



# Botswana Institute of Chartered Accountants

## Law

## Examination Paper

Date: 07 December 2017

Time: 13:30pm -15.00pm

Time allowed: 1 hour 30 minutes

### **Instructions to Candidates**

There are 50 questions in this paper with equal marks, together adding up to 100 marks. You should complete them all.

The questions are of two types;

- Multiple choice- select 1 from 4 options A,B,C or D
- Multi-part multiple choice- select 1 from 2 or 3 options, for two or more question parts

**Note: Do not open this paper unless you are told to do so by the invigilators.**

1. Among the following sources of law, which will prevail in case of a conflict among them?

- A. Legislation
- B. Roman-Dutch law
- C. Customary law
- D. Judicial precedent

2 Marks

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2. As regards the Constitution of Botswana, which of the following statement(s) is or are correct?

- i. It is the supreme law of Botswana
- ii. It cannot be amended
- iii. It should be interpreted generously or liberally

- A. (i) only
- B. (ii) only
- C. (iii) only
- D. (i) and (iii)

2 Marks

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3. As regards delegated legislation, which of the following statements is or are incorrect?

- (i) It is made by Parliament
- (ii) It should not be inconsistent with the Constitution of Botswana
- (iii) The High Court cannot strike it out if it contravenes an Act of Parliament

- A. (i) only
- B. (i) and (ii)
- C. (ii) only
- D. (i) and (iii)

2 Marks

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4. In judicial precedent, which of the following is correct?
- A. Decisions of a Chief Magistrate are a source of law
  - B. Decisions of the High Court are binding on the Court of Appeal
  - C. Decisions of the Court of Appeal and the High Court are binding on Magistrates' Courts
  - D. Decisions of the High Court are binding on the Industrial Court
- 2 Marks
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5. Which of the following courts has unlimited original and appellate jurisdiction in civil and criminal matters?
- A. The High Court
  - B. The Court of Appeal
  - C. The industrial Court
  - D. The Regional Magistrate's Court
- 2 Marks
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6. An Act of Parliament provides that "any person who is in possession of unlicensed firearm is guilty of an offence". A plain reading of the section would mean that a police officer arresting someone suspected of possessing an unlicensed firearm would also be guilty by taking the firearm from the suspect. Under the circumstances, which of the following, if any, would be the appropriate approach for the interpretation of the provision?
- A. The literal rule
  - B. The mischief rule
  - C. The golden rule
  - D. None of the above
- 2 Marks
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7. Which of the following courts could be considered a 'specialist court'?

- A. Court of Appeal
- B. High Court
- C. Industrial Court
- D. Regional Magistrate's Court

2 Marks

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8. In interpretation of statutes, are the following statements true or false?

*Ejusdem generis* is a primary rule of interpretation.

- A. True
- B. False

Marginal notes can be used to interpret legislation

- C. True
- D. False

2 Marks

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9. In the law of contract, which of the following is correct?

- A. There are instances where a person or entity who was not a party to the contract at the time of contracting may have the authority to enforce a contract
- B. In every contract, communication of acceptance is necessary
- C. A voidable contract is not legally enforceable
- D. A minor of 16 years of age has no contractual capacity

2 Marks

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10. Which of the following statements is or are correct as regards a unilateral contract?

- i. The offeree must be aware of the offer
- ii. The offeree must communicate acceptance
- iii. The contract can be made with the whole world

- A. (i) only
- B. (ii) only
- C. (iii) only
- D. (i) and (iii)

2 marks

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11. Boikanyo offers to sell her motor cycle to Modise for P15 000. Modise tells her that he has P10 000.00 in full settlement. Boikanyo rejects this amount. After three days, Modise informs Boikanyo that he is ready to pay P15 000 for the motor cycle. Boikanyo tells him that she is no longer selling the motor cycle. Which of the following is correct?

- (i) A contract exists between the parties
- (ii) An offer as in the scenario has to be made in writing
- (iii) A contract does not exist between the parties because Modise rejected Boikanyo's offer of P15 000.00 through his counteroffer to pay P10 000.00

- A. (i) only
- B. (ii) only
- C. (iii) only
- D. (ii) and (iii)

2 Marks

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12. Regarding intention to contract as a requirement for the formation of a contract, which of the following is incorrect?
- A. In commercial agreements, the presumption is that parties have intention to contract
  - B. In domestic and social agreements, the presumption is that parties do not have intention to contract
  - C. If the presumption in commercial agreements is rebutted, the agreement becomes legally enforceable
  - D. If the presumption in domestic and social agreements is rebutted the agreement becomes legally enforceable

2 Marks

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13. Which of the following refers to the general principle that a contract is only enforceable by the parties to the contract?
- A. Collateral contract
  - B. Unilateral contract
  - C. Privity of contract
  - D. Intention to contract

2 Marks

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14. Karabo is building a house for Kagiso. They agree that if the house is not completed on time, Karabo will pay Kagiso P500.00 per day until the house is completed. Which of the following refers to the category of damages agreed?
- A. General damages
  - B. Special damages
  - C. Liquidated damages
  - D. Nominal damages

2 Marks

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15. Kabelo's house is about to be auctioned by the bank which financed his purchase of the property. Kabelo believes the bank is in breach of contract and would like to obtain an interdict to stop the bank from proceeding with the public auction. Are the following statements true or false?

Kabelo must prove that a clear right exists

- A. True
- B. False

Kabelo must prove that the balance of convenience favours the granting of an interdict

- C. True
- D. False

2 Marks

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16. About exclusion clauses, are the following statements true or false?

The exclusion clause can override provisions of an Act of Parliament

- A. True
- B. False

To be enforceable the exclusion clause must be an integral part of the contract

- C. True
- D. False

2 Marks

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17. In agency, which of the following refers to agency reasonably assumed from the representations of the agent or the principal?

- A. Agency by estoppel
- B. Agency by agreement
- C. Agency by ratification
- D. None of the above

2 Marks

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18. A close company has three members who hold different percentage interest. Are the following statements true or false?

They must appoint a manager to conduct the affairs of the company

- A. True
- B. False

The member who holds the most interest in the company is the only one who should conduct the affairs of the company

- C. True
- D. False

2 Marks

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19. In agency by ratification under the common law, which of the following statements is not correct?

- A. Ratification has a prospective effect to the contract
- B. The principal must have been in existence at the time of ratification
- C. Both the principal and the agent must have had legal capacity when the contract was made
- D. The principal must ratify the entire contract

2 Marks

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20. Which of the following is not an element of a delict?

- A. An act or conduct
- B. Fault or blameworthiness
- C. Causation
- D. Foreseeability

2 Marks

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21. Which of the following is not a consequence of incorporation of a company?

- A. Separate legal entity
- B. The company can sue and be sued in its name
- C. Perpetual succession

2 Marks

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22. Kenosi is burning litter in his residence. Unfortunately, the fire spreads to other peoples' properties in the neighbourhood causing serious damage. Are the following statements true or false?

Kenosi is not liable because there was no intention to cause the damage

- A. True
- B. False

Kenosi is liable only for the damage which is reasonably foreseeable

- C. True
- D. False

2 Marks

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23. About negligent misstatements by an auditor, which of the following statement or statements is or are incorrect?

- (i) The auditor is liable to every shareholder who sustains loss from relying on the audit report
- (ii) The auditor is liable to directors of the company
- (iii) The auditor is liable to majority shareholders only

- A. (i) only
- B. (ii) only
- C. (i) and (ii)
- D. (i), (ii) and (iii)

2 Marks

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24. Lebogang and Neo are employees of City Builders Ltd, a construction company. Neo is injured by Lebogang when she pushes a wheelbarrow negligently while working on one of their employer's projects. Which of the following is correct?
- A. City Builders Ltd is not liable because the injury to Neo was not foreseeable
  - B. City Builders Ltd is vicariously liable for the injury to Neo
  - C. Lebogang is only liable for any medical expenses incurred by Neo
  - D. Neither City Builders Ltd nor Lebogang is liable to Neo

2 Marks

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25. Which of the following forms of business should not exceed 20 members?
- A. A company limited by guarantee
  - B. A partnership
  - C. A private company
  - D. A public company

2 Marks

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26. As regards a limited liability company, are the following statements true or false?  
A close company is not a separate legal personality
- A. True
  - B. False
- There is no perpetual succession in a private company having a share capital
- C. True
  - D. False

2 Marks

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27. Mooketsi has been appointed the liquidator of a company listed on the Botswana Stock Exchange. The liquidation order was issued because of the company's inability to pay its debts. Mooketsi has found out that directors of the company have been carrying on the business of the company recklessly and with intent to defraud its creditors. Under the circumstances, are the following statements true or false?

The company is fully liable for the debts because it is a separate legal entity

- A. True
- B. False

Directors of the company are personally liable for the debts of the company

- C. True
- D. False

2 Marks

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28. In which of the following companies is a member's liability for the debts of a company determined at the point of the company's incorporation?

- A. A private company limited by shares
- B. A public company limited by shares
- C. A close company
- D. A company limited by guarantee

2 Marks

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29. Gosego and Oteng would like to form a company in which they will have full control but not be personally liable for the debts of the company. Which of the following companies should Gosego and Oteng incorporate?

- A. A private company limited by shares
- B. A public company limited by shares
- C. A close company
- D. A company limited by guarantee

2 Marks

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30. As regards exempt and non-exempt private companies, which of the following statement or statements is or are correct?
- (i) An exempt private company should appoint an auditor
  - (ii) A non-exempt private company should appoint a qualified company secretary
  - (iii) Exempt and non-exempt private companies have to appoint a company secretary
- A. (i) only  
B. (ii) only  
C. (iii) only  
D. (ii) and (iii)

2 Marks

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31. Which of the following is not a requirement for a pre-incorporation contract to be ratified by the company?
- (i) The contract must be in writing
  - (ii) The contract must have been entered by a person named as a director of the company to be formed
  - (iii) The contract or a certified copy of the contract must be delivered to the Registrar of Companies and Intellectual Property simultaneously with the application for incorporation of the company
- A. (i) only  
B. (ii) only  
C. (i) and (iii)  
D. (iii) only

2 Marks

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32. The directors of A-Z Ltd do not wish to have the auditor of the company re-appointed by the shareholders. Which of the following statements is not correct?
- A. The company would be liable for wrongful dismissal of the auditor if there is no justifiable cause for his non-reappointment
  - B. The company has to give the auditor 20 days' written notice
  - C. The auditor is entitled to make representations at the meeting of shareholders
  - D. The auditor has to be paid reasonable fees and expenses for him to make representations at the meeting of shareholders

2 Marks

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33. As regards the constitution of a company, are the following statements true or false?  
Every company must register a constitution with the Registrar of Companies and Intellectual Property.

- A. True
- B. False

If the constitution of a company states the nature of the business of the company, the company cannot lawfully engage in any other business

- C. True
- D. False

2 Marks

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34. Oaitse, Obonye, Mpho and Marea hold equal shares in a newly formed company, Truck Hire (Pty) Ltd. As regards meetings and resolutions of the company, which of the following statements is correct?

- A. The company has to hold annual general meetings
- B. At the first meeting of the company attended by all shareholders, the votes of any two shareholders are sufficient for the passing of a special resolution
- C. Any two shareholders may pass an ordinary resolution notwithstanding opposition from the other two shareholders
- D. The members of the company may pass written resolutions

2 Marks

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35. About majority and minority shareholders, are the following true or false?  
Majority shareholders have unlimited power

- A. True
- B. False

A shareholder derivative action is commenced by a shareholder for a wrong done to the company

- C. True
- D. False

2 Marks

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36. Mosweu, Sethunya and Pule are members of Book Lenders CC. They hold 75%, 15% and 10% interest respectively. As regards the management and resolutions of the company, which of the following is not correct?
- A. The name of the company cannot be changed without the consent of Mosweu
  - B. The three members have the right to participate in the management of the company
  - C. Pule is not an agent of the company
  - D. The members may appoint a manager to run the affairs of the company

2 Marks

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37. Which of the following refers to shares issued free of payment to the existing shareholders of a company?
- A. Rights issue
  - B. Prospectus
  - C. Capitalisation issue
  - D. Redeemable shares

2 Marks

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38. About par value and no par value shares, which of the following statement or statements is or are correct?
- (i) Every company having a share capital must issue par value shares
  - (ii) Only public companies may issue par value shares
  - (iii) The par value of a share determines the market price of the share
- A. (i) only
  - B. (ii) only
  - C. (i) and (ii)
  - D. None of the above

2 Marks

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39. As regards share capital, which of the following is made up of issued shares which are not paid for?
- A. Stated capital
  - B. Issued and allotted capital
  - C. Bonus shares
  - D. Uncalled share capital

2 Marks

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40. Thapelo is a debenture holder of East Wing Developers (Pty) Ltd. Tuelo is shareholder in the same company. Which of the following statements is true or false?

Tuelo may at any time demand payment in exchange for his shares in the company

- A. True
- B. False

Both Thapelo and Tuelo are creditors of East Wing Developers (Pty) Ltd

- C. True
- D. False

2 Marks

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41. As regards members' interest in a close company, which of the following is correct?

- A. A trustee of the estate of an insolvent member may sell the interest of such a member only after giving the company and its members an opportunity to purchase the interest of the insolvent member
- B. The company may pay for the acquisition by the company of a member's interest
- C. The company may give financial assistance for the acquisition of a member's interest in the company
- D. All the above

2 Marks

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42. The three shareholders of All Year Logistics Ltd are also its directors. In the recent past, one of the three directors have been deliberately left out of the meetings of the Board of Directors and meetings of the company. There is no reason to believe that the other two will abandon their exclusion of the one member any time soon.

In the circumstances, which of the following would be a viable cause of action by the prejudiced director and shareholder?

- A. Members voluntary winding up
- B. Judicial management
- C. Institute proceedings for the winding up by the court under the just and equitable rule
- D. None of the above

2 Marks

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43. The shareholders of Reality Shows Ltd would like to wind up their well-performing and debt-free company. Which of the following would be commenced by the shareholders of the company?

- A. Judicial management
- B. Members voluntary winding up
- C. Creditors voluntary winding up
- D. Judicial management followed by creditors voluntary winding up

2 Marks

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44. As regards the insolvency of an individual, which of the following statement or statements is or are correct?

- (i) Sequestration means the placing of the estate of an individual with a trustee appointed by the High Court
- (ii) An individual may voluntarily surrender his estate to the High Court for sequestration
- (iii) After sequestration of his estate, an insolvent continues to run his affairs without any restriction

- A. (i) only
- B. (i) and (ii)
- C. (ii) only
- D. (iii) only

2 Marks

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45. Moyo has received a huge amount of money from a government department through corrupt means. He deposits the money into his bank account. After two weeks, Moyo buys many properties which he sells immediately. The buying and selling goes on for several months. Eventually, Moyo buys an expansive agricultural farm with a large residential house on it. He also buys several moveable assets. He now feels confident that he is not in trouble anymore and decides not to sell these assets which are all in his name. Under the circumstances, are the following statements true or false?  
Depositing the corruptly received money into his bank account is known as layering

- A. True
- B. False

Keeping the assets and money in his name is known as layering

- C. True
- D. False

2 Marks

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46. Which of the following is not a requirement for the retrenchment of employees?

- A. Written notice to the employees
- B. Notification to the Commissioner of Labour
- C. Application of the First-in-last-out rule
- D. A hearing

2 Marks

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47. Victor and Sebolao are practising chartered accountants. To ensure that their firm does not violate legislation, which of the following statement or statements is or are not correct?

- (i) Under no circumstances should they disclose their clients' confidential information
- (ii) They should keep their clients' identification data
- (iii) Only one of them is required to possess a practising certificate

- A. (i) only
- B. (i) and (ii)
- C. (ii) only
- D. (i) and (iii)

2 Marks

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48. Which of the following forms of dismissal does not require procedural fairness?

- A. Summary dismissal
- B. Wrongful dismissal
- C. Unfair dismissal
- D. Constructive dismissal

2 Marks

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49. In employment contracts, which of the following remedies are courts reluctant to grant?

- A. Damages
- B. Specific performance
- C. Interdict
- D. None of the above

2 Marks

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50. Breaks and Pumps Ltd has acquired the most recent technology in its line of business. The improvement in technology compels the company to consider retrenching many its employees. In this regard, which of the following statement or statements is or are incorrect?

(i) The company may retrench Dineo, its only accountant who joined the company two months ago

(ii) The company should notify the Commissioner of Labour in writing

(iii) If redundancy is carried out contrary to the law, the employer may sue for unfair dismissal

(iv)

A. (i) only

B. (ii) only

C. (ii) and (iii)

D. (iii) only

2 Marks

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