against happening.

(ii) 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.

(iii) The doctrine of subrogation – this principle operates in the same line as indemnity. Emphasis however here is that an insured should not be made to benefit from his own loss and that the insurer should account to the insurer for any profits arising from the compensation.

(c) A partnership is established under the Partnership Act 1890. It requires two or more persons coming together with a common purpose to form a business with intention to profit. Partnerships are unlimited liability companies meaning, the partners in the ship are all liable jointly and severally for the debts and wrongs of the company. A partnership will usually dissolve in event of death of anyone of the partners.

On the other hand, an incorporated company is registered under the Company's Act. It has limited liability characteristics meaning, sponsors cannot be held liable for the debts and wrongs of the company but the company itself. A company evolves into an artificial person able to sue and be sued in its own capacity.

(d) Dismissal which is wrongful relates to whether an employee has been dismissed from employment with the contractual procedures for dismissal followed. Therefore, where the employer fails to follow procedures laid down for dismissing an employee then the dismissal is wrongful. ***Reine Engineering Co. Ltd v Baker*** is instructive on that. The plaintiff a director was employed under a contract of service. According to the contract, he was to be given notice of termination of contract. However, the board of directors dismissed him with immediate effect when he refused to resign upon being asked to do so. He brought an action for wrongful dismissal.

SOLUTION FIVE

(a) ***Christine Mulundika and 7 others v the Attorney General*** is a classical case on the effects of article 1(3) of the constitution. The case concern the plaintiff and seven others who were arrested and charged under section 7 of the Public Order Act for breaching section 5(4) of the same Act. Section 5(4) of the Act required persons wishing to hold a public rally to obtain a permit from the police. Failure to obtain such permit constituted a criminal offence under section 7 of the Act. A permit was denied to *Christine Mulundika and Seven Others* but decided to hold the rally anyway. They were arrested and charged under the Act and brought before a magistrate. They however challenged the constitutionality of section 5(4) and 7 of the Act contending they were in violation of articles 20 and 21 of the constitution. The matter was referred to the High Court pursuant to article 28 of the constitution. The High Court ruled in favour of the applicants holding that sections 5(4) and 7 of the Act indeed violated the constitution which guaranteed fundamental rights of freedoms of expression, association and assembly.

The principle of law established by the case is that the constitution in Zambia is the supreme law of the land and should any other law be inconsistent with it, that other law is to the extent of the inconsistency to be declared void. Further, the case established that in Zambia freedoms in the constitution are to be protected and given effect where there is evidence of their violation.

(b) Pursuant to section 20 of the Bankruptcy Act, the court may adjudge someone bankrupt in the following events:
   (i) Where the debtor applies to the court that they be declared bankrupt
   (ii) On the application of the official receiver, and;
   (iii) On the application of creditors pursuant to section 6(1)(a)(b) of the Bankruptcy Act.

(c) One of the major distinctions between tort and contract is that liability in contract arises from the agreement. Since a contract is a legally binding agreement where one makes an offer and the other accepts unconditionally. A party to a contract becomes liable upon breaching the provisions of the contract. However, in tort it is not necessary for there to be a pre-existing relationship or to fix any terms, because the law imposes a duty on each individual to respect the rights of others. Liability is dependent on the situations e.g. if a person is not taking care in certain circumstance he or she may be liable in negligence; if as person makes statements concerning another this may amount to defamation. Liability will not depend on whether or the parties have had a previous relationship.

(d) Insurance is very important in business as it ensures accidental losses in business are covered for compensation thereby spreading the risks of doing business and eventually protecting businesses perhaps from complete collapse due to damage that may happen by fire etc.

END OF SUGGESTED SOLUTIONS