



TAXATION PROGRAMME EXAMINATIONS

CERTIFICATE LEVEL

C6: LAW FOR TAX PRACTITIONERS

FRIDAY 18 DECEMBER 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. **Cell Phones** are **NOT** allowed in the Examination Room.
6. 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.
7. All workings must be done in the answer booklet.
8. Present legible and tidy work.
9. Graph paper (if required) is provided at the end of the answer booklet.

Attempt all FIVE (5) Questions

QUESTION ONE

- (a) With reference to the Law of Contract, explain how a condition differs from a warrant. (6 marks)
- (b) Distinguish a floating charge from a fixed charge. (4 marks)
- (c) State any five (5) advantages of a joint venture partnership. (5 marks)
- (d) Explain the principle of utmost good faith. (5 marks)

[Total: 20 marks]

QUESTION TWO

- (a) Explain the following terms:
- (i) Trade Union (4 marks)
 - (ii) Receiver (3 marks)
- (b) Explain how an agency by ratification is created (2 marks)
- (c) Explain the conditions for agency by ratification to be valid. (8 marks)
- (d) Explain the three (3) situations that may prompt the Court to make a bankruptcy order. (3 marks)
- [Total: 20 marks]**

QUESTION THREE

- (a) Explain the three (3) types of meetings that can be held by a company. (6 marks)
- (b) Define the following:
- (i) void contracts (3 marks)
 - (ii) voidable contracts (3 marks)
 - (iii) Invalid contracts (3 marks)

(c) State any five (5) ways in which a contract of employment may be terminated.

(5 marks)

[Total: 20 marks]

QUESTION FOUR

(a) Define a negotiable instrument. (2 marks)

(b) List the four (4) requirements for its negotiability. (4 marks)

(c) Identify any three (3) types of endorsements for transfer of title in banking.

(3 marks)

(d) The law of insurance always tries to provide security for people or companies that deal with goods in the event of damage. This has been seen as a proper way to secure goods especially by business entities.

Required:

(i) Define a contract of Insurance. (1 mark)

(ii) Explain the elements of an Insurance contract. (4 marks)

(e) Distinguish between a partnership and an incorporated company. (6 marks)

[Total: 20 marks]

QUESTION FIVE

(a) Explain the elements of a valid contract with reference to the case of **Carlill v. Carbolic Smoke Ball & Co. [1893]**. (10 marks)

(b) The general rule in a contract of Sale of Goods is that a non-owner of goods cannot pass valid title, but there are exceptions.

State any five (5) of such exceptions. (10 marks)

[Total: 20 marks]

END OF PAPER

C6: LAW FOR TAX PRACTITIONERS

SUGGESTED SOLUTIONS

DECEMBER 2015 EXAMINATIONS

SOLUTION ONE

- (a) A condition of a contract is **the vital term of the contract**. When it **is breached**, the contract can be repudiated and **damages can be** claimed.

For example, in **Poussard v Spiers and Ponds [1876]**, it was held that failure of a singer to **appear at a concert was breach of a condition as the appearance at** the concert was the main term upon which the contract was based. Therefore, **the employer was justified in dismissing the singer**.

Whereas a warranty however is a **subsidiary term of the contract**. When it is **breached**, the contract stands, but a **claim for damages can be made by the injured party**.

In Bettini v. Gye [1876], the failure of a singer to attend rehearsals was held to be breach of a warranty as it did **not constitute the main term** of the contract which was to perform at the show. Therefore, the **dismissal of the singer was not justified, because the employer could only claim damages**.

- (b) A fixed is a charge which **gives the lender** rights to **the property in question**.

While a floating charge is where **the chargee's rights attach** to a shifting fund of **assets and can be** in the form of stock in **trade, receivables**, etc. This allows the company to continue **dealing with the assets in the normal course** of business without creditor interference.

- (c) The advantages of joint venture are:

- The pooling together of resources
- Greater capacity of the business
- Increased technical expertise

- Easy access to well established markets and distribution channels
- Increased innovation
- Increased productivity
- Sharing of risks and costs
- Obtain growth without having to borrow funds

Any five of the above

- (d) A contract of insurance is a contract "**uberrimae fidei**", meaning it is a contract of "utmost good faith". This is a contract with **extensive duties of disclosure** at common law. The **parties to such a contract owe** each other a mutual duty of the utmost good faith to disclose all material facts. This means that the **insurer is discharged from any liability** if the insured gave any false statements on the insurance proposal form.

Any correct five elements in the description.

SOLUTION TWO

- (a) (i) A trade union is defined under section three of the Industrial Relations Act, Chapter 269 as: **any group or organization of employees** registered under the Act, **whose principal objectives** are the **representation and promotion of the interests** of the **employers and regulation of relations between employees and employers and includes a federation of trade unions**.
- (ii) A receiver is a an officer of **the court who is appointed** to dispose of company **assets and pay the proceeds to the lender** in or towards the discharge of his security. **A receiver is appointed by the lender if there is a default in loan** repayments.
- (b) An agency is created by ratification when a **person who has no authority purports to contract with a third party on behalf of a principal**. Ratification is the express acceptance of **the contract by the principal**. **Where the principal elects to ratify the contract**, it gives retrospective validity to the action of the purported agent.

There are, however, certain conditions which have to be fully complied with before the principal can effectively adopt the contract, as follows:

The principal must have been in existence at the time that the agent entered into the contract

Thus, for example, in **Kelner v Baxter (1866)**, where promoters attempted to enter into a contract on behalf of the as yet unformed company, **it was held that the company could not ratify the contract after it was created and that the promoters, as agents, were personally liable on the contract.**

The principal must have had legal capacity to enter into the contract when it was made

When the capacity of companies to enter into a business transaction was limited by the **operation of the doctrine of ultra vires**, it was clearly established that they could not ratify any such ultra vires contracts. Similarly, **it is not possible for minors to ratify a contract, even though it was made in their name.**

An undisclosed principal cannot ratify a contract

The agent must have **declared that he or she was acting for the principal**. If the agent appeared to **be acting on his or her own account, then the principal cannot later** adopt the contract. **The principal must adopt the whole of the contract. It is not open to the principal to pick and choose which parts of the contract to adopt; they must accept all of its terms.**

Ratification must take place within a reasonable time

It is not **possible to state with certainty what will be considered as a reasonable time in any particular case**. Where, however, the third party with whom the agent contracted becomes aware that the agent has acted without authority, **a time limit can be set, within which the principal must indicate their adoption of the contract for it to be effective.**

- (c) 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.

SOLUTION THREE

(a) The following are the types of meetings that can be held by a company:

- i) An annual general meeting-Section 158 (i) **provides for an incorporated public company to hold a meeting called the Annual General Meeting within three months after the end of each financial year. Failure to hold an AGM as prescribed in section 138 (i) is an offence and the company officers should be fined up to 1, 000 monetary units.**
- ii) An extraordinary general meeting-Section 139 of the Companies' Act Cap 388 of **the Laws of Zambia provides that an Extra-Ordinary General Meeting may be convened by the Directors as they think fit or nay person if provided for in the Articles of Association.**
- iii) A class meeting-Section 140 of the Companies' **act provide s that class meetings can be convened by the Directors as they think fit or by two or more embers of the class unless the articles provide otherwise.**

(b)

- (i) A void contract is a contract which is ***void ab initio***, meaning it has never **existed, for example a contract which involves business which is illegal.**
- (ii) A voidable contract is a **valid contract until the discovery** of a vitiating factor such as **Misrepresentation**, and this **entitles the innocent party to avoid the contract at his option.**
- iii) An invalid contract is a contract which **cannot be enforced at law because it lacks any or all of the elements of a valid contract.** For example, a contract not supported **by consideration is unenforceable.**

(c) Employment can be terminated in the following ways:

- By dismissal
- Retrenchment
- Resignation by giving reasonable notice
- Redundancy
- Retirement
- Death of an employee
- Frustration
- Breach

Any five of the above

SOLUTION FOUR

(a) A negotiable instrument is a written document, **written and signed by the maker or drawer of the document**, that contains an unconditional promise or order to pay an **exact sum of money on demand or at an exact future time** to a specific person, **or to order, or to its bearer**. A holder of a negotiable instrument can transfer a good title by delivery where the transferee takes it in good faith.

(b) For a negotiable instrument to be valid it requires the following:

- it should be signed by the drawer
- it must be issued unconditionally
- there must be a fixed amount indicated on it
- it must be paid on demand or at a future definite time.

(c) Types of endorsements:

- (i) Endorsement in blank – this 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.
- (ii) Special endorsement – is one where the holder signs the cheque on its back with directions to pay a specified person.
- (iii) Restrictive endorsement – as the name suggests this endorsement restricts the payment of the instrument only to the person named on the instrument. Special and restrictive endorsements are not very distinct as they both look at specific payees.

iv)

- i. A contract of insurance **is one where one party insures against the risk of an uncertain event which is not within the insured's control**, happening at the future time, in which event the other party has an **interest and under which contract the insurer is bound to pay money** or provide its equivalent if the uncertain event occurs.
- ii. Elements of a contract of insurance are:
 - (i) Existence of legal contract of insurance
 - (ii) There should be uncertainty of the event happening
 - (iii) Insured must have insurable interest in the subject of the insurance
 - (iv) The insurer should undertake to pay money to the insured in event of the risk insured against happening.

(d) A partnership is established under the Partnership Act 1890, while a company is regulated by the COMPANIES' Act Chapter 388 of the Laws of Zambia.

- In a partnership there is joint and several liability while a company is liable for its own debts.
- Partnerships have unlimited liability meaning, but a company has limited liability meaning its members cannot be held liable for the company's debts except to the extent of the balance owing on their shareholding.
- A partnership will usually dissolve in event of death of anyone of the partners. A company has perpetual succession such that the existence of the company is not affected by change in membership.
- A partnership and its members are one, but under companies, the owners are separate from the company itself.

SOLUTION FIVE

(a) **In Carlill v Carbolic Smokeball Co. (1893)**, the defendant company manufactured a patent medicine, called 'smoke ball'. In various advertisements they offered to pay £100 to any person who caught influenza after having sniffed the smoke ball three times a day for two weeks. They also stated that they had deposited £1,000 in the Alliance Bank in Regent Street to show their 'sincerity'. According to this case:

- i) There was an offer when the Carbolic Smoke & Company Limited advertised the smoke ball; acceptance was when Mrs. Carlill bought the smoke ball;

An offer is a definite promise to be bound on certain specific terms.

ii) Acceptance was when Mrs Carlill bought the smoke ball;

Acceptance may be defined as an unconditional expression of willingness to be bound by the terms of an offer.

iii) Consideration was when she used the smoke balls as prescribed;
Consideration is the price at which a promise is bought.

iv) Intention to create legal relations was when the company deposited money into the bank;

This is the willingness of parties to a contract intend their relations to have legal consequences.

v) Both Mrs. Carlill and the Company had capacity to contract. Mrs. Carlill was of full legal age and the company was duly registered.

Capacity is the competence of a person or entity to enter into a contract.

(b) The following are the exceptions:

- Sale by court order
- Sale by an authorised agent
- Sale in a market overt
- Sale under common law rules
- Sale by statutory authority
- Sale by estoppel (An five exceptions)
- Sale under a voidable title

END OF SOLUTION