MAY 2021 PROFESSIONAL EXAMINATIONS
BUSINESS AND CORPORATE LAW (PAPER 1.3)
CHIEF EXAMINER'S REPORT, QUESTIONS AND MARKING SCHEME

EXAMINER'S GENERAL COMMENTS

The performance by students from a pass rate of 34.13% to 83.95% in this diet was phenomenal. The success of many candidates could be attributable to many factors, but there is a high likelihood that some candidates have used the Institute's learning material to advance their studies.

The Institute carried out an intervention for students in line with recommendations in the previous Chief Examiner's report. During the intervention, students were encouraged to use the learning material of the Institute. To a large extent, many answers and principles of law stated could be referenced from this learning material.

It is satisfying that the Institute's interventions to assist students in managing their studies better are working.

STANDARD OF THE PAPER

The standard of the paper was slightly higher than the previous diet in terms of the depth of answers required. However, the questions were well spread over the syllabus, and each question had weights equivalent to the syllabus requirements.

PERFORMANCE OF CANDIDATES

The general performance of candidates was the best in recent times. However, despite the high performance, there were no signs of copying whatsoever, and the good performance was seen across all examination centres. Even the majority of the candidates that did not pass scored marks not far off the pass mark. A pass rate of 83.95% was awe-inspiring.

NOTABLE STRENGTHS & WEAKNESSES OF CANDIDATES

Strengths

Candidates had the opportunity to analyze and discuss scenario questions, but their strength mainly was in attempting questions that required short answers. This means should the Institute consider objective questions in future, candidates will perform well. In addition, most candidates had a fair understanding of the law of contract and the court system.

Weaknesses

The use of wrong tenses and grammatical errors by candidates continue to be an issue. Additionally, candidates should be encouraged to practice time management during examinations and attempt all the questions to the best of their ability instead of answering part of a question very well and leaving the rest unanswered.

QUESTION ONE

a) Every Ghanaian's civil and political rights are guaranteed under the 1992 Constitution of Ghana.

Required:

i) List **FOUR (4)** fundamental human rights guaranteed under the 1992 Constitution. **(4 marks)**

ii) List **FOUR (4)** freedoms guaranteed under the 1992 Constitution. **(4 marks)**

b) Briefly explain the statement **"*fundamental human rights as enshrined in the 1992 Constitution of Ghana are inalienable and inviolable*". (2 marks)**

c) Mr. Biggs initiated a claim before the High Court at Agona Swedru for certain reliefs. These were based upon Mempeasem Communication Ltd's allegedly unlawful acts of encroachment upon a piece of land belonging to Mr. Biggs family on which a telecommunication tower (mast) had been erected. The action went through a trial. At the end, the court held a judgment that accepted Mr. Bigg's version of the matter and awarded damages of GH¢ 92 million against Mempeasem Communication Ltd.

Required:

You are working at Mempeasem Communication Ltd's legal department as an intern. Your boss has asked you to advise him on whether or not the High Court decision, being a Superior Court, can be overturned by any other court. In addition, state if any, from which courts could further redress be sought? **(10 marks)**

(Total: 20 marks)

QUESTION TWO

a) Kakai Company Limited had for weeks advertised their products in the electronic and print media that **"Buy GH¢450 worth of products from any of our branches and get one blender free"**. The deadline for the promotion was 30 November 2020. Fiifi saw the advertisement and bought products worth GH¢600 from one of the branches on 1 October 2020. Fiifi demanded the free blender. However, the sales girl told him there was no free blender to be given in that branch. An argument then ensued.

Required:

i) Describe in **TWO (2)** ways the nature of the transaction. **(4 marks)**

ii) Determine whether Fiifi should be entitled to the blender. **(6 marks)**

b) Adzoe acting for and on behalf of Maclean, was authorized to purchase corn worth Two Thousand Ghana Cedis (GH¢2,000) for Makafui. Adzoe bought the corn in Makafui's name at Two Thousand Five Hundred Ghana Cedis (GH¢2,500), which was clearly beyond his authority. Maclean was to ratify. Makafui then failed to take delivery of the corn.

Required:

i) Explain whether Maclean would be justified in ratifying the transaction entered by Adzoe and Makafui. **(6 marks)**

ii) Explain the concept of **"*Agency of necessity*".** **(4 marks)**

(Total: 20 marks)

QUESTION THREE

a) In accordance with the Companies Act, 2019 (Act 992), the directors shall not, without the approval of an ordinary resolution of the company, exceed the powers conferred on them.

Required:

i) State **THREE (3)** limitations on the powers of directors. **(9 marks)**

ii) Explain **THREE (3)** ways in which a director's appointment can be terminated. **(6 marks)**

b) List **FOUR (4)** timelines under the Sale of Goods Act, 1962 (Act 137), within which a seller must deliver goods to the buyer. **(5 marks)**

(Total: 20 marks)

QUESTION FOUR

a) When is a company deemed to be finally dissolved? Explain whether the company can ever be resuscitated. **(10 marks)**

b) The desire to form an incorporated company is the legal wish of one or more persons. State **FIVE (5)** advantages that exist for persons who form an incorporated company. **(10 marks)**

(Total: 20 marks)

QUESTION FIVE

a) The Chief Driver of Legon Rural Bank Ltd on 16 May 2010, abandoned midway an official bus carrying the bank's staff to Ada for an official boot camp/bonding training session. The bank held a disciplinary enquiry to investigate his conduct. The result of the investigation was the termination of his appointment for gross misconduct. He was paid one (1)-month's salary in lieu of notice in accordance with the respondent's Collective Bargaining Agreement.
Dissatisfied with the management of the bank terminating his appointment, he has approached you for advice.

Required:

i) List **FIVE (5)** grounds for termination of employment.

ii) Explain the course of action The Chief Driver could take. **(10 marks)**

b) Adjato and Hilda are in partnership, providing forensic services to the Ghana Police Service. The partnership agreement states that all scientific equipment is to be supplied by Johnny and that neither partners may incur a liability of more than GH¢3,000 without consulting the other. Although Adjato contributed all the Firm's initial capital, he does not

have any active involvement and rarely visits its premises. Hilda receives a salary and works full time for the Firm.

Required:
It has come to the notice of Adjato that Hilda has ordered GH¢5,000 worth of equipment from Barclays Ltd without consent by both parties. Advise Adjato. **(10 marks)**

(Total: 20 marks)

SOLUTION TO QUESTIONS

QUESTION ONE

a)

i) Four**(4) rights** guaranteed every Ghanaian under the 1992 Constitution of the Republic of Ghana are:

- The right to life
- Personal liberty
- Right to human dignity
- Equality and freedom from discrimination
- Rights to privacy and protection

(Any point @ 1 mark each = 4 marks)

ii) Four(**4**) **Freedoms** guaranteed under the 1992 Constitution of the Republic of Ghana are:

- Freedom of speech/ expression.
- Freedom of press/media
- Freedom of religion
- Freedom of association
- Freedom of conscience

(Any point @ 1 mark each = 4 marks)

b) The statement means that fundamental human rights are not transferrable and are not capable of being violated. **(2 marks)**

c) The Supreme Court can utilize the power conferred on any other court in the realm to grant an order of stay of execution or overturn any earlier orders.
Judicial precedent is an indispensable foundation upon which to decide the law and its application to cases. Accordingly, the power to depart from a decided case must be exercised with self-restraint and resorted to only when the court is convinced that the earlier decision was incorrect or such a departure is necessary to bring certainty to its decision to give credence to the doctrine of judicial precedent.
The courts that further redress could be sought in this case are the Court of Appeal and Supreme Court. **(10 marks)**

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT

Question one was straightforward, and the first part required the appreciation of fundamental human rights as set out in Chapter 5 of the 1992 Constitution.
It also required applying the court's jurisdiction and how to redress could be sought from the Court of Appeal and Supreme Court. The marks allocated to each sub-question was appropriate and this question was well answered by many candidates.

QUESTION TWO

a)

i) Elements of a contract to be mentioned- Offer, Acceptance, Consideration, Intent to create legal relation

- An offer may be made to a particular individual, groups or classes of persons or the world at large.
- In an offer made to the world at large, the offer ripens into a contract with anybody who comes forward and the condition required.
- Such an offer made ends in contract with the limited portion of the public who come forward and perform the condition on the faith of the advertisement.

(Any two points @ 2 marks each = 4 marks)

ii) Therefore, the transaction was an offer to the world at large, and the limited portion of the public that came forward was Fiifi, who acted on the condition. Fiifi is, therefore, entitled to the blender. **(6 marks)**

b)

i) The question is on the law of agency. Therefore, a brief definition of who an agent is in the eyes of the law is very appropriate.

- An agent is a person who is authorized to act for another (**principal)** in the making of legal relations with third parties. If the Agent acts with authority, the contract will be valid and binding on the Principal. (**1 mark**)

- An agency relationship can be created by the express agreement where the Agent is usually appointed to carry out a particular task, by appointment which is generally a contract between the Agent and the Principal, by the donation of a Power of Attorney to the person and other appointment must be made by a deed, this means that the Agent is being given the authority to deal with all the Principal's property as defined in the Power of Attorney. (**1 mark**)

- Ratification is a very important aspect of any agency relationship. Suppose a properly appointed agent exceeds his authority or a person having no authority purports to act as an agent. In that case, the Principal incurs no liability on the contract purportedly made on his behalf unless the Principal ratifies the contract. (**1 mark**)

- By ratification, the Principal becomes liable under the contract. Ratification appears retroactively, meaning that the Principal is bound by the contract from the date on which it was originally made; the Agent is relieved from any liability to the Principal as to a third party.

- In the circumstance of this case, Adzo, the Agent was authorized by the third party, Makafui, to purchase the corn at (GH¢ 2,000.00), but he bought the same at a price far beyond his authority.

- Besides, Adzoe bought the corn in his name.

- As an Agent, Adzo was expected to work within the scope of his authority ie Adzo was authorized to buy corn at a certain price, but he bought the corn at a price for, beyond his authority in buying the corn in his name, Adzo acted fraudulently as an agent of Maclean. **(2 marks)**

- Maclean will, therefore, not be justified to ratify the action taken by Adzoe.

- In the instant case, Maclean may be justified in not ratifying the contract between Adzoe and Makafui because, Adzoe's intention when claiming to contract for Maclean was, in fact, fraudulent because he took the benefit for himself by buying the corn in his name, Adzoe acted fraudulently as an agent of Maclean. **(1 mark)**

ii) **Agency of necessity**
Agency of necessity is an umbrella expression which two (2) quite distinct types of case may be found:

The first type of case raises the central issue of agency of whether A is acting with P's authority.

The second type of case arises in similar circumstances of necessary emergency action but raises no agency issue.

The only question is; Is a person who acted to preserve another person's endangered property entitled to an indemnity for the cost to him of so acting?
Indeed the agency of necessity originated in the needs and practices of the shipping business. Therefore, it was essential for the best interest of all concerned that the ship's Master be empowered to react to all emergencies of the voyage without incurring personal liability.

From the above, the requirements that ought to arise are as follows;
- There is a pre-existing legal relationship between the parties.
- There is an emergency.
- The Agent can't communicate with the Principal
- The Agent is acting in the best interest of the Principal.

(4 marks)

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT
The second question was generally not difficult. It had two (2) scenario cases, and the first was to test candidates' knowledge on the invitation to treat or offer and acceptance. The second tested their knowledge of agency law. Generally, the performance of candidates in answering this question was average.

The first part required candidates to state the elements of a valid contract and how an offer to the whole world can materialize into an entire binding contract. The marks allocated to each point made was self-explanatory.

The second part required an explanation of the Agent's ratification of actions by the Principal where the Agent's actions exceed the powers allocated to him/her.

The agency of necessity question was direct, and candidates did well with some examples given and a few cited related decided cases. However, it is important to note that candidates must save time while answering direct questions and not repeat the question before answering. It is just a waste of time to do so.

QUESTION THREE

a)

i) The limitations on the powers of directors include:

- Directors are not to sell, lease or otherwise dispose of the whole or substantially the whole of a company's undertaking or assets.
- Directors are not to issue any new shares or unused shares, other than treasury shares in the company, unless the same was first offered on the same terms and conditions to all existing shareholders.
- The Act would debar the issue by the directors of new and unissued shares or treasury shares to any director or past director or a nominee of such director of the company unless the same was first offered on the same terms and conditions to all existing shareholders or to members of the public where applicable.
- Directors are not to make voluntary contributions to any charitable or other funds other than pension funds for the benefit of employees of the company or any associated company of the amounts the aggregate of which will, in a financial year of the company, exceed a prescribed amount or two percent (2%) of the income surplus of the company at the end of the immediately preceding financial year.
- A director with shares in the company cannot, in the absence of express authority in the company's constitution, exercise the company's power of borrowing money or of charging any of its assets except with the approval of an ordinary resolution of the company.

(Any three points @ 3 marks each = 9 marks)

ii) Companies Act, 2019 (Act 992) provides that:

- a director will have to vacate his office if he becomes incompetent under section 173 of Act 992;
- where he/she ceases to hold office by failure to meet a share qualification as required by section 174 of Act 992; or
- if he resigns without any reasons by notice in writing to the company.

- By order of the court in case of a person found guilty of fraud or dishonesty, or any offence in connection with companies.
- If the director is properly removed under Section 176 of the Act.

(Any three points @ 2 marks each = 6 marks)

b) Section 16 of the Sale of Goods Act, Act 137, provides for the timelines within which the seller must be ready to deliver the goods in exchange for a price.

- That if no time is fixed for the delivery of the goods, they must be delivered at a reasonable time.
- The parties to a contract of sale may, whether with or without consideration, agreed that delivery should be made at a date or time other than that stipulated for in the contract.
- Where the buyer agrees to accept delivery from the seller at a date later than stipulated in the contract without substituting another date.
- Where the seller contracts to use his best endeavour to deliver the goods on, or not later than a given date, the seller must deliver the goods within a reasonable time after the date.

(Four points @ 1.25 marks each = 5 marks)

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT

The question on directors and the limitations on their powers seemed very difficult to many candidates. Candidates were required to state limitation powers of directors in reference to Section 189 of Companies Act 2019 (Act 992). The marks allocated were a bit high, and so any wrong answer resulted in low performance.

The performance of candidates was average.

QUESTION FOUR

a) The question is in two (2) parts: the first part considers when a company is deemed dissolved, while the second part wants the candidate to explain whether once a company is dissolved, it can ever be resuscitated.

When the registrar strikes out the name of a company off the register, after satisfying himself that the winding up of the company is complete, and he notifies of same in the Gazette, the company is thereupon deemed to be dissolved as at the date of the publication of the Notification in the Gazette.

As regards the issue of the possibility of a company that has been dissolved in the way described above to be restored to life at any time within two(2) years by order

of the court made on the application for reinstatement by the registrar or the liquidator of the company or by any former officer, member or creditor of the company, or any person claiming through or under him, the court order may contain such terms as the court thinks fit and will declare the dissolution to have been void and order the name of the company to be restored to the register.

The registrar has to be furnished with an official copy of the court order for the registration and shall then cause the name to be published in the Gazette. Thereupon the name of the company shall be restored to the register as if it had not been dissolved.

(10 marks)

b) **Advantages for forming an incorporated company**

- The separate legal entity. The company is distinct from its members
- The property of the company belongs to the company and not that of the members.
- Perpetual succession. The death of a member/shareholder of the company cannot affect the company's continued existence.
- Limited liability. When a member has fully honoured the payment of his shares, he cannot be called upon to pay anything more towards the company's liability.
- Suing and being sued. As a legal person, a company acquires the right to sue and be sued.
- Transferability of shares- only public companies have the legal mandate to transfer shares on the stock market.

(Any five points @ 2 marks each = 10 marks)

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT

The question on dissolution was a difficult one for the candidates.

The second part of the question on advantages for registering a company or having it incorporated was a popular question. Almost all candidates had this answered correctly. Candidates clearly stated the separate legal entity principle, the capacity of the company to sue and be sued, perpetual succession, limited liability nature, transferability of shares and so on.

QUESTION FIVE

a) Grounds for termination

i) Section 15 of Act 651 gives the ground upon which the contract of employment may be terminated as follows:

- By mutual agreement between the employer and the worker
- By the worker on the grounds of ill-treatment or sexual harassment
- By the employer on the death of the worker before the expiration of the period of employment
- By the employer, if the worker is found on medical examination to be unfit for employment
- By the employer because of the inability of the worker to carry out his or her work due to
- Sickness or accident
- The incompetence of the worker
- Proven misconduct of the worker

ii) Yes, he can sue against wrongful termination of his appointment.
He can also petition the National Labour Commission. **(10 marks)**

b) The question is on partnership. A partnership is a relationship between two (2) or more persons carrying on a business in common with a view of making profits. This means it is not a separate legal entity. In Ghana, activities are regarded by the incorporated Private Partnership Act, 1962, Act 15. **(1mark)**

When entering into a contract in the ordinary course of the Firm's business, a partner acts as the Agent of all the partners, including himself or herself. All partners are liable for such contracts. **(1 mark)**

A partner's authority to act on behalf of the business may be express or implied. The express authority of the partners will be set out in the Partnership agreement. **(1 mark)**

If a partner acts outside both his or her express and implied authority, then he or she will be personally liable on the contract. **(1 mark)**

In this case, Adjato is a sleeping partner who takes no part in the running of the business but is treated as another partner with respect to his liabilities.

On the other hand, Hilda is a salaried partner, which means that she can run the business. Any act done within the ordinary course of the Firm's business is binding on all partners, and they are jointly liable for the debts of the business. **(2 marks)**

In the scenario in the instant case, when Hilda enters into the contract with Johnny, she exceeded the power given to her in the Partnership Agreement.

However, the Partnership Agreement is not a public document, and Johnny could not be expected to know of any limitation imposed on Hilda's authority.

As long as the equipment could be used in the ordinary course of the business, the contract will be binding on both partners. **(1 mark)**

When Hilda entered into the contract with Johnny, she is acting in breach of the Partnership Agreement. **(1 mark)**

Adjato could be advised to sue for breach of agreement and recover damages for any loss he suffers. **(2 marks)**

(Maximum 10 marks)

(Total: 20 marks)

CHIEF EXAMINER'S COMMENT

The first part of the question was not well answered by most candidates. It required understanding of grounds for the termination of appointment as stipulated in Section 15 of the Labour Act, 2003 (Act 651). Accordingly, the marking scheme was adjusted to cater for an application of the principles on termination to the case and the courses of action. The courses of action agreed included compensation or damage for wrongful termination, sending a petition to the National Labour Commission and sue for reinstatement etc.

The second part of the question was on partnership. Many candidates did not refer to the specific provision in the Partnership Act 1962 (Act 152), including Sections 4, 10, 12 and 14 but were able to explain satisfactorily the points required. The one (1) mark per point allocation was appropriate. Many candidates got the conclusion wrong but were able to pass well because their total ticks were not affected by a few wrong answers. It means that a wrong answer did not result in a material drop in the candidates' overall marks, and for this level, this kind of question will be advised.

CONCLUSION

Some remedies for observations made and look ahead to future examinations are as follows:

- Candidates must learn how to answer law scenario case questions. For instance, if the question only requires an advice to be given, candidates must state the area of law, deduce the relevant principles and apply the law to the case before giving the advice. Where necessary, some decided cases will be an added advantage.

- Companies Act constitutes 45% of the entire examination as it is very related and applicable to the Accountant's field of work. Students should therefore learn that area thoroughly and take it seriously during their preparation for the examination.

- The Institute should encourage students to familiarize themselves with the learning materials on Business and Corporate Law. This material provides an overview and details of the entire syllabus. It should also be used to guide the Examiners in setting questions so that the suggested solutions could be easily referenced from the book.