

# BUSINESS & COMPANY LAW REVISION KIT



## PASTPAPER QUESTIONS & ANSWERS

Certified Public Accountants of Uganda Course

# CPA (U)

## PAPER 4

### BUSINESS LAW

R  
E  
V  
I  
S  
I  
O  
N  
  
K  
I  
T

The Practice and Revision Kit complements the Study Test by giving you the chance to practice exam-style questions covering the Business Law Syllabus. The practice and revision kit has been reviewed and approved by a panel of experts in the field of teaching Business Law. Therefore, this study text contains all the information that you need to pass your exam.

*The practice and revision kit,*

- Features past paper questions for the current and previous examinations diet,
- Suggest solutions to the featured examination sitting,
- Discusses the best strategies for revising and taking your Business Law Professional exams,
- Ensures you are well prepared for your Professional exam,
- Provides you with great guidance on tackling questions.

**Always ensure you have our latest version of the Revision Kit.**

Visit our online Bookshop: <https://www.harvestuganda.net/online-store/>



Questions.	Page
------------	------

Test Paper 1 June 2012.....	1
Test Paper 2 December 2012.....	4
Test Paper 3 June 2013.....	7
Test Paper 4 November 2013.....	10
Test Paper 5 June 2015.....	13
Test Paper 6 August 2015.....	16
Test Paper 7 November 2017.....	19
Test Paper 8 June 2018.....	22
Test Paper 9 August 2018.....	25
Test Paper 10 November 2018.....	28
Test Paper 11 June 2019.....	31
Test Paper 12 August 2019.....	35
Test Paper 13 December 2019.....	38
Test Paper 14 December 2020.....	41
Test Paper 15 March 2021.....	45
Test Paper 16 October 2021.....	49
Test Paper 17 December 2021.....	53
Test Paper 18 March 2022.....	56
Test Paper 19 June 2022.....	60
Test Paper 20 September 2022.....	63
Test Paper 21 December 2022.....	66
Test Paper 22 May 2023.....	69
Test Paper 23 August 2023.....	73
Test Paper 24 December 2023.....	78
Test Paper 25 May 2024.....	82
Test Paper 26 August 2024.....	86
Test Paper 27 December 2024.....	93

<b>Answers.</b>	<b>Page</b>
Test Paper 1 June 2012.....	97
Test Paper 2 December 2012.....	102
Test Paper 3 June 2013.....	197
Test Paper 4 November 2013.....	112
Test Paper 5 June 2015.....	118
Test Paper 6 August 2015.....	122
Test Paper 7 November 2017.....	129
Test Paper 8 June 2018.....	136
Test Paper 9 August 2018.....	141
Test Paper 10 November 2018.....	147
Test Paper 11 June 2019.....	154
Test Paper 12 August 2019.....	161
Test Paper 13 December 2019.....	169
Test Paper 14 December 2020.....	175
Test Paper 15 March 2021.....	182
Test Paper 16 October 2021.....	190
Test Paper 17 December 2021.....	197
Test Paper 18 March 2022.....	203
Test Paper 19 June 2022.....	210
Test Paper 20 September 2022.....	217
Test Paper 21 December 2022.....	225
Test Paper 22 May 2023.....	231
Test Paper 23 August 2023.....	238
Test Paper 24 December 2023.....	246
Test Paper 25 May 2024.....	253
Test Paper 26 August 2024.....	260
Test Paper 27 December 2024.....	269



# Questions

# TEST PAPER 1

## CPA (U) JUNE 2012

### Question 2

Bruno instructed Farida to sell his Ipsum car and agreed to pay her Shs 2 million on completion of the sale. Farida sold the car and on completion of the transaction, Bruno paid her the commission. Bruno later on met Zueni who had bought the car. In their conversation, the issue of the car came up. Zueni revealed Bruno the price at which she bought the car. She went further to reveal that she had even paid a commission of Shs 1 million to Farida. This revelation annoyed Bruno and he is wondering about an appropriate action he can take against Farida.

In another incident, Bruno advertised his house for sale in the Kamunye newspaper and then left for Germany for a heart surgery. While Bruno was away, Tegule having read the advertisement in the newspaper, inspected the house and decided to make an offer for it. Bruno's shamba boy, Andraole, pretending to act with Bruno's authority, entered into negotiations with Tegule and reached an agreement with him and accepted Tegule's offer on behalf of Bruno. When Bruno returned after the successful heart surgery, he wrote to Tegule saying that he was ratifying Andraole's act.

#### Required:

- (a) Advise the parties. **(15 marks)**
  - (b) Explain the conditions that must be fulfilled for a principal to ratify a contract made by an agent? **(5 marks)**
- (Total 20 marks)**

### Question 3

Santa Limited was incorporated in Uganda by Sempasa, Antonio and Tandarwa each with a holding of 30% of the company's issued share capital. The three constitute the board of directors.

The company's articles of association state, among other things, that: "No single director shall commit the company to purchases exceeding Shs 90 million without the approval of all the directors".

Later, Sempasa and Antonio secured jobs with the United Nations' office in Taiwan and left the country to take up their respective assignments.

The three board members have never appointed a managing director but the day-to-day running of the company has been left to Tandarua. Despite the restriction in the articles, Tandarua contracted to buy a Fuso lorry to help in the transportation of timber from the Democratic republic of Congo to their workshop in Bwaise. He made the contract with Tupakase Auto Traders Ltd on behalf of Santa Ltd at a price of Shs 150 million.

**Required:**

Raise and resolve all the issues involved in the above scenario.

**(20 marks)**

**Question 4**

A security firm in Kaberamaido is charged with security in that locality and it even escorts bullion vans when delivering money to different banks. Some two years ago, the firm recruited 12 people from various parts of Uganda. Kamagaiga was one of the recruits from the newly created district of Mitooma.

Kamagaiga reported to his new work station with his family members. His boss liked him because he was a vibrant security guard. It is for this reason that he offered him a two bed-roomed house in which to stay with his family. During his course of employment, Kamagaiga encountered some challenges. As part of the security team escorting a bullion van, they fell into an ambush of robbers who showered them with bullets. All his colleagues were killed on the spot but Kamagaiga survived with injuries. He even lost one eye which was hit by a broken windscreen of the bullion van. He was taken to hospital and later discharged, after a long spell.

Upon his discharge from the hospital, Kamagaiga reported back for duty but was not deployed for three months. This was in spite of his pleadings with his bosses to deploy him.

Last month, Kamagaiga confronted the manager and one of the directors of the security firm to demand for his salary payment. Due to his delayed salaries, he was having a big financial problem. His wife, living with HIV/AIDS, was no longer accessing ARVs and her life was in danger. Additionally, his children had been sent away from school for non-payment of school fees.

The manager told off Kamagaiga not bother him since he lost one eye and can no longer perform his duties to the expectations of the firm. He even threatened him with dismissal if he dared to disturb him again. Kamagaiga took his case to the labour office who wrote to the management demanding payment of Kamagaiga's salaries from the time he was injured to date. On receipt of the



letter from the labour office, the management decided to dismiss Kamagaiga for being big headed.

Kamagaiga was served with a dismissal letter and an eviction order to vacate the firm's premises. Kamagaiga reported back to the labour officer about the dismissal and eviction. He was advised not to vacate the house until his salary arrears are paid and is provided with transport for himself and his family back to Mitooma.

**Required:**

Raise and resolve issues involved.

**(20 marks)**

**Question 5**

Discuss the circumstances under which a contract of employment may be terminated.

**(20 marks)**

**Question 6**

Write short notes on the following:

(a) Rules for consideration under the law of contract. **(8 marks)**

(b) The rights of an auditor under the Companies Act. **(12 marks)**

**(Total 20 marks)**

**Question 7**

(a) Describe the rights of partners under the Partnership Act. **(14 marks)**

(b) Describe the liabilities of incoming and the outgoing partners? **(6 marks)**

**(Total 20 marks)**

## **TEST PAPER 2**

### **CPA (U) DECEMBER 2012**

#### **Question 2**

Musota, 70, an accountant by profession promoted and formed Musota Construction Company Limited. Other shareholders include Kicere, 30, Muchobe, 28, Lubuto, 72 and his wife, Mangeri, 66.

The company has been contracted to construct a road in Kayunga district in commemoration of 50 years of Uganda's independence.

At the annual general meeting held in October 2012, one of the members pointed out that Musota was too old to continue running the company as the sole director and company secretary. The shareholders urged Musota to retire but he refused. He argued that he was still strong and was the one who had the vision for the company.

Before registration of the company, Musota had secured a loan from Kafuma Commercial Bank which he used to construct an office block for the company. Todate, the loan has not yet been repaid and the bank is threatening to sell the office block to recover their money.

The shareholders were informed that Kafuma Commercial Bank was in the process of selling their property to recover the loan. They demanded that Musota personally pays back the loan. In retaliation, Musota unilaterally dismissed Muchobe and Kicere from the company as a punitive measure for demanding for his retirement and paying the bank. Musota's actions threw the shareholders into confusion and are frantically seeking for help .

#### **Required:**

(a) Raise and resolve the issues.

**(14 marks)**

(b) Give circumstances under which a director may be disqualified.

**(6 marks)**

**(Total 20 marks)**

### Question 3

Wambwa owns a plot of land in Nansana Town Council, Wakiso district which he put up for sale at Shs 20 million. Humura Nkwine expressed interest in the land. He gave an offer of Shs 19.5 million, which was outrightly rejected by Wambwa.

A couple of weeks later Humura Nkwine wrote back to Wambwa accepting to pay the Shs 20 million. Wambwa responded that he was no longer interested in selling the land.

Humura Nkwine is furious and intends to sue Wambwa for specific performance.

#### Required:

(a) Raise the issues and advise the parties.

**(14 marks)**

(b) What are the rules of revocation of an offer?

**(6 marks)**

**(Total 20 marks)**

### Question 4

Komakech, a resident of Namugongo, recently travelled to India for a heart surgery of his one year old son. While in India, he met Praka Patel at a social club. They had an interesting conversation on business. Patel, a businessman, who had always wanted to establish business in Uganda was excited. He requested Komakech to represent him in Uganda. Komakech accepted the offer and an agreement was entered into. One of the conditions was for him to exclusively work for Patel. A bank account was opened in Bank of New Delhi in India with Komakech as the sole signatory.

Komakech was instructed to purchase a wide range of products from India to be sold in Uganda at a very good profit.

In the meantime, Komakech had established a business relationship with Nehru supermarket. He had negotiated with the supermarket to extend to him credit facilities. He was fascinated by winter clothes which were abundantly available at cheap prices since the winter was coming to a close. On return to Uganda, he discovered that woolen clothes had no demand. In a bid to dispose them of, he sold some to third parties on credit. Patel is now trying to recover the debts from third parties directly. Meanwhile, the business bank account is at the verge of closing since there is no money.

It is now over six months since Komakech received goods on credit from Nehru supermarket. The management is now demanding for payment for the woolen

clothes. Komakech is neither responding to their e-mails nor picking their telephone calls.

**Required:**

- (a) Describe the kind of relationship that was entered into by Komakech and Patel.  
(4 marks)
  - (b) Raise the issues and advise the parties involved.  
(16 marks)
- (Total 20 marks)**

**Question 5**

- (a) Explain what is meant by the term 'partnership property'.  
(6 marks)
  - (b) Under what circumstances may a partnership be dissolved by court?  
(14 marks)
- (Total 20 marks)**

**Question 6**

In relation to the law of contract, write short notes on the following:

- (a) Infants. (5 marks)
  - (b) Voidable contracts. (5 marks)
  - (c) Void contracts. (5 marks)
  - (d) Executed consideration. (5 marks)
- (Total 20 marks)**

**Question 7**

- (a) Discuss the various methods by which the authority of an agent can be terminated.  
(10 marks)
  - (b) Briefly state the duties of an employer and the employee.  
(10 marks)
- (Total 20 marks)**

## **TEST PAPER 3**

### **CPA (U) JUNE 2013**

#### **Question 2**

Two friends, Anyole and Balingo, agreed to venture into hotel business jointly. They intend to conduct this business under a new company known as ANYOBO Limited. They contracted Mateka and Company Advocates to register the said company with the Registrar of Companies on their behalf. Mateka and Company Advocates conducted a search in the company registry, established that the name was available for their use and proceeded to register the company. A certificate of incorporation was issued to them in January 2013.

Prior to incorporation of ANYOBO Limited, Anyole who was anxious to commence business as soon as possible, had entered into contracts on behalf of the company in December 2012. The first contract was between Anyole and Twezimbe Construction Ltd for the rent of a five storeyed building to be used as a hotel. This contract was signed by Anyole under his own name, on behalf of the proposed company. The second contract was entered into with Kiswaga Ltd for the supply of all materials to be used in the hotel business, to be delivered immediately after the company was incorporated. The same contract was signed by Anyole, under the proposed company's name and authenticating it with his own signature.

Twezimbe Construction Ltd, having received a higher offer for their building, are now refusing to honour their agreement. At the same time, Anyole has found a better supplier for hotel materials and wishes to avoid the contract with Kiswaga Ltd. Anyole has also just been informed that there is already another registered company in the name of ANYOBO Limited.

#### **Required:**

Raise issues and advise the parties on the legal position on all the issues in the above scenario.

**(20 marks)**

#### **Question 3**

Fiona was recruited by the Batwa District Service Commission as a personal secretary. She was subsequently deployed in the principal accountant's office.

As personal secretary in that office, she faced a number challenges with her boss. She was always assigned a lot of work which she could not accomplish in time. Sometimes, she was forced to leave office late, at times eight o'clock in the night. Mr. Semonda, the principal accountant was also sending to her e-mails proposing that they kick start a love relationship. She was put under tremendous pressure but she refused to give in. He at one time proposed to travel with her on a work trip to the U.K but Fiona refused. She got fed up



with his advances and decided to report the matter to the chief administrative officer with a request for transfer to another department. The chief administrative officer got incensed and instead sent Fiona on forced leave. A disciplinary meeting was convened after two weeks in which she was summoned. She appeared with her lawyer but the lawyer was not allowed to enter on grounds that this disciplinary proceeding was not a court where lawyers represent clients. In the disciplinary meeting Fiona was not allowed to say anything. The following day she received a dismissal letter stating that she was insubordinate to her boss.

Meanwhile, Kapere who was employed as a tractor operator at the same district, was allocated a house. He occupied it with his girlfriend. He enjoyed his job as a tractor driver until he was involved in an accident, which resulted into amputation of his leg. He was hospitalized at Ampala for three months.

After his recovery, he was discharged from hospital, he immediately reported to his place of work but was informed that his job had been taken by another person. The district had stopped paying his salary from the time he got involved in an accident.

Kapere approached the chief administrative officer for payment of his salary arrears. The district management then decided to dismiss Kapere for misconduct. Kapere was served with a dismissal letter and an eviction notice to vacate the employer's house immediately. Kapere refused to vacate the house unless his salary arrears were paid to him.

**Required:**

Raise all the issues and advise the parties accordingly.

**(20 marks)**

**Question 4**

Macho, Matama and Kibuto incorporated a company in 2010 which they named MMK Ltd. They had equal shares in the company. The company's articles of association contained a clause to the effect that in order for the company to borrow money exceeding Shs 30 million, an extraordinary meeting would have to be convened and a special resolution passed to that effect.

Matama and Kibuto were working and residing in Somalia. They decided to appoint Macho to work as director of the company since he was the one staying in Uganda where the business is based. Macho, as sole director of the company, hatched an idea of borrowing money for the company and called an extraordinary meeting for which he gave notice of two days. Fortunately Matama was in the country and attended the meeting.

In that meeting Macho and Matama passed a resolution in which Macho was appointed the secretary of the company. Another resolution was passed to

borrow Shs 45 million from Crested Crane Bank on behalf of MMK Ltd. Upon getting the loan and after Matama had gone back to Somalia, Macho used part of the money to organize a ceremony to wed his second wife. The remaining money was invested in the company business.

MMK Ltd has since failed to repay the bank loan with the accumulated interest. Kibuto and the manager of Crested Crane Bank are confused about what to do and have approached you for advice.

**Required:**

- (a) Raise and resolve the issues involved. **(14 marks)**
  - (b) Give **three** duties of a company secretary. **(6 marks)**
- (Total 20 marks)**

**Question 5**

- (a) Define the term 'contract' and explain how a contract may be created. **(5 marks)**
- (b) Explain the essential features of valid contract.

**(15 marks)**  
**(Total 20 marks)**

**Question 6**

Explain the rights and responsibilities of partners as laid out in the Partnership Act.

**(20 marks)**

**Question 7**

Write short notes on each of the following as used under company law:

- (a) Shares. **(5 marks)**
- (b) Debentures. **(5 marks)**
- (c) Fixed and floating charge. **(5 marks)**
- (d) Ordinary shares. **(5 marks)**

**(Total 20 marks)**

## TEST PAPER 4

### CPA (U) NOVEMBER 2013

#### Question 2

Lwavula is a prominent businessman in Kibwetere Town Council. He promoted and incorporated a company known as Lwavula Ltd. Lwavula made himself director and also appointed his sons Muna and Nsubuga as co-directors. Lwavula owns 40% of the company's issued share capital, while Muna and Nsubuga own 10% each of the issued share capital. The remaining 40% was sold out to Umaru, Veto and Wampu.

Initially, the company prospered and was able to buy many assets including land within and out of Kibwetere Town Council. At one time, Lwavula arranged to have one of the plots owned by the company to be sold to his son Muna at Shs 40 million. The other shareholders were not aware of the sale of the plot and therefore, did not approve the sale.

The minority shareholders, namely, Umaru, Veto and Wampunu, believe that the price at which the plot was sold was significantly below the market value.

Currently, the fortunes of the company have begun to drastically dwindle. However, in the midst of this reversal, Lwavula and his sons have decided to increase their salaries considerably. The profitability of the company is indeed falling at a high rate. Lwavula Ltd has consequently been unable to declare any dividends.

#### Required:

- (a) Raise issues and advise Umaru, Veto and Wampu whether the actions of the directors are legal and if not whether they have any remedies available to them in respect of the above.

**(16 marks)**

- (b) Discuss the law exceptions to the rule in Foss-V-Harbottle (1843).

**(4 marks)**

**(Total 20 marks)**

#### Question 3

Machanti, one of the richest businesspersons in Bwaise made a promise to sell his newly acquired Mercedes Benz to Tomanyiira at Shs 6 million. Tomanyiira was well aware that the price was far below the market price of a car of that stature and was not convinced that the sale would be legally valid. He was reluctant to go ahead with the deal.

Meanwhile, Machanti was constructing a house in Bwaise trading centre. The house was almost complete and was planning to have it plastered as soon as he returned from a two weeks business trip to Juba. However, when he returned from Juba he found that Bazirio, one of the engineers who had previously worked for him had plastered the house. He agreed to pay Bazirio Shs 2 million for his work but declined to put the commitment in writing.

Machanti was so happy with the developments on his house that he contracted Champion to paint the house at a total cost of Shs 800,000. The work was to be done within three weeks. He later promised a further Shs 200,000 to Champion if he finished the job on time. Machanti, however, had no intention of paying the additional Shs 200,000 and is just using it as false incentive to ensure that Champion meets the deadline.

While still in Juba, Machanti promised to deliver 5 fridges to Ndidamu for free. Ndidamu, unfortunately, traveled to Fuji. He requested Ezriaziri to receive the fridges or take any necessary action to ensure that the fridges are delivered by Machati. Ndidamu directed Ezriaziri to take over the ownership of the fridges. However, Machanti did not deliver the fridges and Ezriaziri was contemplating taking legal action in respect of the promised fridges.

**Required:**

Raise issues and advise the parties according to the doctrine of consideration under the law of contract.

**(20 marks)**

**Question 4**

Chief Opondo, a Nigerian living in Uganda since 1996, decided to sell his house in Muyenga since he was relocating back to Nigeria. He accordingly instructed Kafeero, one of the brokers in Kampala, to sell the house at a brokerage fee of Shs 10 million on completion of the sale.

Kafeero, a shrewd broker, sold the house to Babatunde at Shs 600 million at a commission of Shs 5 million 'for getting him a very good house'. Babatunde paid the Shs 605 million, including the Shs 5 million commission. Kafeero banked Shs 600 million on Chief Opondo's account. Chief Opondo paid him his brokerage fee and thanked him for quick services.

Later on, Chief Opondo discovered that Kafeero had been paid a commission of Shs 5 million by Babatunde. He was not happy that Kafeero did not disclose it to him.

Prior to the sale of the house, Chief Opondo, had put his bus on sale. He advertised the intended sale in The Regular newspaper. He left the vehicle parked in his compound and flew off to Nigeria for a brief stay.

While Chief Opondo was away, Toterebuka who had seen the advertisement in the newspaper, visited Chief Opondo's home to buy the bus. He entered into negotiations with Babayetu, Chief Opondo's askari, who purported to act on Chief Opondo's instructions. Babayetu accepted Totebureka's offer of Shs 30 million.

Later on, Toterebuka learnt that Babayetu had no authority to act for his employer. However, when Chief Opondo returned from Nigeria, he wrote to

Toterebuka ratifying Babayetu's act. Toterebuka got confused whether it was safe to go ahead with the deal under those circumstances.

In another development, Babayetu sold off Chief Opondo's two motorcycles to Kafuru and Kososo respectively. He informed them that he was selling the motorcycles on behalf of his employer, whose name he did not disclose. Both purchasers agreed the price and made part payment. However, when they came to pay the final price and collect their motorcycles, they were informed that Babayetu had sold off the motorcycles to other people. Kafuru and Kisoso are confused about what to do to recover their money. They are aware that Babayetu was an agent but they do not know the principal.

**Required:**

Raise issues and advise the parties.

**(20 marks)**

**Question 5**

- (a) Explain the meaning of the term 'ratification' as used under contract law.

**(4 marks)**

- (b) Describe the requirements for ratification of a contract.

**(16 marks)**

**(Total 20 marks)**

**Question 6**

In relation to the law of contract, write short notes on the following:

- (a) condition.
- (b) warranty.
- (c) void contract.
- (d) voidable contract.

**(20 marks)**

**Question 7**

Discuss the rights and duties of a limited partner.

**(20 marks)**



## **TEST PAPER 5**

### **CPA (U) JUNE 2015**

#### **Question 2**

Mpuga is a real estate dealer operating in the central and eastern regions of Uganda. Due to high demand for his services, Mpuga appointed Katete and Simati as his agents in the central and eastern regions respectively of Uganda. In the appointment letters, one of the terms was that for any sale to a non-Ugandan, the agent would always seek prior written permission from Mpuga.

It happened that Katete on behalf of Mpuga bought a big chunk of land which he divided into 500 plots. Many people bought the plots that were selling like hot cakes. Kopa was one of the buyers to whom Katete sold plots without disclosing that he (Katete) was an agent. Kopa bought plot 10 at Seeta and paid the whole purchase price except transfer fees that was payable upon delivery of the land title. When Kopa delivered building materials to the plot, Tofili stopped him from trespassing on his (Tofili's) plot. It transpired that Katete while acting on behalf of Mpuga had sold the same plot to Tofili and even effected a transfer into Tofili's names. Kopa is contemplating suing Tofili and Mpuga.

In the meantime, the agency relationship between Mpuga and Simati had been going on well in the eastern region of Uganda. Since the time of appointment, Simati had been selling the 5,000 plots that Mpuga had handed over to him along Iganga road. Recently, however, Simati has developed some misunderstandings with Mpuga on the grounds that:

- Mpuga was upset when he learnt that Simati had sold 100 plots to an Indian investor without his (Mpuga's) consent at 40 million shillings each and only declared 38 million shillings for each plot.
- Mpuga refused to refund Shs 500,000 incurred by Simati in the course of evicting trespassers who had encroached on some plots.

#### **Required:**

Raise and resolve the issues arising from the facts.

**(20 marks)**

#### **Question 3**

While Ketu was in USA, her cousin Jomo, a renowned 'professional' painter painted her residential flat. On her return, Ketu was impressed by the look and promised to pay Jomo, Shs 3 million for the work well done. After six months had elapsed, Jomo pressurised Ketu for payment lest he seek court redress.

In another event, Toto entered into an agreement with Dungu for supply of 100 sacks of beans upon which Toto undertook to pay upon delivery. When Dungu

delivered the beans, Toto refused to receive them stating that he had changed his mind. Dungu sold all the beans at a lower price to retailers

making a loss of Shs 5 million. Dungu is contemplating suing Toto for damages for breach of contract.

In yet another development, Kopango bought Cupuli's sports car for his son, Junior, who was a young rally driver of 17 years. It was agreed that in case of any defect in the engine in 3 years period, Cupuli would replace it with a new one, provided routine service was observed. Two years after the sale, the engine knocked despite routine service. Cupuli has refused to replace it and Junior, who is now of majority age is contemplating suing Cupuli.

In another transaction, Zedi who deals in the business of hiring halls for party activities in Kampala hired to Yuki the biggest hall (hall M) for a wedding ceremony upon which a deposit of 200,000 was made by Yuki. On the eve of the wedding day, the hall caught fire and was burnt down. Yuki is puzzled as to the next step to take against Zedi for premature end of the contract.

**Required:**

Resolve all issues disclosed by the facts.

**(20 marks)**

**Question 4**

Jaguza Ltd has been in existence since 2005 and deals in decoration of party venues and any other related activities. After incorporation the company carried on business for 5 years without holding any annual general meeting.

In the 6<sup>th</sup> year, the directors convened an annual general meeting which was attended by all shareholders. At the meeting, the company secretary tabled the following agenda which had been approved by the directors, for adoption:

- 1 Opening prayer
- 2 Communication from the board of directors
- 3 Confirmation of minutes of the previous extra-ordinary general meeting
- 4 Celebrating six years of existence
- 5 Adjournment

Upon perusing the agenda, Fanta, one of the shareholders objected to its adoption on grounds that it did not include pertinent matters for a meeting of that kind. After hot arguments, the majority voted in favor of adopting the agenda. Fanta and other minority shareholders who had voted against the adoption of the agenda walked out of the meeting. The meeting, however, continued to the last item although no resolutions were passed. Fanta and the other minority shareholders have intimated

to the directors their intention to seek court redress but the directors argue that they have no liability.

**Required:**

- (a) Raise and resolve the issues from the above facts. **(12 marks)**
  - (b) Explain circumstances under which minority shareholders may sue on company matters instead **of the company itself.**  
\_\_\_\_\_**(8 marks)**
- (20 marks)**

## TEST PAPER 6

### CPA (U) AUGUST 2015

#### Question 2

Lufere Ltd was incorporated in 2008. The company deals in sale of cosmetics for ladies. It is located at Ghetto hill, a Kampala suburb. The company's directors are; Zinda, Bala and Fude. They do not own shares in the company.

The company has been facing hard times for the last two years. There was hardly any business carried out last year yet the company has many pending debts.

A series of disagreements have occurred among the directors concerning management of company affairs. For instance, Zinda and Fude have of recent contested the transfer by Bala, of one of the company's plots of land to one of the creditors who is a relative of his wife.

At the same time, many other creditors have been demanding for payment in vain. The creditors are also threatening to petition courts of law for winding up of Lufere Ltd. Zinda and Fude are afraid that company property will soon be attached.

Due to continuous challenges, company members except Bala's wife have resigned from the company. The registrar of companies has been duly notified.

#### **Required:**

- (a) Raise and resolve the issues at Lufere Ltd.

**(12 marks)**

- (b) Explain the procedure and benefits of voluntary winding up to the directors of Lufere Ltd.

**(8 marks)**

**(Total 20 marks)**

#### Question 3

Peter Kiyenje and John Kiku started operating a hardware shop in Kabusu, Rubaga division, Kampala, in 2007. Peter Kiyenje is managing the business while John Kiku is an employee of the Ministry of Gender and Cultural Development.

Peter Kiyenje contributed Shs 10 million and John Kiku Shs 8 million to the business. The building in which the hardware shop is operated belongs to John Kiku and a monthly rent of Shs 250,000 is paid to him.

Peter Kiyenje and John Kiku agreed to share the profits in the business equally. For the first five years, the hardware business realised a lot of profits. They

reinvested some of the profits to expand their business, built a warehouse and shared the remaining profits.

In the next three years, business went down. Peter Kiyenje was not declaring full proceeds from the partnership businesses and was not allowing John Kiku to access business records. He also clandestinely opened a hardware shop in the neighborhood.

The relationship between Peter Kiyenje and John Kiku has become unbearable and they are no longer talking to each other. John Kiku feels betrayed and he has come to you for advice.

**Required:**

Identify the issues arising from the facts and resolve them.

**(20 marks)**

**Question 4**

Pio was a shareholder of YY Ltd which was a duly registered company limited by shares and James Wanga as a director. The articles of association of the company provided among others that 'transfer of shares shall be restricted to the existing company share holders, subject to the discretion of the directors, which discretion shall not unreasonably be withheld'. Pio was an active member of the company holding ten shares in the company. However, due to financial constraints, he sold all his shares to his son Odonno who is also a shareholder of the company.

When Odonno presented the share transfer duly signed by his father, Pio, James Wanga declined to effect the transfer. He instead immediately wrote to Odonno informing him that his application had been rejected and he copied the letter to Pio. It transpired that James Wanga had given the company office clerk a 10 million cheque to deliver to Pio but Pio rejected it. James Wanga had prior to drawing the cheque cancelled the name of Pio from the register and inserted the name of his wife, Melle Wanga.

Upon learning the conduct of James Wanga, Odonno started investigating all his acts and omissions before and after he became director. The investigation revealed among others that Wanga presented his age at the time of appointment as a director as 23 years when actually he was 17 at the material time.

James Wanga the previous year had legally dismissed Makofi the former company records clerk and declined to pay him his four months' salary arrears. Makofi has got nothing from the company from the time he was dismissed to date, and he hangs around the company premises soliciting money for survival.



The aggrieved parties have come to you for advice on how the injustice in the company may be addressed.

**Required:**

Raise and resolve all the issues arising from the facts.

**(20 marks)**

**Question 5**

(a) Explain the following.

(i) Simple contracts

**(4 marks)**

(ii) Contract of record

**(4 marks)**

(iii) Contracts under deed

**(4 marks)**

(iv) A condition

**(4 marks)**

(v) A warranty.

**(4 marks)**

**(Total 20 marks)**

**Question 6**

(a) Briefly explain the circumstances under which the directors of a company may refuse to register a transfer of shares of a public company.

**(10 marks)**

(b) Outline the procedure through which a company can reduce its capital.

**(10 marks)**

**(Total 20 marks)**

**Question 7**

(a) Distinguish between criminal law and civil law.

**(14 marks)**

(b) Differentiate between legal wrongs and moral wrongs.

**(6 marks)**

**(Total 20 marks)**

## **TEST PAPER 7**

### **CPA (U) NOVEMBER 2017**

#### **Question 2**

Semu Ltd ran an advertisement in one of the daily newspapers inviting tenders to construct a ramp for their storied office building in Mbale town. They wanted to ease access to all levels of the building, especially by people with disabilities. Joki Constructors were evaluated as the best bidders to construct the ramp. Semu Ltd accepted Joki Constructors' financial bid of Shs 75 million to carry out all the works.

In their memorandum of understanding there was a provision to consider price changes if they arose. In the course of construction, prices of cement and other materials had increased, leading to an increase of Shs 15 million in the total cost for the assignment.

Semu Ltd paid up the Shs 75 million but declined to pay the extra Shs 15 million demanded by Joki Constructors. According to Semu Ltd, there was no contract between them and no price changes were agreed upon in the memorandum of Understanding they had made.

In another development, the shareholders of Semu Ltd are angry that the directors issued shares to 2 members at a discount without first applying to Court to sanction the resolution passed in the recently held annual general meeting.

It also transpired that directors refused to admit Suvava as a member, despite the fact that he was a legally recognised representative, appointed in a will by one of the members who died recently.

#### **Required:**

Raise and resolve the issues involved.

**(Total 20 marks)**

#### **Question 3**

Dikula, an established business man, dealt in the manufacture of Suzuki cars in Japan. He contracted Mulesi to supply cars, on his behalf, in Uganda. Mulesi in turn contracted Mwanje, a marketer, to sell the Suzuki cars. It was agreed that Mwanje would receive the vehicles on order and upon payment of half the value of the total amount for the cars ordered. It was further agreed that Mulesi would be held personally liable for any breach of contract by Dikula.

Business prospered until June 2017 when Dikula's factory closed, due to financial constraints. At the time of closure, Mwanje had placed an order of 100 Suzuki cars and had paid a deposit as agreed. The cost for each car was Shs 10 million. Dikula is now on the run and cannot be traced.

Mwanje sued Mulesi to recover the advance payment he had made. In his response, Mulesi claimed that he was not liable since he was a mere agent who was promoting the business of his principal, Dikula.

Coincidentally, Mulesi had also contracted Mbata to sell cars and had undertaken to supply him with 20 Suzuki cars. Mulesi had assured Mbata that the cars were direct imports from Japan. He did not reveal that his supplier was Dikula or that he was acting on his behalf. Mulesi had remitted all the money he had received from Mwanje and Mbata to Dikula. Mbata is demanding the delivery of 20 Suzuki cars or a refund of his money from Mulesi.

In another development, Jako company Ltd is also facing financial challenges. Mutima and Kangaru are its majority shareholders and directors at the same time. The company borrowed money but the directors used some of it for personal activities such as birthday parties, marriage gifts and anniversaries.

Bongo, a minority shareholder, implored Mutima and Kangaru to convene a meeting to address the company's financial challenges, in vain. Bongo is puzzled as to whether he can sue Jako Company or not.

Bongo has another challenge related to the recent death of his father, Kapere. A few days to his death, Kapere had gathered relatives and close friends and informed them that he had bequeathed his part of estate comprised in Busito Block D Plot 1 to his son, Mukono. He had further revealed them that he was drafting a letter to the effect that he had passed on all his interest in the land absolutely for natural love and affection to his son, Mukono. Kapere died 3 days later before he completed writing the letter. Mukono's siblings, including Bongo, are of the view that Busito Block D Plot I forms part of the family estate to be shared.

**Required:**

Raise and resolve all issues arising from the facts.

**(Total 20 marks)**

**Question 4**

Arejja, the proprietor of Ndejja Coffee Factory is a big employer in Western Uganda. Recently, he recruited young university graduates from neighbouring countries of Rwanda and Democratic Republic of Congo. When an outbreak of measles occurred in the area he invited doctors from a nearby hospital to conduct a general medical check-up for all factory workers. None of the workers was found to be suffering from measles but some were found to be HIV positive.

The doctors advised Arejja to terminate the services of the HIV positive employees. Being a kind person, he sympathised with them and decided to retain them. He, however, halved their salaries. Nzeyimana, one of the affected people, is aggrieved and needs advice.

In another development Sekanyo, a super mechanic in Kiseka Market heard of Tukanike Co. Ltd, an enterprising Company of mechanics. He was interested in joining the company. He met Muga, a shareholder, who was selling his shares worth 5 million shillings. Sekanyo paid Muga for the shares. They went to the company secretary to conclude the transfer of shares. He noted Sekanyo's name in his diary and asked them to go. He promised to remove the names of Muga from the company members' register and register Sekanyo as a shareholder. Sekanyo was excited about his membership in a lucrative company in Kampala. He even invited his fellow mechanics for a party to celebrate his achievement.

Recently, at the annual general meeting, the directors declared dividends to the shareholders. To Sekanyo's disappointment, his name was not among the list of shareholders whereas Muga still appeared as a shareholder. When he inquired about the absence of his name as a shareholder, he was informed that his name was not listed in the register as a member of the company. Sekanyo insisted that he had bought Muga's shares and the company secretary had written his name in the diary as the new member. Therefore, he was a shareholder.

In a related development, one of the directors had secured a debenture with the company on 12<sup>th</sup> January 2015 and one of shareholders had also secured a debenture on 10<sup>th</sup> January 2015. However, these debentures were issued without indicating that they rank *pari passu* (equally). At the time of paying the two debentures, it transpired that the company had insufficient assets. The director wants to be paid first and the shareholder also insists on being paid first.

**Required:**

Raise issues and resolve them.

**(Total 20 marks)**

**Question 5**

(a) Explain how a partnership may be dissolved.

**(12 marks)**

(b) Describe the persons who can petition for winding up of a company.

**(8 marks)**

**(Total 20 marks)**

**Question 6**

(a) Explain the general contents of articles of association of a company.

**(8 marks)**

(b) Explain the legal effect of the articles of association.

**(4 marks)**

(c) Explain the requirements necessary for a valid alteration of articles of association.

**(8 marks)**

**(Total 20 marks)**

## **TEST PAPER 8**

### **CPA (U) JUNE 2018**

#### **Question 2**

Gabi, Feefe and Pima are partners whose partnership is called GFP Dealers and its business is printing. One of their customers is Jokuna, who transacts business of printed materials on behalf of Ndeku. On three occasions, orders made by Ndeku's customers were very bulky, which necessitated hiring of pick-up trucks to make deliveries. Ndeku did not have money for those three occasions, so he requested Jokuna to use his own money, which would be refunded after the customers had paid for the deliveries. So far, only two deliveries have been paid for and Jokuna has recovered his money for the two deliveries. The third delivery is yet to be paid for.

Meanwhile, GFP Dealers which prints most of the materials that Ndeku's customers order for is going through a tough time. Feefe has been discovered to be using partnership machinery to print materials for his own side business. Feefe also admitted a new partner called Nteefu in GFP Dealers, without seeking the consent of Gabi and Pima, who thought that Nteefu was just temporarily helping out with GFP Dealers' work.

When Gabi and Pima confronted Feefe to explain his actions, Feefe only suggested that they should just agree to dissolve the partnership and forget about it.

Gabi who had contributed more start-up capital is of the view that if the partnership is to be dissolved, he should receive the residue after all partnership obligations have been met. On the other hand, Pima who had advanced a loan to the partnership insists that he should be the one to be paid first, then whatever will be left should be divided equally among the partners.

Word has gone round that GFP Dealers is facing problems. Ndeku has now communicated to Jokuna the cancellation of all transactions on his behalf and the outstanding delivery fees for the third delivery. He, in fact, has now demanded for all property, documents and any other things related to the business transactions Jokuna was doing on his behalf. Jokuna is insisting that Ndeku cannot abruptly revoke their relationship.

#### **Required:**

Raise and resolve all issues involved.

**(20 marks)**

### **Question 3**

Juma, a truck driver, had a contract with Safari Ltd, under which he was to drive his truck only on company business, to obey the instructions of the foreman and to wear company uniform. Juma could also employ a substitute driver. He was paid on the basis of mileage and quantity of goods delivered. He met the expenses for repair, maintenance, insurance and his personal tax liability. It has now transpired that National Social Security Fund (NSSF) has categorised Juma as an employee of the company demanding for his NSSF contributions. The company has objected to this.

Meanwhile, Mrs. Juma who is employed as a stores assistant is paid Shs 120,000 per month while her male workmates, doing the same work, are each paid Shs 300,000 per month. When she raised this matter with management, she was told that she could not get the same salary as men. She is not happy with this explanation.

The articles of association of Safari Ltd were altered to enable the majority shareholders purchase the shares of the minority at a fair value. The intention was to invoke the clause against minority members who were refusing to inject further capital into the company. The minority members are objecting to the alteration.

#### **Required:**

Identify the issues involved and advise the parties accordingly.

**(20 marks)**

### **Question 4**

DADUNDA Limited is operating a business of shoe making in Kampala. It has fifteen shareholders with Komatu, Maiso and Kamaino as majority shareholders. Their business has been booming for a long time.

Recently Komatu opened up a shop in Kikuubo dealing in buying and selling of men's garments. The business required a lot of capital. Komatu was forced to sell all the properties he had to sustain it. He even sold all his shares in DADUNDA Limited.

On the other hand, Maiso used to import motor cycle spare parts from Dubai. His business of spare parts was flourishing and he used the profits to construct a hotel in Kampala.

In October 2017, misfortune befell Maiso. The spare parts in transit from Dubai caught fire. He lost a substantial sum of money in that inferno. He had been buying most of his spare parts on credit from Dubai shops. The Dubai suppliers

learnt of the unfortunate incident that befell Maiso but they are demanding for their money.

Maiso had no option but to sell his hotel in Kampala to clear to debts. Unfortunately, the proceeds were not sufficient to clear all his obligations and he was thereafter declared bankrupt. As a result, the other shareholders of DADUNDA Limited did not allow him to benefit from his shares.

Recently, the directors of the company declared dividends to be shared among the shareholders. Some shareholders were of the view that Maiso and Komatu were not entitled to dividends. Maiso and Komatu are fighting hard to have a share of the dividends.

When Kamaino heard about the fate of Maiso and Komatu, his blood pressure rose culminating into a heart attack that took his life. Subsequently, Mrs. Kamaino, the administrator of Kamaino's estate lodged a claim for Kamaino's dividends. However, the other shareholders rejected the claim. Her further appeal to be registered as a shareholder in replacement of Kamaino was also rejected.

### **Required**

Identify issues involved and resolve them.

**(20 marks)**

### **Question 5**

- (a) Define a contract and briefly explain the different forms in which a contract can be made.

**(10 marks)**

- (b) Explain the circumstances that amount to exceptions to the general rule of privity of contract.

**(10 marks)**

**(Total 20 marks)**

### **Question 6**

- (a) Distinguish between criminal and civil law.

**(8 marks)**

- (b) Explain the general rules regarding priority of payment of debenture holders.

**(8 marks)**

- (c) Outline the duties of a company secretary.

**(4 marks)**

**(Total 20 marks)**



## **TEST PAPER 9**

### **CPA (U) AUGUST 2018**

#### **Question 2**

Two lawyers, Joseph Kavuyo, Robert Mapengo and engineer Abel Mulasi agreed to form a partnership. They intend to register it as KMM and Company Advocates. Their plan is to use Kavuyo and Mapengo's influence as lawyers to obtain engineering contracts which Mulasi would execute on behalf of the firm. Engineer Mulasi is also happy to work with lawyers because he knows that in case of any legal issues, he will be covered by his partners.

On the other hand, Mbuzi, Kapalaga and Sekoko formed a company and registered it as Kambuse Investments Limited (KIL). They were directors and the only shareholders of the company. In the company's memorandum of association there was a clause that the company's sole business was to buy hides and skins from Uganda and sell them to Dubai.

KIL's business was performing well right from inception. When Mbuzi realised that there were some substantial funds on the company's account, he suggested to Kapalaga that they should divert some money to start trading in cars. This idea was appreciated by Kapalaga. He in turn rang Sekoko to inform him about Mbuzi's idea. Sekoko also agreed that they start dealing in cars.

As a result of the two businesses, the company capital increased tremendously and the directors decided to declare dividends that would be distributed from profits and part of capital. They also bought properties for themselves.

Thereafter, the company business started collapsing. The suppliers of hides and skins as well as those for cars started to demand for payment. On approaching the directors for payment they were advised to sue the company.

#### **Required:**

Raise issues and advise the parties involved.

**(20 marks)**

#### **Question 3**

Mpamba, Moni and the late Nsatu were prominent members of Falanga Ltd. Nsatu, who was a widower, died 2 years ago. In his will, he appointed his sister, Weke to hold his shares in the company in trust for his 2 children, Peter and John, who were then 16 and 14 years old, respectively.

The business was flourishing; therefore, the shareholders never queried the actions of management. Upon attaining 18 years, Peter demanded for an explanation as to why he and his brother were not benefitting from their late



father's shares. He also demanded for the transfer of his father's shares into his names, now that he was 18 years old. According to Peter, their aunt, Weke, was a married woman and so was not the right person to be appointed as trustee in respect of their shares. She was living with her husband in Kenya and for the last 14 months they had lost contact with her. So, according to Peter, their aunt could not continue as trustee.

In response, the directors insisted that the boys' interests were well represented. Two months and a half after Peter's request, the directors sent a written notice to Peter, declining to transfer the late Nsatu's shares to him and gave no reason for the refusal.

When Mpamba and Moni heard about Peter's complaints, they mobilised other members to demand for accountability. They soon found out that there was a lot of mismanagement. It was discovered that despite the fact that the auditor had access to all relevant documents, the company's financial records were not updated, yet the audit gave a clean opinion. When queried about his role, the auditor insisted that he knew his responsibility very well. It has, however, transpired that the Registrar of companies has queried the company's financial records as well.

The shareholders of the company and Peter are now seeking for your advice on what steps to take.

**Required:**

Raise the relevant issues and resolve them.

**(20 marks)**

**Question 4**

Mpaka, an employee of Ken Ltd joined the company on 1 January, 2014. One of the terms of his three year contract was that his contract was renewable for a further period of 3 years, at the option of the employer. On 10 February 2017, when the managing director, Katara, was perusing the employee's records, he discovered that Mpaka had worked for a week after the expiry of his contract. Katara immediately wrote a letter directing Mpaka to leave the company premises within 2 hours, as his contract had expired. Mpaka reluctantly left the company premises, arguing that he was still an employee of the company.

On 10 February 2017 when Katara returned home after work, Ndege, his housekeeper requested for permission to go for a malaria blood check-up. The permission was granted. Ndege went but never returned. The following day, Ndege communicated to Katara on phone that he had left for good, as he could no longer withstand his (Katara's) mistreatment. He accused him of locking the gate and going with the keys to his office in order to frustrate any plans of

Ndege to move out of Katara's home. Katara was upset. He blamed Ndege for unlawfully abandoning his job.

In another case, Munta who was working under a contract of 2 years for Taka Taka Ltd received a termination notice of 2 months. Munta immediately packed his belongings and left the company. Taka Taka Ltd has sued Munta for damages for unlawfully absconding from work.

In yet another case, Simu Ltd is a private company limited by shares, dealing in communication systems and delivery of parcels. Recently, the company by a special resolution of 5 members in an extraordinary general meeting made changes in its operations from analogue to digital, an improved technology. As a result, its memorandum of association was altered by adding another objective. Kamese, a shareholder, has threatened to sue for unlawful alteration of the company objectives.

**Required:**

Raise and resolve issues arising from the facts.

**(20 marks)**

**Question 5**

Every company is required by the Companies Act, 2012 to keep a register of its directors and secretaries.

**Required:**

- (a) Explain the general duties of a company secretary. **(12 marks)**
- (b) Describe the contents of a register of directors and secretaries.

**(8 marks)**

**(Total 20 marks)**

**Question 6**

- (a) Explain the meaning of the term 'agency'. **(2 marks)**
- (b) Explain the circumstances under which an agency relationship may be terminated.

**(10 marks)**

- (c) Distinguish between criminal law and civil law.

**(8 marks)**

**(Total 20 marks)**

## **TEST PAPER 10**

### **CPA (U) NOVEMBER 2018**

#### **Question 2**

Pella is the managing partner of Kazi & partners. The other partners are Sange, Kama, Kapere and Dofil. The partnership deals in building materials. In order to compete favourably in marketing their products, the firm decided to offer its clients free transport for delivery of materials. On behalf of the partnership, Pella hired his wife's Fuso for the purpose of implementation of the partnership decision.

In a meeting to discuss the partnership affairs, it was revealed that Pella had been receiving tokens secretly from clients for delivery of goods. Pella explained that there should be no cause for alarm, as he earned the tokens through his hard work and clients had not complained. It also transpired that Kapere's several requests to access firm's books of account were also ignored by Pella. Other partners joined Kapere to demand accountability for money received. They insisted that Kapere, an accountant by profession, had to access the firm's books of account.

Having realised that his stay in the partnership management was in balance, Pella sold his shares in Penguin Ltd, a private limited company to Tadoba, a non-member to raise capital to start other businesses. The director of Penguin Ltd declined to effect the transfer, on the ground that he was not duty bound to do so.

In December last year, the company held its annual general meeting, Tadoba moved to attend the meeting with his share certificate and the transfer document he got from Pella. He was denied access to the meeting venue on the ground that his name did not appear on the company register. Tadoba is contemplating to sue Penguin Ltd.

#### **Required:**

Raise and resolve all issues arising from the given facts.

**(20 marks)**

### Question 3

Tallo Ltd sells and buys nuts and maize within and outside the country. One of the suppliers is Primpo. He grows maize in the village and transacts business with Tallo Ltd through Kipoli.

Over the last two months, Kipoli has been delivering maize to Tallo Ltd at his own transport cost. Primpo had promised to pay every three months when the company pays for the maize. It has now come to Kipoli's knowledge that Primpo was in fact paid every month, directly to his bank account. When Kipoli demanded for his commission and extra transport costs, Primpo responded that although the commission would be promptly paid, he had never promised to pay any extra money relating to any transaction.

Kipoli thereafter informed Tallo Ltd that due to some cash challenges, Primpo had instructed him (Kipoli) to receive cash payment on Primpo's behalf for a full month. When Primpo did not receive payment from Tallo Ltd at the end of the month, he asked Kipoli about the month's supplies. Kipoli instead showed him evidence of all supplies to Tallo Ltd. Primpo is confused on the next course of action.

In another development, 17 year old, Jim, who is the first son of the late Bende, is demanding recognition from Tallo Ltd to enable him hold his late father's shares in Tallo Ltd, in trust for his younger siblings and himself. According to Jim and his siblings, the current trustee for their shares does not manage trust affairs well.

The directors of Tallo Ltd have also been threatened by some shareholders who hold 1/10 of company shares, to bring an action against them. The shareholders discovered that while the directors sold nuts outside the country at a profit, they at times sell elephant tusks in the company's name but the huge profits received are divided amongst themselves.

#### **Required:**

Raise all issues involved and resolve them.

**(20 marks)**

### Question 4

Mbalo Ltd was incorporated in 2016. The company manufactures tiles. Mbalo Ltd employs a number of people ranging from expatriates to casual labourers. Kabi, one of the employees, has been working with the company since its incorporation. One day, as he was loading tiles on a truck, he fell and broke his left leg. He informed the general manager about his fate. He spent a month in hospital on treatment. When he checked his bank account, he found no credit for

the monthly salary. Upon inquiry, he was informed that he could not be paid because he never worked during that month.

In the same company, Turuho, a mechanical engineer took his wife to hospital for delivery. On reaching the hospital, it was realised that she had complications and was admitted. At around mid-night, Turuho's wife had a miscarriage. Turuho informed the company about his family misfortune and requested for two days to nurse his wife. His request was denied and he was asked to choose between the job and nursing his wife.

In another development, Balolo aged 16 years bought shares in Mbalo Ltd. The company made a lot of profits and the directors declared dividends. After the declaration of dividends, Balolo was shocked to find that he was not given any dividends, on grounds that he was a minor.

In another scenario, Donke, Monti and Twona are directors of BMT Ltd. Donke and Monti are part-time directors while Twona works on a full time basis. The part-time directors are based abroad and whenever they come, they sign blank cheques for Twona, to run the company. Twona used the signed blank cheques to advance unsecured loans to debtors, who never paid back the money. The shareholders are now contemplating an action against the directors.

**Required:**

Raise and resolve issues involved.

**(20 marks)**

**Question 5**

(a) Describe the types of mistakes in the law of contract.

**(10 marks)**

(b) Explain the different ways in which a contract may be discharged.

**(10 marks)**

**(Total 20 marks)**

**Question 6**

(a) Explain the contents of a memorandum of association.

**(10 marks)**

(b) Outline the effects of altering a memorandum of association.

**(10 marks)**

**(Total 20 marks)**

## **TEAT PAPER 11**

### **CPA (U) JUNE 2019**

#### **Question 2**

Kazimoto Ltd recruited Kazida as a plumber five years ago. He was a good plumber and all the employees appreciated his services. Due to financial distress, the directors decided to terminate some of the employees, including Kazida. They were all given due notices of termination of their services. On expiry of the notices, they were served their termination letters asking them to leave the company. Kazida was advised by his colleagues not to leave but to sue the company.

In another scenario, Maba and Bundura raised money and formed a company which was duly incorporated in 2016, and adopted Table A of the Companies Act, 2012. The company directors were appointed and assumed office. Maba and Bundura who promoted the company, approached the directors for a refund of expenses incurred on promotional activities. The directors are ready and willing to make the refund but they have a feeling that payment of promoters of the company is against the Laws of Uganda.

In yet another scenario, Baringo a businessman in Mukula village, was approached by promoters of Bambo Ltd who requested him to supply them with bricks, for the construction of the company's office block. Baringo supplied the materials. When he approached the company for payment, a week after its incorporation, the directors advised him not to demand for payment from them because he supplied the bricks before the company was incorporated. He is perturbed and determined to get paid for the supplies made.

Sulanta, who had supplied Bambo Ltd with cement, was also demanding for payment. The directors made a resolution to ratify Sulanta's contract so that he could be paid for the cement supplied before the company was incorporated. Some shareholders are, however, contesting the directors' decision.

#### **Required:**

Raise the issues and resolve them.

**(20 marks)**

### Question 3

Rute, a banking officer and Bakka, an internal auditor, with CU Bank met Byodo, a prominent businessman in Kikuubo who suggested to them that they partner and start exporting onions, marijuana, Indian hemp and red pepper to Kenya. He assured them that the business was very lucrative.

On realising that they needed capital, each one of them was tasked to invite six reliable and honest friends to join them. Rute, Bakka and Byodo together with 18 others, proceeded to do their business.

In another scenario, Timba Ltd deals in timber and furniture. The company board of directors agreed to hold an annual general meeting (AGM) and the managing director issued a notice for the AGM to be held in one week's time. The AGM was held as scheduled, but some members were absent because they were attending their political party's delegates' conference. When all matters deliberated upon were brought to the notice of all the members including those that never attended, the members were of the view that whatever took place could not be relied upon.

In yet another scenario, Armstrong Public Ltd was purposely formed to save money for homes and most householders became members. There were several directors of the company which was incorporated on 3 October, 2016. An annual general meeting was held on 7 May 2017.

However, some members had many issues to discuss and requested the directors to convene another meeting. The directors decided to convene the next meeting in December 2018, but members were still not happy about the directors' decision.

#### **Required:**

Raise the issues involved and resolve them.

**(20 marks)**

### Question 4

Kampala Designers Ltd (KDL) is a private company limited by shares. It was incorporated 5 years ago. KDL deals in ladies' wear and fashions of all kinds. The company business was going on very well until last year, when it experienced a number of challenges.

On 5 July, 2018 Uganda Revenue Authority sent a notice to the company director to the effect that the company was likely to be wound up, for failure to file tax returns and to pay company taxes for the years 2015, 2016 and 2017. Loka, the company director, placed the notice in his desk tray and never bothered to share the contents of the letter.



When Jamila, the company office cleaner read all the documents that were in the tray, she immediately photographed the notice and sent the picture to her father Pakata, who is a shareholder of the company. In turn, Pakata sent the notice to all company shareholders and company secretary on the company WhatsApp group, adding that Loka had hidden the notice and was, accordingly, liable for failure to file returns and pay taxes.

When Loka got the WhatsApp message while in China, he denied liability, stating that he was attending to business issues at the time the notice was sent to him. He advised that since he was to spend two more months in China, an extraordinary general meeting should be held and the company secretary should file and pay taxes as necessary. He also requested that in the same meeting, the company accountant Opika be confirmed in service as an auditor. Loka had casually appointed Opika to fill a vacant post of an auditor. A meeting was convened by the company secretary after sending due notice on the company WhatsApp group and the following resolutions were passed:

*"With immediate effect:*

- *Loka's services as director be stopped as he was disqualified to continue as a director and another director be appointed to replace him.*
- *Opika's services as company auditor be terminated.*
- *The registrar of companies be informed accordingly.*

Loka argued that there were no valid reasons to disqualify and remove him from office.

In another scenario, Habari was appointed as a liquidator for QC Ltd. In exercise of his duties, he sold a company house whose value was set at Shs 700 million. Later, it was discovered that Habari had caused alteration of company returns to reflect 300 million shillings instead of 700 million.

The company creditors came to learn about Habari's conduct and intend to hold him personally liable for payment of the 400 million, which can be used to pay company debts.

**Required:**

Raise and resolve all the issues arising from the facts.

**(20 marks)**



### **Question 5**

- (a) Explain the different ways in which an offer can be terminated. **(10 marks)**
  - (b) Differentiate between duress and undue influence. **(4 marks)**
  - (c) Describe the grounds upon which relief of undue influence can be restricted. **(6 marks)**
- (Total 20 marks)**

### **Question 6**

- (a) Describe the sources of law in Uganda. **(10 marks)**
  - (b) Explain the duties and liabilities of trustees. **(10 marks)**
- (Total 20 marks)**

## **TEST PAPER 12**

### **CPA (U) AUGUST 2019**

#### **Question 2**

Jep, Huru and Maso are partners who carry on business as Jehuma & Partners. The firm was established 5 years ago to offer accountancy services to small and medium-sized entities. The thriving business, however, experienced some challenges last year, forcing them to borrow money to sustain its operations. The state of affairs is still bizarre as interest on the loan obtained from Kobo Commercial Bank Ltd has increased due to non-servicing the loan and fines for defaulting.

The situation at the firm stressed Huru and he has now been admitted in Butabi Hospital for mental instability. His condition does not seem to be improving. When Jep and Maso discussed the firm's state of affairs, Jep proposed that they should disband the firm since Huru was unwell with no hope of improving. He argued that this would as well help them escape liability to pay debts. However, Maso is of the view that they must continue business to enable them pay debts, because sale of the firm's assets cannot settle all debts due on dissolution.

In another development, Jep and Maso are directors of Gep Ltd which was incorporated with the objective of offering cleaning services. In order to boost the company's profit, the directors decided to engage in a money lending business.

The money lending business has realised incredible losses since most borrowers have default. The other shareholders are now furious with the turn of events. When they demanded for an explanation from the directors, they assured them that business will improve since they have devised better ways of ensuring loan recoveries. The directors also stated that as managers, they have to make decisions and engage in business that would bring profit to the company.

On the other hand, the shareholders want the directors to make good the losses incurred, resulting from their poor decisions.

#### **Required:**

Identify relevant issues and resolve them.

**(20 marks)**

### **Question 3**

Pondo was appointed as a trustee of the estate of the late Dodi in 2014. On assumption of his duties, a lot of properties were handed over to him to manage and among them were vehicles, houses and plots of land. The plots of land included one that was situated in Malaba, with a title in the names of the deceased. One of the sons of the deceased fraudulently transferred the land without Pondo's knowledge. Pondo later discovered that the land had been transferred using a special title while he had the original title in his custody. Other children of late Dodi are holding Pondo responsible for failure to protect their land.

In a related development, Mukasa, aged 17, was appointed as one of the trustees of the estate of the late Dembe. Mukasa being a law student at the Law Academy, was trusted and given many responsibilities in the trust. The trust is moving on well but some of the beneficiaries are not happy with the trust management under Mukasa.

In another scenario, the directors of Kuku Company Ltd decided in their meeting to alter the share capital of the company by increasing it. Their decision was later presented to the general meeting. However, members objected to the decision and are contemplating court action.

In another controversial development, the directors of Mukoko Company Ltd (MCL) which was incorporated in 2015 decided to reduce the capital of the company because of the credit crunch MCL faced. Some creditors and shareholders are concerned about the development and are wondering what to do.

#### **Required:**

Raise and resolve the issues.

**(20 marks)**

### **Question 4**

Musa and Jackie were both employed by Exon Ltd as receptionists. Musa who was lame and used crutches would at times arrive late for work. Engineer Baaki, the managing director, was unhappy with Musa's late coming and sacked him without any warning or notice.

After Musa's sacking, Engineer Baaki, who had developed interest in Jackie, approached her on several occasions for a love affair, but she declined. One evening, he invited Jackie to meet him at Classic Amusement Bar, from where he gave her Shs 500,000 and told her it was her salary for the month of July. He then went ahead to demand response to his love requests or else she would lose

her job. Jackie refused to budge and consequently Engineer Baaki issued a letter of dismissal to her for disobedience.

In another scenario, Tabu a banker with CD Bank, has a close friend, Maali who works with Ocean Ltd as an accountant. Tabu and Maali met their friend, Bijodo, a businessman. They discussed business matters and later resolved to form a metal fabrication company. They raised capital and incorporated Metal Fabricators Ltd. The company has since incorporation realised good profits.

Recently, Tabu, Maali and Bijodo approached the company's managing director demanding for a refund of expenses incurred in registering the company. The managing director is now seeking for your advice.

**Required:**

Identify relevant issues and resolve them. **(20 marks)**

**Question 5**

- (a) Explain the different ways in which a company may be wound up. **(8 marks)**
  - (b) Describe the legal consequences of winding up a company. **(12 marks)**
- (Total 20 marks)**

**Question 6**

- (a) Describe the different ways in which an agency relationship may be created. **(8 marks)**
  - (b) Write short notes on each of the following in regard to law of agency:
    - (i) Banker. **(2 marks)**
    - (ii) Del credere agent. **(2 marks)**
    - (iii) Auctioneer. **(2 marks)**
  - (c) Describe the jurisdiction of the following courts in Uganda:
    - (i) High Court. **(2 marks)**
    - (ii) Court of Appeal. **(2 marks)**
    - (iii) Supreme Court. **(2 marks)**
- (Total 20 marks)**

## **TEST PAPER 13**

### **CPA (U) NOVEMBER 2019**

#### **Question 2**

Katuramu is one of the shareholders of Nyindo Ltd in Kabandole town. On his 90<sup>th</sup> birthday, Katuramu decided to transfer half of his share capital in Nyindo Ltd to his only son, Bisoke. He wrote to the directors informing them about his decision to transfer his shares, which was immediately effected by management. However, some shareholders objected to the transfer arguing that it was unlawful.

The directors, in their monthly meeting, agreed to reduce the share capital of Nyindo Ltd. When some of the shareholders complained about the reduction, the directors informed them, that what they were doing was lawful and in the interest of the company. However Katuramu, considers the directors' actions as being wrong.

Businde, an office attendant at Nyindo Ltd, died in an accident in July 2019, on his way to office. In September 2019, Businde's wife, Kabonesa, was granted letters of administration. She approached Nyindo Ltd, to claim for her late husband's unpaid salary and refund of the money which was used to transport Businde's body to his ancestral home for burial. However, the managing director declined, arguing that the company does not pay salaries to the deceased and that the accident was due to his own recklessness.

In September 2019, Bwango, Businde's younger brother, who was employed as a cleaner at Nyindo Ltd received a letter of immediate dismissal from the company. The Human Resource Manager did not provide any reasons for his dismissal.

#### **Required:**

Identify relevant issues and resolve them.

**(20 marks)**

#### **Question 3**

Jude, a trustee of the estate of the late Kateregga, was convicted and detained in USA for 13 months, on charges of smuggling drugs. He returned to Uganda on October 2019 and reported to the trustee's office, to continue with his responsibilities. On reporting, he was informed that he had been replaced by Muyaye. Jude argued that his dismissal was unlawful. Consequently, he forcefully kicked Muyaye out of office.

KTR Ltd, a clearing and forwarding company, entered into a contract with Jude, to transport his tomatoes to Kalangala Island. In one instance weather conditions

changed and the ship could not sail to Kalangala landing site. The ship was on the waters of Lake Victoria for a period of 5 days, waiting for the weather to settle. All telecommunication networks were off during that period. On the fourth day, the captain realised that some of the perishable goods onboard were beginning to go bad. He decided to sell them to Malaika, who was in a small boat heading to Kalangala. Among the goods sold were Jude's tomatoes. When KTR Ltd informed Jude about the captain's decision to sell, he insisted that his plan was to deliver tomatoes to Kalangala to realise more proceeds. He claimed that since he had not authorised the captain to sell his tomatoes, the sale was unlawful.

In another development, Kabamba, authorised Malaika his elder sister to buy goods on credit from Atero Ltd on his behalf. One day, Kabamba fell sick and was admitted in Butabi Hospital. It was later confirmed that Kabamba was insane and was consequently confined in the hospital for treatment for 6 months. However, Malaika continued buying goods on credit from Atero Ltd on behalf of her brother. When Kabamba was discharged from Butabi hospital, Atero Ltd submitted a demand note relating to the goods Malaika had obtained on credit. Kabamba insists that he was not liable.

**Required:**

Identify relevant issues and resolve them.

**(20 marks)**

**Question 4**

Karungi and Nsemere, with assistance of K & A Advocates, incorporated Kabwente Ltd. K & A Advocates included a clause in the articles of association, that the promoters shall be refunded preliminary expenses. Five months later, Nsemere wrote to the directors of Kabwente Ltd demanding for a refund of Shs 2 million from the company for the preliminary expenses incurred during incorporation. The directors declined to honour her demand arguing that her claims constituted a pre-incorporation claim which the company was not ready to settle.

In a related development, the directors of Kabwente Ltd passed a resolution to alter the articles of association in the directors meeting. They approached Kapere, a successful businessman to amend the entire company's articles of association, which he did. However, Karungi, one of the shareholders is of the view that what the directors did was inappropriate.

It also transpired that Kabwente Ltd bought land in Wakiso District. The company entered into a contract with Build Ltd to construct the company's head offices on the same land. Kabwente Ltd paid part of the contract price and Build Ltd purchased the materials for construction. When the foundation was being

laid, the site engineer was served with a letter prohibiting the construction of any building in the locality as per the by-laws passed by the district council. Kabwente Ltd alleges that Build Ltd breached the contract.

In another development, Nsemere sold her car to Irumba for Shs 80 million. Irumba paid Shs 40 million on 1 January 2013 and agreed in the contract to pay the balance before or on 1 January 2016. However, Irumba ran insane on 30 December 2015 and was admitted at Butabi Hospital. He was released in December 2017 having been declared sane. When Nsemere demanded for balance, Irumba told her that she was unlawfully demanding for the money since she was barred by the Limitation Act to do so.

**Required:**

Identify relevant issues and resolve them.

**(20 marks)**

**Question 5**

(a) Differentiate between the following classes of law in Uganda.

(i) Public and private law.

**(2 marks)**

(ii) Civil and criminal law.

**(2 marks)**

(b) Describe the duties of a trustee.

**(8 marks)**

(c) Explain ways in which a trust can be created.

**(8 marks)**

**(Total 20 marks)**

**Question 6**

(a) Explain the statutory provisions against discrimination in relation to the employment law.

**(4 marks)**

(b) Explain the particulars required for the registration of a partnership.

**(8 marks)**

(c) Describe the rights of partners.

**(8 marks)**

**(Total 20 marks)**



## **TEST PAPER 14**

### **CPA (U) DECEMBER 2020**

#### **Question 2**

BBK Ltd was incorporated to establish and operate education centers. On 1<sup>st</sup> January 2015, one of the directors was approached by Dolly Barton, a USA based catholic priest, to establish a hospital under BBK Ltd, fully sponsored by one of the Catholic Relief organisations in USA. This was good news to the directors and they unanimously agreed. The directors have since then used the proceeds from the hospital to meet most of their personal needs. Recently, BBK Ltd was sued for unpaid debts amounting to Shs 120 million, accruing from a supply of furniture made in June 2020 to the hospital. Fujjo, one of shareholders of BBK Ltd insists that the company should not pay and that the actions of the directors were ultra-vires the company memorandum of association.

In another development, on 4 January 2020, the directors of BBK Ltd issued a notice to all members of the company to attend the annual general meeting scheduled to take place on 21 January 2020, at the company premises. Kabazira, one of the shareholders received the notice but did not attend the meeting, which she and other members considered not proper. She further insists that more time needed to be given for another meeting to be called.

Kabonesa is the secretary of BBK Ltd, a position she has held for more than 5 years. As at 31<sup>st</sup> December 2019, the company's returns had never been filed with the registrar of companies, subsequently the registrar of companies listed BBK Ltd among the non-complying companies. The shareholders are not happy about this. On inquiry from the directors, they responded that only the secretary should be answerable for such matters.

In another instance, Goodman sold his house to John, who paid 50% of the consideration. Goodman thereafter incorporated a company called GM Ltd and conveyed the house to the company. When John came back to pay the balance of the consideration, Goodman informed him that the house belonged to GM Ltd and that the company had no intentions of selling it.

#### **Required:**

Raise the relevant issues and resolve them.

**(20 marks)**



### Question 3

Tusingwire has been the trustee of the estate of the late Bwente for one year. Among other properties, the estate has 10 buses. On 1<sup>st</sup> January 2020, one of the buses was involved in an accident and was destroyed beyond repair. Tusingwire on behalf of the trust entered into agreement with an insurance company to comprehensively insure the remaining buses. This did not go well with the beneficiaries.

In a related scenario, Tusingwire sold the scrap of the destroyed bus to Kanyama, the proprietor of Kanyama Garage, in Bwaise for a consideration of Shs 30 million. Tusingwire immediately bought a brand new Forester Subaru from the proceeds, and donated it to his wife on 14<sup>th</sup> February, 2020. Kasukali, one of the beneficiaries, got to know about it and was not happy with Tusingwire's action.

Gololo, an estate agent has worked for Kyakyo for more than 5 years. Kyakyo lives in Chune province in the oriental world and comes to Uganda after every 2 years. On 18<sup>th</sup> February 2020, Gololo was instructed by Kyakyo to rent for her an apartment where she would live when she comes to Uganda. Gololo found the apartment on 1<sup>st</sup> March and deposited 10% of the total rent. That same day, he called Kyakyo's phone but it was received by a strange person, who informed him that Kyakyo had succumbed to corona virus. The apartment management demanded for damages for breach of contract from Gololo who claimed that he was just an agent.

In another scenario, Ssemakula, Musana and Amos are partners in Semuam partners, which deals in events management. Amos is the technical partner, while Ssemakula and Musana are funding partners. On 31<sup>st</sup> December 2019, the partners shared profits for the year 2019. Amos bought brand new cameras out of his profits and employed Byabagambe as a camera man. Lately, for some of events as Amos takes photos on behalf of the partnership, Byabagambe takes photos on behalf of Amos. Musana got information about Amos' business and believes it is a betrayal of the partners.

#### **Required:**

Identify the relevant issues and resolve them.

**(20 marks)**

#### Question 4

Jadongo is a retired civil engineer who is now practicing modern commercial farming in Kibiito Village. Upon receiving his retirement benefits he expanded his farm. On 2<sup>nd</sup> February 2020, Jadongo approached Bigizi who owns a big chunk of land. Jadongo shared with him about his plan to expand his farm. As a result, Jadongo offered to buy part of Bigizi's land. However, Bigizi rejected the offer. At night, Jadongo stormed Bigizi's home with five men wielding pangas. Bigizi was asked to either sign the sale agreement or choose to lose his life. The agreement was to the effect that Bigizi had sold all his land to Jadongo at a cost of Shs 20 million. Bigizi was then given a grace period of two months to vacate the land which he declined.

Later, Jadongo hired Akooma, one of the most notorious thugs in the area to burn Bigizi's house, to force him out of his land. Jadongo paid Akooma Shs 1.5 million for the deal. However, it later transpired that Akooma did not accomplish the deal and Jadongo is demanding for his money.

Bigizi finally decided to sell his land to Bonge, a retired army general, in order to avoid Jadongo's wrath. No written agreement was made and yet Bonge had paid a consideration of Shs 50 million in cash. Although Bonge believes he is the rightful owner, his wife is not comfortable given that the contract was verbal.

In yet another incident, Bigizi's half-brother, Turyatempa works for a tile-making company in Kampala, as an accountant. He is the only Ugandan in the company. On 20 February 2020, he had an argument with one of his workmates and since then, all his workmates call him Mukiga, instead of Turyatempa. Turyatempa has also been barred from applying for the recently advertised vacancy of a finance manager. He claims that he is more qualified than all his workmates.

#### Required:

Raise the relevant issues and resolve them.

**(20 marks)**

#### Question 5

Explain the:

(a) duties of an agent to the principal.

**(10 marks)**

(b) powers of a liquidator.

**(10 marks)**

**(Total 20 marks)**

**Question 6**

(a) Describe the different sources of law in Uganda.

**(10 marks)**

(b) Explain the different classifications of law in Uganda.

**(10 marks)**

**(Total 20 marks)**

## **TEST PAPER 15**

### **CPA (U) MARCH 2021**

#### **Question 2**

Mwangu and Muzibu are partners in Ngumu firm. They are involved in retail-based trading business. They are also actively involved in all aspects of managing the firm's business. Over the years, the firm has registered high profit levels. However, since the beginning of 2021, the firm has faced a number of challenges attributed to actions of the partners.

In one instance, Mwangu purchased the firm's goods on credit from Kuubo Traders on an understanding that he would pay for them in a week's time however, two weeks elapsed without any payment. Kuubo Traders sent a demand note to Ngumu firm which was received by Muzibu. Muzibu's reply was that Kuubo Traders were demanding payment from a wrong party.

Upon learning of what had transpired, Mwangu approached Muzibu to clear the air but in vain. The two partners instead had a heated exchange and never resolved the matter. To date, Mwangu and Muzibu hardly communicate. Each one concentrates on his work without informing the other about the firm's business. One of Mwangu's friends, Opio, has advised him to let go of the partnership.

In another scenario, Pinsi who deals in the construction and sale of houses often calls upon Muzibu to source for prospective clients for his houses. On one occasion, Pinsi agreed with Muzibu to source for a prospective buyer of his house in Nyonyo town. Muzibu identified a buyer who was willing to purchase a house at Shs 300 million and consequently informed Pinsi. Pinsi accepted the offer, subject to conditions that would be in the contract of sale. Three days later, before the sale agreement was concluded, Muzibu secured another interested buyer, who was willing to purchase the same house at Shs 320 million. He, however, did not inform Pinsi. Pinsi sold the house at Shs 300 million. Two days after the sale, Pinsi learnt that there was a prospective buyer who had informed Muzibu about his willingness to buy the house at Shs 320 million.

It also transpired that Pinsi had agreed with Muzibu to source for prospective buyers for his three bed roomed bungalow. Negotiations would then be handled by Pinsi himself. Muzibu secured two prospective buyers and introduced them to Pinsi. Whereas on inspection one of them did not show any interest in the house, the second one showed willingness to purchase it and subsequently entered into negotiations. However, he was not able to buy it. When Muzibu demanded for his commission, Pinsi informed him that he could not claim for any payment since the house had not been sold.

**Required:**

Raise the relevant issues and resolve them.

**(20 marks)**

**Question 3**

Bakola Enterprises (BE) is a thriving business based in Kampala district that deals in supply of stationary. At each of its offices, BE employs a minimum of ten people. All BE employee sign a contract of service upon recruitment.

Jena, one of the employees at Bakola Enterprises signed a contract upon recruitment which provided among other things, that she would be offered accommodation with '.... a monthly deduction of Shs 30,000 towards water bills, Shs 30,000 towards electricity and Shs 200,000 towards general maintenance...'. Jena is perturbed by the deductions and is seeking for guidance.

In a related development, another employee at Bakola Enterprises, Shida's contract contained a provision for 'monthly deductions amounting to Shs 35,000, towards a pension scheme ...'. Shida had been informed about the scheme at the time of recruitment and she signed a document of consent to join the scheme. However, she wonders why her salary continues to be subjected to deductions yet she has never accessed that money.

Bisobye, one of the employees at Bakola Enterprises, was absent from office for two months as a result of a knee injury he sustained while working on his farm. He called his supervisor and informed him about his inability to move. When he reported to his supervisor with all his supporting medical documents as evidence of his treatment, the supervisor instead handed him a termination letter, on grounds of absence from work for 2 months.

In another development, the marketing officer at Bakola Enterprises (BE) entered into a transaction on behalf of BE to supply three packages of art paper to Smart Art Ltd, worth Shs 150,000 per package. Part of the sale agreement was concluded on phone, while some aspects like the time of delivery, and full payment for the packages were written and signed by representatives of both parties. It is however, apparent that Smart Art Ltd has now declined to settle the payment arguing that, all their transactions have to be concluded with detailed written agreements. This implies that that BE has no basis to demand for payment.

**Required:**

Identify all the relevant issues and resolve them.

**(20 marks)**

#### **Question 4**

Disog Ltd is company based in Gulu City. Disog Ltd has been registering considerable profits over the years. However, there are some questionable issues that cropped up recently.

At one time, the directors decided to raise some capital by issuing shares at a discount. The company members were informed at a general meeting and a resolution was accordingly passed. A few minutes after the meeting, the shareholders were informed that the shares had been issued at a discount awaiting court sanction. Majority of the shareholders were shocked at the news and suspect that the directors could have had ill motives.

In another incident, a 21 days' notice was given for a general meeting. During the meeting, members were informed about the need to replace Mugumu as the company auditor. Whereas some members preferred to handle such an appointment at another meeting, the directors insisted and persuaded members to replace Mugumu. Consequently, a resolution was passed to appoint another auditor. During the days that followed, it transpired that directors had been using the company name and money to conduct other businesses. Mugumu had kept asking about those proceeds without getting an explanation. It was suspected that all proceeds from the extra businesses were for the directors' personal benefit. Some members were very furious. They blamed the directors and demanded that they account for the proceeds.

In despair, some members of Disog Ltd have opened a business under an agreed name 'Exodus Ltd'. They hired office space and sourced for business opportunities from various companies. However, they are disturbed by the fact that some companies have denied them business opportunities. The reason advanced to them is that it is very risky doing business with them. One company advised them to legalise their operations before approaching them for business.

#### **Required:**

Identify the relevant issues and resolve them.

**(20 marks)**

#### **Question 5**

(a) Differentiate between shares/ shareholding and debentures/ debenture holding.

**(10 marks)**

(b) Explain the duties of company directors.

**(10 marks)**

**(Total 20 marks)**

**Question 6**

(a) Distinguish between criminal law and civil law.

**(10 marks)**

(b) Explain circumstances under which an agency can be terminated by operation of the law.

**(10 marks)**

**(Total 20 marks)**

## **TEST PAPER 16**

### **CPA (U) OCTOBER 2021**

#### **Question 2**

Kwiki Ltd deals in the trade of machines and equipment in the clothing industry. Over time, the directors have realised that apart from machinery and equipment, the company had a good chance of gaining from sale and purchase of bales of clothes.

In the recent general meeting, one of the agenda items was 'trade in bales of clothes' although this was not indicated in the circulated notice for the meeting. A detailed explanation was made about the benefits of dealing in the sale of bales of clothes as one of the ways the company would increase its profits. Many shareholders were happy and agreed to support the new venture, but Ndereza was skeptical about it. Ndereza was of the view that the new venture should be considered in another meeting and no abrupt resolution should be agreed upon. However, a resolution was passed that the company articles be altered to include directors' power to deal in the sale of bales of clothes. Ndereza and other members think this was not proper.

In a twist of events, the company directors also decided to reduce company capital in the same general meeting. The explanation given by the directors was to enable reduction of liability on shares which were not paid up. The resolution for this change was immediately thereafter the meeting taken for filing with the registrar, but it was rejected by the assistant registrar. The directors are unhappy with the action of the assistant registrar.

It also transpired that the directors engaged in a risky business venture that involved purchase of machinery and equipment from a country that had registered a big number of people suffering from COVID 19. Whereas many members thought that the directors had not made a good decision to engage in such a transaction, the directors argued that it was lucrative business which the company should benefit from.

The directors, in an interest of securing more capital for the company, also decided to reissue debentures that had earlier on been redeemed. The reissue did not go down well with some members, who thought that the company directors should not be issuing redeemed debentures.

#### **Required:**

Raise all the relevant issues and resolve them.

**(20 marks)**



### **Question 3**

Nsonzi and Kibira have been employed by JJembe Ltd for a period of four months. Despite the many challenges they face at JJembe Ltd, both of them have endured. On joining JJembe Ltd, Kibira signed a contract of service for three months while Nsonzi's was for six months.

One morning, when they reported for work, many workers had been served with letters of termination. Kibira was one of them and his letter indicated the termination was long overdue. Kibira is disappointed but is hopeful that his contract stands a chance of being renewed.

Nsonzi was given a termination letter as well, the reason given was that soon the company was to hire competent workers. He was informed that the company was willing to give him a recommendation letter for other employment opportunities. Nsonzi thinks this was not fair.

In another development, Tulumbe firm that deals in retail business with three partners; Yombwa, Fulejje and Mpisi who are fully engaged in running the business, has registered high profits over the years. However recently, Gugu, one of their creditors sent a demand note to Tulumbe firm, for payment of Shs 10 million, following the loss caused to him by Mpisi. It transpired that Mpisi had visited Gugu's store to purchase some goods for the firm and got involved in a heated argument with one of the staff. Mpisi then deliberately pushed a stack of glass products, which fell and broke. The demand note had attachments of copies of receipts for the purchase of glass products, for which Gugu demanded payment.

Yombwa and Fulejje were furious with Mpisi. When they demanded for an explanation, Mpisi ignored them. Since that time to-date, Yombwa does not talk to Mpisi and has told Fulejje that the partnership should be dissolved. The strained relation has seriously affecting the smooth running of the firm. Fulejje cannot take it anymore.

#### **Required:**

Raise all the relevant issues and resolve them.

**(20 marks)**

#### **Question 4**

In December last year, Bwenu agreed to work for Tunda as a singer in his music studio. An agreement was to the effect that Bwenu would only work for Tunda. However, Tunda was one time shocked to hear Bwenu performing for another music studio. When questioned about his action, Bwenu failed to give an explanation. Tunda wants the agreed terms to be complied with.

In another scenario, Tunda's half-brother, Ninja owes Baseku Shs 200 million resulting out of a contractual obligation made 6 years ago. Baseku was unfortunately involved in a terrible accident at the time when Ninja was supposed to pay, which left him with a loss of memory and inability to pursue his claim against Ninja. The hope that Baseku has now is that he has regained his memory and expects to be discharged from hospital in a few days. Ninja is of the view that those are simply bygones.

In another development, Bwenu's longtime friend, Kabindo, was critically sick, when he executed a settlement voluntarily in the presence of his lawyer, and signed it without it being read out to him. In a miraculous turn of events, Kabindo was able to recover. When he reviewed the settlement he made, he disagreed with the contents that omitted a possibility for it to be revoked. His lawyer insists that since he voluntarily signed, it is a true representation.

Meanwhile, in another scenario, Bando is a trustee for the estate of the late Malibu, whose children included Ninja and Kimonde. He has always carried out his duties as expected but for some reason unknown to him, Ninja and Kimonde always oppose him. Several attempts by relatives to put an end to the sour relationship of the trustee and beneficiaries have not yielded anything. Ninja and Kimonde are contemplating to remove Bando as a trustee for their late father's estate.

#### **Required:**

Identify the relevant issues and resolve them.

**(20 marks)**

#### **Question 5**

(a) Explain the circumstances under which an agency relationship can be terminated.

**(12 marks)**

(b) Describe the legal consequences of winding up a company.

**(8 marks)**

**(Total 20 marks)**

### **Question 6**

(a) Explain the advantages and disadvantages of case law.

**(10 marks)**

(b) (i) Explain the meaning of 'delegated legislation'.

**(2 marks)**

(ii) Explain the reasons for delegated legislation.

**(8 marks)**

**(Total 20 marks)**

## **TEST PAPER 17**

### **CPA (U) DECEMBER 2021**

#### **Question 2**

Kaz Ltd deals in the processing of mineral water. On 01 June 2021 the 3 shareholders of Kaz Ltd perished in a motor accident while they were traveling to the village for a give-away function. The wives of the deceased are now fighting for the company's ownership. Mori, a widow of one of the deceased, has written to the company about the same issue, claiming that all the deceased's shares are hers. The other widows are contesting her claim.

The directors of Kaz Ltd held a meeting on 1 August 2021, in which they agreed to reduce the company's share capital in order to have a presentable balance sheet in the annual report. Marumba, one of the shareholders, has rejected the move.

In yet a different case, Yaketa Ltd is a single member company, and the only member is Kats. On 1 February 2021 Kats transferred 50% of his shares to his son, Tom, for having successfully completed his CPA course in the December 2020 examinations diet. Kats instructed the company secretary to re-type, print and bind the articles of association and memorandum of association and to keep them in the shelf as evidence of transfer of shares. Tom, however thinks his father might have just hoodwinked him.

In another scenario, Gonza, one of the directors in Aron Ltd, appointed Kats as another director in Aron Ltd. The appointment was done at one of the buildings the company had been contracted to construct. However, Kalubo, one of the shareholders, believes that the appointment was null and void.

#### **Required:**

Raise the relevant issues and resolve them.

**(20 marks)**

### **Question 3**

Kyalenga Ltd is a duly incorporated limited company. The company deals in the production of passion fruit juice known as Mugezi passion juice. The company's business has been progressing well and recently, it diversified into the production of Mugezi soda.

On the eve of launching Mugezi soda, one of the directors ordered the DJ to stop playing the music because he had a special announcement to make. He revealed that they (directors) had all unanimously agreed to appoint a new auditor, Bandabe & Associates. He immediately, summoned the managing partner of KA & Associates to the stage and informed him that his firm's auditing services had been terminated with immediate effect.

In another development, one of the staff of KA & Associates who had not attended the launch of Mugezi soda visited the company's offices to carry out a verification of all the company's fixed assets. He was however informed by the finance manager that he was under strict instructions not to issue any documents to any staff of KA & Associates.

In another scenario, Kyalenga Ltd's list of creditors recently grew bigger. This prompted the creditors to meet to deliberate on the possible ways of collecting their money however, they failed to have a conclusive resolution. Some suggested that they should attack and harm the directors and the employees as well, others were of the view that they needed to work towards dissolution of company and get paid. According to the audit report presented by KA & Associates, it is very clear that the company is no longer a going concern.

#### **Required:**

Raise the relevant issues and resolve them.

**(20 marks)**

### **Question 4**

Mubali works with Kadamu Ltd as the company accountant. In December 2020, the human resource manager summoned him to his office. He informed him that he would not be allowed to go for leave on 1 January 2021 because he had gained a lot of weight. The human resource manager further barked at him that he was backward just like most of his tribesmen. Filled with anger, Mubali did not adhere to the human resource manager's orders, subsequently, he was summoned and terminated.

In yet another incident, Mubali's friend, Komiswa works as an agent of Build Ltd, a company duly incorporated in Uganda. Build Ltd deals in construction. The

company sent Komiswa to the UK to meet a prospective client and in a bid to fulfill his duties, Komiswa incurred extra expenses that were not budgeted for by Build Ltd, and used his personal money. On return to Uganda, he presented the relevant documents to the finance manager for a refund. However, the finance manager just ignored him.

Desperately, Komiswa recently met Build Ltd's competitors and shared with them all the UK prospective client's information. Furthermore, he organised a successful meeting between Build Ltd's competitors and the UK prospective client. The directors of Build Ltd are furious and contemplating to sue Komiswa.

**Required:**

Raise the relevant issues and resolve them.

**(20 marks)**

**Question 5**

- (a) Explain the conditions necessary for ratification of an agent's acts.  
**(10 marks)**
- (b) Explain circumstances when a partnership may be dissolved by a decree of court.

**(10 marks)**

**(Total 20 marks)**

**Question 6**

- (a) Distinguish between criminal law and civil law.  
**(10 marks)**
- (b) Describe the duties of a trustee.

**(10 marks)**

**(Total 20 marks)**

## **TEST PAPER 18**

### **CPA (U) MARCH 2022**

#### **Question 2**

Bunda Ltd (BL) is a newly formed company dealing in buying and selling of maize flour. Recently, management of BL, was tipped off by one of the traders in Kikuubo, that Ngano Millers Limited, had good quality wheat flour at a very competitive price. The idea fascinated management of BL. They approached, Mugezi, one of the successful businessman in Kampala, who informed them that it is easy for BL to alter its memorandum of association to include buying and selling of wheat flour. Consequently, BL issued a notice to members for a meeting to alter the memorandum of association.

Half of the members attended the meeting and a resolution was passed to alter the memorandum of association. During the same meeting, Dundu, one of the shareholders, also proposed that BL could venture into buying and selling cocoa. However, members declined to support his proposal on grounds that He (Dundu) would be a beneficiary since, his wife, was the one going to supply cocoa. Dundu is determined to take the case to court for an order of rectification of articles of association.

In another scenario, Goke lost his father, Faku, one of the shareholders of BL. Prior to his death, Faku had thirty shares in the company. Upon his death, Goke obtained letters of probate from court, to administer the estate of his father. He applied for the transfer of Faku's shares into his name, but the directors of BL vehemently declined, arguing that he (Goke) cannot have shares transferred into his name.

It has also transpired that BL recently issued a prospectus to the public to buy shares. It was stated in the prospectus that whoever buys one hundred shares within the first month of the offer would be given a bonus of fifty shares although, it has transpired that the bonuses were non-existent. Unknown to Mandule, he bought one hundred and fifty shares with the hope of getting the bonus. Later on, when he inquired about the bonus, he received no response.

#### **Required:**

Raise relevant issues and resolve them.

**(20 marks)**



### **Question 3**

Nzori Ltd was incorporated in 2017. The company had hard working directors. This made the company realise a lot of profits over the years until 2020 when it made losses as a result of corona virus. Some of the shareholders were disappointed with the poor performance and took appropriate actions.

They resolved to appoint new directors. Among the new directors was Mwase, aged twenty years although, some members were opposed to his appointment on ground of his age. According to them, the company needed mature directors who would make more informed decisions.

In another scenario, Mumbé, one of the new directors, had been working for a year however, he had never been paid since his appointment. When he (Mumbé) demanded for payment, shareholders, informed him that it was a general rule that directors of the company are not paid. They argued that directors are controllers and not servants of the company although, in the company's articles of association, there was a provision for payment of directors.

It has also transpired that Nzori Ltd faced many legal battles in 2021, and lost many of them, and a lot of money has to be paid in costs. Recently, whenever summons are served on the company, nobody files a defense or even represents the company in court. Mwandu, the secretary, is threatening to sue the directors for failing to handle court matters and causing financial loss to the company.

In another development, following the death of the managing director, Mwandu, took over as managing director of the company. Members of the company are not happy with his dictatorial behavior, such as declaring himself director.

#### **Required:**

Raise and resolve the issues involved.

**(20 marks)**

#### **Question 4**

Onyo and other forty professionals formed a partnership. The partnership was duly registered and business went on successfully. Later on, Muhwezi, one of the members managed to persuade some other members to sue the partnership on grounds that it was illegal. He argued that the number of members in the partnership was not within the requirements of the Law. The partners who have been happily benefitting are now confused.

In another scenario, Muhwezi's wife, Pauline, joined a group of traders and formed Bopo partners, to import and export timber. The partnership has been carrying on business well until recently, when one of them, Muchamo, started behaving in a funny way. Muchamo, who has been working in the records and accounts department has, on several occasions, been making erroneous entries, and omitting to record some receipts. He has also not been co-operative pertaining business matters. Whenever any of the partners approaches him he, abuses them. Every partner now fears to approach him. In one of the meetings recently held, one of them had suggested to dissolve the partnership but was rebuked by Muchamo. Muchamo maintained that the partnership must continue as usual.

It has also transpired that, Bopo partners, borrowed five hundred million shillings from Mutemu Sacco to be paid within one year. The partnership defaulted in payment within the agreed period. Mutemu Sacco loans officer tried by all means to recover the Sacco money, in vain. Mutemu Sacco sued the partnership, and got a court order to recover the money from the partnership. It attached all partnership property but failed to raise the borrowed money plus interest. The Sacco started attaching individual property of the partners but when it tried to attach one of the partners, Balulu's Mercedes Benz, he threatened to take legal action.

In another development, Mapengo, who hails from Arua was employed by Situka Ltd, a company based in Kampala city, as a machine operator, for over five years. Over the years, he was recognised as the best employee. On a sad note, he recently lost his two arms when he was operating a machine. He was hospitalised and got healed but was unable to continue working since he had no arms. Subsequently, Situka Ltd laid him off, and processed his terminal benefits. The company however, did not process his transport back to Arua because by the time he was laid off, he was not working. Mapengo is now confused.

#### **Required:**

Raise and resolve the issues involved.

**(20 marks)**

### **Question 5**

- (a) Describe the different types of agents.  
**(10 marks)**
  - (b) Explain the circumstances under which an agency may be terminated.  
**(10 marks)**
- (Total 20 marks)**

### **Question 6**

- (a) Explain the different sources of law in Uganda.  
**(12 marks)**
  - (b) Outline the main courts of Uganda in descending order of jurisdiction.  
**(8 marks)**
- (Total 20 marks)**

## TEST PAPER 19

### CPA (U) JUNE 2022

#### Question 2

Jaguza Ltd is a duly incorporated company dealing in trading of Covid-19 related products. Prior to its incorporation, Nsimbi was approached by Kiki and Ndyomu to assist with raising finances for the company's formation which he (Nsimbi) did. Later on, Nsimbi approached the company directors, seeking for an opportunity to supply Jaguza Ltd with face masks. According to Nsimbi, he was a promoter of the company and stood a better chance than the other suppliers who were competing for the same business. The directors claim to know only Kiki and Ndyomu as Jaguza Ltd's promoters, and have disregarded Nsimbi, whom they think is an opportunist.

It has also transpired that Kiki and Ndyomu are demanding to be rewarded for their contribution as well towards the promotion of Jaguza Ltd. This was after realising that the company directors had ignored everyone who took part in forming the company. Despite all attempts to explain to the directors, nothing has been done to date.

In another development, in one of the contracts made before incorporation, Siseka enterprises supplied face masks to Jaguza Ltd, where Ndyomu and Kiki pledged that payment would be effected in a month's time. They believed that the company would have been incorporated by then. It is now six months after the face masks were supplied on credit, but payment has never been effected. This was despite the fact that a week after incorporation, Jaguza Ltd had agreed to take on all contracts made on its behalf before incorporation however, the directors kept this information to themselves, so Kiki and Ndyomu knew nothing about it. Recently, Kiki and Ndyomu received demand notes for payment for the face masks supplied by Siseka enterprises to Jaguza Ltd. This prompted them to approach the directors about the demand for payment but instead the directors informed them that Jaguza Ltd was no longer dealing in Covid-19 related products.

It transpired that the directors had managed to get a resolution to stop any trading in Covid-19 related products, when they called an extra ordinary meeting, for which the members had been notified in two weeks' time. Kiki and Ndyomu are really anxious about the next step to take.

#### **Required:**

Identify the relevant issues and resolve them.

**(20 marks)**

### **Question 3**

Numbe Ltd was incorporated last year. Upon incorporation, Chico, agreed to subscribe to the company's memorandum of association. Recently, a meeting was held following a notice. When Chico came to attend, he was denied entrance, the person in charge, stated that since his name was not on the register, he was not a member and could not be part of the company meeting.

In another development, Tunda sold all his shares in Numbe Ltd to Mogo and all due action was taken, including certification. Unknown to Mogo, Tunda was still interested in the same shares, so he secretly wrote to the company stating that he had temporally given some of his shares to Mogo. When it was time to earn dividends, Tunda demanded for his dividends basing on the letter he had written, but in vain.

In another scenario, Numbe Ltd has received a notice from the registrar of companies. The registrar is seeking for an explanation as to why the company should not be fined for default in requirements concerning its members' register. According to the directors, Numbe Ltd has not defaulted since all its shareholders are duly registered, and that due notice was given to the registrar when the register was previously kept at the main office. The directors however, admit that it is now being kept safely at one of the branch office. According to the registrar, the location of the register forms part of the company's default.

In another development, Gezi, a member of Numbe Ltd, informed the directors that the company articles of association wrongly provided for calling of meeting at shorter notice than 21 days. The directors however, insist that they know what is best for the company and that there is no problem with the company articles.

#### **Required:**

Raise the relevant issues and resolve them.

**(20 marks)**

### **Question 4**

Zidobe Ltd deals in chemical and laboratory products. Two years ago, Mugu was offered a job at Zidobe Ltd however, to date he has never been given a contract spelling the terms and conditions of his appointment. According to his supervisor, unlike many people, at least he has a job.

Recently, Mugu brought the matter to the attention of the human resource department. In response, he was informed that he was lucky to be getting all entitlements including; lunch and transport allowance, a 5% payment towards the NSSF contribution, and safari day allowance for field work.

It also transpired that in December 2021, Mugu's wife, had a miscarriage and he (Mugu) was granted a 2 days unpaid leave to take care of his wife. Unfortunately, at the end of his leave, his wife's condition needed to be monitored closely for more two days. Mugu's request for more days of leave from work was totally ignored.

Last month, Mugu's left hand was injured when he was carrying boxes of chemicals to the company store. It transpired that one of the packages in the box had been damaged, and when he lifted it, its contents poured onto his hand consequently injuring it. All effort to get help or compensation from the company failed, and instead he has been asked to be more careful next time.

**Required:**

Raise the relevant issues and resolve them.

**(20 marks)**

**Question 5:**

(a) Explain the essential elements of a valid contract.

**(10 marks)**

(b) Describe circumstances that render an agreement void.

**(10 marks)**

**(Total 20 marks)**

**Question 6**

(a) Distinguish between general partnerships and limited partnerships.

**(4 marks)**

(b) Explain the basis for determining property of a partnership.

**(6 marks)**

(c) Explain the general rules which determine existence of a limited partnership.

**(10 marks)**

**(Total 20 marks)**

## TEST PAPER 20

### CPA (U) SEPTEMBER 2022

#### Question 2

Mubulu and Kawo are long-time friends, having met at Moshi University in Tanzania over 20 years ago while pursuing their undergraduate degrees. Upon their return to Uganda, they hatched an idea of forming Muka Limited. However, before it was incorporated, they approached Kulembeka Ltd, which deals in petroleum products. Kulembeka Limited supplied them with petroleum products which they sold on behalf of Muka Limited, and realised substantial profits. However, when Muka Limited was duly incorporated, Mubulu and Kawo claimed that they had not realise profit from the sale of the petroleum products. Kajanja, one of the shareholders is not happy with their actions and has approached you.

It has also transpired that the war in Ukraine coupled with other issues have had an adverse impact on Muka Limited's financial performance. Currently, the company is making losses. The directors are also trying everything within their means to address the issue of poor performance but the situation is not yet good. The shareholders are equally confused with some proposing that the company should come to an end since it cannot make profits as well as settle liabilities.

To address the situation at hand, last week, the directors of Muka Limited decided to issue shares at a discount. As a result of the discount, many people bought shares in the company. Some shareholders are not contented with the directors' resolution of issuing shares at a discount.

In another twist of events, shareholders of Muka Limited are proposing to alter some articles of association of the company. They are of the view that once they make some alterations, it may give the company an opportunity to do better. The directors are arguing that it is not legally possible to alter the articles of association.

#### **Required:**

Raise all the relevant issues and resolve them.

**(20 marks)**



### **Question 3**

Tombe Ltd (TL) deals in exporting coffee to United Arab Emirates. At incorporation, TL had thirty shareholders however, their number kept on falling. By the end of 2020, TL membership stood at three shareholders. In June, 2021, two of the shareholders also perished in a road accident. The only surviving shareholder, Kawonawo has since been running the company alone. However, he is also facing a number of challenges including; creditors threatening to attach his property on grounds that TL has failed to pay them despite several reminders.

In another development, Ndundu, a son of one the shareholders who perished in the road accident in June 2021, managed to get letters of administration to manage the estate of his deceased father, upon presenting them to the directors of Tombe Ltd to register him as a member of the company replacing his late father, they declined arguing that his father never informed them that Ndundu would be his heir.

In a twist of events, it has emerged that Bwiso subscribed and bought shares in Tombe Ltd (TL). To his dismay, the company secretary says that he is not a shareholder because his name was omitted and is not on the company register. Although he has requested the secretary several times to have his name entered on the company register, the secretary has vehemently declined to do so. Surprisingly, even Kawonawo is aware that Bwiso bought shares in TL.

On the other hand, Tombe Ltd (TL) recently appointed Musota, a lawyer by profession as a company auditor. His appointment followed his vast experience with a number of companies as a company secretary. The company directors were convinced that he would make a competent auditor. Bwiso is uncomfortable with the appointment of Musota as the company auditor.

#### **Required:**

Raise all the relevant issues and resolve them.

**(20 marks)**

### **Question 4**

Sauti, who recently qualified as a chef, approached GF Ltd which operates a number of hotels. She met one of the directors of the company who advised her to present her curriculum vitae. She was later given an interview which she passed, and was consequently offered a job as the chef. An agreement was drafted and signed by both the director and Sauti. In the agreement, there was a clause which stated that Sauti was precluded from presenting any complaint to the labour office in case of any misunderstanding between her and GF Ltd.

In another scenario, Jeresi, a front-desk manager at GF Ltd, recently gave birth to a bouncing baby. To her surprise, she was only granted 10 days of maternity leave. The directors argue that being the only front-desk manager at the company, Jeresi has to be at work most of the time.

Relatedly, Muleme, the human resource manager at GF Ltd is not satisfied with the company's decision to deny him a car. It transpired that GF Ltd gave out cars to their senior staff with the exception of Muleme. The directors argue that Muleme has a disability therefore doesn't deserve a car.

In another development, Nondo and Muleme were appointed trustees of the estate of Kundi three years ago. The trusteeship has been moving on very well until recently when Nondo succumbed to covid 19. Muleme is now confused since one of the beneficiaries, Mpuuta is threatening to sue him on ground that a sole trustee cannot manage the trustee.

**Required:**

Raise all the relevant issues and resolve them.

**(20 marks)**

**Question 5**

- (a) (i) Describe the rules that govern consideration as an essential element of a contract.

**(6 marks)**

- (ii) Explain the different remedies for breach of a contract.

**(6 marks)**

- (b) Explain the different types of agents.

**(8 marks)**

**(Total 20 marks)**

**Question 6**

- (a) (i) Explain the various ways a trust may be created.

**(4 marks)**

- (ii) Explain the duties of the trustees.

**(8 marks)**

- (b) Describe the different types of courts in Uganda starting from the lowest to the highest.

**(8 marks)**

**(Total 20 marks)**

## TEST PAPER 21

### CPA (U) DECEMBER 2022

#### Question 2

Josh and Jesh are company promoters for Josh & Jesh Ltd, a company that deals in electrical supplies. At one point, they entered into a contract with Kazimoto electricals Ltd on behalf of Josh & Jesh Ltd before it had been registered. Once Josh & Jesh Ltd was fully registered, it ratified the contract. However, to date Kazimoto Ltd is still pursuing Josh and Jesh for payment.

In another development, immediately after incorporation of Josh & Jesh Ltd, Josh conspired with one of the directors and sold his building at Buwamba trading centre to the company. The building now serves as the head office of the company. Other directors were not aware of the fact that the building belonged to Josh. During the recent audit, it was discovered that Josh had sold the said building at a high price as opposed to its market price. The other directors are contemplating suing Josh.

In another incident, Josh's wife, Vuyo, is a former managing director of Boom Ltd. Her employment contract prevented her from attempting to solicit Boom Ltd's customers in the event that she left the company. Recently, Vuyo was fired and subsequently set up a competing company that charges prices far below Boom Ltd's. Although, Boom Ltd didn't have any legal restrains upon Vuyo's company, some directors want Boom Ltd to commence legal proceedings against Vuyo.

Jane and John are shareholders in Seven Ways Ltd. The two shareholders are dissatisfied with the management of the company, and want to commence an action against five other shareholders, promoters and directors of the company. Jane and John claim that the other 5 shareholders sold their own property to the company at an exorbitant price, and then improperly mortgaged it. They are before you.

#### **Required:**

Raise and resolve the relevant issues.

**(20 marks)**

### **Question 3**

Mumbe works with Kombe Ltd as the company secretary. On 1 January 2022, Bob, the managing director instructed him (Mumbe) to prepare a notice inviting the shareholders for the annual general meeting. Mumbe declined to prepare the notice, as he considered it outside his scope of duty.

In another development, Bob's first born, Chris is 17 years old, and currently pursuing a bachelor of Laws degree. At one moment, Chris was allowed to attend the directors meeting and was given an opportunity to speak. He spoke very well and challenged the entire board. At the end of the meeting, all the directors except Bob unanimously agreed to appoint him as one of the directors.

Maki is a certified public accountant working as the chief accountant at Kombe Ltd. He also runs Uki & Associates, a certified audit firm. When the company called for proposals for audit services, Uki & Associates applied and it was the successful bidder. The firm carried out the audit, but it transpired that some of the shareholders rejected the audited report.

It transpired that, Kimera & Associates, was later appointed as the company's auditor. The firm carried out an audit and the audited report was presented to CCB bank Ltd for a loan. The bank granted the loan, but the company defaulted in repayments. The bank later discovered that most of the assets in the statements contained in the audited report were fictitious. Kombe Ltd insists that the company auditor is to blame.

#### **Required:**

Raise and resolve the relevant issues.

**(20 marks)**

### **Question 4**

Brenda and Oliver trade as Bikadde partners, a partnership, which deals in the selling and buying of scrap metals in Kamwe district. At one point, the two had accumulated huge debts that forced them to search for another partner. They approached Kyali, a very rich business man in the area. Kyali accepted on condition that, he would be made managing partner, to which they agreed. One month later, Kyali received a demand notice of Shs 5 million in respect of a loan obtained by the partnership two years before he joined. Brenda insists that Kyali, as managing partner, must contribute towards the loan repayment.

In another scenario, Brenda has been denied access to the partnership books of accounts. Brenda however, insists that she has a right to access the firm accounts, to find out how the firm is operating.

In yet another scenario, Oliver wrote to her fellow partners informing them that, she intends to call for dissolution of the partnership. However, the firm's agreement provided that the partnership would only be terminated by mutual arrangement. Brenda and Kyali are opposed to Oliver's decision.

In a different scenario, Mate and Kate have been the trustees of Kato's estate. Unfortunately, Mate died in a car accident while traveling from the estate's farm in Kiboga. Kate is now occupying the office alone. One of the beneficiaries has written to Kate, asking her to leave the office and to vest the estate to all the beneficiaries.

**Required:**

Raise and resolve the relevant issues.

**(20 marks)**

**Question 5**

(i) Distinguish between a void contract and a voidable contract.

**(8 marks)**

(ii) Explain the different ways in which a contract may be discharged.

**(8 marks)**

(iii) Explain the different remedies available for breach of a contract.

**(8 marks)**

**(Total 20 marks)**

**Question 6**

(i) Describe the different types of courts in Uganda in descending hierarchy.

**(10 marks)**

(ii) Explain the different sources of law in Uganda.

**(10 marks)**

**(Total 20 marks)**

## TEST PAPER 22

### CPA (U) MAY 2023

#### **Question 2**

Kirimutu, a businessman based in Gulu city wishes to start a business with his wife and sons together as a registered entity. He also wishes that his business should be one where he is not liable for any eventuality that may occur. He desperately needs your professional advise on the best business entity he can opt for to cater for his wish.

In related development, Katakū, a businessman in Kidawalime town also wishes to form a company, consequently he consulted a lawyers. Upon consultation, he was advised that, he may mobilise other people and form a company. Katakū heeded the lawyer's advise. He asked his wife and his brothers to join him and register a company. In total, he managed to mobilise six other people. They agreed to register and thereafter incorporated a company called Katakū Enterprises Ltd. The company dealt in hides and skins, and the business was booming. However, the business was greatly affected by the low sales during the Covid 19 pandemic, and eventually it collapsed just after the covid restrictions were lifted however, one of the suppliers, of hides and skins threatened to sue Katakū personally over non-payment for the hides and skins supplied.

In another scenario, shareholders of Kabaya Ltd tasked the directors of the company to declare dividends. The directors informed the shareholders that there were no profits realised and therefore no dividends could be declared for that year. One member, who claimed to be an expert in managing businesses informed other members that, the company had a lot of money in form of capital, and therefore there was no reason why dividends could not be declared. The members are now up in arms against the directors.

In another development, some members of Kabaya Ltd recently found out that the directors had been secretly taking out money from the company for their personal gains. They consequently approached Mudoki, who claimed to be lawyer over the matter. He informed them that, it was difficult for members to sue the directors. He said that it is only the company with powers to sue directors. The shareholders are now in a dilemma.

#### **Required:**

Identify all relevant issues and resolve them.

**(20 marks)**

### **Question 3**

Ndeku was one of the partners in Ndeku and Co. Advocates. However, he had some misunderstandings with other members forcing him to retire, and thus opting to join another firm of advocates in town. After he left Ndeku and Co. Advocates, he was served with a demand note from Kyepere. Kyepere was demanding for payment for supplies that were recently delivered to the firm. Ndeku is furious and has vowed not to make any payments since he is no longer a partner in Ndeku and Co. Advocates.

In another scenario, Munaku is seeking advise from you, the subject being security of his family properties. He informs you that he has properties in different parts of Uganda but fears that in case of any eventuality, him (Munaku) and his family are likely to lose the properties. He now wants to secure the properties after being briefed about trusts by his longtime friend. He is seeking for your advise.

In another development, Mulife was running from a stray dog and decided to seek refuge in the nearby factory. However, as he (Mulife) approached the factory gate, he stepped in liquid soap that had been poured at the gate by one of the workers and slid. Unfortunately, his right leg got broken and it was later amputated. Mulife is now contemplating suing the factory.

In another scenario, Mudogo aged 16 years requested for a loan from Kafuna to buy text books and a school uniform. Being muscular, Kafuna imagined he (Mudogo) was about twenty years old. He then extended the loan. They agreed that he (Mudogo) would repay the loan within two weeks. Two weeks elapsed, to his surprise, Mudogo did not seem to be bothered. Kafuna is now contemplating suing Mudogo.

#### **Required:**

Raise the relevant issues and resolve them.

**(20 marks)**

### **Question 4**

Doka Cooperative Society was formed and registered in Kamuli District. Its membership comprises of residents of Kamuli District and its surroundings. Doka Cooperative Society is the pride of Kamuli district and everyone (young and old) wishes to be associate with it. At one point, Bulu aged 16, approached the officials of Doka Cooperative Society to be registered as a member as well. Being a son of a rich politician in Jinja, he was immediately registered. Some members are not comfortable about his admission, and have started harassing him on grounds that that he is a minor, and therefore not eligible to be a member. They are also contemplating court action against him and the directors.



In another scenario, the late Lubungo had worked for Kamani tea factory, for over fifteen years as a machine operator. On day, thugs attacked him at the gate of the factory as he was leaving for home at 10.00 p.m. The thugs manhandled him and demanded for money, and since he had no money, they clobbered him and left him unconscious. He was found dead in the morning by the other workers who were reporting for duty at the factory.

The workers reported the matter to the factory manager. The manager called Lubungo's next of kin, to take the body for burial. The next of kin asked the manager for money to take the body for burial for which the manager declined. Efforts to access his arrears for one month were also futile. The manager argued that it was pointless to release any money because Lubungo was already dead.

In another development Garama and Mubata made a sale agreement. In the agreement, it was agreed that Garama would go to Masaka, buy matooke and supply it to Mubata in Kampala. Business went on well until one day, when a truck that was carrying matooke developed a mechanical problem on Masaka road. It took a week to get the spare parts for the truck. All the matooke on board got rotten. However, Garama is demanding for money from Mubata, in accordance with the sale agreement. Mubata on the other hand has ignored Garama's demands.

**Required:**

Raise the relevant issues and resolve them.

**(20 marks)**

**Question 5**

(a) Explain the:

(i) rights of a member of a cooperative society.

**(6 marks)**

(ii) obligations of a member of a cooperative society.

**(6 marks)**

(b) Explain the instances when an agency relationship may be terminated by operation of the law, under the Contracts Act, 2010.

**(8 marks)**

**(Total 20 marks)**

**Question 6**

- (a) Describe the rules that must be followed in order for an offer to be considered valid

**(14 marks)**

- (b) Write short notes on Uganda courts of record starting from the highest to the lowest in jurisdiction.

**(6 marks)**

**(Total 20 marks)**

## TEST PAPER 23

### CPA (U) AUGUST 2023

#### Question 2

Nisefu Ltd is a company that has carried on business for more than two years now. Some of its shares of a particular class have been issued and recently, the directors decided to issue all remaining shares at a discount. In order to avoid wasting time, the directors passed a resolution in one of their meetings to implement the issuing of shares at a discount. They later on informed all members in a general meeting that the resolution was ready to be presented in court for sanctioning. This did not go well with one of the members called Mugezi, who had the opinion that the directors had not properly come to such a decision. He was told that since the directors were managers of the company, they had a right to do what was best for it. Mugezi doubts the sincerity of the directors and seeks your advice.

In another incident, Musigire who was a personal representative of Ruga's estate sold some of the late Ruga's shares to Zange, who was also a member of the company. This did not go well with some directors, who informed Zange that they would never allow such a transfer made by Musigire, a non- member of the company. Zange and Musigire have vowed to get to the bottom of the matter and are now set to go ahead, despite the directors' threat.

In the general meeting, some of the member issues were presented and a discussion was made. During the member discussions, Bamo also indicated that he wanted to contribute to the discussion. Bamo was representing one member who had given him the right to do all that was lawful to do as a representative. Bamo was however, stopped from giving his views, on the ground that he was not a member of Nisefu Ltd. He was advised to listen to what was discussed, so that he could report back to the member he represented.

When other members observed the trend of events, they too were not happy with what was going on. A few of them decided to apply to the registrar of companies for assistance, making known their grievances. In response, the registrar appointed an inspector to find out if company affairs were carried out in a satisfactory manner. The inspector made inquiries and among other things, presented to the members who had applied for inspection a document that outlined all expected expenses for the inspection. The members paid expenses but

later on demanded for a refund from the company. The directors ignored their demand, and insisted that the company would not pay unnecessary money spent by members who failed to understand company matters.

**Required:**

Identify the relevant issues and resolve them.

**(20 marks)**

**Question 3**

Nkola partnership carries out a business of buying and selling plots of land among other things and its business has thrived over time. All partners are always involved in getting different plots for sale as well as getting buyers for the plots. It happened that one time, Buloka who was a very active partner, entered onto a vacant plot of land that belonged to Wange. Wange who had brought an engineer to inspect the land, found Buloka moving around his plot. On inquiry about what he was doing, Buloka said that when he saw the vacant land, he got interested in it and was taking a closer look at it. Wange was not convinced with Buloka's response and is determined to enforce his rights. Advise him.

In another scenario, Buloka's 14 year old boy was playing in the compound where Nkola partnership office was located. The boy enjoyed riding bicycles and when he got a bicycle from the office, he went riding round the compound. His father cautioned him not to go riding outside the office. It so happened that the boy decided to venture outside the gate and continued riding down the road. As he turned one corner, he failed to control the bicycle and fell off and rolled into an excavation of Muzimbi's neighbouring area. The excavation had been done in preparation of construction of a four-level building. The boy got injured and Buloka is now preparing to sue Muzimbi for leaving his land unattended to, despite the risks likely to occur. Muzimbi also insists that Buloka's boy should have acted more responsibly.

In a related development, Kasobeza, who was one of the partners of Nkola partnership got involved in a business deal which had nothing to do with the partnership business. It was a side deal where he was assisting his friend Bingi. While taking property to Bingi's home, he was stopped by the police who checked what he was carrying and immediately arrested him for stealing property.

Unknown to Kasobeza, Bingi was involved in a robbery and had stolen some property, which he requested Kasobeza to take for him. Unfortunately before the case had commenced, Kasobeza died. When news got round social media, the

other partners apart from Tembu wanted to disassociate themselves from the partnership, and, to the disappointment of Tembu, they have suggested its dissolution.

In a different scenario, Bingi was a trustee for Lukadde's estate in a company that carried out a thriving business in town. Following his arrest and the charge in court, he was convicted of robbery and sentenced to imprisonment for three years. The beneficiaries of Lukadde's estate have requested the directors to let them have another trustee. The company directors have been working well with Bingi and are hesitant to do what the beneficiaries had requested. They are of the view that Bingi will appeal against the sentence to be reversed, so that he can be able to carry out his duties. However, the beneficiaries have decided to approach you for advice.

**Required:**

Identify the relevant issues and resolve them.

**(20 marks)**

**Question 4**

Bakozi Cooperative Society has been in existence for several years, carrying out business in the buying and selling of farming tools and equipment. Its business has thrived over the years. A general meeting was called for this year where, among other things, a dividend payment was to be announced. Prior to the announcement of dividends, Tagaba who is a member, requested the society managers to inform members about the society documents sent and received from the registrar of Cooperative Societies. The managers informed members that the society's balance sheet had been duly lodged with the registrar, but that since the registrar's office takes time to provide responses, the society can go ahead with its business as usual. A dividend payment was thereafter announced, but Tagaba remained concerned about the directors' way of conducting business. He seeks your advice.

In another scenario, Nsonga who is an employee of Bakozi Cooperative Society is not happy with the turn of events at the workplace. He has just discovered that overtime, his fellow workmates had the same political opinion but he was of a different political opinion. In some instances, the society provided for allowances which were given to all employees who affiliated to the famous political opinion.

He always lost out on extra allowances for this reason. When he inquired about his missing out on allowances, he was informed, that he would only get when he assures the society about his support to the famous political opinion. Nsonga is not willing to be arm-twisted but needs the extra money given to others. He has decided to find out the best way forward for his situation.

In yet another scenario, Bakozi Cooperative Society was faced with a challenge of having agreed to sell farm tools on credit to Mufupi, who had assured the society about his ability to pay for the tools in a month's time. On the day that Mufupi came to collect the tools from the society's stores, the society's credit manager got information that Mufupi had been sued in court for bankruptcy. The credit manager immediately gave an order to his junior officer to go and reclaim the goods from Mufupi. When Mufupi had driven for two miles, he was stopped by the society vehicle and all the farm tools he was carrying were taken and brought back to the society's stores. Mufupi was enraged at what had just happened, and vowed to sue Bakozi Cooperative Society.

In a similar development, Bakozi Cooperative Society was also involved in another business hitch with Tool Masters Ltd, where it had entered into an agreement to buy equipment worth shs. 6 million. According to the agreement, Tool Masters had to deliver the equipment to the society's stores in four days, and upon delivery, the society was to make full payment for the equipment. At the time of the agreement, that type of equipment was scarce. Two days later, the society got another supplier at a more affordable price. On the third day, Tool Masters Ltd delivered the equipment as agreed. The store manager made further inquiries before receiving the equipment and he was instructed not to receive the equipment. A heated argument and explanations by Tool Masters Ltd.'s representative for acknowledgement of receipt and payment for the equipment were in vain. Tool masters is threatening to sue Bakozi Cooperative Society and has come to you for advise.

**Required:**

Identify all the relevant issues and resolve them.

**(20 marks)**

### **Question 5**

- (a) Briefly explain the meaning of the following:
- (i) General acceptance of a bill of exchange.
  - (ii) Qualified acceptance of a bill of exchange.
  - (iii) Negotiation of bill of exchange;
  - (iv) Restrictive endorsement of a bill of exchange;
  - (v) Discharge of an instrument for a bill of exchange.
- (10 marks)**
- (b) Explain the circumstances under which an agent may be held personally liable to third parties.

**(10 marks)**

**(Total 20 marks)**

### **Question 6**

- (a) In the event that a party to a contract does not fulfill his/her obligations, describe the different possible consequences.
- (10 marks)**
- (b) It is sometimes not easy to know what amounts to civil law or criminal law. Explain the different ways in which this can be done.

**(10 marks)**

**(Total 20 marks)**



## **TEST PAPER 24**

### **CPA (U) NOVEMBER 2023**

#### **Question 2**

Funga Ltd was recently incorporated and granted a certificate of incorporation. Prior to its incorporation, Mbazi supported all Funga Ltd's efforts and objectives. At one point, he signed a contract with Treasure Plans Ltd for a business deal on behalf of Funga Ltd. Upon incorporation, the company adopted all the contracts made on its behalf. However, when Treasure Plans Ltd approached the directors of Funga Ltd for the fulfillment of its obligations, the company declined, and argued that the company had nothing to do with that contract.

In a similar scenario, Mbazi had also entered into a business contract with Kiwani Ltd on behalf of Funga Ltd prior to its incorporation. The contract provided that any party that pulled out of the contract before its performance would compensate the other party for any loss incurred. After incorporation, Funga Ltd disassociated itself from the contract. Kiwani Ltd presented their concern and a demand note to Funga Ltd, claiming that they had suffered business losses. Funga Ltd instead referred Kiwani Ltd's demands to Mbazi.

In another scenario, Tunza to whom shares of a late member of Funga Ltd had been transmitted is not pleased with the way company affairs were being conducted. He was often denied the right to carry out different tasks. He later got to know that some other members of the company who had bought shares were treated in a similar or even worse, way. Despite all requests made for consideration, he got no positive response. The unhappy members have now approached you for advice.

In another twist of events, Bala, a member of Funga Ltd, who is an accountant by profession also inquired about the company auditor's absence in a recent general meeting. The response he got from the directors was that it was not very necessary for the auditor to attend the meeting since they (directors) had all the audit information, which they intended to give to the members. Bala and other members were dissatisfied with this explanation.

#### **Required:**

Raise all the relevant issues and resolve them.

### **Question 3**

Byonna firm is a partnership that has been operating well for the last three years. Recently, its members started complaining about what was happening in the firm. Yanga who was admitted to the firm two years ago when he was 16 years old, has now been notified about contributing towards the firm's obligations. Despite the fact that Yanga has been benefitting from the firm, he thinks that the notification has come too soon. Yanga enjoys the privilege of being a partner and has no plans to retire from the firm.

In another incident, Mubuya who was one of the partners who usually markets the firm's products, delivered less than the purchased products to Ntunda Ltd. When Ntunda Ltd complained, verification from the firm store revealed that Mubuya took products for customers, but he however delivered less products to Ntunda Ltd. As a result, Ntunda Ltd. incurred loss when it was penalized for not providing its customers with the agreed number of products. Ntunda Ltd now demands compensation from Byonna firm, but other partners are against paying for the loss caused by Mubuya. Mubuya is seeking for your advice.

In a different scenario, Mubuya's son, Dalu, hit and injured the eye of the son of Mubuya's neighbour. It happened that a group of children were playing with pieces of wood in the compound. Dalu was standing nearby but not playing with the group, but when a piece of wood thrown by the neighbour's son hit his leg, Dalu got it and threw it back, thereby hitting and injuring the boy's eye. The boy's father wants to sue and claim damages for the injury caused to his son, but Mubuya insists that his son should not be blamed since the boys were all aware of the likely danger out of their playing.

In another scenario, Mubuya and his siblings are in a challenging situation, concerning the estate of their late father. Tifu is the trustee for the estate and in his appointment, provisions included ability to take or do any reasonable action to maintain properties for the beneficiaries. Some siblings have learnt about the sale of one property which they think is not right. Tifu's explanation about the need for finances to upgrade all other properties fell on deaf ears.

#### **Required:**

Identify the relevant issues and resolve them.

#### **Question 4**

Tukola cooperative society was registered to carry out retail business, among other things. Business went on well with only a few challenges to handle. One of the issues concerned Mputu, who has to-date refused to meet the required society payments, including the subscription fee. As a result, Mputu is often prevented from exercising member rights, and this annoys him. He is now determined to do anything possible in order to fight for his rights.

In one of the meetings held by the society, members voted for some vacant positions in the society. However, not everything went well when votes for one position tied for two candidates, Jogo who is one of the society directors declared that he would take another vote so that only one member got higher number of votes. He did so and the member he voted for the second time was declared as the one to take up that position. Other members disagreed with this and intend to dispute it in court.

In a different scenario, the society had contracted Tenters Ltd for the provision of tents during an event that the society carried out. Tenters Ltd provided tents for the society which proved to be bad, since they leaked when it rained. Complaints made to Tenters Ltd yielded no positive response since Tenters Ltd argued that the tents which the society requested for the event were provided. The society intends to take action against Tenters Ltd.

The society employees also had issues relating to the society policies. In that respect, Kijana who works for the society was provided with a society house for accommodation. There was a provision to this effect in the employment contract that Kijana signed. He, however, got to know from the Human Resource officer about some monthly salary cuts which were explained to be a contribution towards his accommodation. Kijana was not happy about this, since he thought that the accommodation was provided without requirement for any payment.

#### **Required:**

Raise all the relevant issues and resolve them.

### **Question 5**

(a) Explain the following terms in accordance with the Bills of Exchange Act, 2000:

- (i) A bill payable to bearer.
- (ii) A bill payable to order.
- (iii) A Bill payable on demand.
- (iv) A bill payable at future time.

**(8 marks)**

(b) Explain the duties of an agent to the principal.

**(12 marks)**

**(Total 20 marks)**

### **Question 6**

(a) Describe the different sources of law in Uganda.

**(12 marks)**

(b) Explain the rules governing consideration under the law of contract.

**(8 marks)**

**(Total 20 marks)**

## **TEST PAPER 25**

### **CPA (U) MAY 2024**

#### **Question 2**

Kaki Ltd is a duly incorporated private limited company. The company has been registering steady growth over the years until recently when it started facing some challenges. At one point, Kitwe, a majority shareholder instructed Moga, one of the directors, to remit to him monthly airtime allowance for which he (Moga) vehemently declined. A furious Kitwe thereafter managed to convince other shareholders, and Moga was dismissed with immediate effect.

In another scenario, Kitwe's first born, Kato, graduated with a first-class degree in education, majoring in English. Soon after his (Kato's) graduation party, Kitwe called for a shareholders' meeting to discuss ways in which Kaki Ltd could be rebranded. During the meeting, Kitwe successfully convinced all members with exception of Tekisoboka, that Kato was competent enough to occupy the office of secretary, and was subsequently appointed. Tekisoboka has since then been unhappy with the way affairs of the company are being run, and has approached you for advice.

In another scenario, DB Ltd acquired shares in Kaki Ltd in 2021, and appointed Bukenya as its representative in any transaction with Kaki Ltd. During the 2022 annual general meeting, Bukenya presented to Kaki Ltd members some concerns of DB Ltd, however, members interjected his submission, arguing that a 'mere person' can't submit on behalf of DB Ltd in any of Kaki Ltd's meeting. They even went ahead and ordered security personnel to escort him out of the meeting.

Another scenario concerned Sekifere & Co, who have been Kaki Ltd's auditor for 2 years. The auditor's unqualified report of 2022 was presented to the directors and they signed it. However, the auditor concealed the fact that the assets of the company had been over stated by Shs 3 billion, in the statement of financial position. The report was relied upon by a one Patel, who invested Shs 200 million in the company. Three months later, the company was under receivership, and that is when Patel discovered that the assets had been overstated. Patel is furious and he intends to sue the company.

#### **Required:**

Raise all the relevant issues and resolve them.

### **Question 3**

Buju and Picho are twin brothers as well as partners in Bucho firm. The firm deals in provision of legal services. Recently, the firm successfully represented Kamu and won the case in the commercial court, and Kamu paid Shs 400 million as legal fees. Picho was the lead counsel in the case while Buju was representing other clients of the firm. Although, the two always share the losses and profit equally, Picho wants to pay himself monthly remuneration of Shs 4 million because of his tremendous contribution to Bucho firm.

In another scenario, Buju and Picho agreed to bring on board their wives and children as new partners of the firm. They all agreed that the firm's name should not be changed because they were one family. At the time of entry, the new partners found the firm owing a debt of Shs 20 million, payment for which was being demanded by Kibusu Financial Services. The loan had been acquired to buy the firm's vehicle. Buju asked the new partners to contribute towards paying the debt since they all use the firm's vehicle. His wife, Bena however declined to contribute towards the debt payment.

It has also transpired that, Kwazi has been the sole trustee of the estate of the late Lante. In January 2022, he (Kwazi) left Uganda in search for greener pastures in China, where he was employed as a mathematics teacher in Chungulu primary school. In February 2023, Mesa, one of the sons of the late Lante, successfully petitioned court to remove Kwazi from the office of the trustee and court consequently appointed Amo as the new trustee. In March 2023, Kwazi returned to Uganda, and on discovering that his office was being occupied by another person, he expressed intention to sue him.

In another development, Kwazi's dog together with his neighbour's recently attacked Amo's sheep which was grazing nearby his (Amo's) home. Amo then sent a notice of intention to sue Kwazi and his neighbour as well. However, Kwazi was not contented, he felt that Amo was just trying to cover up his wrongdoing concerning the estate of the late Lante, and proposed that his neighbour alone be held liable for damages incurred. Kwazi's neighbour, on the other hand was only willing to meet part of the payment for the damages.

#### **Required:**

Raise all the relevant issues and resolve them.

#### Questions 4

Gom Cooperative is a duly registered cooperative society dealing in the supply of fertilizers among other products to its members. Gom Cooperative has 30 members, including Ndakwe. The society recently called for an annual general meeting to appoint an auditor and Secretary but Ndakwe was not invited because he was out of the country. However, he managed to return on the day of the meeting. He then went to the head office and found that members were about to start the meeting. When he made it to the meeting hall, he was ordered to vacate because he had not been invited for the meeting. Ndakwe is aggrieved about this un fair treatment

In a related development, Ndakwe's son, Roku passed all the required interviews for the post of accountant with Gom Cooperative. He was given a 5-year employment contract, commencing on 1 July 2022. To date, Roku has been reporting to work as per the contract but he has never been assigned any duty, and his salary has never been paid on time and he has approached you for advise.

In another scenario, Ndakwe agreed to purchase materials from Ngoye Ltd which he expected to sell before the Easter holidays. He then made a part payment for them. However, when he went to collect the materials from Ngoye Ltd, he was informed that Haji Mafuta had already taken them because he had also placed an order for the same materials. Ndakwe feels cheated.

In another development, Gom Cooperative received a sample of a new Chinese type of fertilizer from Lee Ltd in December 2022. It then ordered for 100 bags and paid 50% of the purchase price. In February 2023, the fertilizers were delivered but when they were tested and compared with the sample, there was a difference in the colour and smell. Gom Cooperative rejected the delivery, and intends to sue Lee Ltd.

#### Required:

Raise all the relevant issues and resolve them.

**(20 marks)**

#### Questions 5

(a) Explain the different parties to a bill of exchange.

**(10 marks)**

(b) Explain the duties of an agent to the principal.

**(10 marks)**

**(Total 20 marks)**

### **Questions 6**

- (a) Discuss the factors that can vitiate a contract.  
**(10 marks)**
- (b) Describe five different types of courts in Uganda, starting from that of highest jurisdiction.  
**(10 marks)**

**(Total 20 marks)**



**TEST PAPER 26**  
**CPA (U) AUGUST 2024**

## SECTION B

*Attempt four of the five questions in this Section*

### Question 2

Kingo Ltd is a fully incorporated company, dealing in the manufacture of small industrial tools in the urban center. Over time, its customer base has grown in leaps and bounds. A number of their customers were based in a semi-urban area called Bifuna municipality. A small manufacturing base has already been set up in the municipality, to serve the small-scale development businesses in all the surrounding parishes. During the next general meeting, the directors intend to have a duly passed resolution to alter the Memorandum of Association, so that a sizeable company hub is located in Bifuna municipality to include the company headquarters. Wakana, a member who lives near the current headquarters, vehemently protested the move, as it may result in acting against the registered state of operation of the company. He has made his concerns known to the directors but they have ignored his protest. He has approached you for advice.

In another development, the company's Memorandum of Association provided for 1,500 shares of Kingo Ltd. In their meetings, the directors decided to have only 1,200 company shares, by canceling 300 shares that have so far not been taken by anyone. Since there are many redundant shares, it is another matter that they intend to table before the general meeting. When some members scrutinized the company's Articles of Association, they found that it lacked any specific reference towards matters concerning such changes in the conditions of the Memorandum of Association. Some company members think that this change is not necessary and therefore not allowed, as it would impact negatively on the company.

In another twist of events, the directors of Kingo Ltd have, in the alternative of canceling some shares, reduced the share capital of the company to diminish the liability for the unpaid share capital. They are of the view that once a confirming order is secured from the court, it would be easy to reduce the share capital in a legally acceptable manner and pave the way for better management of the company. Some company creditors whose claims are almost due are against this decision. They let their objection known to the directors, whose response was that they should not be agitated over a matter that can easily be resolved.



In another development, some shareholders of Kingo Ltd are not happy with the performance of the company. Buuza has now determined to do his quiet investigations. In his first move, he requested the Secretary for minutes of proceedings of the previous general meeting but was informed that the directors must first provide for the charge he has to pay before accessing the minutes. His angry insistence about his rights as a member was all in vain. Advise Buuza on how he may proceed.

**Required:**

Identify all the relevant issues and resolve them.

**Total 20 marks**

**Question 3**

Nsonga partnership firm was established to deal in the business of buying and selling medical equipment and tools. Its deed provides for the continuation of the partnership even when any partner dies or becomes bankrupt.

In the last two years, the firm's business boomed as a result of the high demand for the products it sold during the COVID-19 and Ebola outbreaks in the country. The firm got loans to cover the high demand. However, during the Ebola outbreak, one of the partners Yosef also succumbed to the Ebola disease and died. After Yosef's death, the firm was earmarked to be a good supplier of equipment and tools, so it borrowed more money from Pesa Lenders, to be repaid within six months, after making sales. However, since the Ebola virus is no more, the firm makes less profits and has failed to pay the debt. Pesa Lenders has sent a demand note to the firm, addressed to all known partners, including Yosef. Yosef's wife was informed by the firm but she protested to no avail, since all partners were told to pay.

Yosef had left a Will before he died, where he had appointed Tambula as a trustee for his children, to manage any benefits accruing from the firm and any other income from the business concerns he left behind. Tambula has now made known to the firm that he intends to travel in two days' time and will be outside the country for 3 months. He granted a power of attorney to Musigire, to handle all matters of the trust. Musigire carried out his tasks so well that when Tambula returned, the partners continued working with Musigire instead of Tambula. Tambula seeks your advice.



In another scenario, Gongo, an active partner in getting business for the firm entered into an understanding with Muyambi, to get a supplier of medical syringes for the firm. Muyambi got Kiki Enterprises, whose price for the syringes was affordable. The firm bought syringes worth Shs.3 million, through a transaction made by Muyambi with Kiki Enterprises and made a part-payment of Shs.1 million. Since then, no more payment has been made and Kiki Enterprises is demanding payment from Muyambi. Muyambi forwarded the demand note to Gongo, who in turn presented it to the firm. However, other partners are of the view that Muyambi is not a partner and the firm cannot pay debts that were not incurred by partners.

In another development, the firm's truck driver got involved in an accident when the truck slipped into a river that had burst its banks in the eastern part of the country, but the driver escaped without any serious injury. Unfortunately, the driver had given a lift to Lugendo, whom he had found stuck on the road. When they got to the swollen river that had spread to the road, the driver hesitated to drive through it but Lugendo insisted that they try since they were in a big truck. Lugendo died and his body was found the next day. The firm is now faced with a case where Lugendo's family intends to sue the firm and its driver for the liability.

**Required:**

Identify all relevant issues and resolve them.

**(Total 20 marks)**

**Question 4**

Kwesiga Cooperative Society was registered two years ago and started carrying on business. The society's head office was in the city center but it soon faced challenges of hiked rental costs. In one meeting early last year, a member suggested to change the headquarters to a more affordable area and Tawuni municipality which was near the city was agreed upon as the best choice. The society office was moved and business stabilized. A year has since passed after moving to Tawuni municipality and Pindo who is one of the members is concerned about the society's communication about the new address to the registrar of cooperative societies. He was informed by a colleague that the society was not doing things right. However, when he inquired from the management team, they laughed at him, saying that he should mind his other business. He is now before you for advice.



In another scenario, most employees of Nkwesiga Bank subscribed to a labour union for the purpose of saving for their future social security, among other reasons. However, Mukozi refused to join the union. His reasons for refusal included the stories he had heard about corruption and mismanagement of the savers' funds, as well as the mandatory amount of money deducted from salaries, to contribute to the fund. Mukozi ignored all efforts made by the bank to persuade him to join the union. One day, Mukozi was given a letter dismissing him from working with the bank, due to his failure to comply with workers' conditions of employment. His dismissal followed a disciplinary committee session where his arguments were not given the deserved attention. Advise Mukozi on what he should do.

In a different twist of events, Gamba entered into a business agreement with Diluz Enterprise to supply him with hand-washing machines, which he would resale to his customers. Diluz Enterprise was a bulk seller of different types of hand washing machines, it agreed with Gamba that he would receive good machines and then make full payment. When the driver of Diluz Enterprise delivered the machines, Gamba refused to pay. His reason was that the hand-washing machines which were brought did not match with the type demanded by his customers. Diluz Enterprise thought that since the machines had been delivered, Gamba had to fulfill his part of the agreement.

In another development, Gamba agreed to sell glass materials to Fandi, which Fandi used as a raw material to produce various products. After packing and handing them to the transporter, Gamba informed Fandi that his goods were on the way to the agreed destination. Unfortunately, there was a small accident on the way and the glass materials were damaged when they were being taken to the destination. Fandi refused to pay for the glass materials because he was not supposed to pay for any mishaps on the way. According to him, he had to receive materials that he could use, not the damaged materials that Gamba sent.

**Required:**

Raise all the relevant issues and resolve them.

**(Total 20 marks)**

**Question 5**

- (a) Briefly explain the different ways of endorsing a cheque. **(8 marks)**
- (b) Describe the different types of agents. **(12 marks)**
- Total 20 marks**

**Question 6**

- (a) Explain the rules of consideration as provided for in the law of contract. **(10 marks)**
- (b) Discuss the different sources of law in Uganda. **(10 marks)**
- (Total 20 marks)**



**TEST PAPER 27**  
**CPA (U) DECEMBER 2024**



## SECTION B

*Attempt four of the five questions in this Section*

### Question 2

Bana, Malevu, Nali and Hinda incorporated Zizo Ltd in 2006. They all subscribed to the Memorandum and Articles of Association and each was allotted 25 shares at Shs 10,000 per share. Bana, Nali and Malevu fully paid for their shares. The company directors have on several occasions held meetings excluding Hinda, on grounds that he had not paid up for the shares allotted to him and, thus, was not considered a member who could attend meetings. Hinda insists that he is entitled to attend meetings and other company activities.

In another incident, some members were concerned at the general meeting this year when Kambura Associates (auditors of Zizo Ltd) did not present a report on the company's accounts. However, the directors and some members think that an audit report on the company's accounts would waste time and resources, especially because the company is doing well financially.

Bana and other members think that the company is not managed well. They are not aware of audit information and feel that the company affairs are not focused to a positive outcome. Bana and the other members intend to seek the Registrar of companies' intervention on the matter, as a way forward.

### Required:

Raise the relevant issues and resolve them.

**(20 marks)**

### Question 3

Bayoko appointed his long-time friend Zaviyo as a trustee of his property for the benefit of his children and wives, upon his death. After some time, Bayoko died and Zaviyo took over management of the estate, in trust for Bayoko's children and wives. RIV Holdings, a telecommunication company, floated its shares and Zaviyo bought 3,000 shares using the trust money. This development did not go down well with the late Bayoko's first wife and her children. They are proposing the removal of Zaviyo as a trustee of Bayoko's estate.

In another development, Zaviyo's three sons (Tadi, Mito and Jono) are partners in Tripple Enterprises, which deals in pharmaceutical products. Jono was tasked to buy pharmaceutical products for the firm. Unknown to Tadi and Mito, Jono



sold the pharmaceutical products to his Somali friend and made profits. He, however, later replaced the pharmaceutical products after the sale. Tadi and Mito later discovered the payment receipts for Jono's transaction with the Somali and they are furious and thus want Jono to bring all the profit he had made.

Following the Somali incident, Tripple Enterprises was dissolved. Thereafter, Mito partnered with their sister Rau and formed Betta firm, which deals in stationery. They are both involved in the day-to-day management of the firm. One time, Rau purchased firm goods on credit from Nim traders and agreed to pay at the end of the month. However, two months have elapsed since then without payment. When the manager of Nim Traders recently visited the firm offices on Wakanda Street to demand payment, Mito informed him that he was not aware of any credit supplies made to the firm and that they (Nim Traders) were making demands from the wrong person.

In another scenario, at about 4:00 p.m. on one day, Ojo, a driver of Kakuzi Ltd was on his way to deliver flowers to one of the company's flower outlets but deviated from his usual route. He passed by his home to check on his young son, who was sick. On the way from his home, Ojo collided with Koma's motor vehicle. Koma reported to Kakuzi Ltd seeking funds to repair his vehicle but the Managing Director advised him to trace for Ojo on the grounds that the accident was caused by Ojo when he deviated from the usual route.

**Required:**

Raise all relevant issues and resolve them.

**(20 marks)**

**Question 4**

Tuziba entered into a contract with Wulia on behalf of the Zabu Corporative Society (the Society), which was yet to be registered, to supply sundries. Tuziba entered into the contract believing that he was contracting with the Society. After registration, Tuziba issued a demand note to the executive committee of the Society but it did not pay because the Society was struggling financially. Tuziba is now demanding payment from Wulia.

In another development, Wulia and her husband started a tour company and planned to purchase three motor vehicles for the business. They consulted Rufu, a car dealer, to get vehicles which were ideal for touring. Rufu recommended the "Jeep Wrangler" type of vehicle. Wulia and her husband followed the advice and bought two Jeep Wranglers from Rufu. The written contract disclaimed any



“guarantee or warranty, statutory or otherwise” on the part of Rufu. Shortly after the purchase, the cars proved to be unsuitable for touring. Wulia and her husband have now returned the two vehicles to Rufu, demanding for a refund of their money.

In another incident, Wulia also entered into a contract for the sale of a printer to Tyron. At the time of sale, the printer was still being assembled, but it was agreed that the printer would be properly assembled and delivered to Tyron by bus. Wulia assembled the printer but when it was being taken to the bus station, it got damaged. Tyron refused to accept the printer and is now threatening to sue Wulia, to recover the price of the printer.

In another scenario, Tyron drew a cheque in blank and crossed it with the words ‘Not negotiable.’ His daughter, Migo, was supposed to fill in the amount payable and the drawee as Halisi Bank. However, she inserted an amount of \$<sup>1</sup> 600 instead of \$ 200 and delivered the cheque to Potra as the payee, in payment of her personal debt. Tyron wants to recover the \$ 600 paid to Potra by his banker, Halisi Bank. He has come to you for advice.

**Required:**

Raise and resolve the relevant issues.

**(20 marks)**

**Question 5**

- (a) Explain the various ways in which a Principal-Agent relationship may be created.

**(12 marks)**

- (b) Briefly explain the permitted deductions from an employee’s remuneration, as provided by the Employment Act, 2006.

**(8 marks)**

**(Total 20 marks)**

**Question 6**

- (a) Briefly explain the circumstances under which a contract may be rendered void.

**(10 marks)**

- (b) Distinguish civil law from criminal law.

**(10 marks)**

**(Total 20 marks)**

---

<sup>1</sup> \$ is the currency symbol of United States dollar



# Answers

**ANSWERS TO TEST PAPER 1  
CPA (U) JUNE 2012**

**Qns.2**

**Issues raised.**

- (i) Whether there was a contract between Bruno and Farida.
- (ii) Whether Farida was right to get commission from purchaser.
- (iii) Whether Tegule is bound by the contract.
- (iv) What remedies are available?

**Resolution of issues:**

- (i) There was a binding contract of agency between Bruno and Farida.
- (ii) Farida as an agent owes various duties to her principal and the most important is the fiduciary duty. The agent must not make secret profit from her dealings on behalf of the principal or accept any bribes or commissions. (**Boston Deep Sea Fishing and Ice Co. Ltd – V – An sell (1957)**). As Farida has been paid a commission by the purchaser, she is in breach of the judiciary duty that she owes to Bruno.
- (iii) Where a person purports to act as another's agent, even though he or she has no authority to do so, the principal is only bound by the contract if he decides to ratify it. When the principal ratifies the contract, it is binding on the parties from the date, it was originally made. Tegule is bound by the contract.

**Remedies available.**

Bruno can sue Farida to recover the shs 2,000,000/= (Two million shillings) paid to her and also shs 1,000,000/= (One million shillings) bribe paid by the purchaser.

(b) **Conditions for ratification.**

- The contract must be made on behalf of a named principal.
- The principal must have been in existence and have full contractual capacity at the time the contract was made.
- Ratification must take place within a reasonable time.
- The principal must at the time of ratification, have full knowledge of the material facts.
- Ratification must be of the whole contract.

### **Qns. 3**

#### **Issues raised:**

- (i) Whether there was a binding contract between Santa Ltd and Tupakase Auto traders Ltd.
- (ii) Whether Santa can lawfully avoid the contract.

#### **Resolution of issues:**

- (i) The validity of a contract between Santa Ltd and Tupakase Auto Traders Ltd. depends on the authority, actual and apparent, of Tanderuwa to contract for the company.

The company would be bound if Tanderuwa was acting within his actual authority of making the contract with Tupakase Auto Traders Ltd.

Articles of Association state that, no single director shall commit the company to purchases exceeding Shs 90,000,000/= without approval of all directors. Thus Tanderuwa had no actual authority to make the contract as it was for the purchase of Shs 150,000,000/= and the required approval was not obtained

The companies Act can assist Tupakase Auto Traders Ltd as it provides that a person presumed to act in good faith, that a person is not bound to inquire as to the powers of the Board and that a person shall not act in bad faith by reason of knowledge that the act was beyond the directors powers.

- (ii) Although Tanderuwa is not the managing director, the other two directors by allowing him to run the business, are authorizing him to act on behalf of the company.

It is presumed that Tupakase Auto Traders Ltd is acting in good faith and Tanderuwa is a person authorized to act on behalf of the company. The contract is enforceable by both companies. Santa Ltd cannot legally avoid the contract with Tupakase Auto Traders Ltd.

#### **Qns.4**

##### **Issues raised:**

1. Whether Kamagaiga was entitled to salary when he was in hospital.
2. Whether kamagaiga was entitled to any payment for the period of three months he was not given work while on duty.
3. Whether Kamagaiga dismissal by the company was lawful.
4. Whether notice of eviction for Kamagaiga was valid.
5. Whether Kamagaiga was entitled to transport back to Mitooma.

##### **Resolution of issues.**

1. According to Section 55 of the employment Act Kamagaiga is entitled to full payment for the first month of sickness.
2. Section .40 of the Employment Act compels the employer who fails to provide work, to pay the employee at the same rate as if work was provided to him. Kamagaiga was therefore entitled to three months payments of his salary.
3. Kamagaiga's dismissal came as a result of his claim for his salary. Mere claiming of ones salary cannot be a basis for dismissal. Therefore Kamagaiga's dismissal was unlawful.
4. According to Section 43 of the Employment Act an employee shall not be required to vacate his residential premises until all the terminal benefits are paid.
5. According to Section 39 of the Employment Act an employer is supposed to repatriate his employee in event of termination of contract for reason of sickness or accident.

#### **SECTION: C**

##### **Qns.5**

- Performance – that is after fixed term of contract expiring.
- Frustration – one of the parties being unable to continue with employment contract.
- Agreement – both parties agreeing to termination.
- Breach – either party breaking an essential part of the contract.
- Notice.
- Dismissal.

**Qns.6**

- (a) Consideration need not be adequate
- Consideration must not be past.
  - Consideration must move from the promisee.
  - Consideration must be of some value.
- (b) To receive notices of all general meetings.
- To attend general meetings.
  - To have access to books of accounts and vouchers of the company.
  - To require from the officers of the company all information necessary for performance of their duties.
  - To require directors to call an extra ordinary meeting (general) where necessary.

**Qns 7.**

- (a) To share equally in the capital, profits and losses of business.
- To be paid interest on capital.
  - To be indemnified by the firm for any liabilities incurred on
  - Payments made during the ordinary course of business.
  - To take part in the management of the business.
  - To have access to the firm's books.
  - To prevent admission of a new partner or prevent any change in
  - the nature of the partnership business.
- (b) Any person admitted as a partner into an existing firm is
- not personally liable to the creditors of the firm for anything
  - done before he or she became a partner.
  - A retiring partner remains liable for any debts due at the time
  - of retirement.



## ANSWERS TO TEST PAPER 2 CPA (U) NOVEMBER 2012

### **Solution.2**

a) Issues:

- i) Whether Musota's refusal to retire was justified.
- ii) Whether it is legal for Musota to hold position of Director and Secretary.
- iii) Whether Musota Construction Co. Ltd was liable to pay Kafuma Commercial Bank.
- iv) Whether dismissal of Muchobe and Kicere was lawful.

### **Resolution of issues:**

- i) Director upon reaching 70 years should retire in the next annual general meeting unless he is re-appointed with approval by passing a resolution following a special notice stating the age. However for private companies it is not mandatory that at the age of 70 years, the director has to retire.
  - ii) It is prohibited for a sole director to hold the position of a company secretary at the same time.
  - iii) Musota Construction Co. Ltd cannot be held liable for payment of money to Kafuma Commercial Bank because the company did not exist at the time the money was borrowed from the bank. Musota would be held liable in person. *Kelner –V-Baxter (1866)*.
  - iv) Dismissal of Muchobe and Kicere was unlawful since it was not based on any resolution.
- b) Director may be disqualified if he is:
- convicted of an indictable offence.
  - found guilty of fraudulent offence in management of company.
  - under an order in respect of fraudulent or wrongful trading.

- on un-discharged bankrupt.

### **Solution.3**

a) Issues:

- i) Whether there was a contract between Wambwa and Humura Nkwine.
- ii) Whether court could grant specific performance to Humura Nkwine.

### **Resolution of issues:**

- i) For a contract to exist there must be an offer and acceptance. An offer terminates if a counter offer is made to it. Humura Nkwine made a counter offer when he suggested to pay 19,500,000/= for the plot. Therefore there was no contract between Wambwa and Humura Nkwine.
  - ii) Specific performance cannot be granted by court where there is no contract.
- b) Rules of revocation of offer are:
- Revocation of an offer must be communicated to the offeree.
  - Revocation by post does not take effect until it is actually received by the offeree.
  - Where offeror promises orally in writing to keep his offer open for a specified time, he is not bound by it.

### **Solution.4**

a) The relationship entered into by Komakech and Patel is agency.

b) Issues raised.

- i) Whether an undisclosed principal can be liable for the acts of his agent.
- ii) Whether the supermarket can succeed in recovering any money from Komakech.
- iii) Whether Patel can succeed from third parties.
- iv) What remedies are available.

**Resolution.**

- i) The general rule is that the principal whether disclosed or not must be liable to the third party. However an undisclosed principal is not liable if the true effect of the contract is that the agent shall alone be entitled under it.
- ii) An agent is neither liable nor entitled to enforce a contract he makes on behalf of his principal. However an agent is both entitled and liable under the contract where the principal is undisclosed.
- iii) The general rule is that a disclosed principal can sue a third party. On the other hand an undisclosed principal can also sue a third party but this is limited in three main respects like where exercise of right is inconsistent considerations and third party defence where a third party can claim that he was dealing with the agent only.
- iv) Nehru palace supermarket can succeed from the agent since the principal is undisclosed.  
-Patel can succeed from 3<sup>rd</sup> parties since Komakech was to buy and sell for him though Komakech never disclosed that he was an agent.

**Solution.5**

- a) Partnership property includes property:
  - Originally brought into the partnership stock.
  - Acquired, whether by purchase or otherwise, on firms account or for the purpose of the partnership business.
  - Bought with money belonging to the firm, unless the contrary appears to be the case.
- b) Circumstances under which partnership can be dissolved by court are when:
  - a partner becomes of unsound mind.

- a partner other than the one suing, becomes in any other way permanently incapable of performing his part of the partnership contract.
- a partner, other than the one suing, has been guilty of conduct calculated to affect prejudicially the carrying on of the business.
- a partner willfully commits a breach of partnership agreement.
- the business of the partnership can only be carried on at a loss.
- the court thinks it just and equitable to dissolve the partnership.

### **Solution .6**

- a) **Infants.** An infant is a person below 18 years of age.

The infant can enter contracts with other people but the following contracts are void.

- An agreement for the repayment of money lent or to be lent.
- Any agreement for the goods supplied or to be supplied other than necessities.
- All accounts stated with infants, e.g. statements of acknowledgment of debts.

- b) **Voidable Contracts.** These are usually contracts of continuing nature under which an infant derives some benefit or acquires some right. Such contracts are binding on the infant unless he avoids them either during his infancy or within a reasonable time thereafter.

- c) **Void contracts** are not a contract at all. They have no legal effect.

Examples of void contracts are:

- Where one of the basic ingredients of a contract is missing.
- Contracts made under a mistake of fact.
- Agreement of which the consideration or object is unlawful.

- d) **Executed consideration** is some value already given by the promisee to the promisor, e.g. purchase of goods on credit. The seller has performed his side of the obligation in delivering the goods to the purchaser.

### **Solution 7**

- (a) Various methods by which the authority of an agent can be terminated are by:

- ✓ Agreement between parties.
- ✓ Renunciation.
- ✓ Operation of law by
- ✓ Performance.
- ✓ End of fixed period.
- ✓ Death or insanity of either party.
- ✓ Bankruptcy of the principal.
- ✓ Destruction of the subject matter.
- ✓ Subsequent illegality.

- (b) Duties of an employer are:

- To pay reasonable remuneration.
- To indemnify the employee.
- To provide a safe system of work.
- To give reasonable notice of termination of employment.
- Duty of mutual co-operation, confidence and respect.

Duties of an employee are:

- To obey lawful and reasonable orders.
- To exercise reasonable care and skills.
- To give honest and faithful service.
- To render personal service.
- Duty of mutual co-operation.

## **ANSWERS TO TEST PAPER 3**

### **CPA (U) JUNE 2013**

#### **Answer.2**

##### **Issues.**

- (i) Whether a promoter can sue to enforce pre-incorporation contracts.
- (ii) Whether a promoter can be personally liable for pre-incorporation contracts.
- (iii) Whether the similarity of names can affect the business.

##### **Resolution of issues.**

- (i) Twezimbe contractors are trying to deny on the contract but Anyole can personally sue to enforce a pre-incorporation contract.
- (ii) Anyole can be sued by Kiswaga Ltd for the contract of the materials to be used in the hotel. He will be held personally liable.
- (iii) If the names are similar to that of an existing company, there are two possible ways in which ANYOBO company Limited might be affected.  
First, the company Registrar has power to instruct the change of a name on ground that it is similar to an existing company.

Second an injunction can be obtained to prevent tort of passing off.

##### **Advice**

Since there is no suggestion that ANYOBO Company Ltd is threatening act on the Registrar of companies is likely to make an order regarding the use of the name, I would advise the promoters to sit and wait to see whether either course of action occurs. If it does they would probably find themselves having to choose another name for the company.

#### **Answer.3**

##### **Issues.**

- (i) Whether it is lawful for the principal accountant to demand sex from Fiona.
- (ii) Whether forced leave for Fiona was legal.

- (iii) Whether it is legal to deny Fiona to enter with her lawyer.
- (iv) Whether Kapere was entitled to salary for the period he was in hospital.
- (v) Whether Kapere dismissal was lawful.
- (vi) Whether notice of eviction from the government house was valid.

**Resolution of issues.**

- (i) The employment Act prohibits sexual harassment. I would advice Fiona to sue Mr. Semanda and the District.
- (ii) The forced leave for Fiona was done in error. It is wrong to give one forced leave for having complained against bad working conditions. Since Fiona complained against sexual harassment it was wrong for her to be given forced leave.
- (iii) The Employment Act gives an employee a right to attend disciplinary hearing in the presence of her lawyers. It was wrong to deny Fiona's lawyer to attend the meeting.
- (iv) S.55 of the Employment Act provides that an employee is entitled to full payment for the first month of his sickness. Kapere was therefore entitled to full payment of his salary for one month he spends in hospital.
- (v) Kapere's dismissal came as a result of his claim for his salary. This cannot be misconduct. S.6 of the Employment Act prohibits discrimination of employees on basis of disability among others. Kapere's dismissal was therefore unlawful.
- (vi) S.43 (5) Employment Act provides that employee shall not be required to vacate residential premises until all the terminal benefits are paid.

**Answer.4**

**Issues.**

- (i) Whether notice of the meeting was sufficient.
- (ii) Whether resolutions passed are lawful.
- (iii) Whether Macho breached any of his duties as a director.
- (iv) Whether borrowing by Macho from Crested Crane Bank on behalf of the company was lawful.
- (v) Whether there are remedies for the bank.

### **Resolution of issues.**

- (i) S.133 and 141 of the companies Act, in a meeting where special resolutions required, a notice in writing of 21 days should be given. In the instant case it was only 2 days. It was therefore not sufficient.
- (ii) Resolution passed was illegal since there was insufficient notice. Appointment of a sole director as a secretary is prohibited under S.178 and 179 of the companies Act.
- (iii) By using part of the borrowed money for the company to organize a wedding, Macho breached his duty of good faith.
- (iv) Borrowing therefore, was done in contravention of the clause of the articles of association. Borrowing was unlawful.
- (v) According to the facts of the case Crested Crane Bank is likely to recover the loan. (Re Jon Beanforde Ltd (1953) ALLER 634.
- (b) **Duties of a company secretary.**
  - Preparing for attending and taking action after meetings of the Board of Directors and general meetings.
  - Maintaining the statutory registers.
  - Witnessing i.e. signing as witness.
  - The generation and delivery of returns.
  - Preparing of numerous returns required by government departments and official bodies.

### **Answer .5**

- (a) A contract is an agreement between two or more persons which is intended to create legally binding relationships/obligations.
- (b) **Essentials of a valid contract.**
  - Offer and acceptance.
  - Consideration
  - Contractual capacity
  - Consent
  - Lawful/ legally



## Answer 6

### Rights between the partners.

- All partners are equally entitled to share in capital and profits of the business, and must contribute equally to the losses of the firm.
- Partner is entitled to indemnity from the firm for any payment made or personal liability incurred in the ordinary proper conduct of the firm business.
- A partner is entitled to interest on any money he lends to the firm.
- Every partner is entitled to participate in the management of the business.
- Every partner is entitled to oppose the introduction of a new partner.
- Every partner is entitled to access the partnership books.
- On dissolution of a partnership, every partner has an equitable lien over the firm's property.

### Answer 7. Writing short notes on each of the following as used under company law

- (a) **Share** means share in the share capital of a company, and includes stock except where distinction between stock and share is expressed or implied. J.Frwell has defined a share as “the interest of a shareholder in the company measured by the sum of money for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders inter se”.
- (b) **A debenture** is an instrument, either under seal or not, which acknowledges a debt for a specific sum for which it purports to be a security.

It usually gives a charge on the asset of the company by way of security, in which case it is called “secured”, where no security is given it is called “unsecured”.

- (c) **Fixed and floating charge** passes on a charge upon property of the company.

A **fixed charge** passes legal title to certain specific assets, and the company loses the right to dispose of the property e.g. its machinery and buildings

A **floating charge** is equitable charge upon all the property of the company for the time being of a going concern. It attaches to the subject charged in the varying conditions in which they happen to be from time to time. The essence of a floating charge is that the security remains dormant until the business ceases to be going concern.

- (d) **Ordinary shares** include all shares which are not preference shares. The holders of these shares receive dividends out of profits determined by directors and declared to members at the annual general meeting. If there are preference shares, the dividend is paid after the payment of dividend on preferences shares.

## **ANSWERS TO TEST PAPER 4**

### **CPA (U) NOVEMBER 2013**

#### **Answer.2**

##### **Issues.**

- (i) Whether Lwavura was right to sell a plot to Muna without approval of the shareholders.
- (ii) Whether the increase of the Directors salaries is legal.
- (iii) What remedies are available for minority shareholders

##### **Resolution of issues.**

- (i) The Directors owe common law and fiduciary duties to the company (i.e. the shareholders as a body) and not just to the majority shareholders. The role in FOSS - V - HARBOTTLE states that the company is the proper claimant to sue in respect of any breach of duty owed to the company. As a general rule shareholders cannot sue on company's behalf.
  - However, courts will permit a derivative action, where the case is brought by a shareholder on behalf of the company, in some circumstances.
  - For example, if the majority shareholders have used their voting power in an oppressive manner to deprive the company of a benefit, which they then award themselves, that it is found on the minority. The minority shareholders will be permitted to bring a derivative action as in Cook - V - DEEKS. Moreover if the directors have acted negligently and benefited personally as a result, such an action can be brought as well: DANIELS - V - DANIELS.
  - Here it would seem that as a result of the sale to Muna of a plot in case it was under valued, a derivative action could be brought on the basis of the decision in Daniels.
  - The board, in particular Muna, appears to have breached the duties they owe to the company.

- (ii) The increase of the Directors salaries is unlawful since the company's profitability is falling. There seems to be lack of good faith on the part of directors as their salaries are excessive and thus interests of the members are generally unfairly prejudiced.
- (iii) Remedies available.
  - Umaru, Veto and Wampumu should be able to bring derivative in respect of these breach of duties.
- (b) **Case law exceptions.**
  - Minority right of action where the
  - Minority complaining about infringement of personal rights company has acted illegally.
  - Minority right of action where company fails to comply with special procedures.
  - Fraud on the minority.
  - Derivative action.

**Answer .3 Raising issues and advising the parties according to the doctrine of consideration under the law of contract.**

**Issues raised.**

- (i) Whether Shs 6 million was adequate for purchase of a Benz.
- (ii) Whether consideration of Bazirio was sufficient.
- (iii) Whether performance of an existing duty is sufficient.
- (iv) Whether there was consideration between machati and Eliezari.
- (v) Whether performance of less than contractual duty is sufficient.

**Resolution of issues.**

- (i) Consideration must be valuable but need not be adequate. Consideration must be of some economic a monetary value, such as a Benz and money. Thus Shs 6 million in return of an expensive Benz is consideration even though inadequate. Accordingly Machati is bound by his promise to Tomanyiira.

- (ii) Consideration must be sufficient. In law part consideration is insufficient RE MCARDLE. Consideration is past where it is wholly executed before the other party makes their promise. Thus Bazirios plastering the house, having been done before Machati made his promise of payment, is past. Accordingly Machati is not bound by his promise to Bazirio.
- (iii) Performance of an existing duty is insufficient to amount to consideration. Champion is already contractually obliged to paint the house by a given date and the mere doing of this by Champion is insufficient unless some extra benefit is thereby conferred by Machati.
- (iv) Consideration must move from the promisee. This means that a party who wishes to enforce a promise must himself provide consideration. **TWEED-V-ATKINSON**. Thus Ndidamu cannot enforce Machatis promise because Ndidamu provided no consideration for it.

The doctrine of privity of a contract states that only the parties to a contract can sue on it. This in order for Eriazari to enforce Machati's promise Eriazari must show that it was to him that Machati made the promise.

Since performance of an existing contractual duty is insufficient, it follows that performance of less than a contractual duty is also insufficient. **FOAKES - V -BEER**. Payment of a lesser sum does not discharge a debt of a greater amount. Accordingly, Machati is not bound by his promise by release.

#### **Answer.4 Raising issues and advising the parties.**

##### **Issues raised.**

- (i) Whether chief Opondo can sue Kafeero.
- (ii) Whether Toterebuka is bound by the contract.
- (iii) Whether there was a contract between the buyers and sellers.
- (iv) What remedies are available to the parties.

##### **Resolution of issues.**

- (i) An agent owes various duties to his principal and most important is the fiduciary duty. The agent must not make secret profits from his principal's business/dealings. As Kafeero has been paid a commission by the purchaser, Kafeero is in breach of the fiduciary that he owes to chief Opondo. This means that chief Opondo can recover the money paid to Kafeero and also the bribe paid by the purchaser.
- (ii) Where a person purports to act as another's agent, even though he has no authority to do so, the principal is only bound by the contract if he decides to ratify it. When the principal ratifies the contract, it is binding on the parties from the date on which it was originally made. Toterebuka is bound by the contract.
- (iii) Where neither the existence nor the identity of the principal is disclosed, the third party has rights. He may elect to sue the agent or principal.
- (iv) Remedies available.
  - Chief Opondo can sue kafeero to refund money received from him and the purchaser.
  - Kafuru and Kisoso can sue chief Opondo or Babayetu for refund of their money (purchase).

#### **Answer 5.**

- (a) Meaning of the term '**ratification**' as used under contract law.  
Ratification is a principal's approval of an act of its agent where the agent lacked authority to bind the principal.
- (b) **Describing the requirements for ratification of a contract**  
**Requirements for ratification of a contract.**
  - The contract must be purported to be made on behalf of a named principal.
  - The principal must have been in existence and have full contractual capacity at the time the contract was made.

- Ratification must take place within a reasonable time, and in any event before the expiration of the time, if any, fixed for performance.
- The principal must, at the time of ratification, have full knowledge of material facts.
- Ratification must be of the whole contract, and the principal cannot ratify part of the contract.
- Void contract cannot be ratified.

#### **Answer.6**

**Writing short-notes on the following in relation to the law of contract.**

**(a) Condition.**

Condition is a term of major importance and it goes to the root of the contract. Its breach entitles the innocent party to avoid the contract and claim damages. Under the sale of goods Act the innocent party is permitted, if he so wishes, to continue with the contract and claim damages for the breach of the condition.

**(b) Warranty.**

Warranty is a term of lesser importance, and as such does not go to the root of the contract. Its breach entitles the innocent party to claim damages, but gives no right to the termination of the contract.

**(c) Void contract.**

Void contract is not a contract at all. The term means an agreement which is completely destitute of any legal effect.

Examples of void contracts.

- Where one of the basic ingredients such as offer, acceptance, consideration and the intention to create legal relations is missing.
- Contracts made under a mistake.
- Agreement of which the consideration or object is unlawful.

**(d) Avoidable contract.**

Avoidable contract is an agreement that is binding and enforceable, but because of the lack of one or more of the essentials of a valid contract, it may be set aside at the option of the aggrieved party. If the party entitled to such right does not exercise the right within a reasonable time, the contract is binding. The right to avoid the contract is given in the following circumstances.

- Where one of the parties has been fraudulently induced to enter into a contract.
- Where the other party has used duress or undue influence.
- Certain contracts entered by infants and insane persons.

#### **Answer.7**

##### **Discussing the rights and duties of a limited partner**

##### **Rights and duties of a limited partner.**

- He cannot claim the right of sharing management if he takes part in the management, he is liable for all the debts and the obligations of the firm just like a general partner.
- He has no power to bind the firm.
- He may inspect the firm's books and examine the prospects of the partnership business and may advise with the partners thereon.
- The death or bankruptcy or lunacy of a limited partner does not dissolve the partnership, unless specifically provided in the agreement,
- A limited partner may assign his share with the consent of the general partners, and the assignee will become a limited partner with all the rights of the assignor.
- A limited partner is not entitled to dissolve the partnership by notice.



# ANSWERS TO TEST PAPER 4

## CPA (U) JUNE 2015

### Solution 2

#### Issues:

- (i) Whether Mpuga was liable for a contract between Katete and Tofili
- (ii) Whether Mpuga can be held liable for the contract between Katete and Kopa
- (iii) Whether Simati was entitled to a refund of Shs 500,000
- (iv) Whether the sale of 100 plots to an Indian investor was in breach of Simati's duties as an agent
- (v) What are the remedies available to the parties

#### Resolution of issues:

- (i) According to the facts, Katete disclosed Mpuga as a principal while selling the plot of land to Tofili. As a disclosed agent, Mpuga would be held liable for any loss that may be incurred by Tofili.
- (ii) Katete did not disclose to Kopa that he was an agent of Mpuga while selling plot 10 at to him. An agent is personally liable if he conceals the principal. Therefore, Mpuga was not liable for any loss that Kopa might incur.
- (iii) An agent is entitled to be indemnified by his principal for expenses properly incurred by the agent in lawful execution of his duties. Therefore Simati was entitled to refund of Shs 500,000.
- (iv) An agent must carry out his work according to the instructions. In addition, an agent must not make secret profit or accept bribes. In the instant case Simati breached his duties as an agent and is liable to his agent for breach.
- (v) Remedies available are based on rights and duties in the agent principal relationship
  - Tofili can recover any loss he may incur from Mpuga.
  - Kopa can recover from Katete personally, if traced.
  - Simati is entitled to indemnity against Mpuga.
  - Mpuga is entitled to accountability from Simati. He may even terminate the agency.

### Solution 3

#### Issues:

- (i) Whether Ketu is liable to honor the promise for payment of services offered by Jomo.
- (ii) Whether Toto is liable for damages for breach of contract with Dungu.
- (iii) Whether Junior is entitled to enforce the contract against Cupuli.
- (iv) Whether Zedi is liable for damages for premature end of the contract.
- (v) Remedies are available to the parties

#### Resolution of issues:

- (i) One of the rules of consideration is that it must not be past. In the instant case, consideration was promised long after execution of the work by Jomo. Therefore, Ketu is not liable to honor the promise to pay.
- (ii) Toto was under contractual obligation to pay for the beans upon delivery. Failure to do so amounted to breach of the contract. Therefore, Toto was liable to pay damages to Dungu for breach of contract.
- (iii) Under the general principle of privity of contract, a person who is not a party to a contract cannot derive any benefit from it. Therefore, Junior is not entitled to enforce a contract because he was not a party even if it was made for his benefit. In any case, he was a minor at the time the contract was concluded.

- (iv) The contract between Zedi and Yuki was prematurely terminated by frustration. Therefore Zedi cannot be held liable for premature termination of the contract. Where a contract is terminated by frustration, parties are automatically discharged from their obligations.
- (v) Remedies available to parties:
  - Dungu is entitled to damages for breach of contract and costs incurred from Toto.
  - Junior can only recover replacement of the engine if he sues in the name of his father, Kopango.
  - Yuki can only recover 200,000 shillings paid as deposit for hiring the hall.

#### **Solution 4**

##### **Issues**

- (i) Whether the items on the agenda of the meeting were properly suited for the annual general meeting.
- (ii) Whether Fanta had a right to object to the adoption of the agenda.
- (iii) Whether the directors are liable for failure to convene AGMs of the company

##### **Resolution of issues:**

- (i) Matters for discussion in annual general meeting include appointment of auditors, directors, fixing their remuneration, reports of directors and auditors and other special business. An annual general meeting is an important protection to members for it is one occasion when they can be sure of having an opportunity of meeting the directors and questioning them on accounts, reports, and company's position and prospects (see Gowa and others (1979), *The Principles of Modern Company Law*, 4<sup>th</sup> Edition). Therefore the items that were included on the agenda according to the facts did not suit the annual general meeting.
- (ii) Fanta, being a shareholder had a right to protect his interest in the company by objecting to the adoption of the agenda, which in his opinion did not include items suitable for discussion in an annual general meeting. Fanta rightly exercised his right.
- (iii) Under S.138 of the companies Act 2012, it is mandatory for a company to hold an annual general meeting every year. Where a default is made, like in the instant case, every officer of the company who is in default is liable to a default fine of twenty five currency points. Therefore, the directors were liable for failure to convene annual general meetings for five years.
- (b) Circumstances under which minority shareholders may sue on company matters instead of the company itself
  - Minority shareholders may sue on matters of the company instead of the company where the minority complain that the company is acting or proposing to act ultra vires (Outside its objectives).
  - Minority shareholders may sue on matters of the company instead of the company where the personal right(s) of the minority is/ are infringed upon or is / are about to be infringed upon by the majority.
  - Minority shareholders may sue on matters of the company instead of the company where, those in control of the company are perpetrating fraud on the minority.
  - On just and equitable grounds where the ends of justice require that the majority rule be disregarded, minority shareholders may sue on matters of the company instead of the company.

## Solution 5

- (a) Rights of a female employee seeking for a maternity leave under the Employment Act:
- Leave of sixty (60) working days from work after child birth or miscarriage
  - Fully paid maternity leave
  - Right to return to her job or to a reasonably suitable alternative job on similar favorable terms and conditions.
  - In the event of sickness arising out of pregnancy or confinement, affecting either the mother or the baby, making the mother's return to work inadvisable, the right to return to her job or to a reasonably suitable alternative job shall be available within eight weeks after the date of childbirth or miscarriage.
- Rights of a male employee seeking for a paternity leave under the Employment Act:
- Leave of four (4) working days immediately after delivery or miscarriage of his wife
  - Full payment of wages during paternity leave.
  - Right to return to the job held immediately before paternity leave.
- (b) Obligations /duties of:
- (i) A female employee seeking maternity leave:
- Giving a certificate about her medical condition from a qualified medical practitioner, if required by the employer.
  - Giving at least a seven (7) day's notice in advance of her return to work, or a shorter period if reasonable in the circumstances.
- (ii) The Minister in charge of labour, in order to prohibit discrimination, is obliged to:
- Promote equality of opportunities in order to eliminate discrimination in employment.
  - Promote and guarantee equality of opportunity for migrant workers or members of their families, who are lawfully residing in Uganda.
  - Give effect to the principle of equal remuneration for male and female employees whose work is of equal value.

## Solution 6

- (a) Under the interpretation section of the companies Act 2012, a prospectus is defined as a notice, circular, advertisement or other invitation, offering to the public shares or securities for subscription or purchase.
- (b) Remedies for persons who may incur loss as a result of issuance of prospectus containing false information:
- Compensation by a director who permits or authorizes issuance thereof, for any loss, damage or costs which the aggrieved party has sustained.
  - In addition, any person who willfully makes any false statement in the prospectus, knowing it to be false commits an offence and is liable on conviction to imprisonment not exceeding 2 years or a fine not exceeding 200 currency points or both.
- (c)
- Express trust: This is a class of trust that has been intentionally created by a settler and manifests such intention. It may be made by a deed, a will or by word of mouth.
  - Constructive trust: These arise by operation of law or by acts of parties. No formalities are required to have it created.

- A public trust: benefits the general public or a big section of it and can be enforced by any of the beneficiaries.
- A private trust: On the other hand benefits specific individuals whether or not they are immediately ascertainable.
- Implied trust: These are trusts which are inferred from the conduct of the parties or circumstances of their transactions. No formalities are required for their formulation.
- Resulting trusts: These are trusts where the interest in property has been transferred to another person but the trust does not exhaust all the beneficiary interests. The part not disposed of reverts or returns to the transferor/ settler.
- Statutory trust: these are trusts created under succession law. It occurs where a person dies intestate and his estate is held by statutory trustees for the beneficiaries, for example, the administrator general.

### **Solution 7**

- (a) Common law means that part of English law which has not been formally enacted by Parliament. It has been described as a unification of the customs of the English people and welded together by practice or common law courts. It is judge – made law, which has been developed by means of judicial precedent, and it is common to the whole country. It constitutes an independent legal system.

Statute law on the other hand consists of Acts of Parliament enacted formally and is only a secondary source of English law. It is used to supplement the judge – made law and to bring about social changes.

- (b) Magistrates courts  
These are the lowest courts in the hierarchy of courts in Uganda. They are comprised of Magistrates Grade II Courts at the bottom, followed by Magistrate Grade I Court and the chief Magistrate Court at the top.

#### **High Court**

It is headed by the principal judge who works with the judges. It has original and appellate jurisdiction. All appeals from the lower courts are handled by the High Court and it is a court of record. The decisions of the High Court bind the Magistrates Courts.

#### **Court of Appeal**

This is an appellate court which entertains all appeals from the High Court. It constitutes the constitutional court which makes decisions on constitutional matters. It is presided over by the Justices of the court of Appeal. The decisions of the Court of Appeal bind the courts below it.

#### **Supreme Court**

This is the highest court in the country and binds all courts below. The Supreme Court does not bind itself, although in general the Supreme Court Justice will keep to the rule of precedent. It is the final appellate court in Uganda but it also has original jurisdiction in cases of presidential election petition.

# **ANSWERS TO TEST PAPER 6**

## **CPA (U) AUGUST 2015**

### **Question 2**

**(a) Issues:**

- (i) Whether the transfer of Lufere Ltd's land by Bala to one creditor was lawful;
- (ii) Whether Lufere Ltd can lawfully continue to carryout business;
- (iii) Whether the creditors can successfully petition for winding up of Lufere Ltd;
- (iv) What remedies are available to the parties?

**Resolution of issues:**

- (i) Bala who is a director of the company was aware of the inability of Lufere Ltd to pay its debts owed to creditors. He was also aware that other creditors were intending to petition for the company's winding up but he went ahead to sell off company land. It therefore follows that his action was unlawful as it amounted to a fraudulent transfer to one creditor preferred against all other creditors.
- (ii) The company can lawfully continue in business even if its membership has reduced to one. Section 4 (1) of the Companies Act, 2012 provides that any one or more persons may for a lawful purpose, form a company.
- (iii) Since the company has failed to pay its debts as they fall due despite several demands for payment, the creditors can successfully petition for the winding up of the company.
- (iv) Remedies available to the parties
  - The creditors can petition for the company's winding up so that they can realise the company's assets from which they can be paid.
  - Upon appointment of a liquidator on the winding up of the company, the company land which was fraudulently transferred can be recovered by the liquidator. The recovered land would form part of the company property to be realised to settle the outstanding debts.

**(b) Procedure for a winding up a company voluntarily:**

- (i) Members of a company in a general meeting pass a special resolution to wind up the company;

- (ii) The petition for winding up the company is thereafter presented to the High Court;
  - (iii) Following presentation of the petition, an application is made to court for the appointment of a provisional liquidator and after his appointment, the directors' powers of management cease;
  - (iv) The liquidator must notify the registrar of companies about his appointment and give security as may be prescribed by court;
  - (v) The liquidator can apply to court for a vesting order which requires the liquidator to have control of the company's property;
  - (vi) The court may after appointing a provisional liquidator, examine on oath any company officer or any person deemed to have information about the company on its dealings or property;
  - (vii) Court hears the petition and may take interim orders or ultimately make a winding up order;
  - (viii) Following the issue of winding up order, the company is required to send a copy to the registrar of companies.
- (c) Benefits of voluntary winding up
- (i) No legal proceedings are instituted against the company without leave of court;
  - (ii) The liquidator takes over management of company affairs. This means that the directors' powers of management cease, except where allowed by members, creditors or the committee of inspection;
  - (iii) All company property automatically vests in the liquidator and there will be no fraudulent transfer of property to one creditor preferred against others.
  - (iv) Any disposition of company property or transfer of shares is void, unless court directs so;
  - (v) Any attachment, distress or execution lodged against company assets is void unless court grants leave for execution or other proceedings.
  - (vi) After all company liabilities have been dealt with, the remaining company assets are distributed among members according to their rights and interests in the company, unless the articles provide otherwise. No other Company arrangements can be considered above this requirement.

### Question 3

Issues:

- (i) Whether it was legal to deny John Kiku access to business records;
- (ii) Whether it was lawful for Peter Kiyenje to start a competing business in the neighbourhood;

- (iii) Whether it was legal for Peter Kiyenje not to declare full proceeds from the partnership business for his own business;
- (iv) What remedies are available to the parties?

#### Resolution of issues:

- (i) Every partner is entitled to have access to the partnership books. Therefore, denying John Kiku access to check the records of the partnership was not lawful.
- (ii) Partners should not engage in competing businesses with that of the partnership. Therefore, the starting of a hardware shop in the neighborhood of the partnership business by Peter Kiyenje was unlawful (Section 32 of the Partnership Act, 2010).
- (iii) According to Section 30 of the Partnership Act, every partner has a duty to render true accounts of the partnership and full information to other partners. It was therefore unlawful for Peter Kiyenje not to declare full proceeds to John Kiku.
- (iv) Remedies are available to the parties:
  - John Kiku can seek a court order to allow him access to records of the business.
  - John Kiku can seek for a permanent injunction, stopping Peter Kiyenje from carrying on business similar to the partnership business in the neighbourhood.
  - In case the above two remedies cannot be obtained, the partnership between Peter Kiyenje and John Kiku can be dissolved because Peter Kiyenje is conducting himself in a manner which makes it impossible for John Kiku to carry on business with him. In *Yenidge Tobacco Co. Ltd, 1904* the relationship between the partners was so bitter that they could not speak to each other. It was held that the partnership should be dissolved.

#### Question 4

##### Issues:

- (i) Whether the rejection of registration of share transfer from Pio to Odonu by James Wanga was justified;
- (ii) Whether the registration of Melle Wanga as a shareholder was lawful;
- (iii) Whether James Wanga was qualified to serve as director of YY Ltd;
- (iv) Whether YY Ltd was liable to pay salary arrears to Makofi;
- (v) What remedies are available to the aggrieved parties?

##### Resolution of issues

- (i) According to the articles of association of YY Ltd, the discretion to effect transfer to an existing shareholder should not be unreasonably withheld. In the instant case, Odonu is a shareholder of YY Ltd and there is no genuine reason given by James Wanga to reject the transfer of shares to Odonu. The rejection was therefore unjustified.
- (ii) According to S.85 of the Companies Act, 2012 it is unlawful to register a transfer without a proper instrument of transfer. In the instant case, James Wanga simply cancelled the name of Opio without any instrument of transfer. Hence the transfer was unlawful and of no effect.
- (iii) Under Section 196 of the Companies Act, 2012 the minimum age of a person to be appointed a company director is 18 years. Section 197 imposes a duty on persons



appointed as director below 18 years to disclose their age. In the instant case James Wanga breached the duty of disclosure and was therefore unqualified to continue serving as director.

- (iv) Section 43 (6) of the Employment Act, 2006 provides for payment of wages to an employee within 7 days from the date of termination of his or her services. Therefore, YY Ltd was liable to pay Makofi his salary arrears.
- (v) Remedies available to aggrieved parties:
  - Odonu has a right to apply to court for rectification of the register of members by cancelling the name of Melle Wanga and substituting it with his;
  - Makofi is entitled to sue YY Ltd for payment of his salary arrears;
  - James Wanga should be removed from the position of director since he never disclosed his age at the time of appointment.

### **Question 5**

- (i) Simple contracts: is formed orally or in writing or partly orally and partly in writing, or it may be implied from conduct of parties.. It is called a simple contract because of the lack of necessity in writing. Every simple contract, however, must be supported by consideration.
- (ii) Contracts of record: are those contracts that emanate from court record or personal recognisance. The rights and obligations of these contracts are imposed on parties and do not result from initial agreements.
- (iii) Contracts under deed: are also referred to as special contracts or contracts under seal. They are made in writing, signed, sealed and delivered. It is a legal requirement that some contracts, for example contracts for hire purchase and conveyance of land must be sealed in order to be valid.
- (iv) Condition: a condition is a major term of a contract, which goes to the root of the contract. The breach of a condition leads to a contract coming to an end, where the aggrieved party is entitled to repudiate or revoke the contract.
- (v) Warranty: a warranty is an extraordinary/ a minor term of a contract whose breach does not affect the root of the contract. Breach of a warranty entitles the aggrieved party to claim for damages.

### Question 6

- (a) Circumstances under which the directors of a public company may refuse to register a transfer of shares:
  - (i) Where the shares are not fully paid up by the shareholder;
  - (ii) The directors disprove of the person to whom the transfer is intended (transferee);
  - (iii) There is an adverse equitable claim on the shares;
  - (iv) There is a company lien (equitable charge) on the shares, if they are not fully paid up;
  - (v) The instrument of transfer is not accompanied by a certificate of the shares in the name of the transferor and other related evidence giving the right to transfer;
  - (vi) The instrument of transfer relates to more than one class of shares of the company.
- (b) Procedure through which a company can reduce its capital:
  - (i) The company passes a special resolution to reduce its share capital where its articles do not authorize a reduction;
  - (ii) An application by petition to court for a confirming order;
  - (iii) Confirmation by court that creditors or other claims have been discharged or determined;
  - (iv) Registration of the court order and minute confirming the reduction of the company's share capital by the registrar of companies;
  - (v) Publishing in the gazette or by any method as may be directed by court, of a notice of registration, followed by issuance of a certificate in respect of the registration.

### Question 7

- (a) Distinction between criminal law and civil law:

Criminal law is a set of laws that regulate the acts, omissions, defaults or conduct prejudicial to the community. Criminal law, therefore, establishes crimes, states principles of criminal responsibility, defences and prescribes punishments. Prosecutions are always conducted in the name of the state as an aggrieved party. It is the duty of the state (prosecutor) to establish the guilt of the accused beyond any reasonable doubt, and there is presumption of innocence until proved guilty. Crimes include offences like murder, rape, robbery and theft. All offences are included in the Penal Code Act of Uganda and punishments range from a fine to hanging.

Civil law, on the other hand, is concerned with the violation of private rights belonging to an individual in his capacity as an individual, for example refusing to

repay a loan or defaming another. Unlike criminal cases, the proceedings in civil cases are instituted in the courts by the plaintiff himself and the burden of proving his claims rests on him. If the plaintiff succeeds in a civil action, the defendant will be ordered by the court to compensate him by paying damages. The remedies available in civil actions include damages, specific performance and injunction, among others.

(b) Legal wrongs vs. moral wrongs:

Legal wrongs are created by law; for example rights and obligations under contract law, etc. and are enforced by the courts of law.

Moral wrongs, on the other hand, are values or principles observed and practiced by society, for example greeting, respect for elders, etc. Moral wrongs are not enforced by courts of law. For instance, if a person fails to honour his parents, he is not liable to court proceedings.

# **ANSWERS TO TEST PAPER 7**

## **CPA (U) NOVEMBER 2017**

### **Solution 2**

#### **Issues:**

- (i) Whether the memorandum of understanding between Semu Ltd and Joki Constructors was binding.
- (ii) Whether Semu Ltd was liable to pay Joki Constructors the extra Shs 15 million
- (iii) Whether the Directors were justified to issue shares to 2 members at a discount
- (iv) Whether the refusal to register Suvava as a member of Semu Ltd by the Directors was justifiable
- (v) What remedies are available to the aggrieved parties.

#### **Resolution of issues**

- (i) There was a binding contract between Semu Ltd and Joki Constructors. This is because Semu Ltd made an offer for works to be done and Joki Constructors accepted to do the work at the price indicated in the memorandum of understanding they made. This is further confirmed by the fact that Joki Constructors performed the work (contract by conduct), and Semu Ltd paid the agreed amount (contract price). Since the memorandum of understanding between Semu Ltd and Joki Constructors provided for all the essential elements of a contract, it was, therefore, binding to the parties.
- (ii) The memorandum made by Semu Ltd and Joki Constructors included a variation clause that formed part of the contract. Therefore, Semu Ltd is liable to pay for the extra Shs 15 million spent by Joki Constructors to complete the work.
- (iii) As a general rule, the law does not allow issuing shares to members at a discount. However, according to S.67 (1) (a) & (2) of the Companies Act 2012, a company may issue shares at a discount with the authority of a resolution passed in a general meeting and sanctioned by Court.  
In the instant case, the directors issued shares to the 2 members after the passing of the resolution, without first applying to Court for sanctioning the same. Therefore, the Directors were not justified to issue the shares at a discount in the manner they used.
- (iv) The directors were not right to refuse the registration of Suvava as a member of the Company. Suvava was a duly appointed legal representative of a deceased member and was entitled to become a member through transmission of shares to him.
- (v) Remedies available to the parties.
  - Joki Constructors may seek for a Court order to recover the extra amount of Shs 15 million spent.
  - Members of Semu Ltd may move Court to order for rectification of the Company register under S.125 (b) of the Companies Act.
  - Suvava may move Court for an order to effect rectification of transmission of shares of the deceased member.

### **Solution 3**

#### **Issues:**

- (i) Whether Mulesi was liable for Dikula's breach of contract
- (ii) Whether Mulesi was liable for breach of contract with Mbata.
- (iii) Whether Bongo can sue Jako Company
- (iv) Whether Kapere created a valid trust in favour of Mukono.
- (v) What are the remedies available to the parties

#### **Resolution of issues:**

- (i) A 3<sup>rd</sup> party is legally allowed to set terms and conditions, upon which, if accepted by the agent, the agent becomes personally liable. In the instant case, Mulesi expressly agreed that he would be personally liable in the event of a breach of contract by Dikula. Dikula failed to supply cars to Mulesi despite the fact that Mulesi had sent purchase money to him. Therefore, Mulesi was personally liable to compensate Mwanje for the deposit made to Dikula.
- (ii) Under the law of agency, if an agent conceals a principal's existence or identity, he becomes personally liable to the 3<sup>rd</sup> party. In the instant case, it is indicated in the facts that the identity of Dikula, the principal, was not disclosed to Mbata. Therefore, Mulesi was personally liable to Mbata for breach of contract.
- (iii) Under Ss.247 & 248 of the Companies Act, 2012, a company member has the right to complain to the Registrar of Companies for winding up of the Company or to petition Court, in circumstances such as the instant case facts show, where there is oppression of the minority or where the affairs of the company are being conducted in a manner prejudicial to the interests of the minority shareholders. Directors of Jako Company have acted in a manner that compromises the interest of the company and of the minority shareholders. Therefore, Bongo can sue the Company as a minority shareholder.
- (iv) Under the law of trusts, a settlor may make a trust by manifesting an intention to do so. In case of land, however, evidence in writing is a legal requirement for the creation of a trust. Under S.92 of the Registration of Titles Act, a declaration of trust in land must be evidenced by a memorandum in writing. In this case, the Settlor (Kapere) died before executing the settlement in favour of Mukono. Therefore, there was no valid trust created by Kapere in favour of Mukono.
- (v) Remedies available to the parties
  - Mwanje may petition Court for an order in specific performance.
  - Mbata may seek for a Court order for the supply of the 20 cars from Mulesi or a refund of his money.

- Bongo may complain to the Registrar of Companies for winding up of the company or petition Court for any other orders, including compelling the directors to properly manage company affairs.

## **Question 4**

### **Issues**

- Whether it was lawful for Arejja to pay HIV positive employees half salaries.
- Whether Sekanyo was a member of Tukanike Co. Ltd.
- Whether Muga was still a member of Tukanike Co. Ltd.
- Whether the Director or the shareholder has priority for payment of the debenture.
- What remedies are available to the parties

**(1 mark each)**

### **Resolution of issues**

- S.6 (3) of the Employment Act, 2006 states that it is unlawful to discriminate employees. According to this section, discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, social status, HIV status or disability, which has the effect of nullifying or impairing the treatment of a person in employment or preventing an employee from obtaining any benefit under a contract of service. Therefore, it was unlawful for Arejja to pay half salaries to employees who were HIV positive, including Nzeyimana.
- S.47 (2) of the Companies Act, 2012 provides that a person who agrees to become a member of the company, and whose name is entered in the register of members shall be a member of the company. In the instant case, Sekanyo agreed to become a member of the company but his name was just registered in the company Secretary's diary, not in the company register. Therefore, he was not a member of the company as provided by law.
- A person ceases to be a member of the company when his name is removed from the register of members e.g after transfer of his shares to another person. Membership does not cease until the transferor is removed from the register. In the instant case, Sekanyo was not yet registered as a member; instead Muga's name was still in the Company register. Therefore, Muga was still a member of Tukanike Co. Ltd.
- Where a series of debentures are issued without indicating that they rank pari passu, they will be repaid according to the date of issue. In this case, the shareholder's debenture was issued on 10<sup>th</sup> January 2015 while that of the Director was issued on 12<sup>th</sup> January, 2015. Therefore, the shareholder whose

date of issue was 10<sup>th</sup> January 2015 should be paid first and the Director paid later.

(v) Remedies available to the parties are:

Nzeyimana together with other employees who are HIV positive may complain to the Labour Officer to direct Arejja for payment of their full salaries.

Sekanyo may petition Court for an order to rectify the register by removing Muga's name and replacing it with his name as a shareholder of Tukanike Co. Ltd.

The shareholder whose debenture was issued first may complain to the Board of Directors for priority of payment.

### **Solution 5**

(a) A partnership may be dissolved by Court order or without Court order.

#### **Dissolution by Court order:**

- (i) When a partner is adjudged a lunatic, or of permanent unsound mind.  
Any partner may petition Court on behalf of the other affected partners to have the partnership dissolved.
- (ii) When a partner other than the partner suing, becomes in anyway permanently incapable of performing his part of the partnership contract.
- (iii) When a partner, other than a partner suing, has been found guilty of any such conduct as, in the opinion of Court, is calculated to prejudicially affect the carrying on of the business.
- (iv) When a partner, other than the partner suing, willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in a way that is not reasonably practicable for the other partners to carry on the partnership business.
- (v) When the business of the partnership can only be carried on at a loss.
- (vi) Whenever any circumstances arise, which in the opinion of Court, render it just and equitable that the partnership be dissolved

#### **Dissolution without Court order:**

Dissolution of the partnership will occur if:

- (i) it was for a fixed term, by expiration of that term.
- (ii) meant for a single venture or undertaking, by execution of that venture or undertaking.
- (iii) its duration was for an undefined time, by any partner giving notice to the others of his intention to dissolve the partnership.
- (iv) a partner dies or becomes bankrupt (unless the agreement between the partners provided otherwise).

- (v) any partner permits his share of the partnership to be charged under the Partnership Act for his separate debt and the other partners opt for dissolution of the partnership.
- (vi) an event happens which makes it unlawful for the business of the firm to be carried on.

**(b) Persons entitled to petition for winding-up**

- (i) A company may, by special resolution resolve to be wound up and may, therefore, present a petition to court to that effect.
- (ii) Creditors usually initiate winding up proceedings and may petition for winding up at the discretion of the Court. These may be:
  - A contingent creditor who may petition but must give security for costs and establish a prima facie case.
  - A holder of promissory notes from the company
  - An assignee of a debt which is due from the company may also petition, provided the assignor has not himself presented a petition.
- (iii) A Contributory may also petition for winding-up of a company. A contributory is a person who is liable to contribute to the assets of the Company in event of it being wound up. A contributory must have been a shareholder for at least six months during the eighteen months before the commencement of the winding-up and should show his interest in winding-up as well as availability of assets for distribution among the shareholders.  
A bankrupt contributory cannot petition, but his right to do so can be exercised by his trustees in bankruptcy.
- (iv) The official receiver who is attached to Court for bankruptcy purposes may petition for a compulsory winding up.
- (v) The Attorney General may present a petition for winding-up where an inspector's report has been submitted, following investigation of the company.

**Solution 6**

**(a) General contents of Articles of Association of a Company are:**

- (i) Share capital and related guidelines  
The Articles of Association provide details about the company's share capital, its alteration and rights of share holders. Details include variation of rights, transfer of transition of shares, conversion of shares and forfeiture.



- (ii) Provisions on meetings. Details on notices procedure and the general conduct of company meetings, including voting rights of members, proxies and representatives contained in the Articles of Association.
  - (iii) Directors and secretaries. The Articles provide for powers and duties of directors and secretary, directors' rotation and may specifically give powers on borrowing and payment of dividends, as well as general management, disqualification, and indemnity of such officers.
  - (iv) Companies accounts and audit. The Articles make provisions on accounts of the company, including the audit function.
  - (v) Signatures. Articles of Association must contain signatures of each subscriber to its memorandum, and at least one witness who attests the signature and adds his/her occupation and postal address.
- (b) **The legal effect (importance) of Articles of Association is:**
- (i) Articles of Association provide regulations for the management of internal affairs of a company, although Articles do not confer wider powers than those stipulated in the company's Memorandum of Association.
  - (ii) The Articles constitute a statutory contract which binds members to the company and vice versa. Therefore, the company may sue a member, to restrain any breach of the provisions in the Articles. A member may also sue the company for actual or imminent breach.
  - (iii) Articles are a statutory contract that binds members to each other, thus, the use of pre-emption clauses where transfer of shares is first offered to existing members, not third parties.
  - (iv) The contractual nature of Articles requires that members are bound only in their capacity as members, not in any other special capacity. This is because Articles cannot constitute a contract between the company and a third person. The Articles create rights and obligations only between members and the company.
- (c) Requirements necessary for a valid alteration of Articles of Association are as follows:
- (i) In line with statutory provisions: Section 16(1) of the Companies Act, 2012 provides that a company may, by special resolution alter its Articles, subject to the provisions of the Companies Act.
  - (ii) In line with memorandum of association: A valid alteration of Articles must be subject to conditions contained in the company's memorandum of association. An alternation would, therefore, be of no effect if it contravenes provisions of the memorandum.

- (iii) Share subscription by shareholders: Any alteration of Articles must not lead to subscription by a shareholder for more shares than those held at the date of alteration. If an alteration requires further subscription, it is invalid.
- (iv) Class rights: A valid alteration of Articles must not lead to variation of rights attached to any class of shares.
- (v) Liability of shareholders: The liability of shareholders to contribute to the share capital or otherwise pay money to the company, must not be increased.
- (vi) Modification of Memorandum: An alteration of Articles will not be valid if it results into extending or modifying the Memorandum of Association.
- (vii) Absence of fraud: Where an alteration of Articles would amount to a fraud on the minority shareholders, such alteration will be invalid. It must be made subject to the general principles of law and equity, without any oppression or discrimination.

# ANSWERS TO TEST PAPER 8

## CPA (U) JUNE 2018

### Solution Two

#### Issues:

- i) Whether it was lawful for Feefe to use partnership property for his own side business.
- ii) Whether it was lawful for Feefe to admit Nteefu as a partner
- iii) Who on dissolution of the partnership, should have priority of payment?
- iv) Whether Ndeku was justified to revoke the agency relationship with Jokuna
- v) What remedies are available to the parties?

#### Resolution of issues:

- (i) Every partner has a duty to account for any benefit derived by him without the consent of other partners, from any use of partnership property. Feefe's use of the partnership property to print and sell materials for his side business without the consent of Gabi and Pima was unlawful. This is because it amounted to competing with the partnership and making secret profits which were not accounted for.
- (ii) Under the law of Partnerships, all partners have a right to consent to the admission of a new partner into the firm. Where such consent is not obtained from partners, every partner is entitled to object to the introduction of a new partner. Therefore, it was not lawful for Feefe to admit Nteefu as a new partner without Gabi and Pima's consent.
- (iii) In the absence of an agreement to the contrary, when a firm is dissolved, the firm assets, including the original and subsequent contribution of partners, are applied in the following order: (a) payment of debts and liabilities to persons who are not partners; (b) payment of a partner what is due from the firm to him, for advances (these exclude capital); (c) the ultimate residue (if any) is divided among the partners in the proportion of profit distribution. In this case, if GFP Dealers is to be dissolved, Pima who advanced a loan to the firm will be paid first.
- (iv) An agency relationship is irrevocable where a Principal has given the agent an authorization coupled with an interest. Such authority may, for instance, be to a "Factor" agent who makes an advance to his principal and has authority to sell the Principal's goods and recover his advance from the proceeds of sale. In the present case, Jokuna made an advance when he used his own money to hire pick-up trucks on an understanding with Ndeku that his money will be repaid when customers pay for deliveries. Since the 3<sup>rd</sup> delivery is yet to be paid, and Jokuna's advance is also yet to be repaid, Ndeku is not justified to revoke the agency relationship.
- (v) Remedies available to the parties:
  - GFP Dealers may seek for a Court order against Feefe to declare all secret profits he made to make good all loss occasioned to the firm.
  - Pima and Gabi are free to object to the admission of Nteefu as a partner in GFP Dealers
  - Pima may seek for a declaratory order that he be paid first.
  - Jokuna may seek for a Court order against Ndeku for payment. Jokuna may also hold on to Ndeku's property until he is paid.

## **Solution Three**

### **Issues:**

- i) Whether Juma was properly categorised as an employee of Safari Company
- ii) Whether the Company was liable to pay NSSF contributions for Juma
- iii) Whether payment of Mrs. Juma less than her workmates was justified
- iv) Whether the alteration of Safari Company Articles of Association was lawful
- v) What remedies are available to the parties

### **Resolution of issues**

- i) An employee is a person who has a contract where he agrees to work for an employer in return for remuneration. In this case, although the Company exercised some control over Juma, the other factors were not consistent with having a contract of service. Juma owned his own equipment and was operating at his own financial risk to a degree that he was an independent contractor. (Ready Mixed Concrete (South east) Ltd v. Minister of pensions & National Insurance & ors. 1968). Therefore, Juma was not [properly categorised as an employee of Safari Ltd.
- ii) NSSF contributions are paid for a Company's employees. Since Juma was an independent contractor, Safari Company was not liable to pay NSSF contributions for him.
- iii) Under S.6 (3) of the Employment Act, 2006, it is unlawful to discriminate an employee on the basis of sex. In the instant case, Mrs. Juma was paid less than her male workmates who did the same work, on the basis of her sex. Therefore, payment of Mrs. Juma less than her workmates was not justified.
- iv) In this case, Safari Ltd's Articles were altered to enable majority shareholders to purchase shares of the minority at a fair value. The alteration of the Articles of Association of Safari Company was not lawful as it would benefit the majority shareholders rather than the Company as a whole. (See Brown V British Abrasive Wheel Co. (1919)1 Ch 407)
- v) Remedies available to the aggrieved parties:
  - Mrs. Juma may complain to the labour officer to compel Safari Ltd to pay her full entitlement of salary and arrears.
  - Safari Ltd may seek for a Court order for a declaration that Juma is not an employee of the Company, thus not liable to pay NSSF contributions.
  - Minority Shareholders may seek a Court Order to declare the alteration of Articles of Association of Safari Ltd unlawful.

## **Solution Four**

### **Issues**

- (i) Whether Komatu was entitled to dividends from DADUNDA Limited
- (ii) Whether Maiso was entitled to benefit from his shares in DADUNDA Limited
- (iii) Whether it was lawful to deny Mrs. Kamaino her late husband's dividends.
- (iv) Whether Mrs. Kamaino was entitled to be registered as a shareholder.
- (v) What remedies are available to the parties?

### **Resolution of issues:**

- (i) Under Company law, a person ceases to be a shareholder of a Company when he sells his shares to another person. In the instant case, Komatu sold his shares when he incurred losses in his business. Therefore, Komatu was not entitled to dividends from DADUNDA Limited.
- (ii) Under Company law, when a shareholder is declared bankrupt he does not cease to be a member of the Company. His shares are, however, held in trust by the Trustee in bankruptcy and he votes as directed by his Trustee in bankruptcy. In this case, other shareholders did not want Maiso to share dividends from the Company. Maiso's shares can lawfully be held in trust by the trustee in bankruptcy. Therefore, Maiso is entitled to benefit from his shares in DADUNDA Limited.
- (iii) Under the law, where a shareholder dies, the legal representative holds the deceased's shares. In this case, Mrs. Kamaino was her late husband's legal representative. Therefore, it was not lawful to deny Mrs. Kamaino her late husband's dividends.
- (iv) Where a Company shareholder dies, his shares are transferred into the names of his/her legal representative. This is referred to as transmission of shares. In this case, Mrs. Kamaino's appeal to be registered as a shareholder was unlawfully rejected. Therefore, Kamaino's wife is entitled to be registered as a shareholder of DADUNDA Limited.
- (v) Remedies available to the parties
  - Maiso may sue DADUNDA Limited through his trustee in bankruptcy, for payment of his dividends.
  - Mrs. Kamaino may seek for a Court order to be paid dividends of Kamaino as a legal representative
  - Mrs. Kamaino may seek for a declaratory Court order for her entitlement to be registered as a shareholder of the Company through transmission of her late husband's shares.

## **Solution Five**

### **(a) Definition of a contract**

A contract is a legally binding agreement made between the contracting parties, the performance of which the law recognizes duties of parties and where the non-performance of which the law gives a remedy.

It can also be defined as an agreement made with free consent of the parties, who have capacity to contract for a lawful consideration with the intention to be legally bound. (S.10) (Contract Act 2010)

**Forms of contracts:**

- (i) Written contracts are those contracts which are reduced into writing, in clear and certain terms, in order to avoid any future misunderstandings. e.g. a contract whose matter exceeds Shs 500,000/=.
- (ii) Oral contracts are those contracts which are not reduced into writing. They can be referred to as simple contracts, and they may not be evidenced in writing.
- (iii) Implied contracts are those contracts which are by conduct of parties, without necessarily being in writing or oral form. They also fall under the general category of simple contracts and as such, must be supported by consideration e.g. A passenger and a bus owner
- (iv) Partly oral and partly written contracts are contracts requiring written evidence. Such a requirement is not for a special written form of contract, but that there is a note or memorandum in writing signed by the parties or a person lawfully authorized by the parties.

**(b) Circumstances that amount to exceptions to the general rule of privity of contract:****(i) Insurance policies:**

A person can take out an insurance policy on behalf of another person e.g. for a spouse, a parent for his or her child. Therefore, a beneficiary who was not a party to the contract can sue on a policy of insurance. (P Samuel & Co V.Duman [1923] 1 KB 592)

**(ii) Bills of exchange:**

As far as negotiable instruments are concerned, a third party can sue on a bill of exchange or cheque.

**(iii) Agency:**

Where an agent enters into a contract with a third party, the principal can thereafter get benefit from such a contract even if he/she was not privy to the contract in the eyes of the third party. At the same time, the third party may sue the principal on the contract made with the principal's agent.

**(iv) Usages of trade and commercial practice:**

Where it is clear that a certain commercial practice that is in favor of a third party exists and all parties involved relate on it, it will support a third party claim as an exception to the privity doctrine.

**(v) Restrictive covenant on land:**

Where covenants on original contracts run with the land, and a purchaser of the land voluntarily accepts them as part of the contract of sale, such covenants bind later purchasers. Under equity, the later purchaser cannot disregard such contractual obligation affecting the land, since he had notice of it at the time of purchase.

(vi) Assignment of contractual benefit: This occurs when, there is a discharge of debt to a third party to the contract. In such an instance, a debt that is due to a third party from one of the contracting parties is discharged by the other party. The contracting parties would, in this case, be bound by a legal assignment for such a discharge. If such other party fails to pay the debt, the third party can sue the party even if he is not privy to the contract.

## **Solution Six**

### **Distinction between Criminal and Civil Law**

- (i) A Crime is an offence against the State whereas Civil law sets out the rights and duties of persons between themselves.
- (ii) The State prosecutes a person who is accused of a crime whereas an action in civil law is brought by one person (the plaintiff) against another (the defendant).
- (iii) The object of criminal law is to prove guilt and have the offender punished whereas in civil law, the object is to provide a remedy for the aggrieved party.
- (iv) In criminal law, the burden of proof lies on the prosecution whereas in civil law the burden shifts from time to time.
- (v) In criminal law, the standard of proof is beyond reasonable doubt whereas in civil law the standard of proof is on the balance of probabilities.
- (vi) In criminal law, it is only the Director of Prosecutions who has powers to withdraw a case from Court by issuing "Nolle Prosequi" whereas in civil law, the parties themselves may withdraw a case from Court any time before judgment.
- vii) The parties in criminal law are the prosecution and the accused whereas in civil law, the parties are normally the plaintiff and the defendant.

#### **(b) General rules regarding priority of paying debenture holders:**

- (i) Payment of debenture holders in equal ranking (pari passu) with others in the same class
- (ii) Distribution in proportion to the amount owing to each of the debenture holders if there are insufficient assets of the company
- (iii) Payment according to the date of issue in case the debentures were issued without indicating that they rank pari passu
- (iv) Payment according to the order of the number allocated to each if they were all issued on the same date
- (v) Debentures secured with a fixed charge ranks higher than those secured with a floating charge
- (vi) A secured debenture ranks higher than that which is not secured.

#### **c) Duties of a Company Secretary:**

The duties of a Company Secretary are as follows:

- (i) Documentation: The Secretary handles Company documents such as letters and circulars, and ensures that they are accurate.
- (ii) Record keeping: the Secretary has to keep all Company records including Company registers in order and ensures that they are kept in safe custody
- (iii) Company returns: the Secretary ensures that all Company returns are made in compliance with the legal requirements, for instance filing annual returns with Registrar of Companies.
- (iv) Meetings: the Secretary organizes Company meetings by issuing notices, preparing agenda, recording minutes and handling other related matters
- (v) Certifying Company documents: The Secretary certifies documents like share transfers
- (vi) Countersigning Company Documents e.g agreements and bills of exchange.

## ANSWERS TO TEST PAPER 9

### CPA (U) AUGUST 2018

#### **Solution 2**

##### **Issues:**

- (i) Whether Mulasi can lawfully be a member of KMM firm of advocates.
- (ii) Whether it was lawful for the company to do the car business.
- (iii) Whether the directors were justified to declare dividends partly from capital.
- (iv) Whether the suppliers of hides and skins, and of the cars can recover their money from the company.
- (v) What remedies are available to the parties?

##### **Resolution of issues**

- (i) Mulasi is an engineer while Kavuyo and Mapengo are lawyers. Since they belong to different professions, Mulasi cannot lawfully be a partner in KMM and Company Advocates.
- (ii) It was not lawful for the company to do the car business. This is because the company's memorandum of association clearly stated that its sole business was to buy hides and skins. The car business was done ultra vires the provisions of the company objectives.
- (iii) The directors were wrong to declare dividends from part of capital. As a general rule in company law, dividends should not be paid out of the capital of a company.
- (iv) The suppliers of hides and skins can only recover their money after lifting the company's veil. This is because the company has no money to pay them since the directors had taken money from the company to buy properties for themselves (See: section 20 of the Companies Act, 2012). The car suppliers on the other hand, cannot recover their money from the company because the company's dealing in the car business was ultra vires the objects in its memorandum of association.
- (v) Remedies available to the parties.
  - Kavuyo, Mapengo and Mulasi may form a company instead of a professional Partnership.
  - The Registrar of Companies may administratively compel Kambuse Investments Limited to stop the car business and the unlawful payment of dividends from capital/ refund any which had been paid from capital.
  - Suppliers of hides and skins may petition court to lift the veil of incorporation, for payment by the directors of the company.
  - Suppliers of hides and skins may in the alternative petition court to wind up Kambuse Investments Limited and be paid.



### Question 3

#### Issues:

- (i) Whether Weke's appointment as trustee was valid.
- (ii) Whether Weke can be discharged as a trustee for Nsatu's children.
- (iii) Whether the Directors' refusal to transfer Nsatu's shares to Peter was valid.
- (iv) Whether Falanga company auditor can be held liable for breach of duty.
- (v) What remedies if any, are available to the aggrieved parties.

#### Resolution of issues:

- (i) Weke was appointed as trustee by her late brother Nsatu in his will. Under the law of trusts, a person who can hold property (i.e. of full age and capacity) can be appointed as a trustee. There is no law in Uganda prohibiting a married woman from being appointed as a trustee. Therefore, Weke's appointment as a trustee was valid.
- (ii) Under the law of trusts, a trustee can be discharged if such trustee resides outside the country for more than 12 months. According to the facts, Weke has stayed in Kenya with her husband for the last 14 months. Therefore, she can be discharged and a new trustee appointed for Nsatu's children.
- (iii) Under Company law, directors of a company have absolute discretion to refuse registration of any transfer of shares without giving any reasons (*Ferris George and Sons V. Khouey* [1965] All NLR). This is upheld, provided the directors' discretion is bonafide and within reasonable time. S.86 (1) of the Companies Act provides 60 days as reasonable time for a notice of refusal to be sent to the transferee.  
In the instant case, Peter just proposed for a transfer. He was not a personal representative for Nsatu's estate and the company records still showed Weke as the trustee for Peter and John. The directors also duly complied with the requirement to give notice of refusal to Peter within reasonable time. Therefore, the directors' refusal to transfer Nsatu's shares to Peter was valid.
- (iv) A company auditor has a duty to audit accounts, which includes verification of updated company records. The auditor owes a duty to shareholders and the company for carrying out his responsibilities with care, skill and caution. In the absence of such, an auditor breaches his duty and is negligent. Therefore, Falanga company auditor was negligent, breached his duty and trust, and can be held liable for the breach (See S.278 (2) Companies Act, 2012).
- (v) Remedies available to parties.
  - Peter may petition Court to have Weke discharged from being a trustee and another person appointed as trustee.

- Falanga company may sue the auditor and claim damages for breach of duty.
- Peter as a beneficiary, may petition court to enable tracing of Aunt Weke, to account for the trust income.

#### **Question 4**

##### **Issues:**

- Whether Ken Ltd's termination of Mpaka's services was lawful.
- Whether it was lawful for Ndege to leave his job.
- Whether Munta lawfully left his employment.
- Whether the alteration of Simu Ltd's objectives in its memorandum of association was lawful.

##### **Resolution of issues:**

- Section 65 (1) (b) of the Employment Act, 2006 is to the effect that a contract of employment fixed for a specific period, automatically expires upon expiry of the period, if not renewed within a week from the date of expiry.

In the instant case, the period of expiry was in January 2017 and Mpaka was told to leave in February 2017. Therefore, Ken Ltd lawfully terminated Mpaka's services.

- Under S.65 (1)(c) of the Employment Act, 2006, where a contract is terminated by the employee with or without notice as a result of unreasonable conduct of his employer, the termination is lawful. In the instant case, the facts show that the conduct of Katara was unreasonable. Hence, Ndege lawfully left his job.
- Under section 65 (1)(d) of the Employment Act, termination is deemed to take place where an employee ends his contract after receipt of notice of termination from his employer but before the end of the notice. Therefore, Munta lawfully left his employment from Taka Taka Ltd.
- S.10 of the Companies Act 2012 empowers a company by a special resolution, to alter its memorandum of association in respect of the objects of the company, under circumstances which include attaining its main purpose by using new or improved means.

According to the facts, Simu Ltd wants to improve its business in line with the use of new technology and the resolution to alter the memorandum of association was lawfully passed and registered. Therefore, the alteration of Simu Ltd's objectives was lawful.

(a) **Under Part V of the Companies Act 2012, the general duties of a Company Secretary are as follows:**

- (i) Issuing notices for meetings. The company secretary, on instructions of the directors or Board of Directors, prepares and issues all notices for the company's general and directors' meetings.
- (ii) Taking minutes of meetings. The secretary writes up minutes of both board meetings and general meetings of the company.
- (iii) Preparation and issuing of company documents. The company Secretary may prepare some company documents and has a duty to issue documentation such as circulars, letters, agenda for meetings and any other related documentation of the company.
- (iv) Countersigning documents: The secretary has a duty to countersign deeds of the company, and have them sealed as may be provided by the articles of association.
- (v) Certification of documents. The company secretary is under a duty to certify documents such as share transfers.
- (vi) Making statutory returns: The company secretary has a duty of ensuring that accurate and orderly returns are made to the Registrar of companies within the required time.
- (vii) Custody of books and registers: The company secretary has a duty to ensure that all company registers are in proper form and that all statutory books and registers are kept properly.

(b) **Contents of the register of company directors and secretaries as provided by the Companies Act, 2012 are as follows:**

S. 228(2) provides particulars of each director to include:

- (i) The director's first name and surname.
- (ii) His/her residential and postal addresses.
- (iii) His/her nationality if the given nationality is not his/her nationality of origin.
- (iv) His/her business occupation, if any.
- (v) Particulars of all other directorships held by him/her.
- (vi) Date of his/her birth.
- (vii) In case of a corporation, its name and registered office as well as postal address.

S. 228(4) of the Act provides particulars in respect of the secretary as:

- (i) His/her first name and surname.
- (ii) Any former first name or surname.
- (iii) His/her usual residential and postal addresses.
- (iv) In case of a corporation, its name and registered office.

## Question 6

**(a) Agency** is a relationship created by contract or by law, whereby one party (the principal), grants authority to another party (the agent), to act on his behalf and to deal with third parties (See S. 118, Part X of the Contracts Act, 2010).

**(b) Circumstances under which an agency can be terminated**(S.135 Contracts Act, 2010)

An agency may be terminated by act of the parties or by operation of law.

Act of the parties:

Agreement between the parties. An agency may be terminated at any time by the mutual agreement of the principal and agent(S 135 (a)).

Renunciation. An agent can, after giving notice of his intention, renounce the contract of agency. The principal may, however, sue the agent for damages, if he has suffered loss as a result of breach of agency(S 135 (b)).

Revocation. The Principal may revoke the agent's authority at any time but if such revocation constitutes a breach of contract, the agent is entitled to compensation (S 135 (a)).

**Operation of law:**

- Performance: Where the agency is for a single transaction, it is terminated when the transaction is completed (S 135 (c)).
- Fixed period: If the agency is created for a fixed period, it comes to an end on expiration of that period (S 135 (c)).
- Death or insanity of either party: If either party dies or becomes insane during the agency, it is immediately terminated (S 135 (a)).
- Bankruptcy of the principal: When the principal becomes bankrupt, the agency is terminated (S 135 (a)).
- Destruction of the subject matter: Where an agency is created on the basis of the principal's property and that property is later destroyed, such an agency is thereby terminated e.g. where an agent has to sell a house and the house is destroyed fire (S 135 (a)).
- Subsequent illegality: Where there is enactment of a law that adversely affects an agency in a way that the transactions of that agency become illegal yet it was legal at the time of creating the agency, such agency is thereby terminated (S 135 (a)).

**(c) The differences between criminal law and civil law are as follows:**

- Object/purpose: The main object of criminal law is to punish the wrong doer while the object of civil law is to make good the wrong done.
- Parties involved: In criminal law the parties are the State and the accused person while parties in civil law are the plaintiff and the defendant.
- Burden of proof: In criminal law, the burden is on the state to prove the case against the accused person but in civil law the plaintiff must prove the case against the defendant.
- Standard of proof: The standard of proof in criminal law is beyond reasonable doubt while it is on balance of probabilities in civil law.
- Redress: Criminal law provides remedies through a number of punishments including imprisonment, fines and caution, while civil law remedies include damages, compensation, restitution, specific performance and injunctions
- Codification: Whereas it is mandatory for criminal law to be written, civil law may not be written e.g. the law of torts and customary law.

# **ANSWERS TO TEST PAPER 10**

## **CPA (U) NOVEMBER 2018**

### **Solution 2**

#### **Issues**

- (i) Whether Pella was liable to the partnership for tokens received from clients.
- (ii) Whether the denial of Kapere to access partnership books of accounts was lawful.
- (iii) Whether Penguin company director's decline to effect the transfer of shares from Pella to Tadoba was justified.
- (iv) Whether the denial of Tadoba to attend Penguin company's AGM was justified.
- (v) What remedies are available to the parties?

#### **Resolution of issues:**

- (i) S.31 of the Partnerships Act, 2010 provides for partners' liability to account to the firm for any benefit derived from any business, where the firm has connection.

In the instant case, Pella got tokens from clients through the partnership business connections. Therefore, Pella was liable to account to the partnership for tokens received from clients.

- (ii) Under S.33 (1) (c) of the Partnerships Act, 2010, a partner is entitled to inspect the partnership books of accounts, among other records.

In this case, Kapere was not given the opportunity to look at the books of account, despite several requests. Therefore, the denial of Kapere to access partnership books of accounts was unlawful.

- (iii) Under S.5 (1) (a) of the Companies Act 2012, one of the characteristics of a private company is the restriction of transfer of shares and other securities to non-members. In practice, members are restricted to sell their shares only to the existing members.

In this case, Tadoba had bought Penguin company shares from Pella but the Director refused to effect the transfer. At the time of transfer of the shares, Tadoba was not a member of the company. Therefore, Penguin Company Director's decline to effect the transfer of shares from Pella to Tadoba was justified.

- (iv) Tadoba was not a member of Penguin company and can only become a member if the transfer of shares from Pella is effected by registration of his name in the Company register. Therefore, the denial of Tadoba to attend Penguin Company's AGM was justified.

- (v) Remedies available to the parties
  - Kazi partnership may demand for Pella's accountability for the money he received as tokens from partnership clients.
  - Kapere may seek for a court order compelling Kazi partnership to enable him to access partnership books of accounts.
  - Tadoba may seek a court order compelling Pella to refund the amount he received on sale of the Penguin company shares.

### **Solution 3**

#### **Issues:**

- (i) Whether Primpo is liable to pay Kipoli for transportation costs
- (ii) Whether Kipoli was justified to take benefit of the money due to Primpo, without Primpo's knowledge.
- (iii) Whether Jim can lawfully hold his late father's property and shares in trust for himself and his siblings.
- (iv) Whether the Directors are liable to Tallo company for involvement in activities for their personal gain.
- (v) Whether there are remedies available to the parties.

#### **Resolution of issues**

- (i) A principal has a duty to indemnify the agent for acts lawfully done and liabilities incurred in execution of his/her authority (S.156 Contracts Act, 2010).

In this case, a principal/agent relationship existed between Primpo and Kipoli. Kipoli lawfully acted for Primpo for 2 months while incurring costs of transporting maize to Tallo company. Therefore, for all this period, Primpo is liable to pay Kipoli (indemnify him), for extra costs incurred when transporting maize to Tallo company.

However, during the last month, Kipoli did not lawfully carry out duties for Primpo, and as such, Primpo is not liable to indemnify Kipoli for the last month.

- (ii) According to the law on agency, an agent is duty bound not to make any profit beyond his commission and must account for any profit made without the principal's consent, out of any property entrusted by the principal.

In this case, Primpo entrusted Kipoli with the maize, to take to Tallo Company. Kipoli lawfully carried out his duties for the two months. During the third month, Kipoli breached his duty by taking money due to Primpo, without Primpo's knowledge or consent.

Therefore, Kipoli was not justified to take benefit of the money due to Primpo, without Primpo's knowledge and consent.

- (iii) A trustee must be a person of full age and legal capacity. A minor cannot hold a legal estate, so, it is not possible for a minor to settle a trust in respect of a legal state. Furthermore, beneficiaries are discouraged from being trustees in order to avoid possible conflict of interest.

In this case, Jim is a 17 year old boy and still a minor. He cannot be a trustee for himself and his siblings and cannot, therefore, lawfully hold his late father's property and shares in trust for his siblings.

- (iv) According to Section 173(a) and 174(b)(i) of the Companies Act, 2012, the Registrar of Companies shall cause an investigation to be made or appoint an inspector to investigate company affairs, where circumstances suggest that the Company business is conducted for an unlawful purpose, which may be oppressive to any of its members.

In this case, the directors engaged in an unlawful activity of selling elephant tusks for their personal gain, but in the name of the company. The directors are therefore, liable to repay costs spent in inspection/investigation, as well as indemnifying the company against liability under S.179 (5) of the Companies Act, 2012.

- (v) Remedies available to parties

- Kipoli may seek for an order from Court for payment of his commission and indemnity from Primpo for two months.
- Primpo may seek for a Court order to recover money taken by Kipoli for one month and for any loss incurred by breach of his duty.
- The shareholders of Tallo company may seek for a Court order for damages to the company, to be paid by the directors.

#### **Solution 4**

##### **Issues:**

- (i) Whether non-payment of Kabi's salary by Mbalo Company was lawful
- (ii) Whether the denial of Turuho's request for 2 days from work was justified.
- (iii) Whether non-payment of dividends to Balolo was justified.
- (iv) Whether BMT Ltd's Directors are liable for loss caused to the Company.
- (iv) Whether there are remedies available to the parties



## **Resolution of issues:**

- (i) S.55(i) (a) of the Employment Act, 2006 provides that an employee who is incapable of work because of sickness or injury is entitled to sick pay for the first month's absence from work and every other benefit as stipulated in the contract of service.

In the instant case, Kabi had worked for Mbalo company Ltd since 2016. When he broke his leg, Kabi spent one month in hospital but was not paid his salary for that month. Since the law provides for sick pay during a month's absence from work, Kabi is entitled to his full wages. Therefore, non-payment of Kabi's wages by Mbalo company was unlawful.

- (ii) S.57 (i) of the Employment Act, 2006 is to the effect that a male employee shall, immediately after the delivery or miscarriage of his wife, have the right to a period of four working days' paternity leave from work.

In this case, Turuho's wife had a miscarriage but when Turuho requested for two day's leave, he was told to choose between the job and looking after his wife. This was against the law. Therefore, the denial of Turuho's request for leave from work was not justified.

- (iii) Unless a Company's Articles of Association provide otherwise, a minor can buy shares and become a member of a company. If he is a member, he is subject to the general contractual rights and liabilities of a minor.

In the instant case, it is not shown that the articles of association for Mbalo company prevents minors from becoming shareholders, and does not prohibit minors from receiving dividends. Therefore, the non-payment of dividends to Balolo was not justified.

- (iv) As a general rule, a director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience.

The part-time directors i.e. Donke and Monti failed to exercise the skill and care which was reasonably expected from them. They signed blank cheques for Twona, who used them to advance unsecured loans to debtors, and the debtors never paid back, thus causing loss to the Company. Therefore, BMT Ltd's directors are liable for the loss caused to the company.

- (v) Remedies available to the parties.

- Kabi may complain to the labour officer for payment of his salary.
- Turuho may complain to the labour officer for enforcement of his right to paternity leave.
- Balolo may sue the Company for payment of his dividends.
- The shareholders of BMT Ltd may seek a Court order to compel the Directors to make good the loss caused to the Company.

## **Solution 5**

### **(a) Types of mistakes in the law of contract:**

(i) Common mistake:

This is where both parties are making the same mistake. It usually involves the mistaken belief that the contemplated subject matter of their contract is in existence when in fact, unknown to them, the subject matter has ceased to exist.

(ii) Mutual mistake:

This happens when the parties to a contract are at cross purposes with one another. This is when one party thinks the subject matter as one thing whereas the other thinks it is another thing. The contract is void for lack of consent since the subject matter contemplated by each party is different, hence, a mutual mistake.

(iii) Unilateral mistake:

This is where only one party to the contract is mistaken while the other is not mistaken. Such mistake does not render the contract void. Where one party is aware of the erroneous belief, the contract may be avoided.

(iv) Mistake to the quality of the subject matter:

Mistake as to quality does not render a contract void. The principle of caveat emptor applies, where a buyer is expected to be aware of the subject matter. The contract can only be set aside under equity, on conditions of fairness and justice to both parties.

(v) Mistake as to identity of the other party:

Where one party mistakes the identity of the other party, the mistake will nullify the contract where the identity is of material importance and the mistake is known to the other party.

(vi) Mistake to the nature of document:

A person is bound by the terms of any document which he/she signs, regardless of illiteracy or ignorance of such terms.

### **(b) Ways in which a contract may be discharged:**

(i) Agreement: A subsequent agreement between the parties intended to extinguish their respective rights and obligations under the original agreement discharges the contract. It may be under seal or supported by a valuable consideration and can be done orally, even if the original contract was in writing or under seal.

(ii) Impossibility or frustration: Parties may provide in their contract that it may terminate when it becomes impossible to perform or on the happening of a specified event. Where no specific provision against the contingency is made, the parties may use the doctrine of frustration as a defence. Here, a party may prove a supervening event that occurs beyond their contemplation, destroying the foundation of the contract.

- (iii) Breach of contract: This happens when a party fails or refuses to perform his/her obligations under the contract. The party who suffers by a breach is entitled to treat the contract as terminated and may refuse any further performance on his part.
- (iv) Performance: Discharge by performance occurs where both parties fulfill their obligations under the contract. The performance must be strictly within the terms of the contract.
- (v) Lapse of time: A contract formed for a specified time is discharged when the period of time has elapsed. Where there is no specified time, the lapse of reasonable time may render the contract unenforceable in a Court of Law.
- (vi) Operation of the Law: This may take place by merger, bankruptcy, death and unauthorized material alteration of the contract without consent of the other.

### **Solution 6**

#### **(a) Contents of memorandum of association:**

- (i) Name clause: The company name is chosen by company promoters, subject to legal restrictions provided under the Companies Act. The restrictions are intended to give a company legal monopoly of its name for protection of its business interests.
- (ii) Registered office clause. This fixes nationality and domicile of a company for purposes of paying taxes, among other things.
- (iii) Objects clause: This states the company's set objectives, to protect subscribers and outsiders who deal with the company, to know the extent of the Company's powers.
- (iv) Limited liability clause: This clause states that the company liability is limited by shares or by guarantee. It also states that liability of members is limited.
- (v) Capital clause. This clause states the amount of share capital with which the Company proposes to be registered. Statements of share capital help potential creditors to determine the money they can lend the company, since capital primarily acts as their security.
- (vi) Association clause: This contains a declaration that the subscribers are desirous of being formed into a company, in pursuance of the Memorandum of Association.

**(b) Effects of altering a memorandum of association:**

- (i) The mode of conducting business may change when the company's aim is to conduct business more effectively, by improved means.
- (ii) The company business may change in size, by expansion or reduction of its stock or geographical area of operation.
- (iii) A new kind of business may be adopted, to combine with the existing business.
- (iv) Any of the existing objectives may be abandoned or restricted, for purposes of carrying out company business more economically.
- (v) The whole or part of a company's undertaking may be disposed of.
- (vi) The company identification may change e.g. a change of company name.
- (vii) The Company share capital and shares held by members may increase or decrease, depending on the resolution for alteration.

# ANSWERS TO TEST PAPER 11

## CPA (U) JUNE 2019

### Solutions 2

- (i) Whether the termination of Kazida was lawful.
- (ii) Whether Maba and Bundura are entitled to payment for expenses of promoting the company.
- (iii) Whether Bambo Ltd is liable to pay Baringo for the bricks supplied.
- (iv) Whether BamboLtd is liable to pay Sulanta.
- (v) Whether there are remedies available to the parties.

### Resolution of issues:

- (i) S.65(1) of the Employment Act is to the effect that termination shall be deemed to take place where the contract of service is brought to an end by the employer, with notice.  
In the instant case, Kazida was employed under a contract of service and he was given sufficient notice of termination. Therefore, his termination was lawful.
- (ii) Promoters have no legal rights against the company they promote, but if the Company adopts Table A of the Companies Act, the directors are empowered to pay the promoters for their promotion expenses.  
In the instant case, since the company adopted Table A of the Companies Act, Directors may pay Maba and Bundura for the promotion expenses they incurred while promoting the company (S.80 of schedule 1 of Table A, Companies Act, 2012). Thus, Maba and Dundura are entitled to payment.
- (iii) In promoting a company, promoters usually enter into contracts with third parties and as such, they purport to do so, on behalf of an unincorporated Company. Such contracts are not binding on the company because a company is not yet in existence and has no capacity to contract. The contract is assumed to be entered into by the promoter (S. 54 (1) Companies Act).  
In this case, Baringo supplied bricks before Bambo company was incorporated. Therefore, the company is not liable to pay Baringo, since it was not in existence by the time he supplied the bricks.
- (iv) S.54 (1) Companies Act 2012 is to the effect that pre-incorporation contracts are deemed to have been entered into by the promoter, not the Company.  
However, when the company is incorporated, it may adopt pre-incorporation contracts entered into by the promoters on its behalf, as per S.54 (2).  
In the instant case, Sulanta supplied cement to Bambo Co. Ltd before the Company was incorporated. Since the directors made a resolution to ratify Sulanta's contract, Bambo Co. Ltd Company was liable to pay Sulanta on the basis of adoption of S.54 (3) Companies Act, 2012.

- (v) Remedies available to the parties.
  - Maba and Bundura may seek for a Court order for payment.
  - Baringo may petition Court to compel the promoters to personally pay him.
  - Sulanta may sue the Company to pay him for the cement.

### **Solution 3**

#### **Issues:**

- (i) Whether the partnership by Rute, Bakka, Byodo and 18 others was lawful.
- (ii) Whether the partnership business was lawful.
- (ii) Whether the notice given for Timba Ltd's annual general meeting was valid.
- (iv) Whether the directors of Armstrong public company were justified to convene the AGM in December, 2018.
- (v) Whether there are remedies available to the parties.

#### **Resolution of issues:**

- (i) According to section 2(1) of the Partnership Act 2010, a partnership will be illegal where it consists of more than 20 partners.  
In this case, Rute, Bakka and Byodo brought six friends each, to form the partnership. Their total number was 21, beyond the maximum allowed by law. Therefore, the partnership by Rute, Bakka, Byodo and 18 others was unlawful.
- (ii) Under the law, a partnership will be illegal if it is formed for purposes contrary to public policy. Dealing in marijuana and Indian hemp is considered to be illegal trade in the East African region.  
In the instant case, the partnership was formed to deal in the trade of exporting marijuana and Indian hemp to Kenya, among others, both of which are prohibited drugs. This renders the partnership illegal, and cannot be regarded as existing. Therefore, the partnership business was unlawful.
- (iii) The requisite notice of every general meeting must be sent to all members of the company and the members must be given a 21 days' notice, excluding the day of service and the day of the meeting (section 140 (3) Companies Act, 2012).  
A shorter notice is given only when all the members have agreed to it.  
In the instant case, the managing director of Timba Ltd gave one week's notice of the general meeting. As there was no agreement on a shorter notice to be given, the notice given for Timba Ltd's annual general meeting was, therefore, invalid.
- (iv) Section 138 (1) of the Companies Act, 2012 provides that not more than 15 months shall elapse between the date of one annual general meeting of a public company and the date of the next general meeting.  
In this case, the first general meeting of Armstrong public company took place on 5<sup>th</sup> May, 2017 and the second one was convened 20 months later, in December, 2018. This was contrary to the provisions of the law. Therefore, the directors of

Armstrongpublic Ltd were not justified to convene an annual general meeting in December, 2018.

- (v) Remedies available to the parties.
- The partners may agree to dissolve the illegal partnership
  - Members of Timber Ltd may seek for a Court order to compel the directors to convene a general meeting according to the law
  - Members may seek for a Court declaration that the meeting of December 2018 was illegal.

#### **Solution 4**

##### **Issues:**

- (i) Whether Loka qualifies to continue as a director of Kampala Designers Ltd
- (ii) Whether the termination of Loka's services as director was valid.
- (iii) Whether Opika's appointment as a company auditor was lawful
- (iv) Whether Habari was liable for payment of Shs 400 million
- (v) What are the remedies available to the parties?

##### **Resolution of issues**

- (i) Under Section 199 of the Companies Act 2012, a person is disqualified to act as a Director for 3 years if he/she fails, to file tax returns and pay tax among other things.  
In this case, Loka had received a notice to file returns and pay taxes but he kept the notice without complying despite the fact that he was going away on a business trip for more than 2 months. Therefore, Loka does not qualify to continue as a director of Kampala Designers Ltd.
- (ii) S.195 of the Companies Act 2012 provides for removal of a company Director, provided a special notice is issued to that effect.  
In the instant case, a resolution was made by the company for the removal of Loka after giving sufficient notice on the company's WhatsApp group. Therefore, the termination of Loka's services as director was valid.
- (iii) Section 169 (2) (b) of the Companies Act, 2012 provides that an officer or a servant of a company is not qualified to act as an auditor of the same company.  
According to the facts, Opika who served as a company accountant was casually appointed by Loka as the company auditor. Opika's appointment as a company auditor was not lawful, therefore, his termination was justified.
- (iv) A liquidator occupies a fiduciary position towards the company creditors, in execution of his duties. In the instant case, Habari the company liquidator sold a company house at shillings 700 million but declared only 300 million. He caused a loss of Shs 400 million to the company, which was obtained through fraud and in conflict of his duties. Habari was, therefore, liable for payment of Shs 400 million.

- (v) Remedies are available to the parties
  - Kampala Designers may remove Loka from the position of director.
  - Kampala Designers may remove Opika from the position of company auditor.
  - Creditors of QC Ltd may seek for a Court order, compelling Habari to refund shillings 400 million to the company.

### **Solutions 5**

- (a) An offer can be terminated in the following ways:
  - (i) Time lapse:  
An offer does not remain open for acceptance longer than the time prescribed for it. Where no time is prescribed, the offer is not open for acceptance longer than a reasonable time, depending on its nature and circumstances of the case(S.6 (b) Contracts Act, 2010).
  - (ii) Manner of acceptance:An offer lapses if it is not accepted in the manner prescribed, or where no manner is prescribed, if acceptance is not in some usual way implied by the nature of the offer e.g. by post(S.6 (c) Contracts Act, 2010).
  - (iii) Death/insanity of offeror/offeree before acceptance:Where a contract is to render some personal services e.g. painting, the contract is discharged by death/insanity of the party responsible to render the services (S.6 (d) Contracts Act, 2010).In case a person accepts an offer in ignorance of the offeror's death/insanity, there can be no contract.
  - (iv) Counter-offer:When a counter-offer is made to the contract, the offer terminates and cannot be revived by the person to whom it was originally made, even if that person is prepared to accept the original offer unconditionally. This is similar to rejection of an offer(See Hyde v Wrench 1840).
  - (v) Revocation:Revocation terminates an offer i.e. withdrawal of offer by a person who made it, at any time before it has been accepted(Ss.51 (1) & 6 (a) Contracts Act, 2010).
- (b) Duress is the use or the threat to use actual violence against the victim or near relations by a contracting party or third party, to induce fear of loss of life or bodily injury, as a means to force the victim to enter into the contract.  
Undue influence on the other hand, occurs when pressure is exerted by one person who has moral authority over the victim, and that position is used to obtain an unfair contractual advantage over the victim(S.14 (1) Contracts Act, 2010).



**(c) Grounds upon which relief for undue influence can be restricted:**

- (i) Third party rights: Where a third party has in good faith acquired an interest for value in the subject matter, the victim's right to set aside the transaction on grounds of undue influence cannot be exercised against the third party.
- (ii) Impossibility of restitution: A party seeking restitution must restore benefits he/she obtained under the contract. Where such restitution cannot be done to restore the pre-contract position, relief for the uninfluenced transaction is restricted.
- (iii) Delay: The victim of undue influence must seek relief within a reasonable time after removal of the influence under which the transaction was made. Delay defeats equity, so if the victim has knowledge of his/her rights but fails to seek relief, he/she is assumed to have ratified the transaction (*Allcard v Skinner* (1887)).
- (iv) Affirmation: A claim for relief is barred by affirmation of the transaction, after the influence has ceased. Affirmation will be effective even if made without independent advice and ignorance of the right to have the transaction set aside (*Mitchell V Homfray* (1882) 8.QBD.587).

**Solution 6**

**(a) Sources of Law in Uganda**

- (i) The Constitution: This is a document with a special legal sanctity, which establishes the major organs of the government of a country and outlines their powers. It is often written and contains most important constitutional laws, which are enacted in one formal document or a series of documents, and are binding on Courts and all persons concerned.
- (ii) Legislation: This is enacted law made by Parliament, consisting of direct or indirect rules. Direct legislation is when rules are contained in a statute, while indirect legislation is when the rules are made by some other competent body.
- (iii) Rules of English common law: This is the law other than legislation, which originated in the ancient English customs and was developed by judges on the principle of "stare decisis". Common law is, on the whole, non-statutory law of England, excluding the rules of equity.
- (iv) Doctrines of Equity: This is a set of rules formulated and administered by Court in cases where common law either provided no remedy or provided a remedy which was not adequate. Rules of equity are not a complete legal system but a collection of rules, formulated to remedy defects in common law or to make it more reasonable.

- (v) Customary law: The principles of customary law in Uganda originate from habitual practices and traditions of its people. Customary law applies only in civil cases, where it is not repugnant to natural justice and morality, and where it is not inconsistent with any written law in Uganda.
- (vi) Case law: In settlement of disputes, lower Court judges follow decisions of higher Courts, in cases which have similar facts and points of law. In such cases, it is only that part which constitutes the "ratio decidendi" that is a binding precedent. Sometimes a judge may have said things which are not strictly relevant to the final judgment (obiter dicta) and such are not binding.

**(b) Duties of a trustee**

- (i) Reduction of property into possession: A trustee has a duty to make an inventory of the trust property as per the directions of the trust instrument. He should ensure that all the trust property is transferred to him.
- (ii) Duty to invest: A trustee is under duty to invest funds in his custody. Investment refers to the employment of money in the purchase of anything from which interest or profit is expected. The investments must produce income and also maintain capital.
- (iii) Duty to distribute: A trustee is under a duty to make payments of income and capital as they become due, to persons who are properly entitled.
- (iv) Duty to maintain equality between beneficiaries: A trustee should not favour one beneficiary at the expense of another. He should act impartially for all beneficiaries.
- (v) Duty to provide accounts and information: A trustee should keep accounts and be ready to produce them to the beneficiaries at any time. Beneficiaries are entitled to be informed about matters affecting the trust. In order to facilitate the supply of updated information, the trustee keeps a trust diary or Minute book, to record decisions and events affecting the trust.
- (vi) Fiduciary duties: A trustee should not compete with the trust by placing himself in a position where his duty conflicts with his interest. In equity, no one with fiduciary duties to discharge can enter into engagements where his personal interest conflicts with the interest of those whom he is bound to protect.

**Liabilities of a trustee**

- (i) Personal breach: A trustee is personally liable for breaches committed during his/her term of office. This includes instances when he/she leaves a matter in the hands of a co-trustee or stands by while a breach is committed (Bahin v Hughes, 1886).
- (ii) Facilitation of breach of trust: A trustee is liable for any loss incurred by the trust if he retires in order to facilitate a breach of trust. A breach of trust

includes intermeddling with property for improper purposes, failure to exercise proper care and wrong exercise of discretion(Re Whitehead's W.T. 1971).

- (iii) Acts of co-trustees:Where there are more than one trustee, liability for breach of trust is joint and several (Keeton v Sheridan, 1974). In such a case, a beneficiary may claim the loss by suing all or some or any one of the co-trustees.

# ANSWERS TO TEST PAPER 12

## CPA (U) AUGUST 2019

### Solutions 2

#### Issues:

- (i) Whether Jehuma and partners can continue to carry on the firm business.
- (ii) Whether the partners are liable for the firm debts.
- (iii) Whether the directors of Gep company were justified to carry out a money lending business.
- (iv) Whether the directors are liable for the losses incurred by Gep Ltd.
- (v) Whether there are any remedies available to the parties.

#### Resolution of issues:

- (i) S. 37(a) of the Partnership Act, 2010 provides for dissolution of a partnership by Court where a partner is, to the satisfaction of Court, shown to be of unsound mind, thus incapable to continue business.  
In this case, Huru has been admitted for mental illness and his situation is not improving. Due to Huru's incapacity, Jehuma & Partners cannot continue to carry on the firm business.
- (ii) According to S.46 (a) of the Partnership Act 2010, after dissolution of a partnership, debts shall be paid out of profits, capital, and lastly if necessary, by the partners individually, in the proportion in which they were entitled to share profits.  
In the instant case, the firm borrowed money from Kobo commercial Bank Ltd. Due to non-servicing of the loan, interest has increased yet the firm assets are insufficient to pay up all the debts due. Therefore, the partners the partners are liable for the firm debts.
- (iii) Under Company law, any activity not expressly or impliedly authorized by the Memorandum of Association is ultra vires. (*See Ashbury railway carriage Co. Ltd v Rische*).  
In this case, the main objective of Gep Ltd is to provide cleaning services. The directors, however, engaged the company in a money-lending business. This decision was beyond the objects of the company and was not authorised by the company memorandum of association.  
Therefore, the directors of Gep company were not justified to carry out a money lending business.
- (iv) The directors of Gep company acted ultra vires the memorandum when the company dealt in money lending, which was not stipulated in the

company's memorandum of association. As a result, the company incurred losses. Therefore, the directors are liable for the losses incurred by Gep Ltd.

- (v) Remedies available to the parties.
  - Creditors of Jehuma may petition Court for dissolution of Jehuma firm and payment of all debts due to them.
  - The shareholders of Gep company may seek for a Court order, compelling Directors to make good the loss incurred by the Company.

### **Question 3**

#### **Issues:**

- (i) Whether Pondo was liable for the loss of the trust land.
- (ii) Whether Mukasa qualified to be a trustee.
- (iii) Whether the directors' decision to alter the company capital was lawful.
- (iv) Whether the decision by directors of Mukoko company Ltd to reduce share capital was justified.
- (v) Whether there are remedies available to the parties?

#### **Resolution of issues:**

- (i) The first duty of a trustee, following appointment, is to find out what the trust property is, the directors of the trust instrument in regard to it and whether the trust property has been properly and safely invested. He should ensure transfer to himself of any property which did not pass to him under the deed of appointment, as well as the transfer of all documents affecting the trust property, such as title deeds and share certificates (*see: Hallows v Lloyd (1888) 39 Ch.D 689*).  
In the instant case, Pondo who was the trustee of late Dodi's estate had the title of land in Malaba but he did not bother to transfer it into his names. As such, he was not aware that a special certificate of title had been obtained and the land transferred fraudulently. Therefore, Pondo was liable for the loss of the trust land.
- (ii) There is no statutory provision on holding of property by a minor. The general principle in trusts, however, is that a minor lacks the capacity to exercise judgment and discretion, and thus, incapable of managing a trust.

In this case, Mukasa who was 17 years old, was appointed as one of the trustees of the late Dembe's estate and given many responsibilities in the trust. Mukasa was a minor. Therefore, he did not qualify to be a trustee.

- (iii) The powers of altering company capital can only be exercised by the company in a general meeting, by means of an ordinary resolution, except where the articles indicate that there should be a special or an extraordinary resolution.

In the instant case, the directors of Kuku company Ltd decided to alter the capital by increasing it without first presenting the proposal to the general meeting. Later when the proposal was presented in a meeting, the members objected to it.

Therefore, the directors' decision to alter the company capital was unlawful.

- (iv) According to S.76 Companies Act, 2012 reduction of share capital must be authorised by Articles of a company. If there is no such authority, the company must then pass a special resolution, authorising the reduction.

In this case, the directors of Mukoko company Ltd decided to reduce the share capital because of the credit crunch, without regard to passing a special resolution. Therefore, the decision by directors of Mukoko company Ltd to reduce the share capital was not justified.

- (v) Remedies available to the parties

- Pondo may seek for a Court order to cancel the fraudulent transfer of the land title.
- Beneficiaries may seek for a Court order to remove Mukasa from the trust.
- Shareholders of Kuku company Ltd may petition Court for an injunction order, prohibiting alteration of company capital.
- Shareholders of Mukoko company may petition Court for an injunction order, prohibiting reduction of share capital.

## **Question 4**

### **Issues:**

- (i) Whether termination of Musa by Engineer Baaki was lawful.
- (ii) Whether money given by Baaki to Jackie in a bar amounted to payment of her salary.
- (iii) Whether Jackie's dismissal from Exon Ltd was justified.
- (iv) Whether Tabu, Maali & Bijodo are entitled to payment by Metal Fabricators Ltd.
- (v) Whether there are any remedies available to the aggrieved parties.

### **Resolutions:**

- (i) According to S.65 (1) (a) of the Employment Act 2006, termination is deemed to take place where the contract of service is terminated by the employer with notice.  
In the instant case, engineer Baaki who was the managing director, was not happy with Musa's late coming and without any warning or notice, terminated him for late coming. Therefore, the termination of Musa by engineer Baaki was unlawful.
- (ii) Section 43 (2) of the Employment Act, 2006 provides that payment of wages shall not take place in premises licensed for the sale of alcoholic beverages or in places of amusement.  
In this case, engineer Baaki gave Jackie money in a bar of Classic Amusement park and told her that it was her salary. This was against the law. Therefore, the money given by Baaki to Jackie in a bar did not amount to payment of her salary.
- (iv) Section 7 of the Employment Act, 2006 provides that an employee is sexually harassed if an employer with authority over the employee directly or indirectly subjects the employee to threats about the employee's employment status.  
In this case, Jackie was dismissed from Exon Ltd for failure to comply with the demands of engineer Baaki. Therefore, Jackie's dismissal from Exon Ltd was not justified.
- (v) Section 54 Of the Companies Act 2012 is to the effect that promoters do not possess an automatic right to be paid by a company for their services because the Company cannot enter into a contract before it comes into

existence. The Company must have adopted a pre-incorporation contract after its incorporation in order for promoters to be paid.

In the instant case, Tabu, Maali and Bijodo undertook to take part in forming a company. They raised capital and even registered the company, hence, they were promoters of Metal Fabricators Ltd. It is not mentioned if Metal Fabricators Ltd adopted any pre-incorporation contracts entered into by the promoters. Therefore, Tabu, Maali and Bujodo are not entitled to payment by Metal Fabricators Ltd.

- (v) Remedies available to the aggrieved parties.
- Musa may complain to the labour officer and claim for damages for unfair termination.
  - Jackie may complain to the labour officer for payment of her salary.
  - Jackie may seek for payment of general damages for unfair dismissal.

### **Question 5**

**(a) A company may be wound up in the following ways:**

- (i) Winding up by Court: Winding up by Court commences by petition to Court, based on the grounds of compulsory winding up. The petition may be presented by a creditor, a member of the company, an official receiver or the Attorney General. The grounds for the petition include inability to pay debts and failure to commence business (Sections 57 (a) & 92 of the Insolvency Act, 2011).
- (ii) Voluntary winding up: A company may be wound up voluntarily if the period for which it was made expires or if any event occurs, upon which it shall be dissolved in accordance with its articles of association. Voluntary winding up may also occur if the company by special resolution decides to be wound up. In this particular way, winding up commences at the time a resolution is passed (See S.268 Companies Act; Ss 57 (b) & 58 Insolvency Act, 2011).
- (iii) Creditors' winding up, subject to supervision of Court: When a company has passed a resolution for voluntary winding up, Court may make an order that it continues, subject to Court supervision. The liberty for creditors and contributories to apply to Court to generally exercise its powers on such terms and conditions, is guaranteed. Therefore, the Court imposes restrictions on how the company is wound up voluntarily (*Ss. 57 (c) & 87 Insolvency Act, 2011*).



- (iv) Creditors' voluntary winding up: To commence a creditors' voluntary winding up, the Directors convene a general meeting to pass a special resolution for voluntary winding up. They also convene a meeting of creditors. A liquidator who is selected by creditors obtains approval of the committee of inspection for the exercise of certain statutory powers (Ss. 69 (6) & 92 (d) Insolvency Act, 2011).

**(b) Legal consequences of winding up a company:**

- (i) The company ceases to carry on business, unless it is for the benefit of the winding up (S. 270 Companies Act, 2012; S. 60 (1) Insolvency Act, 2011).
- (ii) Upon commencement of winding up, any transfer of shares or alteration of membership of the Company is void (Ss. 61 & 97 (d) Insolvency Act, 2011).
- (iii) Directors' powers cease upon appointment of a liquidator, unless some tasks are specifically allowed by members, creditors, or the Committee of inspection (S. 97 (b) Insolvency Act, 2011).
- (iv) Generally, contracts of employment are terminated, although employees are at liberty to claim damages for wrongful dismissal.
- (v) The corporate status and powers of the company continue, subject to the above-stated consequences (S. 60 (2) Insolvency Act, 2011).
- (vi) Upon commencement of winding up, Court has discretion to stay proceedings against the company which is being wound up (S. 117 (1) (a) Insolvency Act, 2011).
- (vii) Upon passing a resolution for voluntary winding up under the Companies Act 2012, provisions of the Insolvency Act 2011 apply, with necessary modifications (S. 272 Companies Act, 2012)

**Question 6**

**(a) Creation of an agency relationship may be by:**

- (i) Express agreement: This is where appointment of an agent is done orally or in writing. An instance requiring written appointment is where an agent is appointed by power of Attorney to execute a deed on behalf of the principal (S. 122 (1) & (2) Contracts Act, 2010).
- (ii) Implication/conduct: An agency relationship may be inferred from the conduct or situation of the parties. A person may allow another to act on his behalf, or someone may hold out as an agent of another in such a way

that a third party relies on the conduct of the two parties to believe that there is an existing agency relationship (S. 122 (1) & (2) Contracts Act, 2010).

- (iii) Ratification: When a person without prior authority purports to enter into a contract on another's behalf and that other person subsequently ratifies the contract, there is an agency relationship. Such ratification is taken to have come into existence from the time the agent first acted (See S.130 Contracts Act, 2010).
- (iv) Necessity: There is an agency relationship created when an agent acts by reason of a genuine emergency to protect the principal's goods from perishing or deteriorating. Such an agent's action must have been performed in good faith (See S.124 Contracts Act, 2010).

**(b) Short notes in regard to the law of agency:**

- (i) A *banker* may act as an agent of his customer, when the banker buys or sells securities and collects cheques on behalf of the customer. The banker is also an agent of the customer when, the banker pays the customer's cheque.
- (ii) A *Del Credere agent* guarantees due payment of all prices of all goods sold by him. He is an agent for the sale of goods and earns a higher commission than the one normally given to other agents.
- (iii) An *auctioneer* sells or offers for sale, goods or lands at a sale, where persons become purchasers by competition. When a bid is accepted and the hammer falls, the contract comes into existence and the auctioneer becomes the agent of both parties, for the purpose of signing the memorandum.

**(c) Description of the jurisdiction of:**

- (i) High Court of Uganda: The High Court has unlimited jurisdiction to hear cases of both civil and criminal nature. This Court also has appellate jurisdiction for cases decided by Magistrate Courts (See: Section 14 of the Judicature Act, Part IV Cap13, 1996).
- (ii) The Court of Appeal: This is an appellate Court that can hear all cases from the High Court, where the High Court decision is appealed against. It also has original jurisdiction to handle interpretation of the provisions of the constitution by constituting itself as a Constitutional Court (See Ss. 10 & 11 Judicature Act, Part III Cap13, 1996).

- (iii) The Supreme Court of Uganda: is the highest appellant Court, for decisions originating from the Court of Appeal. The Supreme Court also has original jurisdiction for presidential election petitions (S.4. Judicature Act, Part II Cap13, 1996).

# ANSWERS TO TEST PAPER 13

## CPA (U) DECEMBER 2019

### Solution 2

#### Issues:

- (i) Whether Katuramu's transfer of his shares to Bisoke was lawful.
- (ii) Whether the decision to reduce the share capital of Nyindo Ltd by the directors was lawful.
- (iii) Whether it was lawful for the directors of Nyindo Ltd to refuse to pay Businde's wife.
- (iv) Whether Bwango's dismissal was lawful.
- (v) Whether there are any remedies available to the aggrieved parties?

#### Resolution of issues:

- (i) Section 5 of the companies act defines a private company as an entity which has restrictions on the transfer of shares and provide for a right of pre-emption. This means that the shares must be transferred to existing members only (*Bread Ltd v Uganda co. Ltd, 1975*).  
In the facts, Katuramu one of the shareholders of Nyindo Ltd, a private ltd company in Kabandole town, decided to transfer half of his share capital to his child Bisoke. However the directors rejected the transfer. Basing on the provisions of the law, Katuramu is not supposed to transfer shares to Bisoke. This is because Bisoke is not a shareholder of Nyindo Ltd.  
Therefore, Katuramu's transfer of his share capital to Bisoke was unlawful and the directors lawfully rejected the transfer.
- (ii) Section 76 of the Companies Act 2012 provides the procedure for reduction of a company's share capital. This must be authorized by the articles. If there is no such authority from the company's Articles of Association, then a special resolution must be passed(*Re Mackenzie, 1916*)  
In the facts, the Directors in their monthly meeting agreed to reduce the share capital of Nyindo Ltd. When some of the shareholders complained about the reduction, the directors informed them that what they were doing was lawful and in the interest of the company. This was wrong because the decision to reduce share capital is not obtained through the Directors' meeting but through the Articles or members resolution.  
Therefore, the decision to reduce the share capital of Nyindo Ltd by the Directors was unlawful.
- (iii) Section 42(3) of the Employment Act 2006 provides that in the event that an employee dies during the term of his contract of service, his wages or salaries will be paid to his legal representative. It further states that the employer is supposed to transport the body of the employee who dies on his way to work.

In the facts, Businde who was an office attendant at Nyindo Ltd got involved in an accident on his way to office and died. Nyindo Ltd refused to contribute to the transportation of Businde's body and payment of his unpaid salaries, which is against the law.

Therefore, it was unlawful for Nyindo Ltd to refuse to pay Businde's entitlements.

- (iv) Sections 58 and 69 of the Employment Act 2006 provides that termination of an employee without fair hearing and adequate notice amounts to unlawful termination of a contract of service.

In the facts, Bwango, Businde's younger brother was dismissed on 3<sup>rd</sup> October 2019 without any reason from the human resource manager. This was done without any notice and fair hearing, which is against the provisions of the law. Therefore, Bwango's dismissal was unlawful.

- (v) Remedies available to the aggrieved parties.
- The directors may seek for a court order restraining Katuramu from acting unlawfully
  - The shareholders may seek for a court order restraining the directors from altering, specifically from reducing the share capital.
  - Businde's wife may seek for a Court order compelling Nyindo Ltd to pay Businde's entitlements.
  - Bwango may sue for damages for unlawful dismissal.

### **Solution 3**

#### **Issues:**

- (i) Whether Jude's dismissal was lawful.
- (ii) Whether the sale of Jude's tomatoes was lawful.
- (iii) Whether Kabamba is liable to pay Atero (u) Ltd
- (iv) Whether there are any remedies available to the aggrieved parties.

#### **Resolution of issues:**

- (i) Section 35 (1) of the Trustees Act Cap 80 is to the effect that a trustee may be removed for reasons of absence from Uganda for 12 months. In the instant case, Jude was convicted and detained in USA for 13 months, on charges of smuggling drugs. When he returned, he was informed that he was replaced by Muyaye, which he thought was unlawful. Basing on the facts, Jude was absent from Uganda for more than 12 months, which was against the law. Therefore Jude's dismissal was lawful.
- (ii) Under the law of agency, agency relationship of Necessity can be created if the following are present:
- It was impossible to get the principles instructions (Springer v Great Western Railway Co., 1921);

- There was an actual and definite commercial necessity for the creation of the agency, (Prager v Blatspiel Stamp & Heacock Ltd, 1924;
- The captain acted bona fide in the interests of all the parties concerned.

In the facts, Jude entered into a contract with KTR to transport his tomatoes to Kalangala, but because of bad weather conditions, the captain could not continue with the voyage. He decided to sell all the perishables on the ship, including Jude's tomatoes. Thus, he became an agent by necessity. Basing on the above, the captain was right to dispose of the perishables to avoid more damage. Therefore, the sale of Jude's tomatoes was lawful.

- (iii) Section 135 of the Contracts Act 2010 provides that the authority of an agent is revoked if the principal becomes insane.

In the instant case, Kabamba had authorized his elder sister (Malaika) to buy goods on credit in his name when he was sane. However, even when Malaika knew that Kabamba was of unsound mind, she continued to obtain goods on credit. According to law, the agency relationship was terminated at the time Kabamba, the principal, became insane. Therefore, Kabamba is not liable to pay Atero (u) Ltd.

- (iv) Remedies available to the aggrieved parties.

- Muyaye and the beneficiaries may seek for a Court order to remove Jude from the office.
- KTR may seek for a Court order to declare the actions of the captain lawful.
- Kabamba may seek for a Court order declaring that Malaika is personally liable to Atero (U) Ltd.

#### **Question 4**

##### **Issues involved.**

- Whether Kabwente Ltd was liable for payment of the pre-incorporation expenses.
- Whether the alteration of the company's articles of association by the Directors was lawful
- Whether Build Ltd breached the contract.
- Whether Nsemere was barred by the Limitation Act to demand for the balance of the sale of her car from Irumba.
- Whether there are any remedies available to the aggrieved parties.

## Resolution of issues

- (i) Article 80 of Table A of the Companies Act 2012 provides that the Articles of Association should provide for payment concerning incorporation of a company. If the Articles do not provide for them, then Table A must be adopted before payment is done.

In the instant case, the Articles clearly stated that the promoters shall be paid preliminary expenses. Therefore, Kabwente Ltd was liable for payment of the pre-incorporation expenses.

- (ii) S.16 & 148 of the Companies Act 2012 provides that Articles of Association may only be altered by a special resolution.

In the facts of the instant case, the Directors passed a decision to alter the Articles in the directors meeting not in the members' general meeting as required by law.

Therefore, the alteration of the Company's Articles of Associations by the Directors was unlawful.

- (iii) A contract to build a designated building may be frustrated if a law prohibiting building houses in the locality is enacted (*Uzomah v Uzomah 1965*).

In the instant case, Kabwente hired Build Ltd to construct offices in Wakiso District. Unfortunately, the district council passed a by law prohibiting construction of buildings in the locality. This meant that the contract had been frustrated by law. Therefore, Build Ltd did not breach the contract.

- (iv) Section 3(1) of the Limitation Act Cap 164 provides that the limitation period for a simple contract is six years after the cause of action occurs.

In the facts of this case, Irumba bought Nsemere's car in January 2013 and made part payment. He was to pay the balance on or before 1<sup>st</sup> January 2016. However he got metal disability in December 2015 before effecting payment. When he was declared sane in December 2017, Nsemere demanded for payment of the balance but Irumba pleaded that Nsemere was barred by the Limitation Act.

The cause of action arose in January 2016. Therefore, Nsemere was not barred by the Limitation Act to demand for the balance of the sale of her car from Irumba.

- (v) Remedies available to the aggrieved parties
- Nsemere and Karungi may seek for a Court order directing Kabwente Ltd to refund the pre-incorporation expenses.
  - Shareholders may seek for a Court order declaring that alteration of the Company Articles by the Directors was unlawful.

- Nsemere may seek for a Court order for payment of the balance by Irumba.

## **Question 5**

### **(a) Differentiation of classes of law in Uganda:**

- (i) Public and private law  
Public law regulates matters that affect the general public or state or society as a whole, whereas private law deals with the rights and obligations of individuals, families, businesses among others.
- (ii) Civil and criminal law: Civil law provides regulations concerning disputes between individuals, groups, or organizations who seek an award of compensation/damages for injuries sustained, whereas criminal law provides regulations concerning crimes, stipulated by the Penal Code Act, Cap 120 and any other Act of Parliament. All criminal cases are committed against the state and are prosecuted by the Director of Public Prosecution (DPP) on behalf of the Government.

### **(b) Duties of a trustee:**

- (i) To reduce the trust property into his possession by ascertaining the trust property and trust deed instructions.
- (ii) Ensuring the transfer of the property into his or her name.
- (iii) Giving notice to persons holding legal interest where the bequest is equitable.
- (iv) Preparing an inventory of all trust properties.
- (v) Initiating legal proceedings in relation to trust property.
- (vi) To invest the trust funds in his or her custody. This may include lending out money at an interest.
- (vii) To distribute income and capital to entitled beneficiaries (S.27 of the Trustees Act, Cap 80)
- (viii) To maintain equality among beneficiaries (Howe v Dartmouth, 1802)
- (ix) Not to buy trust property except under a Court order.
- (x) Accounting for incidental profits to beneficiaries.
- (xi) Not to compete with the trust.

### **(c) Ways in which a trust can be created:**

- (i) By statutory provision e.g. all trusts relating to land must be evidenced in writing (S.92 of the Registration of Titles Act, Cap 230).
- (ii) By a Will, which should be executed in writing, signed by the testator and witnessed by at least 2 witnesses (S.50 of the Succession Act, Cap 162).
- (iii) By a settler when he/she vests trust property in the trustees (Milroy v Lord, 1862).



- (iv) Where a settler declares himself or herself as a trustee.

### **Question 6**

**(a) Statutory provisions against discrimination in relation to the employment law are:**

- (i) Section 6 (3) of the Employment Act 2006 provides that a person shall not be discriminated against on the ground of sex, race, colour, disability, among others.
- (ii) Under Section 14(1) of the Equal Opportunity Commission Act, 2007 the Equal Opportunity Commission is empowered to monitor, evaluate and ensure that every person, private and public bodies comply with equal opportunities and affirmative action.

**(b) Particulars required for the registration of a partnership:**

- (i) The business name. This must not be among the existing partnership names.
- (ii) The general nature of the business, which must be lawful.
- (iii) The principle place of the business, showing the location of the business.
- (iv) The present Christian name, surname and any former name and surname of each partner.
- (v) The nationality of each partner, to ascertain citizenship.
- (vi) Age of each partner.
- (vii) Corporate names of partners which are corporations.
- (viii) Place of business of partners which are corporations.
- (ix) Where the business is carried on using two or more business names, each of those names should be stated.

**(b) Rights of partners as provided under S.26 of the Partnership Act:**

- (i) All partners are entitled to share equally in the capital and profits of the partnership and must contribute equally to losses.
- (ii) Upon ascertainment of profits, every partner is entitled to interest on capital subscribed by him or her.
- (iii) Every partner takes part in the partnership management.
- (iv) Every partner has a right to consent to the introduction of a new partner.
- (v) A partner is entitled to be indemnified by the firm in respect of payments made and liabilities incurred.
- (vi) All partners have the right to access all partnership books of accounts.

# ANSWERS TO TEST PAPER 14

## CPA (U) DECEMBER 2020

### Question 2

Issues:

- (i) Whether BBK Ltd is liable for the unpaid debt.
- (ii) Whether the notice for BBK annual general meeting was sufficient.
- (iii) Whether Kabonesa is liable for not filing company returns.
- (iv) Whether GM Ltd is liable to John for the house.
- (v) Whether there are any remedies available to the aggrieved parties

### Resolution of issues:

- (i) Where the company's Directors are involved in acts which are contrary to its objectives such as use of the corporate veil to mask any fraud or illegality, Court can lift the corporate veil (S. 20 of the Companies act, 2012).

In the instant case, BBK Ltd was incorporated to establish and operate education centers around the country. The directors, however, engaged the company in hospital business without following the proper procedure to amend its objectives. The Directors further used proceeds from the hospital for most of their personal needs. Their actions were ultra-vires the company Memorandum of Association. Therefore, the directors, and not BBK Ltd, are liable for the unpaid debt.

- (ii) Section 140 (1) of the companies act is to the effect that a notice for an annual general meeting must be of 21 days.

In this case, on 4<sup>th</sup> January 2020, the directors of BBK Ltd issued a notice to members to attend the annual general meeting on 21<sup>st</sup> January 2020, which was a 17 days' notice. Therefore, the notice for BBK annual general meeting was not sufficient.

- (iii) Every company is, by law, supposed to file annual returns to the Registrar of Companies (S. 132 of the Companies act, 2012).

Furthermore, where a company fails to comply with the law to file returns, the company and any other officer of the company who is in default is liable to a fine (S. 132(4) of the Companies act, 2012).

The company secretary is normally entrusted with the duty of filing company returns with the registry.

In the instant case, the company's returns had never been filed with the Registrar of Companies, who has now listed BBK Ltd among the non-complying companies. When the shareholders inquired about this, the directors responded that only the secretary should be answerable for such matters.

Therefore, the company and Kabonesa the company secretary are liable for not filing company returns.

- (iv) Where a company is used as a mask or device to commit fraud or an illegality and to avoid recognition by the eyes of equity, the veil of incorporation may be lifted and the company together with whoever used it will be ordered to

specifically perform a contract (Jones v Lipman; Nsangiranabo v. Associated Properties Ltd & Ors, 2008).

In this case, Goodman sold his house to John, who paid part of the consideration. Goodman thereafter incorporated a company called GM Ltd and conveyed the house to the company. When John came to complete payment and demand for the house, Goodman informed him that the company was the true owner of the house and it was not interested in selling.

Therefore, GM Ltd together with Goodman, are both liable to John for the house.

(v) Remedies available to the aggrieved parties:

- Members may seek for a Court order to compel the directors to pay the debts.
- Kabonesa and other members may seek for a declaratory order of Court that the previous notice was insufficient, requiring to call for another meeting.
- The company may seek for a Court order to compel the secretary to pay for the company loss incurred for failure to file annual returns.
- John may seek for a Court order to lift the veil of incorporation of GM Ltd and to order for specific performance of the sale agreement.

### **Question 3**

#### **Issues:**

- (i) Whether Tusingwire was justified to insure the trust property.
- (ii) Whether it was lawful for Tusingwire to use proceeds from the sale of the scrap bus.
- (iii) Whether Gololo was liable to pay for the contract made on behalf of Kyakyo.
- (iv) Whether Amos was justified to do business in photography.
- (vi) Whether there are any remedies available to the aggrieved parties

#### **Resolution**

- (i) Under the law of Trusts, a trustee has fiduciary duties among which, he/she is vested with power to insure trust property against any loss or damage (S. 19 of the Trustees Act, Cap 164).

In the instant facts, Tusingwire who is the trustee of Bwente's estate, agreed with an insurance company to comprehensively insure the estate's buses, following an accident in which one of the buses was involved in an accident that destroyed it beyond repair.

Therefore, Tusingwire was justified to insure the trust property.

- (ii) Every trustee has a duty to account and inform the beneficiaries about any state of property or transaction relating to the estate.

In the facts of this case, Tusingwire sold the scrap from the bus that got an accident and used part of the proceeds to buy a car for his wife, and he never accounted for the proceeds. Therefore, it was unlawful for Tusingwire to use proceeds from the sale of the scrap bus.

- (iii) In agency, the death of a principal terminates the agency relationship even if the agent is not aware of it (S. 143(a) of the Contracts Act, 2010; Kennedy v Thomassen, 1928).

In the instant case, Gololo who was an agent of Kyakyo entered into a contract for renting an apartment on behalf of his principal Kyakyo. Unknown to him, at the time of concluding the contract, Kyakyo had already died succumbed to corona virus. The apartment management then demanded for damages for breach of contract from Gololo. Therefore, Gololo was liable to pay for the contract made on behalf of Kyakyo.

- (iv) According to S.32 of the Partnerships Act 2010, every partner has a duty not to compete with the firm. Where a partner, without the consent of other partners, carries on any business of the same nature as, and competing with, that of the firm, the partner must account for and pay over to the firm all profits

In this case, Amos was one of the partners in Semuam partners, whose business was to deal in events management. Amos bought a camera and employed Byabagambe to work for him, whereby Byabagambe would take photos at the same events as Amos, who took photos on behalf of the firm. Amos was competing with the partnership and never declared any proceeds. Therefore, Amos was not justified to do business in photography.

- (v) Remedies available to the aggrieved parties:
- Tusingwire may seek for a declaratory order of Court that the transaction to insure the estate's buses was lawful.
  - Kasukali and other beneficiaries of Bwente's estate may seek for a Court order to compel Tusingwire to account for the estate money he misused.
  - The apartment management may seek for a Court order compelling Gololo to pay for the contract made on behalf of Kyakyo.
  - Semuam partners may seek for a Court order against Amos to compel him to account for the secret profits and damages breach of duty not to compete.

#### **Question 4**

##### **Issues:**

- (i) Whether the agreement between Jadongo and Bigizi was lawful.
- (ii) Whether there was a valid contract between Bigizi and Jadongo.
- (iii) Whether Akooma was liable to repay Jadongo's money.
- (iv) Whether the contract between Bonge and Bigizi was valid.
- (v) Whether the treatment of Turyatamba by his workmates was justified.
- (vi) Whether there are any remedies available to the aggrieved parties

##### **Resolution of issues:**

- (i) According to S.16 (1) of the Contracts Act 2010, where consent to an agreement is obtained by coercion, the agreement is a contract voidable at the option of the party whose consent was obtained by coercion.

In the instant case, Bigizi was forced to sign the Sale agreement on gun point, to sell his land to Jadongo at shs 20 million. Therefore, there was a voidable contract between Bigizi and Jadongo.

- (ii) Under S. 26 of the Contracts act 2010, a promise to do an illegal thing shall be a void agreement.

A guilty party in an illegal contract cannot recover money or goods obtained under an illegal contract (Berg v Sadler & Moore, 1937).

In this case, Jadongo hired Akooma to burn Bigizi's house and him Shs 1,500,000 for the transaction. Akooma never accomplished the deal, and Jadonga claimed for his money. This was an illegal contract, which was not enforceable. Therefore, Akooma was not liable to repay Jadongo's money.

- (iii) Section 10 (5) of the Contracts Act 2010 provides that a contract the subject matter of which exceeds twenty five currency points shall be in writing.

In the instant case, Bonge paid Shs 50 million to Bigizi, which was exceeding the twenty five currency points. A currency point is worth Shs 20,000 which is Shs 500,000. Therefore, the contract between Bonge and Bigizi was not valid.

- (iv) Article 21(1) of the Constitution of the Republic of Uganda 1995 and S. 6 of the Employment Act 2006 prohibit discrimination of all kinds, among which is that one based on ethnic origin.

In the facts of this case, Turyatemba is referred to as "Mukiga" and he was denied an opportunity to apply for the post of Finance Manager are signs of discrimination. Therefore, the treatment of Turyatemba by his workmates was not justified.

- (v) Remedies available to the aggrieved parties:

- Bigizi may opt out of the contract and seek for a Court order to set the contract aside.
- Akooma may seek for a declaratory order of Court that the contract was illegal and unenforceable.
- Turyatembe may seek for a Court order for payment of damages from his workmates for damages for discrimination

## Question 5

### (a) **Duties of an agent to the principal:**

- (i) Account: An agent must render proper accounts as the principal may require. (Ss. 147 of the Contracts Act, 2010).
- (ii) Exercise of due diligence: The agent is obliged to exercise due diligence in the performance of duties and to use special skills he/she has, so that the tasks are carried out with the same effort the agent would have used to do his own tasks (S. 146 (1) of the Contracts Act, 2010; *Keple v Wheeler*, 1927)
- (iii) Not to have conflicting interest: An agent must not have personal interest that conflicts with his duty to the principal, thus becoming a principal against his principal, e.g. if his duty is to buy property for the principal, he cannot sell his own property to the principal (*Armstrong v Jackson*, 1917).
- (iv) Not to make secret profits: An agent must not get any material, or financial benefit without the knowledge or consent of the principal (S. 150 of the Contracts Act, 2010; *Reading v. Attorney General*, 1951).
- (v) Not to delegate authority: an agency relationship is personal, where confidence in a particular person is at the root of the relationship. Thus, an agent has a duty not to delegate his authority unless the delegation is in the ordinary way of business or authorised by the principal (S. 125 (1) of the Contracts Act, 2010; *De Busche v Alt*, 1878).
- (vi) Not to disclose confidential information or documents: An agent must act in good faith for the principal who has entrusted him/her with confidential information. The agent must not act against the principal's interest (*Weld-Blundell v Stephens*, 1920).
- (vii) Communicate with the principal: an agent must use all reasonable diligence to communicate with the principal and seek to obtain instructions (S. 148 of the Contracts Act, 2010).

### **Powers of a liquidator:**

- (i) A liquidator has power to carry out his functions and duties and is empowered to delegate his power to an agent (S. 101 of the Insolvency Act, 2011).
- (ii) Appoint provisional liquidator: The liquidator has power to appoint a provisional liquidator in order to realize company assets more efficiently (S. 99(2) of the Insolvency Act, 2011).
- (iii) Accept shares/ interest as consideration: A liquidator has power to accept shares or other interest in consideration for the sale of the company's property (Ss. 64 & 75 of the Insolvency Act, 2011).
- (iv) Preparation of reports: The liquidator prepares preliminary, interim and final reports relating to the liquidation, and ensures circulation of the reports by publishing them in newspapers (Ss. 102, 103 & 104 of the Insolvency Act, 2011).

- (v) Obtain company documents: A liquidator has the power to obtain company documents from the Directors, Secretary or shareholders or any person in possession of company books and documents, for the purpose of availing them to any entitled person to deal with or realize a charge or security on company property (S. 105(1) & (3) of the Insolvency Act, 2011).
- (vi) Examine and obtain information: The liquidator has power to examine and get information from current and former Directors and Secretaries, shareholders, former employee or any other person who knows the financial affairs of the company (S. 106 (1) & (2) of the Insolvency Act, 2011).
- (vii) Disclaimer of onerous property: A liquidator may disclaim any property which is onerous (i.e. un-saleable/not readily saleable), even if he/she has taken possession of it, tried to sell it or otherwise exercised rights of ownership for it (S. 107 of the Insolvency Act, 2011).

## **Question 6**

### **(a) Sources of law in Uganda:**

- (i) The Constitution: The 1995 Constitution of the Republic of Uganda is the formal document providing for a comprehensive framework of rules that define the composition and powers of different organs of the State, their relationship with to each other and to private citizens. It is, thus, the supreme law of Uganda, binding all authorities and persons (Article 3(1) of the Constitution, 1995).
- (ii) Legislation: This is written law or enacted law, made through due process by Parliament. Parliament may make laws directly (Statutes) or indirectly (subsidiary law) through delegation to Ministers and local authorities (Article 79 of the Constitution of the Republic of Uganda).
- (iii) Common law: Common law is the non-statutory law which originated from England, excluding the rules of equity. It is contained in customs of the land, previously considered persuasive but now taken to be binding as precedents (previous decisions).
- (iv) Doctrines of equity: This is a source of law that emanated from the need to supplement and mitigate the rigid application of common law by providing more satisfactory remedies and equitable doctrines. Where the rules of common law and equity conflict, the rules of equity prevail.
- (v) Customs or usage: customs or usages arise from habitual practices and traditions of people in tribal or religious practices. Courts therefore observe and enforce jurisdiction in conformity with existing customs, which are not repugnant to natural justice, equity and good conscience, as well as not being in conflict with any written law (S.14(2)(b)(ii) of the Judicature Act, cap 13, 2000).
- (vi) Principles of natural justice, equity and good conscience: In civil cases, where there is no express rule applicable to any matter before Court, the principles of natural justice, equity and good conscience are applied

S.14(2)(c) of the Judicature Act cap 13, 2000; S.10(3) of the Magistrates Courts Act, cap 16).

**(b) Classifications of law in Uganda:**

- (i) Public law: Public law is the branch of law that regulates relations between citizens and the State, as well as operations of the various State organs.
- (ii) Private law: This is a branch of law that deals with the rights and obligations of individuals, where disputes involve private matters of citizens. It includes contracts, torts, succession, etc.
- (iii) Civil law: Civil law is that branch of law which regulates relations between private individuals by enforcing obligations and compensating injured parties. Its objective is to compensate a citizen for financial loss suffered as a result of an act or omission by another citizen.
- (iv) Criminal law: This is a branch of law which defines things that every citizen must do or not do, and prescribes punishments for non-compliance. The primary objective is to protect and sustain society by punishing citizens whose conduct threatens this objective.
- (v) Substantive law: This is the body of legal rules which specifies what is lawful and unlawful to do, according to the laws of the State.
- (vi) Procedural law: this is the body of legal rules which specify the steps to be taken, or procedure to be followed by a person who intends to do a lawful act. The rules of procedure uphold principles of the substantive law. These rules may change whenever the substantive law changes, e.g. civil procedure rules.
- (vii) Public international law: This is the branch of international law which regulates the relations between various nations of the international community. It is derived from customs, conventions, and treaties adopted bilaterally or collectively, under the United Nations Organisation.
- (viii) Private international law: Private international law is the branch of law which determines the national law to be applied by Court in a case involving a citizen of such a State with a foreign citizen.



## ANSWERS TO TEST PAPER 15

### CPA (U) MARCH 2021

#### **Solution 2**

##### **Issues:**

- (i) Whether Ngumu firm is liable to pay Kuubo traders.
- (ii) Whether Ngumu firm should be dissolved.
- (iii) Whether there was a breach of duty by Muzibu.
- (iv) Whether Pinsi was liable to pay commission to Muzibu, concerning the 3 bed roomed bungalow.
- (v) Whether there are any remedies available to the aggrieved parties.

##### **Resolution of issues:**

- (i) Section 5(2) of the Partnership Act, 2010 provides that the act of a partner done for the purpose of carrying on the ordinary course of business of the firm binds the firm and its partners, unless the partner so acting did not have authority to do so.

In this case, Mwangu and Muzibu have been participating in the business management in all aspects. Mwangu purchased goods from Kuubo traders for the firm on credit, on the understanding that Mwangu would pay for them in a week's time. No payment was made as agreed. Mwangu had purchased the goods for the firm, in the ordinary course of business. Therefore, Ngumu firm is liable to pay Kuubo traders.

- (ii) According to section 37(f) of the Partnership Act, 2010, a partnership can be dissolved by Court whenever circumstances arise which, in the opinion of Court, render it just and equitable that the partnership be dissolved.

Where there is continued quarrelling between partners which renders all mutual confidence destroyed, this is a ground for dissolution of the partnership (*Re: Yenidje Tobacco Co. Ltd [1916] 2 Ch 426*).

In the instant case, Muzibu was of the opinion that Kuubo traders demanded payment from the wrong party (Ngumu firm). He refused to listen to Mwangu's explanation. This resulted into an exchange of words and lack of communication between them thus resulting into an impasse. Therefore, Ngumu firm should be dissolved.

- (iii) An agent has a duty to obtain the best price reasonably obtainable and this does not cease when he/she procures an offer which has been conditionally accepted (*Keppel v Wheeler [1927] 1 KB 577*).

In this case, Muzibu got a buyer for Pinsi's house, at Shs 300 million. Pinsi accepted to sell, subject to conditions in the contract of sale. Two days later, before the sale agreement was concluded, Muzibu got another buyer at Shs 320 million but he did not inform Pinsi about the second buyer.

Pinsi sold the house at Shs 300 million, which was less by 20 million of what he would have received. Therefore, there was a breach of duty by Muzibu.

- (iv) A principal has a duty to pay an agent the agreed commission. If there is a commission payable for the agent upon finding a prospective purchaser, that commission is payable once the agent finds that person who contemplates to purchase although he may, in the end, not be able to do so (*Drewery and Drewery v Ware-Lane [1960], 1 WLR 1204*).

In the instant case, Pinsi agreed with Muzibu that Muzibu gets prospective buyers for a bungalow and that negotiations would be handled by Pinsi himself. Muzibu got the buyers and introduced them to Pinsi. One would-be buyer showed no interest and the second one at first showed willingness by negotiating but was not able to buy the house. Pinsi based on the inability to sell and refused to pay Muzibu, yet Muzibu had fulfilled his part of the agreement. Therefore, Pinsi was liable to pay Muzibu, concerning the three bed roomed bungalow.

- (v) Remedies available to the aggrieved parties:
- Kuubo traders may seek for a Court order against Ngumu firm for payment.
  - Mwangi may seek for an order of Court to dissolve Ngumu firm.
  - Pinsi may sue Muzibu for breach of duty and claim for damages.
  - Muzibu may seek for a Court order to compel Pinsi to pay his commission.

### **Solution 3**

#### **Issues:**

- (i) Whether Bakola enterprise was justified to make the monthly deductions from Jena's salary.
- (ii) Whether the monthly deduction of contributions from Shida's salary towards a pension scheme were lawful.
- (iii) Whether the termination of Bisobye was lawful.
- (iv) Whether there was a valid contract between Bakola enterprise and Smart Art Ltd.
- (v) Whether there are any remedies for the aggrieved parties.

#### **Resolution of issues**

- (i) Section 46(1)(c) of the Employment Act 2006, permits deductions from the employee's salary to cater for reasonable rent or reasonable charges for accommodation provided by the employer for the employee, when the employee has agreed to the deductions.

In the instant case, Jena's monthly salary deductions attached to her accommodation, including Shs. 30,000 towards water, Shs 30,000 towards electricity and Shs 200,000 for general maintenance. The deductions for water and electricity are fairly reasonable but charges for general maintenance are uncalled for and not reasonable. Jena is obviously not in agreement and is perturbed by the deductions.

Therefore, Bakola Enterprise was not justified to make the monthly deductions of general maintenance from Jena's salary.

- (ii) Section 46 (i) (b) of the Employment Act, 2006, provides that deduction of contributions to any pension scheme from an employee's remuneration is permitted, where the employee has previously given his/ her written consent.

In the instant case, Shida's remuneration is deducted for contributions of Shs 35,000 per month, towards a pension scheme. Shida was told about the scheme on recruitment and she had signed a document of consent to join the scheme.

Therefore, the monthly deduction of contributions from Shida's salary towards a pension scheme was lawful.

- (iii) Sections 73 (1) (a) and 75 (i) of the Employment Act, 2006, provide for situations that amount to unfair termination of an employee. These include unfair reasons like an employee's temporary absence from work for a period of up to three months on reliable grounds, including illness or injury.

In this case, Bisobye was absent from office for two months, as a result of a knee injury he sustained while working in his farm. He called to inform his supervisor and provided medical forms in evidence of his treatment when he returned to office. He was instead given a termination letter, on the ground of his absence from work for the two months. This was against the provisions of the law. Therefore, the termination of Bisobye was unlawful.

- (iv) According to section 10(2) of the Contracts Act 2010, a contract may be oral or written, or partly oral and partly written or may be implied from the conduct of the parties(See also: *Crystal Consult (U) Ltd v MTN Uganda Ltd HCCS No. 67/2012*).

In this case, the marketing officer of Bakola Enterprise made a transaction for it to supply 3 packages of art paper to Smart Art Ltd, worth Shs 50,000/ per package. A partly oral and partly written agreement was concluded for the transaction. Smart Art Ltd has, however, refused to pay,

on the ground that there was no detailed written agreement for the transaction. This is not right according to the provisions of law.

Therefore, there was a valid contract between Bakola Enterprise and Smart Art Ltd.

- (v) Remedies available to the aggrieved parties:
- Jena may complain to the labour officer to compel Bakola Enterprise to refund the unlawful deductions from her salary.
  - Bisobye may complain to the labour officer against Bakola Enterprise for either re-instatement to his job or for compensation for unlawful termination.
  - Bakola Enterprise may seek for a Court order to compel Smart Art Ltd to pay for the packages of art paper.

#### **Solution 4**

##### **Issues:**

- (i) Whether the issue of Disog Ltd's shares at a discount was lawful.
- (ii) Whether Mugumu's removal as company auditor was lawful.
- (iii) Whether the Directors are liable for the extra businesses carried out.
- (iv) Whether Exodus Ltd is justified to do business with other companies
- (v) Whether there are remedies available to the aggrieved parties.

##### **Resolution of issues:**

- (i) Section 67 (a) of the Companies Act 2012, provides that ,in order for a company's issue of shares at a discount, it must be authorized by a resolution passed in a general meeting and sanctioned by the court.

In the instant case, a company resolution to issue shares at a discount was passed at a general meeting. As soon as the meeting was concluded, many shareholders were shocked by the immediate news received that new shares were issued at a discount. There was obviously no action taken to get Court sanction for the issue of shares at a discount, as provided by the law. Therefore, the issue of Disog Ltd's shares at a discount was unlawful.

- (ii) Section 168(1) of the Companies Act 2012, is to the effect that a special notice is required for the resolution to remove an auditor. Furthermore, section 149(1) of the Companies Act 2012 provides that where a special notice is required of a resolution, the resolution shall not be effective unless notice of intention to move it has been given, not less than 28 days before the meeting at which it is moved.

In this case, a 21 days' notice was given for a general meeting. Members were only informed about the need to replace Mugumu during the meeting. The directors persuaded members to replace Mugumu and a resolution was passed to appoint another auditor. There was no notice of intention to remove Mugumu given before the meeting and only a 21 days' notice was given. Therefore, Mugumu's removal as company auditor was unlawful.

- (iii) According to section 20 of the Companies Act 2012, where Directors of a company are involved in acts including fraud, Court may lift the corporate veil.

In the instant case, members of Disog Ltd discovered that the directors had used the company name and money to do other businesses, and it was suspected that all proceeds from the extra businesses were for the directors' personal benefit. Mugumu the auditor, had kept asking about the proceeds without getting an explanation. It appears that Directors fraudulently did business without accounting for the proceeds.

Therefore, the Directors are liable for the extra businesses carried out.

- (iv) Section 18(1) of the Companies Act 2012 provides that a company is registered by filling particulars of a registration form in schedule 2 of the Act. Furthermore, section 22(1) provides that a certificate of incorporation given by the registrar shall be conclusive evidence that all requirements for registration have been complied with.

In the instant case, some members of Disog Ltd have started their own business after agreeing to use the name "Exodus Ltd". They hired office space and networked for business opportunities, although some companies are hesitant to deal with them, giving the reason that it is a risk doing business with them. One of the companies advised them to legalize their operations before doing business with them. This clearly indicates that "Exodus Ltd" does not exist since it has not been registered as a company, as required by law.

Therefore, Exodus Ltd is not justified to do business with other companies.

- (v) Remedies available to the aggrieved parties:

- Disog Ltd members may seek for a Court order to nullify the issue of shares at a discount.
- Mugumu may seek for a declaratory order of Court that his removal was unlawful
- Disog creditors may petition court to lift the corporate veil and compel the directors to pay the debts due.
- The prospective members of "Exodus" company may carry out all steps prior to registration of their company.

## **Solution 5**

### **(a) Differences between shares/ shareholding and debentures/debenture holding.**

- (i) Relationship with the company: A shareholder is a member of the company while a debenture holder is a creditor of the company.
- (ii) Interest in the company: Whereas a shareholder's main interest is in the company but not its property, a debenture holder's main interest is in the company property, since it constitutes his security.
- (iii) Expected payment: A debenture holder must be paid interest on debentures even when a company makes no profits. This interest can be paid out of capital. On the other hand, a shareholder is paid dividends only if profits are made. The dividends cannot be paid out of capital.
- (iv) Ability for a company to purchase: Whereas a company can purchase its own shares, it cannot purchase its debentures.
- (v) Attendance of company meetings: A shareholder is an insider of a company and can attend its meetings and vote. On the other hand, a debenture holder is an outsider and can neither attend company meetings nor vote.
- (vi) Discount issues: As a general rule, shares cannot be issued at a discount whereas debentures may be issued at a discount.

### **(b) Duties of company directors (S.198 Companies Act, 2012)**

- (i) Care and skill: (Re: City Equitable Fire Insurance Co. Ltd, 1925). A director must exhibit a degree of skill that is reasonably expected from a person of his knowledge and experience, and as a reasonable person looking after their business.
- (ii) Not to conflict or have any conflict of interest: Directors must act in a manner that promotes the success of the company. They must not put themselves in positions where their personal interest and duty to protect the company interest conflict (Aberdeen Railway Co. v Blaikie Brothers, 1854).
- (iii) Act in good faith, in the interest of the company: Where the directors become personally interested in transactions, they must not compete with the company and disregard the fact that it is their duty to do everything that enables the company to take up such transactions (Industrial Development Consultants Ltd v Cooley, 1972).

- (iv) Not to make personal profit at the expense of the company: Directors have a duty not to take up transactions that the company would have taken up, even if the company would not have profited from the transaction (*Regal Hastings v Gulliver*, 1942). Directors are, therefore not expected to breach their duty by making secret profits (*Boston Deep Sea Fishing Co. v Ansell*, 1888).
- (v) Declare interest in transactions with the company: Directors must disclose their interests at a meeting of directors. The declaration must be formal and minutes written (*Re: Neptune (Vehicle Washing Equipment) Ltd*, 1995) and (*Guinness Plc v Saunders and another*, 1990).
- (vi) Ensure compliance: Directors must ensure that the company complies with the Companies Act and any other law (S. 198(d) Companies Act, 2012).

## **Solution 6**

### **(a) Distinction between criminal law and civil law:**

- (i) Description: Criminal law is the branch of law which defines things that every citizen must do or must not do. It regulates relations between the state and individuals.  
Civil law, on the other hand, is the branch of law which regulates relations between private individuals, groups and organizations, to ensure that their rights are not violated.
- (ii) Purpose: Whereas the primary objective of criminal law is to protect and sustain society from elements that threaten stability and security, the objective of civil law is restore the citizen to the state he/she was in before violation of his/her rights.
- (iii) Parties involved: The parties to a criminal case include the state and an individual, where the state will be the prosecutor and the individual will be the accused person.  
On the other hand, parties to a civil case are individuals, the aggrieved party or victim will be the plaintiff while the one complained about will be the defendant.
- (iv) Rules of procedure: The rules of procedure used in criminal law are the Criminal Procedure Code (cap 116) and the Trial on Indictment Act (cap 23), while the rules governing civil law are the Civil Procedure Act (cap 71) and Civil Procedure Rules.
- (v) Burden of proof: The burden to prove the case is on the state (prosecution) in criminal cases while the burden of proving the plaintiff's claim rests on the plaintiff in civil suits.
- (vi) Standard of proof: In all criminal trials, the prosecution must prove the guilt of an accused person beyond any reasonable doubt, while

in civil actions the plaintiff must prove his/her case on the balance of probabilities.

- (vii) Remedies: When an accused person is convicted in a criminal case, he/she is punished by imprisonment or payment of a fine. On the other hand, an aggrieved person in a civil suit is compensated by damages, or where damages are not adequate, Court may give an order for specific performance or injunction.

(b) **Circumstances when an agency is terminated by operation of the law:**

- (i) Performance: Where an agency relationship was made for a single transaction, the completion of such transaction terminates the agency.
- (ii) Fixed period: An agency created for a fixed period will terminate at the expiration of such period, whether or not the business of the agency is completed.
- (iii) Death: The death of either the principal or agent during the agency terminates the agency. The principal's death will terminate the agency even where the agent is not aware of it (Kennedy v Thomassen, 1928).
- (iv) Insanity: Insanity of either the principal or agent during the agency terminates the agency. The principal's insanity terminates the agency even if the agent is not aware of it (Yonge v Toynbee, 1910).
- (v) Bankruptcy of the principal: When a principal is declared bankrupt, the agency will terminate. However, the agent's bankruptcy does not usually affect the agency relationship because its performance does not depend on his financial position.
- (vi) Frustration: When the agency was created to deal with a specific subject matter, when that subject matter is destroyed, the agency itself will be terminated.
- (vii) Subsequent illegality: An agency is terminated by law where its continuation will be illegal (Stevenson & sons v Akt. Fur Cartonnagen-Industrie, 1971).



## **ANSWERS TO TEST PAPER 16**

### **CPA (U) OCTOBER 2021**

#### **Question 2**

- (i) Whether the resolution passed to alter articles of Kwiki Co Ltd was lawful.
- (ii) Whether the assistant registrar lawfully rejected the resolution to reduce capital.
- (iii) Whether the directors were justified to engage in the risky business.
- (iv) Whether the directors were justified to reissue debentures.
- (v) Whether there are any remedies for the aggrieved parties.

#### **Resolution of issues:**

- (i) S. 16 (1) of the Companies Act 2012 provides that a Company's Articles of Association may be altered by special resolution. Furthermore, S.148 (1) provides that a resolution is special if passed by three fourths of entitled members at a general meeting, whose notice had specified the intention to pass the special resolution.

In the facts of this case, an agenda item of one meeting was "trade in bales of clothes" although this was not indicated in notice for the meeting. A resolution was passed that the company articles be altered to include directors' power to deal in the sale of bales of clothes. No special notice had been given prior to the meeting, as required by law. Therefore, the resolution passed to alter articles of Kwiki Co Ltd was not lawful.

- (ii) Under Sections 77(1), 78 & 79 of the Companies Act 2012, after a company passes a resolution to reduce its capital, it must petition Court for a confirming order, publish the resolution in the Gazette and newspaper before the registrar of companies registers and minutes the order.

In the instant case, after passing the resolution, it was thereafter taken for filing with the registrar, who rejected it. None of the procedure prior to filing was done as required by law. Therefore, the assistant Registrar lawfully rejected the resolution to reduce capital.

- (iii) S. 198 of the Companies Act 2012 provides for the duties of company directors to include acting in good faith in the interest of the company as a whole.

In the instant case, the directors engaged in business which was risky in that machinery and equipment had to be purchased from a country where there was COVID 19. However, the Directors believed that it was lucrative

business, which the company would benefit from. Therefore, the directors were justified to engage in the risky business.

- (iv) S.102 (1) of the Companies Act 2012, provides that the company has power to re-issue any previously redeemed debentures.

In this case, the directors decided to re-issue debentures that had earlier on been redeemed, in an interest of securing more capital for the company. Therefore, the directors were justified to reissue debentures.

- (v) Remedies for the aggrieved parties:

- Ndereza and other members may seek for a declaratory order of court that the resolution passed to alter articles of association of the company was unlawful.
- Kwiki Co Ltd. may seek for a court order court to confirm the resolution and follow proper procedure before filing returns with the registrar.
- Directors may seek for a declaratory order of court that the risky business and the re-issue of debentures lawful.

### **Solution 3**

#### **Issues:**

- (i) Whether Jjembe is liable to renew Kibira's contract.
- (ii) Whether Nsonzi's termination was lawful.
- (iii) Whether Tulumbe firm is liable to pay Gugu.
- (iv) Whether Tulumbe firm can continue in business.
- (v) Whether there are any remedies available to the aggrieved parties.

#### **Resolution of issues:**

- (i) S. 65 (b) of the Employment Act 2006 provides that termination of a contract of service is deemed to take place where the contract was for a fixed term and that specified term expires.

In this case, Kibira signed a contract of service with Jjembe Ltd for three months. At the time of his termination, he had worked for a period of 4 months, and he was told that the termination was long overdue. Therefore, Jjembe is not liable to renew Kibira's contract.

- (ii) According to S.71 (1) of the Employment Act 2006, unfair termination is where an employer terminates an employee who has worked continuously for at least 13 weeks immediately before the date of termination.

In the facts of this case, Nsonzi was terminated with reasons that the company would soon get better performing employees and that he had an option to get a recommendation for other employment. Therefore, Nsonzi's termination was not lawful.

- (iii) S. 12 of the Partnership Act 2010 is to the effect that a firm will be liable for wrongs of partners where any wrongful act of a partner in the normal course of business causes loss to any person who is not a partner.

In the instant case, Mpisi went to Gugu's store to purchase goods for the firm and got involved in a quarrel with a staff he found there. Mpisi then deliberately pushed a stack of glass products, which fell and broke, thus causing loss to Gugu. Therefore, Tulumbe firm is liable to pay Gugu.

- (iv) S. 37 (f) of the Partnership Act 2010 provides that on the application by a partner, Court may dissolve a partnership whenever circumstances have arisen which, in Court's opinion, render it just and equitable that the partnership be dissolved.

In the instant case, Yombwa and Mpisi do not talk. According to Fulejje, this has strained business relations and the smooth running of Tulumbe firm business. It would only be just and equitable that the partnership be dissolved. Therefore, Tulumbe firm cannot continue in business.

- (v) Remedies available to the aggrieved parties:
- Nsonzi may complain to the labour office that he was unfairly terminated.
  - Gugu may seek for a court order to compel payment by Tulumbe firm for loss caused by Mpisi.
  - Fulejje may seek for a court order to dissolve Tulumbe firm.

#### **Solution 4**

##### **Issues:**

- (i) Whether Bwenu can be compelled to perform the contract made with Tunda.
- (ii) Whether Ninja is liable to pay Baseku for contractual obligation made 6 years ago.
- (iii) Whether Kabindo's settlement can be cancelled.
- (iv) Whether Bando can be removed as trustee of the late Malibu's estate.
- (v) Whether there are any remedies available to the aggrieved parties.

##### **Resolution of issues:**

- (i) Where an order of specific performance would not be available or cannot be forced onto the party in breach, Court may only grant an order of injunction to restrain the continuance or repetition of a wrongful act (Wraner Brothers v Nelson, 1937.)

In the facts of this case, Bwenu agreed to work for Tunda only as a singer in his music studio. However, Bwenu breached this agreement when Tunda heard him

sing from another music studio. Therefore, Bwenu can be compelled to perform the contract made with Tunda.

(ii) According to S. 3 (i) of the Limitation Act 1959, actions in contract cannot be brought after expiration of six years from the date on which the cause of action arose. However, S. 21 (1) provides that notwithstanding the limitation period, if on the date when the right of action accrued and for which a period of limitation is prescribed, the person to whom it accrued was under a disability, the action may be brought any time before expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred.

In the instant case, Baseku got a terrible accident at the time when Ninja was supposed to pay, leaving him with a loss of memory and inability to pursue his claim against Ninja, to-date. This amounted to inability as prescribed by law. Therefore, Ninja is liable to pay Baseku for contractual obligation made 6 years ago.

(iii) A settlement may be cancelled by Court if it is signed without sufficient explanation and is misunderstood by the settler (*Barret v. Hardley*, 1866).

In the instant case, Kabindo executed a settlement voluntarily in the presence of his lawyer when he was very sick and without it being read out to him. On his recovery, Kabindo reviewed the settlement and disagreed with the contents that omitted a possibility for it to be revoked. Therefore, Kabindo's settlement can be cancelled.

(iv) In exercising jurisdiction to remove a trustee, Court is always guided by what is best for the beneficiaries. Where there is friction between the trustee and beneficiary, it is sufficient ground for removal, even if there has been no breach of trust by the trustee (*Lettersted v. Broers*, 1884)

In the instant case, Bando who was the trustee of the late Malibu's estate carried out his duties as expected. The children of Malibu (Ninja and Kimonde) for some unknown reason always opposed him, despite several attempts by relatives to put an end to the bad relationship. Therefore, Bando can be removed as trustee of the late Malibu's estate.

**(3 marks each)**

(v) Remedies available to the aggrieved parties:

- Tunda may seek for a court order granting an injunction against Bwenu.
- Baseku may seek for a court order of payment from Ninja.
- Kabindo may seek for an order of court for the cancellation of his settlement.
- Kiwogo and Kimonde may seek for an order of court to remove Bando as trustee of their father's estate.

## **Solution 5**

### **(a) Circumstances under which an agency relationship can be terminated:**

#### **Act of parties**

- (i) Agreement between parties: An agency can be terminated at any time by mutual agreement between the parties (S.135 (g) Contracts Act, 2010).
- (ii) Renunciation: An agent can renounce the contract of agency after giving reasonable notice of his intention to do so (S.135 (b) Contracts Act, 2010).
- (iii) Revocation: The principal may, at any time, revoke the authority of the agent (S.135 (a) Contracts Act, 2010).

#### **Operation of law**

- (iv) Performance: An agency for a single transaction is terminated on completion of that transaction.
- (v) Fixed period: Where an agency is for a fixed period, it is terminated at the end of that fixed period, whether or not the business is completed (S.135 (c) Contracts Act, 2010).
- (vi) Death of agent or principal: The death of an agent or the principal terminates the agency (S.135 (d) Contracts Act, 2010).
- (vii) Insanity of agent or principal: When a principal becomes of unsound mind, even if the agent is not aware, or when the agent becomes of unsound mind, the agency comes to an end (S.135 Contracts Act, 2010).
- (viii) Bankruptcy of the principal: Bankruptcy of the principal will lead to termination of the agency. However, bankruptcy of the agent does not (S.135 (f) Contracts Act, 2010).
- (ix) Destruction of the subject matter: When the main subject of the agency ceases to exist, then the agency itself is terminated (S.135 (h) Contracts Act, 2010).
- (x) Subsequent illegality: When a law is passed and the continuation of the agency leads to illegality, the agency is thereby terminated.

### **(b) Legal consequences of winding up a company:**

- (i) No legal proceedings are instituted against the company without leave of Court.
- (ii) A liquidator is appointed, or else the official receiver becomes provisional liquidator.
- (iii) Upon appointment of a liquidator, the directors' powers of management cease.
- (iv) The directors and company employees are dismissed but they may be re-employed by the liquidator if deemed fit.
- (v) All company business letters and other documents bear the statement that the company is in liquidation.

## **Solution 6**

### **(a) Main advantages and disadvantages of case law:**

#### **Advantages of case law:**

- (i) Certainty: Case law ensures consistency in the rules of law and thus contributes to certainty in development of law. The strict use of precedents ensures consistency.
- (ii) Growth: Case law deals with the changes in needs of society, providing a clear approach to practical problems.
- (iii) Detail: Principles of law or equity are elaborately supported by judgments of distinguished judges, lawyers and students of law, thus providing rich detail to appreciate and apply to practical problems.

#### **Disadvantages of case law:**

- (iv) Rigidity: Precedents ensure that only decisions of higher Courts bind lower Courts. In this way, there is restriction in lower Court magistrates using their own reasons for their judgments.
- (v) Over-subtlety: Sometimes, the rigid use of precedents leads to judges using distinctions of cases in order to avoid following earlier decisions.
- (vi) Bulk and complexity: Most case law is detailed and voluminous, creating a problem of bulk. The reports of cases have to be referred to constantly and they become such a burden to reckon with, hence complexity in dealing with them to solve specific practical problems.

- (b) (i) Delegated legislation:** This is legislation that has the power of an Act of Parliament but which was passed by a competent, sub-ordinate body to which Parliament delegated its law-making authority. Such legislation includes rules, regulations, orders and by-laws.

#### **(ii) Reasons for delegated legislation:**

- (i) Saves time: Parliament may have many pressing problems for which legislation is required. In order to ensure that all issues for legislation are attended to for smooth running of government, Parliament delegates some of its legislative powers to competent bodies. Parliamentarians thus save time to enable them attend to the needs of their constituents.
- (ii) Urgency: Whenever there is an urgent need for law, Parliament may not be in session at the same time. Where Parliament undertakes to legislate, the slow and elaborate nature of its procedure hinders effective legislation for urgent problems that may have arisen. Such legislation may best be done by experts in the area, such as a Minister or other competent body.

- (iii) Technicality of subject matter: A proposed legislation may be technical in nature, yet Parliament is a general body and Parliamentarians may not be experts in some areas. In such cases, it is best for qualified personnel or experts in a government Ministry or institution to draft the necessary rules which the Minister may approve and gazette as law.
- (iv) Flexibility: Parliament is riddled with inflexible procedures, such as following elaborate standing orders. It therefore follows that in a situation which requires immediate amendment or repeal, rules or regulations are made faster by bodies that do not have inflexible procedures.

# ANSWERS TO TEST PAPER 17

## CPA (U) DECEMBER 2021

### Solution 2

#### Issues:

- (i) Whether Mori's claim for all the deceased's shares was lawful.
- (ii) Whether the Directors' resolution to reduce the share capital was lawful.
- (iii) Whether there was a lawful transfer of shares from Kats to Tom.
- (iv) Whether the appointment of Kats as a director was lawful.
- (v) Whether there are any remedies available to the parties.

#### Resolution of issues:

- (i) Section 85 (1) of the Companies Act 2012 provides that it is unlawful for the company to register a transfer of shares of the company unless a proper instrument of transfer has been delivered to the company. Furthermore, S. 94 (a) provides that the production of probate of the will or letters of administration of a deceased person shall be accepted by the company as sufficient evidence of the grant.

In the instant case, following the death of the three shareholders in a motor accident, Mori, one of the widows, claimed that all the deceased's shares belonged to her and has written to the company claiming ownership of the shares. There was no evidence of a grant of probate or letters of administration to Mori for all 3 estates. Therefore, Mori's claim for all the deceased's shares was not lawful.

- (ii) Section 76 of the Companies Act 2012 requires confirmation by court and a special resolution must have been in place before reduction of a company's share capital.

In this case, the directors of Kaz Ltd agreed in their meeting to reduce the company's share capital. No Court sanction and no special resolution was passed for this to happen. Therefore, the directors' resolution to reduce the share capital was unlawful.

- (iii) Section 87 of the Companies Act 2012 provides that a single member company may transfer shares on the death of the single member or by operation of law or by a single member company converting into a private company.

In this case, Yaketa Ltd is a single member company, and the only member is Kats. Kats transferred 50% of his shares to his only son Tom as a gift for having completed CPA course and instructed the company secretary to retype the articles of association and memorandum of association and keep them in the shelf. There was no instance of death of the single member or operation of law to give effect to, or conversion of the company into a private company.

Therefore, there was no lawful transfer of shares from Kats to Tom.

- (iv) Section 194 (1) & (3) of the Companies Act 2012 provides for appointment of directors at a general meeting, where a motion for approving nomination or approval is moved.



In the instant case, Gonza, one of the directors of the company, appointed Kato as a director at a site, during the construction of one of the buildings the company had been contracted to construct. Therefore, the appointment of Kats as a director was not lawful.

(v) Remedies available to the parties.

- The other widows may seek for a court order for an injunction against Kaz Ltd's transfer of ownership to Mori.
- Members of Kaz Ltd may petition court for a declaratory order that the reduction of share capital was unlawful.
- Tom may seek for a declaratory order of court that Kat's transfer of shares was unlawful.
- Kalubo may seek for a Court order to declare Kats' appointment unlawful.

### **Solution 3**

#### **Issues:**

- (i) Whether Bandabe & Associates' appointment as auditor was lawful.
- (ii) Whether the termination of KA & Co as auditor was lawful.
- (iii) Whether the Finance Manager's denial of KA & Co to access documents was justified.
- (iv) Whether the company's creditors were justified to cause winding-up of the company.
- (v) Whether there are any remedies available to the aggrieved parties.

#### **Resolution of issues:**

- (i) Section 167 (1) of the Companies Act 2012 provides that every company shall appoint an auditor at each annual general meeting.

In the facts, the directors appointed a new auditor Bandabe & Associates during the launch of the company's new brand, Mugezi soda. Therefore, Bandabe & Associates' appointment as auditor was not lawful.

- (ii) Section 167 (8) of the companies Act 2012, effectively provides that the company may, at a general meeting, remove an auditor. Furthermore, S. 168 (1) provides that special notice is required at a company's annual general meeting appointing an auditor.

In the instant case, KA & Co was terminated as Kyalenga Ltd's auditor with immediate effect, through an announcement made during the Mugezi soda launch. It was replaced with Bandabe & Associates. There was no special notice and no general meeting as required by law. Therefore, the termination of KA & Co as auditor was not lawful.

- (iii) Section 170 (3) of the companies Act 2012, provides that every auditor has a right of access at all times to the books of accounts and vouchers of the company and is entitled to require from the officers of the company such information and explanation necessary for the performance of duties.

In the instant case, one of the staff of KA & Co who were still carrying out an audit at Kyalenga Ltd, wanted to verify all company's fixed assets but was denied access by the Finance manager. Therefore, the finance manager's denial of KA & Co to access documents was not justified.

- (iv) Sections 69, 70 & 77 of the Insolvency Act 2011, provides for a creditors' voluntary winding up of a company, appointment of a liquidator to liquidate affairs and distribute assets of the company, on dissolution.

In this case, Kyalenga Ltd's creditors have increased and it is now clear that the company is not a going concern. Therefore, the company's creditors were justified to cause winding-up of the company.

- (v) Remedies available to the aggrieved parties:
- Members of Kyalenga Ltd may seek for a declaratory Court order that the appointment of Bandabe & Associates was not lawful.
  - KA & Co may seek for a Court's declaratory order that its termination was unlawful.
  - KA & Co may seek for a Court order to compel access to the company's financial records.
  - The company creditors may petition for winding-up of the company.

#### **Solution 4:**

##### **Issues:**

- (i) Whether the denial of leave to Mubali was lawful.
- (ii) Whether Mubali's termination from Kadamu Ltd was lawful.
- (iii) Whether the finance manager's refusal to refund Komiswa was justified.
- (iv) Whether Komiswa was justified to share with competitors the UK client's information.
- (v) Whether there are any remedies available to the parties.

##### **Resolution of issues:**

- (i) Section 54(1) of the Employment Act, 2006 provides that an employee is entitled to a holiday every calendar year with full pay at the rate of seven days in respect of each period continuous four month's service.

In the facts, the human resource manager (HRM) informed Mubali that he would not be allowed to go on leave on 1<sup>st</sup> January 2021 because he had gained a lot of weight. Therefore, denial of leave to Mubali was unlawful.

- (ii) Section 58 (1) & (2) of the Employment Act 2006, is to the effect that termination without fair hearing and inadequate notice to the employee is unlawful termination.

In the instant case, when Mubali disobeyed the HRM's instructions and as a result, he was terminated a month later. Mubali was neither given notice nor a fair hearing before termination. Therefore, Mubali's termination from Kadamu Ltd was not lawful.

- (iii) Section 156 (1) of the Contracts Act, 2010, provides that a principal should indemnify an agent against the consequence of all lawful acts done by the agent in exercise of the authority conferred upon the agent. Furthermore, the principal has to indemnify the agent even if the principal made a loss (*Christoforides v Terry, 1924*).

In the instant case, when Komiswa was in UK, he incurred extra expenses that were not budgeted for by Build Ltd and used his personal money. When he returned to Uganda and presented the documents for refund to the Finance Manager of Build Ltd, he refused to refund the money. This was contrary to the law. Therefore, the finance manager's refusal to refund Komiswa was not justified.

- (iv) Section 146 (1) of the Contracts Act, 2010, provides that an agent has a duty to act with reasonable care, skill and diligence while conducting the principal's business. In a principal/ agent relationship, disclosure is part of the agent's general duty of good faith. However, the agent must not disclose to a third party any confidential information entrusted to him by the principal (*Weld-Blundell v Stephens, 1920*).

In this case, Komiswa met Build Ltd's competitors and shared with them all the UK prospective client's information. He further organised a meeting with Build Ltd's competitors and the UK prospective client. Therefore, Komiswa was not justified to share with competitors the UK client's information.

- (v) Remedies available to the parties:

- Mubali may seek for a Court order for damages against Kadamu Ltd, for discrimination.
- Mubali may complain to the Labour officer for re-instatement and/or damages.
- Komiswa may seek for a Court order against Build Ltd, for a refund of his money.
- Build Ltd may seek for a Court order against Komiswa for damages for breach of duty.

## **Solution 5**

- (a) Conditions necessary for ratification of an agent's acts:

- (i) Disclosure of the principal: The principal on behalf of whom a contract is intended to be made, must be named. If the principal is not disclosed, no ratification can result (*Keighley, Maxted & Co v Durrant, 1901*).
- (ii) Principal in existence: The principal must be in existence at the time of the contract, and must have full contractual capacity. Where a company purportedly ratifying is not yet registered, ratification is ineffective (*Kelner v Baxter, 1806; Natal land CO Ltd v Pauline Colliery Syndicate, 1898*).
- (iii) Reasonable time: The ratification must take place in reasonable time, before expiration of the time fixed for performance of the contract.

- (iv) Knowledge of material facts: Ratification can only be done where the principal, at the time of ratification, has full knowledge of the material facts of the transaction (*Savery v King*, 1856).
- (v) Whole contract: The principal must ratify the whole contract, not only a part of the contract.
- (vi) Lawful contract: a principal cannot ratify a void contract (*Brook v Hook*, 1871).
- (b) Circumstances when a partnership may be dissolved by decree of court:
  - (i) Unsound mind: A partnership is dissolved by decree of court when it is shown to the satisfaction of court that partner is of permanently unsound mind (S.37 (a) of the Partnership Act, 2010).
  - (ii) Incapacity of performance: This is when a partner becomes permanently incapable of performing his part in the partnership business (S. 37 (b) Partnership Act, 2010).
  - (iii) Prejudicial conduct: When a partner is found to be guilty of conduct which prejudicially affects the carrying on of partnership business, the partnership is dissolved by court (S.37 (c) Partnership Act, 2010).
  - (iv) Breach of agreement: A partnership is dissolved by court where a partner willfully or persistently commits breach of the partnership agreement, making it impracticable for other partners to carry on business with him/her (S. 37 (d) Partnership Act, 2010).
  - (v) Business at loss: Where the partnership business can only be carried out at a loss, the partnership may be dissolved by decree of court (S. 37 (e) Partnership Act, 2010).
  - (vi) Just and equitable: Whenever circumstances arise which, in court's opinion render it just and equitable that the partnership be dissolved, court can decree so (S. 37 (f) Partnership Act, 2010; *Yenidje Tobacco Co Ltd*, 1904).

## **Solution 6**

### **(a) Distinction between criminal and civil law:**

- (i) Definition: Civil law deals with violation of rights between individuals, organisations, or between the two. On the other hand, criminal law is the body of law that deals with offences committed or omitted by individuals and for which, punishment is prescribed.
- (ii) Purpose: Civil law deals with disputes between individuals, organisations, or between the two, in which compensation is awarded to the victim. On the other hand, criminal law is to maintain the stability of the state and society by punishing offenders and deterring them and others from offending.
- (iii) Parties to a case: Whereas in criminal law the case is filed by the state against an accused person, in civil law, a case is filed by a plaintiff against a defendant.

- (iv) Standard of proof: In criminal law, evidence must be adduced beyond any reasonable doubt, while in civil law, the plaintiff proves his/ her case on a balance of probabilities.
  - (v) Burden of proof: In criminal law, the burden to prove guilt is on the state, whereas in civil law, the plaintiff proves wrong occasioned to him/ her by the defendant.
  - (vi) Remedy: Whereas in criminal law a guilty defendant is subject to custodial punishment (imprisonment) and/or non-custodial punishment such as fines or community service, in civil cases, punishment is compensatory, usually financial, for injuries or damages, or injunction in nuisance.
- (b) Duties of a trustee:
- (i) Reduction of property into possession: A trustee has a duty to ascertain all trust property and transfer it to him/herself any of the property which did not pass to him/her under the deed (S. 39 (1) Trustees Act, 1954).
  - (ii) Investment: A trustee has a duty to invest all trust funds in his/her custody, through purchasing anything from which an interest or profit can be obtained for the trust (S. 3 Trustees Act, 1954).
  - (iii) Distribution: A trustee is under duty to pay out or distribute income and capital to persons who are entitled under the trust (S. 27 Trustees Act, 1954).
  - (iv) Maintain equality between beneficiaries: A trustee must act fairly or impartially for all beneficiaries in relation to all trust property.
  - (v) Accounts and information: A trustee has a duty to keep accounts and provide information to beneficiaries on all matters affecting the trust, whenever required.

# ANSWERS TO TEST PAPER 18

## CPA (U) MARCH 2022

### Solution 2

#### Issues:

- (i) Whether the resolution to alter the memorandum of association was lawful.
- (ii) Whether Dundu was justified to cause court's rectification of articles of association.
- (iii) Whether the refusal to transfer Faku's shares to Goke was lawful.
- (iv) Whether Mandule had a cause of action against Bunda Ltd (BL).
- (v) Whether there are remedies available to the aggrieved parties.

#### Resolution of issues:

- (i) Section 10(1) of the Companies Act 2012 provides that a company may, by special resolution, alter its memorandum of association with respect to objects. Section 148(1) of the Companies Act 2012 further provides that a special resolution is one which has been passed by the majority of not less than three fourths of the members entitled to vote.

In the instant case, half of the members attended the meeting and a resolution to alter the memorandum of association was passed. The resolution was passed by less than three fourths of the members, against the law.

Therefore, the resolution to alter the memorandum of association was not lawful.

- (ii) Rectification of both the memorandum and articles of association is not possible because the Companies Act contains powers of alteration and extension thereof (*Scott v Frank Scott (London) Ltd, 1940*).

In the instant case, Dundu sued the company for a Court order to rectify articles of association. This was not in accordance with the law.

Therefore, Dundu was not justified to cause Court's rectification of articles of association.

- (iii) Regulation 29(1) of Table A of the Companies Act 2012 provides that in case of death of a member, the personal representative of the deceased shall be the only person recognized by the company as having title to his/her interest in the shares.

In the instant case, the directors of Bunda Ltd declined to transfer the late Faku's shares to his son, Goke, who had letters of probate for Faku's estate. This was against the provision of law. Therefore, the refusal to transfer Faku's shares to Goke was not lawful.

- (iv) Subscription for shares in companies amounts to contracts of utmost good faith. Where one party alone has full knowledge of material facts, this in law, imposes on him the duty to disclose these facts to the other party. The omission to disclose matters of material facts in a prospectus renders those responsible for the prospectus liable in damages (*Re: South of England Natural Gas Co., 1911*).

In this case, the company issued a prospectus for people to buy shares and get a bonus. Mandule bought shares basing on the information in the prospectus but no bonus was given when he requested for it.

Therefore, Mandule has a cause of action against BL company.

- (v) Remedies available to the aggrieved parties:
- Members of Bunda Ltd may seek for a court order to declare the resolution unlawful.
  - Bunda Ltd may seek for a court order declaring that Dundu cannot cause court to rectify the company's Articles of Association.
  - Goke may seek for a court order to compel the transfer of Faku's shares to him.
  - Mandule may seek for a court order for damages to be paid by BL company.

### **Solution 3**

#### **Issues:**

- (i) Whether Mwase qualified to be a director of Nzori Ltd.
- (ii) Whether it was lawful for members not to pay Mumbe's remuneration.
- (iii) Whether Mwandu was justified to sue the directors for failure to represent the company.
- (iv) Whether it was lawful for Mwandu to take over tasks of a director.
- (v) Whether there are remedies available to the parties.

#### **Resolution of issues:**

- (i) According to section 196 of the Companies Act 2012, a person shall not be capable of being appointed a director of a company if, at the time of appointment, he/ she has not attained the age of eighteen years.

In this case, Mwase who is twenty years old, was one of the new company directors appointed. At that time, he was already above 18 years old. Therefore, Mwase qualified to be a director of Nzori Ltd.

- (ii) Regulation 76 of Table A of the Companies Act 2012 is to the effect that Articles of Association of a company indicate and determine remuneration of directors, and an implied contract is inferred on that basis.

Directors are not entitled to remuneration except where there is a provision to that effect in the Articles of Association (*Modikayo Oneka v Wines & Spirits, 1974*).

In the instant case, Mumbe who had arrears of payment for a year, requested to be paid but the shareholders declined to do so, despite a provision in the company's articles of association for payment of directors. This was against the law. Therefore, it was not lawful for members not to pay Mumbe's remuneration.

- (iii) The Secretary of a company has to appear in Court on behalf of the company (*Ayodeji V Lagos City Council, 1974*).

In this case, Mwandu, the company secretary, has threatened to sue the directors for not appearing in or even handling court matters on behalf of the company. This was against the principle of law, where the secretary is duty bound to appear in court, on behalf of the company. Therefore, Mwandu was not justified to sue the directors for failure to represent the company.

- (iv) Section 189 of the Companies Act 2012 is to the effect that acts of a company cannot be done by a person in dual capacity as a director and secretary.

In this case, following the death of the company's managing director, Mwandu the Secretary used it as an opportunity to carry on duties as the director, yet he was the Company Secretary at the same time. This was against the law. Therefore, it was not lawful for Mwandu to take over tasks of a director.

- (v) Remedies available to the parties:

- Members may seek for a court order to declare that Mwase qualified to be a director.
- Mumbe may seek for a court order to compel Nzori Ltd to pay his remuneration.
- Nzori Ltd may seek for a court order to compel Mwandu's representation of the company in court.
- Members may seek for a court order to declare that Mwandu cannot be a director.

## **Solution 4**

### **Issues:**

- (i) Whether the partnership by Onyo and others was lawfully formed.
- (ii) Whether the other partners were justified to dissolve Bopo partnership.
- (iii) Whether Balulu was justified to refuse liability for partnership debts.
- (iv) Whether Situka Ltd is liable to repatriate Mapengo back to Arua.
- (v) Whether there are remedies available to the aggrieved parties.

### **Resolution of issues**

- (i) Section 2(2) of the Partnership Act 2010 provides that where a partnership is formed for the purpose of carrying on a profession, the number of professionals shall not exceed 50.

In the instant case, Onyo and 40 others formed a partnership and carried on business well, before one member persuaded the others to leave, and sue for illegality. The partnership was of 41 professional partners and this was within the requirements of law. Therefore, the partnership by Onyo and others was lawfully formed.



- (ii) Section 37(d) of the Partnership Act 2010 provides that Court may decree dissolution of a partnership when a partner conducts him/herself in a way that is not reasonably practicable for other partners to carry on business with him/her.

In his case, partners of Bopo partnership had ceased talking to Muchamo because of his funny behavior, abuses and not co-operating with anyone. One of the partners suggested stopping business of the partnership but Muchamo rebuked him. Muchamo displayed unreasonable behavior that hindered partners from carrying on business with him.

Therefore, the other partners were justified to dissolve Bopo partnership.

- (iii) Section 9(1) of the Partnership Act 2010 provides that a partner in a firm is liable jointly with other partners for all debts and obligations of the firm, incurred while he/she is a partner.

In this case, Bopo partnership borrowed money from Mutemu SACCO but failed to pay back within the agreed period. Mutemu SACCO got a Court order to recover from the partnership but the partnership property was insufficient to pay off the loan. The SACCO started to attach individual property of partners but Balulu declined to let go of his Mercedes Benz. This was against the provision of law.

Therefore, Balulu was not justified to refuse liability for partnership debts.

- (iv) Section 39(1)(b) of the Employment Act 2006 provides that an employee recruited for employment at a place which is more than 100 kilometers from his/her home shall have a right to be repatriated at the expense of the employer on termination of a contract, by reason of an employee's sickness or accident.

In this case, Mapengo who had been employed by Situka Ltd in Kawempe, got an accident where he lost his arms. After healing in hospital, he received terminal benefits but when he later on requested for money to repatriate him back to Arua, he was not given any money. This was against the law.

Therefore, Situka Ltd is liable to repatriate Mapengo back to Arua.

- (v) Remedies available to the aggrieved parties:
- The partnership may seek for a court order to declare that it is legal.
  - Partners may seek for a court order to dissolve Bopo Partnership.
  - Mutemu SACCO may seek for a court order for attachment of Balulu's Benz.
  - Mapengo may complain to the labour officer for his repatriation by Situka Ltd.

## **Solution 5**

### **(a) Description of the different types of agents:**

- (i) Factor: This is an agent who is entrusted with possession of goods for purpose of sale and has implied authority to sell in his name (*Stevens v Biller, 1883*). A

factor has a general lien on goods in his/her possession, and on the process of sale.

- (ii) Auctioneer: This is an agent who sells goods at a public auction. He has possession of goods to be sold, giving him a lien on them. He has authority to receive the purchase price and can sue for it in his own name.
- (iii) Broker: A broker is an agent who is employed to buy or sell on behalf of another. He differs from a factor by not having possession of goods, and consequently he has no lien and he cannot sue in his own name on the contract. Brokers are not liable to their principal for the failure of buyer to pay the price.
- (iv) Del credere agent: This is an agent who is employed to sell goods, while undertaking that all purchasers will pay for the goods they take. However, he does not make himself liable to his principal if his buyer refuses to take delivery (Gabriel & Sons V Churchill and Sim, 1914).
- (v) Universal agent: A Universal agent is the one who has been appointed with extensive powers to act for the principal in all matters e.g., where a party gives another a power of attorney.
- (vi) General agent: This is an agent appointed to do anything within the authority given to him, or in all transactions related to a specified trade or matter such as a banker or stockbroker.
- (vii) Special agent: A special agent is an agent appointed for one particular purpose. He or she only has authority to do that particular act or acts in that particular transaction.

**(b) Circumstances under which an agency relationship may be terminated:**

- (i) Agreement of the parties: An agreement between the principal and agent can create an agency and it can be terminated in the same way, by agreement.
- (ii) Revocation or renunciation: A breach of contract of agency may occur if the principal revokes the agent's authority, or if the agent renounces the agency, in breach of the terms of a contract. The agency is then terminated.
- (iii) Bankruptcy of principal or agent: Bankruptcy of the principal terminates authority of the agent under the Bankruptcy Act. This is because the agent would then lack capacity to contract. Bankruptcy of an agent will terminate a contract of agency only in those cases where it renders the agent unfit to perform his duties. This is because the contract procured by the agent is between the principal and a third party and its performance does not depend on his financial position.
- (iv) Frustration: An agency may be terminated by frustration in a situation where the agent was appointed by the principal to deal with a specific subject-matter, which is destroyed, or where the principal becomes an enemy.
- (v) Death of principal: This terminates the agency relationship even if the agent is not aware of it. The agency relationship is confidential and personal, and the effect of death is that the rights of parties are frozen at the time of death. Where an agent dies, his personal representatives are not bound to execute his authority. Where the principal or agent is a company, the agency ends when the company is dissolved or ceases to exist.

- (vi) Insanity of the principal or agent: This terminates an agency relationship because an insane person cannot act as a principal, so as to appoint an agent or cannot act as an agent. However, the termination of an agency may not affect the liability of the principal or agent to third parties.
- (vii) Subsequent illegality: Where there is established a law which renders the continuation of the agency illegal, the agency is terminated.
- (viii) Performance: Where an agency is for a single transaction, it is terminated when the transaction is completed.
- (ix) Expiry of fixed period: Where the agency is for a fixed period of time, it comes to an end on expiry of such period, even if the agency business is not yet completed.

## **Solution 6**

### **(a) The different sources of law in Uganda:**

- (i) The constitution: This is the supreme law of Uganda that binds all the authorities and persons. Where any custom or law is inconsistent with any of the provisions of the constitution, the constitution prevails, and that other law or custom is to the extent of the inconsistency, void.
- (ii) Legislation: This is law that is written and passed by the legislature or parliament, following due process. Parliament is the supreme law-making body, which can amend, and sometimes abolish established rules of common law or equity, overrule the effects of decisions of courts or make entirely new law on matters which previously have not been the subject of legislation.
- (iii) Common law: Common law courts applied the declaratory theory of common law, that is, the law was contained in customs of the land, which the judges merely declared. At the time, judges declared precedents or past decisions of court as persuasive and not binding. Later, judges paid more attention to previous decisions, hence, the development of the common law through precedent.
- (iv) Equity: This was law borne out of the need to mitigate rigidity of common law with its strict rules, and introduction of remedies for aggrieved parties. It also follows precedent.
- (v) Custom or usage:  
S. 14(2) (b)(i) of the Judicature Act provides that the High Court shall exercise its jurisdiction in conformity with any established and current custom or usage.  
S.15 empowers the High Court to observe and enforce any existing custom which is not repugnant to natural justice, equity and good conscience, and not incompatible either directly or by necessary implication, with any written law.
- (vi) Principles of natural justice and good conscience: These stem from judicial discretion, created through a wide knowledge and experience of the law. They include all considerations of judicial officers in handling rules of conflicting interests.

### **(b) The main courts of Uganda in descending order of jurisdiction:**

- (i) Supreme Court: This is the highest Court in the country and it is presided over by the Chief Justice. It is a court of record, which entertains appeals from the Court of Appeal in civil, criminal and constitutional matters.
- (ii) Court of Appeal: It is the second highest court in the country as well as a court of record. It handles appeals in both civil and criminal matters from the High Court, and matters related to interpretation of the constitution, when constituted as a Constitutional court.
- (iii) High Court: The High Court has unlimited original jurisdiction in all matters and such appellate and other jurisdiction conferred on it by the Constitution. All appeals from the Magistrates Courts are handled by the High Court.
- (iv) Magistrates Courts: These are subordinate courts headed by the Chief Magistrate. In civil matters, the Chief Magistrate has jurisdiction of up to fifty million Uganda shillings.

The Magistrate Grade One has jurisdiction where the value of the subject matter does not exceed twenty million Uganda shillings. The Magistrate Grade Two has jurisdiction in respect of a subject matter not exceeding five hundred Uganda shillings. Where a dispute is governed only by civil customary law, the Chief Magistrate and Magistrate Grade I Courts have unlimited jurisdiction.

# TEST PAPER 19 SOLUTIONS

## CPA (U) JUNE 2022

### Solution 2

#### Issues:

- (i) Whether the directors lawfully disregarded Nsimbi as a promoter.
- (ii) Whether Kiki and Ndyomu are entitled to payment by Jaguza Ltd.
- (iii) Whether Kiki and Ndyomu are liable to pay Siseka enterprises.
- (iv) Whether the intended alteration of Jaguza Ltd.'s Memorandum of Association was lawful.
- (v) Whether there are any remedies available for the aggrieved parties.

#### Resolution of issues:

- (i) A promoter includes any person who undertakes a part in raising capital for a proposed new company, by taking part in the formation, even where he/she does a minor part in the promotion procedure (*Taibatu Adeniji & ors. v Starcola (Nig) Ltd. & another, 1972*).

In the instant case, Nsimbi took part in raising finances for Jaguza Ltd's incorporation when approached by Kiki and Ndyomu and provided the necessary finances for incorporation. Therefore, Nsimbi was a promoter of Jaguza Ltd.

- (ii) Promoters of a company do not have an automatic right to remuneration from the company for their services, since a company cannot enter into a contract before it comes into existence (*Kelner v Baxter, 1866*).

In this case, Kiki and Ndyomu claimed payments from Jaguza Ltd for what they did towards the promotion of the company. There is no evidence of any payment provision in the company's Articles of Association. Therefore, Kiki and Ndyomu are not entitled to payment by Jaguza Ltd.

- (iii) According to section 54 (3) of the Companies Act 2012, where the company adopts a pre-incorporation contract, the promoter's liability in such a contract ceases.

In the instant case, a week after incorporation, Jaguza Ltd agreed to take on all contracts made on its behalf. Therefore, Kiki and Ndyomu are not liable to pay Siseka enterprises.

- (iv) S.10 (1)(e) of the Companies Act 2012 provides that a company may, by special resolution, alter its Memorandum of Association in respect of its objects, to enable it abandon any of the objects specified in the Memorandum of Association. S. 149 (1) of the Act provides that a special resolution is effective only if notice to move the resolution is not less than 28 days before the meeting.

In this case, a resolution to stop any trading in Covid-19 related products was signed after a 14 days' notice for an extra ordinary meeting was given to members. This was very short notice and not effective for altering the Memorandum of Association. Therefore, the intended alteration of Jaguza Ltd.'s Memorandum of Association was not lawful.

- (v) Remedies available for the aggrieved parties.
- Nsimbi may seek for a declaratory order of Court that he was a promoter of the company.
  - Kiki and Ndyomu may seek for a Court order to declare them not liable to pay Siseka enterprises.
  - Siseka enterprises may seek for payment from Jaguza Ltd.
  - Kiki and Ndyomu may seek for a declaratory order of Court that the intended alteration of the company's Memorandum of Association was ineffective.

### **Solution 3**

#### **Issues:**

- (i) Whether the denial of Chico to attend the company meeting was justified.
- (ii) Whether Tunda was entitled to payment of dividends.
- (iii) Whether Numbe company was in default of requirements concerning its members' register.
- (iv) Whether the company articles of associations' provision for notices of less than 21 days was lawful.
- (v) Whether there are any remedies available for the aggrieved parties.

#### **Resolution of issues:**

- (i) Section 47(1) of the Companies Act 2012 provides that subscribers to a company's Memorandum of Association shall be taken to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

In the instant case, Chico agreed to subscribe to Numbe Ltd's memorandum of association. He was, however, denied entry at the meeting, where the person in charge stated that he could not attend the meeting because his name was not in the register, hence, not a member of the company. This was against the provision of law. Therefore, the denial of Chico to attend the company meeting was not justified.

- (ii) According to S. 47(2) of the Companies Act 2012, a person who agrees to become a member and whose name is entered in its register of members shall be a member of the company. Under S. 92 of the Companies Act 2012, a certificate specifying any shares by any member shall be prima facie evidence of title of that member to the shares.

In this case, Tunda sold all his shares to Mogo and all due action was taken, including certification, thus, Mogo becoming a member in place of Tunda. This, in effect, terminated Tunda's membership. Tunda who had written to the company explaining that he had temporarily given some of his shares to Mogo, demanded for his dividends on the strength of the letter. This was no longer possible, as he had ceased to be a member of the company. Therefore, Tunda was not entitled to payment of dividends.

- (iii) Section 119(3) of the Companies Act 2012 provides that a company shall send to the registrar of companies notice of the place where its register of members is kept and of any change of place.

In this case, Numbe company previously kept the register of its members at the main office, and due notice was given to the Registrar. It is, however, now keeping the register at the branch office and no notice has been given to the registrar of companies about the change of location. The company has received a notice from the registrar of companies, to explain why it should not be fined for default in requirements concerning its members' register. According to the registrar's records, the location of the register is still at the main office. Therefore, Numbe company was in default of requirements concerning its members' register.

- (iv) S. 140(1) & (4) provides that any provision of a company's articles of association shall be void if it provides for the calling of a meeting by a shorter notice than 28 days, and where no agreement is obtained by the majority of members entitled to attend and vote.

In the instant case, Gezi a member of Numbe Ltd disagreed with the provision of the company's articles of association to call meetings at shorter notice than 21 days. Therefore, the company articles of association's provision for notices of less than 21 days was not lawful.

- (v) Remedies available for the aggrieved parties:

- Chico may seek for a declaratory order of Court that he was a member and his name must be entered in the register of members.
- The registrar of companies may administratively cause the company to pay a fine of 25 currency points, as provided by law.
- Members of Numbe Ltd may seek for a court order to stop the directors from using the provision of the articles of association for shorter notices without the consent of the majority members.

#### **Solution 4**

##### **Issues:**

- (i) Whether Zidobe Ltd was justified not to provide Mugu with details of his employment.
- (ii) Whether it was lawful for Zidobe Ltd to contribute only 5% payment to NSSF for Mugu.
- (iii) Whether the 2 days' unpaid paternity leave given to Mugu was lawful.
- (iv) Whether Zidobe Ltd was liable for Mugu's injuries.
- (v) Whether there are any remedies available for the aggrieved parties.

##### **Resolution of issues:**

- (i) S. 59 (1) & (3) of the Employments Act, 2006 provides that an employee is entitled to receive a written notice of particulars of employment from his employer, not later than 12 weeks after the date of commencement of employment.

In the instant case, Mugu who has been working for two years with Zidobe Ltd, has never been provided with particulars of employment or a contract indicating the terms and conditions of employment. On inquiry, from his supervisor, he said that at least he has a job. This was against the provision of law. Therefore, Zidobe Ltd was not justified not to provide Mugu with details of his employment.

- (ii) Sections 11 & 12 of the National Social Security Fund (NSSF) Act Cap 222 provides for employers to remit to the NSSF 15% of the employee's wages, where 5% is contributed by the employee and 10% by the employer.

In this case, Mugu was informed by the human resource department that he was getting all his entitlements which included a 5% payment towards the NSSF contribution. The percentage which the company had to contribute for Mugu was not being remitted. Therefore, it was not lawful for Zidobe Ltd to contribute only 5% payment to NSSF for Mugu.

- (iii) S. 57 (1) & (2) of the Employment Act, 2006 provides that immediately after a miscarriage of a wife, a male employee shall be entitled to a paternity leave of 4 working days, with full pay of his wages.

In this case, when Mugu's wife suffered a miscarriage, Mugu was given only 2 days of unpaid leave. Mugu's request for more days of leave from work was totally ignored. Therefore, the 2 days' unpaid paternity leave given to Mugu was not lawful.

- (iv) S.45 (3) of the Employment Act, 2006 provides that all employers are required to provide employees with equipment and tools necessary for performance of work. In this case, Mugu's left hand was injured while carrying boxes of chemicals to the company store. All effort to get help or compensation from the company failed. He was only told to be more careful next time. No protective gear or equipment was provided by the company for workers. Therefore, Zidobe Ltd was liable for Mugu's injuries.

- (v) Remedies available for the aggrieved parties.

- Mugu may complain to the Labour officer for an order to compel Zidobe Ltd to provide details of his employment.
- Mugu may seek for a court order to compel Zidobe Ltd to contribute 15% to NSSF.
- Mugu may complain to the Labour officer for an order of a fully paid paternity leave.
- Mugu may seek for a court order to compel payment of compensation by Zidobe Ltd.



## Question 5

### (a) Essential elements of a valid contract:

The following are the essential elements that make a contract valid:

- (i) *Consensus*: This is where there is a meeting of minds (*ad idem*), and an agreement is reached. At common law, it must be when an offer is made by an offeror to an offeree, and the offeree accepts the offer. There must be free consent of the parties involved (*S.10 of the Contracts Act, 2010*).
- (ii) *Capacity*: This is a legally recognized right of a person to enter into a legally binding agreement. Capacity is dependent on age, soundness of mind and qualification by law to which a person is subject (*S.11 of the Contracts Act, 2010*).
- (iii) *Consideration*: This is the price paid by a party to a contract for the promise of the other party, where the promise given is for value and is enforceable (*Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co. Ltd, 1915*). The consideration must be lawful (*S. 10(1) of the Contracts Act, 2010*).
- (iv) *Formality*: An agreement must be entered into in a form or manner prescribed by the law. Where the required formality is absent, a contract may not be valid and enforceable. Some contracts can be oral, written, partly oral or written, or even implied from the conduct of the parties (*S.10 (2) of the Contracts Act, 2010*).
- (v) *Legality*: A legally enforceable contract must have been entered into for a lawful purpose or object (*S. 10(1) of the Contracts Act, 2010*). Such an agreement must not be prohibited by statute or common law.
- (vi) *Intention*: In order to constitute a valid agreement, the parties thereto must have intended it to have legally binding effect (*S.10 (1) of the Contracts Act, 2010*).

### (b) Circumstances that render an agreement void:

- (i) *Agreement in restraint of profession, business or trade*: These are agreements that restrain a person from exercising a lawful profession, trade or business of any kind (*S. 21(1) of the Contracts Act, 2010*). Such agreements unfairly limit the freedom of an individual (*Horwood v Millar's Timber Co., 1917*).
- (ii) *Agreements in restraint of law or legal proceedings*: Where an agreement restricts a party absolutely from enforcing his/her rights in respect of a contract by legal proceedings or limit in time to enforce rights, such an agreement is void (*S.22 (1) of the Contracts Act, 2010*).
- (iii) *Agreements that are uncertain*: where an agreement is not certain in meaning or the meaning is not capable of being made certain, such agreement is void (*S.23 (1) of the Contracts Act, 2010*).
- (iv) *Agreements by way of wager*: Any agreement made by way of an unlicensed wager, where there is a promise to pay money or any other

consideration on the occurrence of an uncertain event, is void (*S.24 (1) & (2) of the Contracts Act, 2010*).

- (v) *Agreements to do impossible acts:* Any agreement to do an act which is impossible or becomes unlawful to perform is void (*S.25 (1), (2) & (4) of the Contracts Act, 2010*). This is where no one can perform the act by law or course of nature.
- (vi) *Promise to do legal and illegal acts:* Where a reciprocal promise is made to do a legal thing then an illegal thing, the promise to do an illegal thing shall be a void agreement (*S.26 of the Contracts Act, 2010*).
- (vii) *Alternative promises, one part being illegal:* Where an alternative promise is made with one part legal while the other part is illegal, the illegal part is void (*S.27 of the Contracts Act, 2010*).

## **Solution 6**

### **(a) Distinction of general partnerships from limited partnerships in Uganda:**

A general partnership has partners who are jointly liable with other partners for all debts and obligations of the firm, incurred while they are partners (*S. 9(1) of the Partnership Act, 2010*).

A limited partnership on the other hand, consists of one or more general partners who are liable for all debts and obligations of the firm, and also consists of one or more limited liability partners, who contribute a stated amount of capital and cannot be held liable for the firm's debts beyond the amount of capital so contributed (*S.47 (2) & (3) of the Partnership Act, 2010*).

### **(b) The basis for determining property of a partnership:**

- (i) Partnership property is applied by the partners exclusively for the partnership, and in accordance with the partnership agreement (*S. 22 (2) of the Partnership Act, 2010*).
- (ii) All property, rights and interests in property that was originally brought into the partnership stock by purchase or otherwise for use in the course of partnership business distinguishes it as solely for the partnership (*S.22 (1) of the Partnership Act, 2010*).
- (iii) All property bought using money that belongs to the firm is partnership property (*S.23 of the Partnership Act, 2010*).

### **(c) General rules which determine the existence of a limited partner in a partnership:**

- (i) A limited partner does not participate in the firm's business or management and does not bind the firm (*S.52 (1) of the Partnership Act, 2010*). If he/she does so, he/she will be deemed to be a general partner and will be liable for all firm's debts and obligations (*S.52 (3) of the Partnership Act, 2010*).

- (ii) During the lifetime of the firm, a limited partner cannot withdraw capital he contributed or any part of it. If he/she does so, he/she becomes a general partner with full liability for debts and obligations (*S.47 (4) of the Partnership Act, 2010*).
- (iii) Death or bankruptcy of a limited partner does not cause dissolution of the firm (*S.52 (5) of the Partnership Act, 2010*).
- (iv) Lunacy of a limited partner does not cause dissolution of the firm, unless the share of the limited partner cannot be separated or ascertained from the assets of the firm by any other means (*S.52 (5) of the Partnership Act, 2010*).
- (v) In contrast to a general partner, a limited partner cannot dissolve the firm by notice (*S.52 (7) (e) of the Partnership Act, 2010*).
- (vi) With the consent of general partners, a limited partner may assign his/her shares or contributions in the partnership (*S.52 (7) (b) of the Partnership Act, 2010*).
- (vii) A limited partner may, upon giving notice to general partners, inspect the firm's books, ascertain the state and prospects of the partnership business (*S.52 (2) of the Partnership Act, 2010*).

# TEST PAPER 20 SOLUTIONS

## CPA (U) SEPTEMBER 2022

### Solution 2

#### Issues:

- (i) Whether it was lawful for Mubulu and Kawo not to declare profits to the shareholders.
- (ii) Whether the shareholders of Muka Limited can have the company liquidated.
- (iii) Whether the directors' resolution to offer shares at a discount was lawful.
- (iv) Whether the directors' refusal to alter articles of association was justified.
- (v) Whether there are any remedies available to the aggrieved parties.

#### Resolution of issues:

- (i) A promoter stands in a fiduciary relationship to the company and consequently, owes fiduciary duties to it. It follows that a contract made between a promoter and the company is voidable at the option of the company, unless he/ she has disclosed all material facts relating to the contract, to an independent board and the company has freely agreed to its terms (*Erlanger v New Sombrero Phosphate*).

Promoters are not allowed to make secret profits while acting as such. If they do, the company may recover it (*Gluckstein v Barnes (1900) AC 240 H.L.*).

In the instant case, Mubulu and Kawo sold petroleum products on behalf of Muka Ltd and realised substantial profits, which they did not declare when Muka Ltd was incorporated. This was a breach of fiduciary duties. Therefore, it was not lawful for Mubulu and Kawo not to declare profits to the shareholders.

- (ii) Section 58 of the Insolvency Act, 2011 provides that a company may be liquidated voluntarily by special resolution, if by reason of its liabilities it cannot continue business.

In the instant case, Muka Limited's financial performance has not been good and the shareholders proposed that it should come to an end. Therefore, the shareholders of Muka Limited can have the company liquidated.

- (iii) Section 67 (1) (a) of the Companies Act 2012 provides that a company may issue shares at a discount by resolution passed by the company, in the general meeting and sanctioned by court.

In this case, a resolution was taken by the company directors to sell shares at a discount but it was not sanctioned by Court. Some shareholders were not satisfied with the directors' decision. Therefore, the directors' resolution to offer shares at a discount was not lawful.

- (iv) Section 10(1) (a) of the Companies Act, 2012 provides that a Company may, by special resolution, alter its Articles of Association to carry out business economically and more effectively.

In the instant case, the shareholders of Muka Limited are proposing to alter the articles of association to enable the company carry on business more economically. Therefore, the directors' refusal to alter articles of association was not justified.

- (v) Remedies available to the aggrieved parties:
- Muka Limited may seek for a Court order to recover secret profits from the promoters.
  - The company shareholders may seek for a Court order to liquidate it.
  - Muka Limited may sue the promoters for damages for breach of fiduciary duty.
  - The shareholders may seek for a declaratory Court order that alteration of Articles may be done lawfully.
  - The shareholders may seek for an injunction against the directors, prohibiting them from selling company shares at a discount.

### **Solution 3**

#### **Issues:**

- (i) Whether Kawonawo's property may be attached by the company creditors.
- (ii) Whether Directors were justified to refuse Ndundu's registration as a shareholder.
- (iii) Whether the omission of Bwiso's name in the company register was lawful.
- (iv) Whether the appointment of Musota as an auditor was lawful
- (v) Whether there are remedies available to the aggrieved parties.

#### **Resolution of issues:**

- (i) Section 49 of the Companies Act, 2012 provides that where a company, other than a private company, carries on business without having at least two members for more than six months and knows that it is carrying on business with only one member, the member is liable jointly and severally with the company, for the payment of the company's debts contracted during the period.

In this case, Kawonawo continued running the company alone since June, 2021 when the other two shareholders died. Kawonawo together with the Company are jointly liable for the debts of the company contracted during that period. Therefore, Kawonawo's property may be attached by the company creditors.

- (ii) Section 30 of Table A of the Companies Act, 2012 is to the effect that any person entitled to a share following the death of a member, may elect to be registered himself or herself, upon producing such evidence.

In this case, Ndundu's father who was a shareholder died but upon presenting letters of administration to the company, the Directors refused to register him as a member of the company. This was against the provision of law. Therefore, the Directors were not justified to refuse Ndundu's registration as a shareholder.

- (iii) Section 125(1) (a) of the Companies Act, 2012 is to the effect that Court has power to rectify a company register where the name of a person is, without sufficient cause, entered in or omitted from the register of members.

In the instant case, Bwiso bought shares in the company but his name was omitted from the company register. Therefore, the omission of Bwiso's name in the company register was not lawful.

- (iv) S.169 (1) (a) of the Companies Act, 2012 provides that a person shall not be qualified for appointment as an auditor of a company unless he/she is a member of one or more professional bodies specified in the Accountants Act.

In this case, Tombe Ltd appointed Musota a lawyer, as the company auditor. Musota did not qualify to be appointed as an auditor of the company. Therefore, the appointment of Musota as an auditor was not lawful.

- (v) Remedies available to the aggrieved parties:
- Creditors may seek for a Court order to attach Kawonawo's property and recover the due debts.
  - Ndundu may seek for a Court order to compel his registration as a member.
  - Bwiso may seek for a Court order for rectification of the company register.
  - Shareholders may seek for a Court order removing Musota as auditor.

#### **Solution 4**

##### **Issues:**

- (i) Whether the agreement clause precluding Sauti from reporting to the labour office was lawful.
- (ii) Whether it was lawful for Jeresi to be given only 10 days of leave.
- (iii) Whether the denial by Directors to give Muleme a company car was justified.
- (iv) Whether Mpuuta has a cause of action against Muleme.
- (v) Whether there are any remedies available to the parties.

##### **Resolution of issues:**

- (i) Section 4 (a) & (b) of the Employment Act, 2006 provides that any provision in an agreement or contract of service that precludes a person from presenting a complaint under the Act, to the Labour officer, is void.

In the instant case, there was a clause in the agreement signed by Sauti, precluding her to report a complaint to the Labour office. This was against the law.

Therefore, the agreement clause precluding Sauti from reporting to the labour office was not lawful.

- (ii) Section 56 (1) of the Employment Act, 2006 provides that a female employee is, as a consequence of pregnancy, entitled to a period of sixty working days leave from work on full wages referred to as "maternity leave".

In the instant case, Jeresi gave birth but was granted only 10 days of maternity leave. This was against the provision of law. Therefore, it was not lawful for Jeresi to be given only 10 days of leave.

- (iii) S.6 (3) of the Employment Act, 2006 prohibits discrimination at a workplace. Under the Act, discrimination includes any distinction made on the basis of disability which has the effect of preventing an employee from obtaining any benefit of a contract of service.

In the instant case, Muleme was one of the Senior Officers and was entitled to a vehicle. However, the Directors did not give him a car because he was

disabled. This amounted to discrimination. Therefore, the denial by Directors to give Muleme a company car was not justified.

- (iv) According to section 35 (1) of the Trustees Act, Cap.164, where there are two trustees and one of them dies, both the office and estate pass onto the survivor.

In the instant case, upon the death of Nondo, the office and the estate of the trust passed on to Muleme but Mpuuta threatened to sue him for that. There was no cause for Mpuuta to sue Muleme.

- (v) Remedies available to the aggrieved parties:

- Sauti may seek for a Court order declaring the agreement void.
- Jeresi may file a complaint to the Labour officer, to claim for full maternity leave
- Mulema may seek for a Court order to stop discrimination by the company.
- Muleme may seek for a Court order declaring him a right trustee for the estate.

### **Solution 5**

- (a) (i) Rules that govern consideration as an essential element of a contract:

- Consideration must be sufficient or real but it need not be adequate: It must be something of some value in the eyes of the law (Thomas v Thomas, 1842). While courts only enforce a promise where value has been given, they do not generally inquire into the adequacy of such value or whether the agreement is unfair or harsh.
- Consideration must not be past: In order to succeed in a case, one must prove to court that he was induced to do what he did by the promise which the other party made and he would not have done what he did if that party had not made the promise. In such a case, the plaintiff's act and the defendant's promise constitute a single transaction. Consequently, if the plaintiff performed the act before the defendant made the promise, the performance of the act would not constitute consideration for the defendant's promise.
- Consideration must move from the promisee: This means that only the person who has personally given consideration for a promise can sue for breach of the promise. A person who has not given consideration for a promise cannot sue the promisor for the simple reason that he cannot expect to get something from nothing. Common law regards a contract as a bargain between the parties to a commercial transaction, each of whom has bought a promise of the other with his own promise or act (Dunlop v Selfridge, 1914).
- Consideration must be of some value: An act or promise will only amount to consideration if the law recognises that it has some economic value. Courts have held that a promise to pay a lesser sum on a day earlier than the due date for the debt payment, if accepted by the creditor, is sufficient to relieve the debtor from further liability (Pinnel's case, 1602).

**(ii) Remedies for breach of a contract:**

- *Refusal of further performance/rescission:* If one party has breached the contract, the other party may treat it as rescinded and refuse further performance. By treating the contract as rescinded, she/he makes himself liable to restore any benefits he has received (*Armstrong v Jackson, 1914*).
- *Damages:* Whenever there is breach of a contract by one party, the other party is entitled to bring an action for damages. If he has sustained no loss from the breach, he will only be entitled to nominal damages, that is, damages which recognise that he has had a legal right infringed. If he has sustained loss, he is entitled to substantial damages (*Hadley v Baxendale, 1854*). The injured party has to be placed in the same financial position as if the contract had been performed (*Sunley Ltd v Cunard White Star Ltd, 1940*).
- *Quantum meruit:* Where there is a breach of contract, the injured party may, instead of suing for damages, claim payment for what he has done under the contract. His right to payment does not arise out of the original contract, but is based on an implied promise by the other party, arising from the acceptance of an executed consideration (*Planche v Colburn, 1831*). This is termed as quantum meruit.
- *Specific performance:* Instead of awarding damages to the injured party, a decree for specific performance may be granted. Specific performance means the actual carrying out by the parties of their contract, and in a proper case, court will insist on the parties carrying out their agreement (*Beswick v Beswick, 1968*). Specific performance is usually granted in contracts connected with land or debentures in a company.
- *Injunction:* This is an order of court restraining a person from doing an act. It will be granted to enforce a negative stipulation in a contract where damages would not be an adequate remedy. An injunction, being an equitable remedy, is not automatically available but is issued at the discretion of the court. It will not be awarded when damages would be sufficient compensation to the plaintiff (*Ibrahim Habib v Sheikh Brothers Investment Ltd, 1972*).

**(b) Different types of agents**

- (i) **Factors:** A factor is a mercantile agent who, in the customary course of his business as such agent, has authority to sell goods, or consign goods for sale, to buy goods, or to raise money on the security of goods. A factor has a general lien on goods in his possession and on the proceeds of sale of such goods, for the balance of account between himself and his principal.
- (ii) **Brokers:** These are agents who are employed to buy or sell on behalf of other people. They differ from factors by not having possession of goods, and consequently they have no lien and they cannot sue in their own names on the contract. Brokers who are members of a stock exchange have an implied authority to make their contracts subject to the rules of such institution, but beyond that they have no implied authority of any



kind. Brokers are not liable to their principal for the failure of a buyer to pay the price.

- (iii) *Del Credere agents*: These are agents employed to sell goods in consideration of a higher reward than is usually given, and guarantee due payment of the price of all goods sold. If the buyer does not pay the principal, the agent will have to do so. He is, however, not liable in the reverse situation, since he is not the buyer's agent. He is also not liable if the buyer does not accept the goods since he does not guarantee that a buyer will accept delivery (*Gabriel & sons v Churchill and Sim, 1914*).
- (iv) *Auctioneers*: An auctioneer is an agent who sells goods at a public auction. He has possession of goods to be sold and a special property in them, giving him a lien on them and on their price, for his charges. He has authority to receive the purchase price and can sue for it, in his own name.
- (v) *Confirming houses*: In export trade, when a supplier receives an order from a customer from abroad, he may request for confirmation of that order by a person in the supplier's country. The confirmer gives assurance to the bargain which has been made by the primary contractor and is personally liable to the supplier, if the buyer abroad fails to perform the contract (*Sobel Industries Ltd v Cory Bros. & Co. Ltd, 1955*).

## **Solution 6**

### **(a) (i) Circumstances under which a trust can be created:**

- *Registration of Titles Act*: A settlor may create a trust by manifesting an intention to create it (*Jones v Lock, 1865*). No formalities are required for creation of an *inter vivos* trust of personality. However, evidence in writing is required for creation of trust in land. S. 92 of the Registration of Titles Act, Cap. 230 stipulates that any declaration of trust respecting land must be evidenced by a Memorandum in writing, signed by the party creating it.
- *By Will/Secret Trust*: S. 50 of the Succession Act, Cap. 269 provides that all trusts created by testamentary disposition must be executed and attested in accordance with the formalities therein prescribed. These are that:
  1. The will shall be in writing;
  2. It shall be signed at the foot or end thereof by the testator or some other person in his presence and by his direction;
  3. The signature must be acknowledged by at least two witnesses in writing, in the presence of the testator.
- *Declaration of trust by Settlor*: The settlor may declare himself a trustee instead of transferring his property to trustees. In case the trust relates to land, it must be evidenced in writing. Otherwise, the declaration may be oral or inferred from conduct. Any words which clearly express the intention to create the trust will be sufficient and the settlor will thereafter be bound, provided the trust is unconditional.

**(ii) Duties of the trustees:**

- Reduction of property into possession: Upon appointment as a trustee, he has to find out what the trust property is, the directions of the trust instrument in regard to it and whether the trust property has been properly and safely invested. He should ensure that he transfers to himself any property that did not pass to him under the deed of appointment, as well as transfer of all documents affecting the trust property, such as title deeds and share certificates.
- Duty to invest: A trustee is under duty to invest funds in his custody. Investment refers to use the money to purchase anything from which interest or profit is expected (Re Wragg, 1919).
- Duty to distribute: A trustee has a duty to make out payments of income and capital as they become due and to do so to persons who are properly entitled. If he fails to do so, it amounts to breach of trust.
- Duty to maintain equality between beneficiaries: A trustee should not favour one beneficiary at the expense of another. He should act impartially between all the beneficiaries. For example, a trustee should act impartially between a beneficiary who is entitled to the income out of the trust property and the one who is entitled to capital under the trust.
- Duty to provide accounts and information: A trustee should keep accounts and be ready to produce them to the beneficiaries at any time. The beneficiary's right is merely to see and inspect accounts. If he requires a copy thereof, he has to pay for it. Accounts should be prepared in a simple form, understandable to the beneficiaries.
- Fiduciary duties: The fiduciary duties of a trustee include:
  - Remuneration – an ordinarily a trustee acts gratuitously or may apply income for maintenance and advancement of an infant beneficiary;
  - A trustee should not buy trust property;
  - He must account for incidental profits to beneficiaries;
  - A trustee should not compete with the trust.

**(c) Different types of courts in Uganda starting from the lowest to the highest:**

- Magistrates Courts: These are subordinate courts headed by the Chief Magistrate, who has a fiscal jurisdiction of up to fifty million shillings. Under him is the Magistrate Grade I Court, with fiscal jurisdiction of a subject matter not exceeding twenty million shillings. Also, the Magistrate Grade II Court with jurisdiction where the subject matter does not exceed five hundred thousand shillings.
- The High Court: The High Court has original as well as appellate jurisdiction in both civil and criminal matters. It has unlimited original jurisdiction in all matters as conferred on it by the Constitution.
- The Court of Appeal: This Court hears appeals in both civil and criminal matters from the High Court, and also matters related with interpretation of the Constitution, when constituted as the Constitutional Court.
- The Supreme Court: The Supreme Court hears appeals from the Court of Appeal in civil, criminal and constitutional matters. It is the highest

Court of Appeal in the country. It has original jurisdiction for presidential election petitions.

# TEST PAPER 21 SOLUTIONS

## CPA (U) DECEMBER 2022

### Solution 2

#### Issues:

- (i) Whether Josh & Jesh Ltd is liable to pay for supplies from Kazimoto.
- (ii) Whether Josh is liable for the loss incurred by Josh & Jesh Ltd.
- (iii) Whether Vuyo was in breach of the contract with Boom Ltd.
- (iv) Whether Jane and John can commence an action against 5 other shareholders, promoters and directors of the company.
- (v) Whether there are any remedies available to the aggrieved parties.

#### Resolution of issues:

- (i) Section 54(3) of the Companies Act, 2012 provides that where a company adopts a pre-incorporation contract, the liability of the promoter of that company shall cease.  
In the instant case, Josh and Jesh entered into a contract with Kazimoto Electricals Ltd on behalf of Josh and Jesh Ltd, which had not been registered. The company later on ratified the contract on registration.  
Therefore, Josh and Jesh Ltd is liable to pay for the supplies from Kazimoto.
- (ii) A company may rescind a contract where a promoter breaches his/her fiduciary duty to the company (*Erlaunger v New Sonbrero Phosphate Co, 1878*). Disclosure to the entire membership would be equally effective, before a promoter sells his property to the company (*Salomon v Salomon & Co Ltd, 1897*).  
In this case, Josh conspired with one director and sold his building to the company, without full disclosure of the circumstances and in breach of fiduciary duty to the company. The building was sold at a high price, above market value, thus causing loss to the company.  
Therefore, Josh is liable for the loss incurred by Josh and Jesh Ltd.
- (iii) Court can "pierce the corporate veil" if a company is simply a mere device to evade legal obligations, in discrete circumstances, where a company is formed as a stratagem, a cloak or sham in order to mask the effect of carrying on of a business to evade contractual obligations (*Gilford Motor Co Ltd v Horne, 1933*). In the facts, Vuyo was fired but she subsequently set up a competing company. This was against the employment contract she signed with Boom Ltd. Therefore, Vuyo was liable for breach of the contract with Boom Ltd.
- (iv) A company is the proper claimant and is a legal person, separate from its members. So, a member cannot bring an action to redress a wrong done to the company (*Foss v Harbottle (1842)*).  
In the facts of this case, John and Jane intend to commence an action against 5 other shareholders, promoters and directors of the company, as a result of the sale of property to the company at an exorbitant price. The property belonged to the 5 shareholders.  
Therefore, John and Jane cannot commence an action against 5 other shareholders, promoters and directors of the company.
- (v) Remedies available to the aggrieved parties:

- Kazimoto may seek for a court order to compel payment from Josh & Jesh Ltd.
- Josh and Jesh Ltd may seek for a court order for payment of damages by Josh.
- Boom Ltd may seek for a court order to compel Vuyo to pay damages for breach.
- John and Jane may seek for inspection and redress from the registrar of companies.

### **Solution 3**

#### **Issues:**

- (i) Whether Mumbe was justified to decline to prepare and issue a notice for the meeting.
- (ii) Whether the appointment of Chris as a company director was lawful.
- (iii) Whether the audit of Kombe Ltd by Uki & Associates was lawful.
- (iv) Whether Kimera & Associates is liable for the fictitious audit report.
- (v) Whether there are any remedies available to the parties

#### **Resolution of issues:**

- (i) One of the duties of a company secretary is to prepare and issue company notices, (*Gore Browne on Companies, 4<sup>th</sup> Ed, 1977*).  
In the instant case, Mumbe declined to prepare the notice for members to attend the annual general meeting, which he did not consider to be his task. This was against the law. Therefore, Mumbe was not justified to decline preparing and issuing a notice for the meeting.
- (ii) Section 197(1) of the Companies Act, 2012 provides that a person who is appointed as director of a company at a time before attaining 18 years of age, shall give notice of his or her age to the company.  
In this case, Bob's 17 years old son, Chris, was considered to become a director by all other directors except Bob. Chris did not give any notice of his age as required by law.  
Therefore, the appointment of Chris as a company director was not lawful.
- (iii) Section 169(2) (a) of the Companies Act 2012 prohibits an officer or servant of a company to be appointed as the company auditor.  
In the instant case, the company appointed Uki & Associates as auditor of the company. Uki & Associates belonged to Maki, the chief accountant, therefore Maki's company carried out the company audit.  
Therefore, the audit of Kombe Ltd by Uki & Associates was not lawful.
- (iv) An auditor owes a duty to a non-member of the company, if knows that the audited report is likely to be relied upon by the non-member (*Arenson v Arenson 1977*).  
  
In this case, the bank granted a loan to the company basing on the audited report, but the company defaulted on payments. The bank discovered that the audit report contained fictitious assets.  
Therefore, Kimera & Associates is liable for the fictitious audit report.
- (v) Remedies available to the parties:
  - Kombe Ltd may seek for the registrar's order to compel Mumbe's action.

- Bob may seek for the registrar's declaration that Chris was appointed unlawfully.
- Shareholders of Kombe Ltd may seek for an order of court declaring the audit by Uki & Associates unlawful.
- Kombe Ltd may sue Kimera & Associates for damages for the fictitious audit report

#### **Solution 4**

##### **Issues:**

- Whether Kyali was liable for payment of the partnership loan.
- Whether the denial of Brenda's access to books of accounts was justified.
- Whether Brenda and Kyali were justified to refuse Oliver's decision to dissolve the partnership.
- Whether Kate is justified to continue as surviving trustee of Kato's estate.
- Whether there are any remedies available to the aggrieved parties.

##### **Resolution of issues:**

- Section 19 (1) of the Partnerships Act, 2010 provides that a person who is admitted as a partner into an existing firm does not become liable to the creditors of the firm for anything done before he or she became a partner.  
In the instant case, Kyali received a demand notice of Shs 5 million in respect of a loan obtained by the partnership, two years before he joined.  
Therefore, Kyali was not liable for payment of the partnership loan.
- Section 26 (c) (i) of the Partnership Act 2010 provides that every partner may, at all reasonable times, have access to partnership books.  
In this case, Brenda was denied access to the partnership books of accounts.  
Therefore, the denial of Brenda's access to books of accounts was not justified.
- Section 34 (c) of the Partnership Act 2010 provides that subject to any agreement among partners, a partnership is dissolved if entered into for an indefinite time, by the agreement of the partners to dissolve the partnership.  
  
In the instant case, Oliver wrote to her fellow partners that she intended to call for dissolution of the partnership. However, their agreement provided that the partnership would only be terminated by mutual arrangement. In this instance, Brenda and Kyali were against Oliver's decision.  
Therefore, Brenda and Kyali were justified to refuse Oliver's decision to dissolve the partnership.
- Section 35 (1) of the Trustees Act Cap 164 is to the effect that when one of the trustees dies, the estate and office passes on to the surviving trustees.  
  
In this case, Mate and Kate were both trustees of Kato's estate. When Mate died in a car accident, Kate continued to occupy the office of trustee alone, but one of the beneficiaries requested her to leave the office to vest the estate to all the beneficiaries. This was not in accordance with law. Therefore, Kate is justified to continue as surviving trustee of Kato's estate.
- Remedies available to the aggrieved parties:
  - Kyali may seek for a declaratory court order that he was not liable for the firm's loan.
  - Brenda may seek for a court order to allow her access to the books of account.

- Brenda and Kyali may seek for a court order to prohibit dissolution of the firm without their consent.
- Kate may seek for a declaratory order of court that that she has a right to continue as trustee for Kato's estate.

## **Solution 5**

### **(a) Distinction of a void contract from a voidable contract:**

A **void** contract is a contract which lacks enforceability by law. This may be a result of lack of consideration (S.20(i) Contracts Act 2010); incapability of being made certain (S.23 Contracts Act); doing an impossible act (S.23(i) Contracts Act); in restraint of legal proceedings (S.22(i) Contracts Act); in restraint of profession or trade (S.21(i) Contracts Act); or a wagering contract (S.24(i) Contracts Act).

On the other hand, a **voidable** contract is one where the party whose consent was obtained by coercion, undue influence, fraud or misrepresentation, may opt to avoid it (S.16 (i) Contracts Act, 2010).

### **(b) The different ways in which a contract may be discharged:**

- (i) Discharge by performance: The contract comes to an end when both parties perform their contractual obligations. Performance must substantially correspond with what the parties agreed, allowing for minor or trivial defaults.
- (ii) Discharge by agreement: The parties themselves can agree to end the contract, form a new contract or vary the original one (Re: Moore & Co. v Laudauer & Co., 1921).
- (iii) Discharge by frustration: A contract automatically comes to an end if it is discharged by frustration, such as destruction of the subject matter (S.66 (i) Contracts Act 2010; Nickoll & Knight v Ashton Co. Ltd, 1901).
- (iv) Discharge by breach: Where one of the parties fails to perform their side of the contract, the innocent party may terminate the contract and commence proceedings for damages, or other appropriate remedy (S.64 (e) Contracts Act 2010; Frost v Knight, 1872).
- (v) Lapse of time: Where a contract is formed for a specific time, when that time lapses, the contract is discharged (Panesar v Popat, 1968).
- (vi) Death or bankruptcy: Death discharges a contract for personal services, but other contracts are not discharged by death. On bankruptcy, all rights and obligations of a bankrupt person pass to the trustee in bankruptcy.

### **(c) Remedies available for breach of contract:**

- (i) Compensatory damages: Where there is breach of contract, the affected party is entitled to bring an action for damages, to compensate for the breach (Susley Ltd v Cunard White Star Ltd, 1940).
- (ii) Specific performance: Specific performance is a type of remedy for breach of contract, in which court orders the party in breach to perform their end of the bargain. Court grants a decree for specific performance (Posner v Scott Lewis, 1986).

- (iii) Injunction: An injunction order granted by court restrains a person from doing the act. It is granted where damages would not be an adequate remedy (*Metropolitan Electric Co. v Ginder*, 1901).
- (iv) Rescission: Rescission allows a non-breaching party to cancel the contract, i.e. rescind it. Rather than seeking monetary damages, the non-breaching party can simply refuse to complete their end of the bargain. Rescission puts the parties back in the position they would have been, had they never entered into the contract.
- (v) Liquidated damages: Liquidated damages are a specific amount the parties agree to in the contract, as compensation for a breach (*Cellulose Acetate Silk Co. v Widnes Foundry*, 1933).
- (vi) Quantum meruit: This is an award of damages for a claim of payment for what has been done under the contract (*Planche v Colburn*, 1831).
- (vii) Nominal damages: Court may award nominal damages as a remedy for breach of contract, when the plaintiff cannot support his/her claim for compensatory damages. Court recognises that a breach of contract occurred, but no harm can be calculated.

### **Question 6**

#### **(a) Different types of courts in Uganda, in descending hierarchy:**

- (i) Supreme Court: this is the highest court at the highest level of jurisdiction. It hears appeals from the Court of Appeal and has original jurisdiction for presidential election petitions.
- (ii) Court of Appeal: This is the second highest court and has civil and criminal appellate jurisdiction from the High Court. It may be constituted as a constitutional court whenever the need arises.
- (iii) High Court: this is the third highest court. It has unlimited original jurisdiction and also has appellate jurisdiction from the magistrates' courts.
- (iv) Magistrates Courts: Magistrates courts are at a lower level from the High Court. They consist of the Chief magistrates' court, the Grade I magistrate's court and Grade II magistrate's courts. The Grade I and Chief Magistrates' courts have unlimited jurisdiction over matters of civil and customary law.

#### **(b) The different sources of law in Uganda:**

- (i) The Constitution of the republic of Uganda, 1995: This is the supreme law of Uganda, binding all authorities and persons. Where any law is in conflict with provisions of the constitution, the constitution prevails over such law.
- (ii) Legislation: These are Acts of Parliament, which is mandated as the legislative arm of government. It has power to make new laws, amend or even abolish some. It also has power to delegate its function to designated persons.
- (iii) Case law and judicial precedents: These are made by the courts of record of Uganda. Whenever there is a judgment to a case, it may later be treated as law for the similar cases. Thus, the judicial precedents become sources of law in Uganda.



- (iv) Common law: Uganda was governed by United Kingdom for a long time and it was practiced to maintain the legal system in Uganda. Uganda still follows the English common law in its legal system.
- (v) Customary law: This is a declaratory kind of law, contained in the customs of the land and which judges declare. In Uganda, English customs became part of the law. Customary law considers any established current customs or usages which are not repugnant to natural justice.
- (vi) Equity: The doctrines of equity evolved from the need to mitigate rigidity of common law, in order to apply moral standards of justice. It also developed through precedents.
- (vii) Doctrine of natural justice: These are used where no express rule is applicable in any matter before court. It upholds the principles of natural justice, equity and good conscience, which are values of judgment where there are conflicting interests.

# TEST PAPER 22 SOLUTIONS

## CPA (U) MAY 2023

### Solution 2

#### Issues:

- (i) Whether Kirimutu, his wife and sons qualify to form a company.
- (ii) Whether Katakū is liable to pay the debt of Katakū Enterprises Ltd.
- (iii) Whether the shareholders were justified to task the directors to declare dividends.
- (iv) Whether members of Kabaya Ltd can sue the directors.
- (v) Whether there are remedies available to the aggrieved parties.

#### Resolution of issues:

- (i) Section 4(1) & (2) (a) of the Companies Act, 2012 provides that any one or more persons may for a lawful purpose, form a company, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability. The company may be a company having the liability of its members limited by the Memorandum to the amount, if any, unpaid on the shares respectively held by them in this Act, referred to as "a company limited by shares"

In the instant case, Kirimutu wants to do business with his wife and sons as a registered entity, where he will not be liable for any eventuality that may occur. The law provides for registration of a private company limited by shares, where no one will be liable for debts of the company in excess of the unpaid shares. Therefore, Kirimutu, his wife and sons qualify to form a company.

- (ii) Section 4 (2) (a) of the Companies Act, 2012 provides that a company may have the liability of its members limited by the Memorandum to the amount unpaid on the shares respectively held by them.

Furthermore, the company is a distinct legal entity or person liable for all its debts and obligations. The liability of the shareholders of the company is limited to the amount remaining unpaid on the shares. A company's creditors can only sue the company not the shareholders. (*Sentamu v UCB, 1983*).

In this case, Katakū Enterprises Ltd dealt in hides and skins, which business boomed before the COVID 19 pandemic but it thereafter collapsed because there was no business moving. One of the company suppliers then threatened to sue Katakū for payment of hides and skins supplied.

This was not in line with the provision of law. Therefore, Katakū is not liable to pay the debt of Katakū Enterprises Ltd.

- (iii) According to Table A, Section 116 of the Companies Act 2012, a dividend shall not be paid otherwise than out of profits.

A dividend is essentially a share of the company's declared profits relative to a member's shareholding. The basic rule is that dividends should not be paid out of capital. *Re: Exchange Banking Co, Flitcroft's case, 1882*).

In the instant case, shareholders of Kabaya Ltd wanted the directors to declare dividends but the directors informed the shareholders that there were no profits realised and no dividends could be declared for that year. When one member informed the shareholders that the company had a lot of money in capital from which dividends could be paid, the members tasked the directors for payment. The advice provided by a member which other members based upon to request for dividends, was to force the directors to encroach upon the company assets and it was against the law.

Therefore, dividends cannot be declared when no profits were made by Kabaya Ltd.

- (iv) An individual shareholder (minorities) may sue in place of the company (*Foss V Harbottle, 1957*). An individual member or minority shareholders may sue as an exception to the general rule of a company suing, where those in control of the company are perpetrating a fraud on the minority (*Atwool v Merryweather (1967)*).

In the instant case, some members found out that the directors had used fraudulent means to siphon money from the company. This was against the law for the controllers of the company to perpetrate fraud. Therefore, members of Kabaya Ltd can sue the directors.

- (v) Remedies available to the aggrieved parties:
- Kirimutu, his wife and sons may form and register a private company.
  - Katakū may seek for a court order to declare him not liable for debts of Katakū Enterprises Ltd.
  - Directors may seek for a declaratory court order that dividends are paid from company capital.
  - Kabaya Ltd members may seek for a court order to compel directors to refund the siphoned company money.

### **Solution 3**

#### **Issues:**

- (i) Whether Ndeku is liable for the debts of Ndeku and Co. Advocates.
- (ii) Whether Munaku can create a trust for his properties.
- (iii) Whether Mulife had a cause of action against the factory.
- (iv) Whether Kafuna can recover his money from Mudogo.
- (v) Whether there are remedies available to the aggrieved parties.

#### **Resolution of issues:**

- (i) the Partnerships Act, 2010 provides that a retiring partner continues to be liable for the firm's debts or obligations incurred before his retirement.

In the instant case, Ndeku got misunderstandings with his colleagues and opted out of Ndeku & Company advocates, thereby ceasing to be a partner, and he retired to join another firm of advocates. After his retirement, he was served with a demand note from Kyepere, for payment of a debt for supplies recently delivered to the firm. This was against the provision of law. Therefore, Ndeku is not liable for the debts of Ndeku and Co. Advocates.

- (ii) Any person may create a trust by manifesting an intention to do it (*Jones v Lock, 1865*).

Section 36 (1) of the Succession Act 2000 provides that every person of sound mind and not a minor may by will dispose of his or her property. This can be read together with Section 50 of the Succession Act 2000, which effectively provides for the making of a Will (i.e. a secret trust) in writing, signed and witnessed by at least two persons in the presence of the testator.

Furthermore, Section 2(1) of the Trustees Act 2000 provides that except where otherwise expressly provided, the Act applies to trusts, including executorships and administratorships constituted or created either before or after the commencement of the Act.

In this case, Munaku who had property in different parts of Uganda and feared that in case of any eventuality, he may lose his property or his family may not benefit from his riches.

He therefore wanted to secure the property and suggested use of a trust. The law provides for creation of a trust through writing of a Will, and thereafter, an executioner or an administrator of the estate in case of death may be appointed to manage the properties. Therefore, Munaku can create a trust for his properties.

- (iii) Under the law of torts, a person has a duty to take reasonable care to avoid acts or omissions which one can reasonably foresee would be likely to injure one's neighbor (*Donoghue v Stevenson, 1932*).

Furthermore, a defendant has the burden to prove that an accident did not occur through any want of care on his part (*Ward v Tesco Stores Ltd, 1976*).

In this case, Mulife who was running from a stray dog tried to take refuge in the nearby factory. When he reached the factory gate, he slid and his right leg got broken and it was later amputated. It was later found out that liquid soap had been poured at the gate by one of the workers of factory. There was negligence by the factory worker and a breach of duty of care by the factory worker, for which the factory was vicariously liable. Therefore, Mulife had a cause of action against the factory.

- (iv) Where goods supplied to a child are necessities, the child would be liable to pay a reasonable price for them, as court may consider (*Nash v Inman, 1908*). In the instant case, 16-year-old Mudogo got a loan from Kafuna to buy text books and a school uniform, to be paid back in within two weeks. After the two weeks passed, Mudogo did not bother about the loan. It is a known fact that contracts for money lent to minors if for necessities, are not void. Therefore, Kafuna can recover his money from Mudogo.

**(v) Remedies available to the aggrieved parties:**

- Ndeku may seek for a court order declaring him not liable for Ndeku & Co. Advocates' debts.
- Munaku may write a Will to create a trust for his properties, and their management.

- Mulife may seek for court order to get damages from the factory for his injury.
- Kafuna may seek for a court order to recover his money from Mudogo.

#### **Solution 4**

##### **Issues:**

- (i) Whether the appointment of Bulo as a member of Doka Cooperative Society was lawful.
- (ii) Whether lack of support by Kamani Tea Factory to transport Lubungo's body was justified.
- (iii) Whether the refusal of Kamani Tea Factory to pay Lubungo's wage arrears was unlawful.
- (iv) Whether Mubata is liable to pay Garama for the matooke which got rotten.
- (v) Whether there are remedies available to the aggrieved parties.

- (i) S.13 (2) of the Cooperative Societies Act, 2020 provides that a person above the age of twelve years may become a member of a society, but such a person shall not be eligible to act as a committee member of the society until he or she has reached the age of eighteen years.

In the instant case, 16-year-old Bulo requested Doka Cooperative Society officials to register him as a member, and he was admitted by registration. However, some members were not comfortable with his admission, harassed him that he was a minor who should not be a member, and intend to sue him and the directors. The law provides for membership of a person who is above 12 years. Therefore, the appointment of Bulo as a member of Doka Cooperative Society was lawful.

- (ii) S. 42(3) of the Employment Act, 2006 provides that where an employee dies while at work, or while travelling to his or her place of work, the employer shall be required to transport the employee's body to a place of burial notified by that employee's next of kin.

In the instant case, Lubungo who was employee of Kamani tea factory met thugs at the gate of the factory as he was leaving for home, and following clobbering and manhandling by the thugs, he was left unconscious. He was found dead in the morning and when the matter was reported the factory management, the factory manager called Lubungo's next of kin to take the body for burial. The next of kin's request for support to take the body for burial was not honoured by the manager. This was against the provision of law. Therefore, the lack of support by Kamani Tea Factory to transport Lubungo's body was not justified.

- (iii) S. 42 (1) of the Employment Act 2006 provides that in the case of an employee dying during the term of a contract of service, his or her heirs or legal

representatives shall be entitled to the wages and any other remuneration due to the employee at the date of death.

In this case, Lubungo had wage arrears of one month but when the next of kin requested for the arrears, the manager was not ready to pay, giving the reason that Lubungo was already dead. This was not in line with the provision of law. Therefore, the refusal of Kamani Tea Factory to pay Lubungo's wage arrears was lawful.

- (iv) S.8 of the Sale and Supply of Goods Act, 2018 provides that where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is void.

In this case, Garama and Mubata, made an agreement of sale, whereby Garama was to get matooke from Masaka and supply it to Mubata in Kampala. One time, the truck that was carrying matooke got a mechanical problem and it took a week to get the spare parts for the truck. As a result, all the matooke on board got rotten but Garama still demanded for money from Mubata, in accordance with the sale agreement. The law provides for such a situation to render the agreement void. Therefore, Mubata is not liable to pay Garama for the matooke which got rotten.

- (v) Remedies available to the aggrieved parties:
- Bulu may seek for a court order to declare his appointment as a member of the Society lawful.
  - Lubungo's next of kin may seek for the labour officer's order to take Lubungo's body for burial.
  - Lubungo's next of kin may complain to the labour officer for payment of Lubungo's arrears.
  - Mubata may seek for a court order declaring him not liable to pay Garama for the matooke.

## **Solution 5**

### **(a) Rights of members of a cooperative society are prescribed as follows:**

- (i) Attendance, participation and voting for decisions taken at all general meetings of the society (*Section 16(2) (a) Cooperative Societies (Amendment) Act, 2020*).
- (ii) To be elected to organs of the society, subject to the society's bye-laws, policies and resolutions of the general meeting (*Section 16(2) (b) Cooperative Societies (Amendment) Act, 2020*).
- (iii) To enjoy the use of all facilities and services of the society, subject to its bye-laws, policies and resolutions of the general meeting (*Section 16(2) (c) Cooperative Societies (Amendment) Act, 2020*).
- (iv) Accessing all legitimate information relating to the society (*Section 16(2) (d) Cooperative Societies (Amendment) Act, 2020*).

### **Obligations of members of a cooperative society are prescribed as follows:**

- (i) Observing and complying with all the society bye-laws and with the decisions taken by relevant organs of the cooperative society in accordance with its bye-laws (Section 16 (3) (a) *Cooperative Societies (Amendment) Act, 2020*).
- (ii) Paying up for shares or making other payments provided for in the society bye-laws (Section 16 (3) (b) *Cooperative Societies (Amendment) Act, 2020*).
- (iii) Meeting debts of the society in case of bankruptcy, in accordance with the Cooperative Societies Act and the society's bye-laws (Section 16 (3) (c) *Cooperative Societies (Amendment) Act, 2020*).
- (iv) Patronize the society (Section 16 (3) (d) *Cooperative Societies (Amendment) Act, 2020*).

**(b) Instances when an agency relationship may be terminated by operation of the law under the Contracts Act, 2010:**

- (i) *Bankruptcy of the principal:* When a principal is insolvent, he/she would then lack contractual capacity, therefore terminating the authority of the agent (*S. 135 (d) Contracts Act, 2010*).
- (ii) *Frustration:* An agency may have been created for a specific subject matter or purpose. Where such purpose of the agency is frustrated, the agency relationship comes to an end (*S. 135 (h) Contracts Act, 2010*).
- (iii) *Death of principal or agent:* The death of a principal even if an agent is not aware of it, terminates the agency (*Kennedy v Thomassen, 1903; S. 135 (d) Contracts Act, 2010*).
- (iv) *Insanity of principal or agent:* Where a principal is insane, an agency is terminated even when the agent is not aware of this fact (*Yonge v Toynbee, 1910; S. 135 (e) Contracts Act, 2010*).

**Solution 6**

**(a) Rules that must be followed for an offer to be considered valid:**

- (i) *Intention of offeree:* The offeree must have been aware of, and must have intended to accept the offer, when he did what is alleged to be acceptance (*The Crown v Clark, 1927*).
- (ii) *Offeror notified of offeree's assent:* The offeree's assent must be notified, or made known to the offeror (*Household Fire Insurance Co. Ltd v Grant, 1879*).
- (iii) *Fulfillment of conditions:* An offer made to the public in general can be accepted by anybody who fulfils or performs the conditions stated in the offer (*Carlill v Carbolic Smoke Ball Co., 1892*).
- (iv) *Offer to one of joint promises:* An offer made to a class of persons can only be accepted by a person who belongs to that class (*Wood v Lectrick Ltd, 1932; Section 34(2) (b) Contracts Act, 2010*).
- (v) *Acceptance by offeree:* An offer made to a particular person can only be accepted by the person to whom it is made (*Boulton v Jones, 1857*).
- (vi) *Unconditional acceptance:* The acceptance of an offer must be unconditional (*Hyde v Wrench, 1840; Section 34(2) (a) Contracts Act, 2010*).
- (vii) *Same place of contract and acceptance:* The place where the contract is made is the place where the offeror receives the notification of the acceptance by the

offeree (*Entores Ltd v Miles Far East Corporation, 1955; Section 34(2) (b) Contracts Act, 2010*).

- (ix) *Acceptance done as agreed:* Where an offeror expressly or impliedly authorises the offeree to transmit his acceptance by post, the offer will be effective and the contract formed at the moment that the letter of acceptance is posted, irrespective of whether it subsequently gets delayed or lost in transit *Household Fire Insurance Co. Ltd v Grant, 1879*).
- (x) *Delivery of what was bound to be offered:* Where the offer is an offer to deliver anything to the promisee, the promisee shall have a reasonable opportunity to see that what is offered is what the promisor is bound by the promise to deliver (*Section 34(2) (c) Contracts Act, 2010*).

**(b) Short notes on Uganda courts of record, starting from the highest to the lowest in jurisdiction:**

- (i) *The Supreme Court:* This is the court with the highest jurisdiction in the country. It hears appeals from the Court of Appeal in civil, criminal and constitutional matters. It also has original jurisdiction for presidential election petitions.
- (ii) *Court of Appeal:* The Court of Appeal is the second highest jurisdictional court in Uganda. It hears criminal and civil appeals from the High Court, and matters related to the interpretation of the Constitution, when constituted as the Constitutional Court.
- (iii) *The High Court:* This is the last Court of record with both original jurisdiction and appellate jurisdiction. It has unlimited jurisdiction and hears appeals from subordinate courts in civil and criminal matters.



## TEST PAPER 23 SOLUTIONS

### CPA (U) AUGUST 2023

#### **Solution 2**

##### **Issues:**

- (i) Whether the directors were justified to present their resolution to court for sanctioning.
- (ii) Whether the transfer of shares by Musigire to Zange was lawful.
- (iii) Whether stopping Bamo from discussing of company matters was lawful.
- (iv) Whether the company was liable to refund expenses for the inspection of the company.
- (v) Whether there are any remedies for the aggrieved parties.

##### **Resolution of issues:**

- (i) Section 67(1) (a) of the Companies Act 2012 provides that a company may issue at a discount shares in the company of a class already issued, and such issue of the shares at a discount must be authorised by resolution passed in a general meeting of the company and must be sanctioned by the court.

In this case, the directors made a resolution in their meeting to issue shares at a discount and informed all members in a general meeting that the resolution was ready to be presented in court for sanctioning. Mugezi who had the opinion that the directors had not properly made such a decision, was told that the directors as managers of the company had a right to do what was best for it. However, the resolution was supposed to have been passed in a general meeting but not in a directors' meeting. Therefore, the directors were not justified to present their resolution to court for sanctioning.

- (ii) Section 86 of the Companies Act 2012 provides that a transfer of shares of a deceased member of a company made by his or her personal representative shall, although the personal representative is not himself or herself a member of the company, be as valid as if he or she had been a member at the time of the execution of the instrument of transfer.

In the instant case, Musigire who was a personal representative of Ruga's estate sold some of the late Ruga's shares to Zange, who was also a member of the company. Some directors, however, told Zange that they would never allow a transfer by Musigire, who was not a member of the company. Musigire was the lawful representative of Ruga as provided by law. Therefore, the transfer of shares by Musigire to Zange was lawful.

- (iii) Section 143 (1) of the Companies Act 2012 provides that a member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person, whether a member or not, as his or her proxy to attend and vote instead of him or her and a proxy appointed to attend and vote instead

of a member of a private company shall also have the same right as the member, to speak at the meeting.

In this case, when members were discussing, Bamo who was a proxy indicated that he wanted to contribute to the discussion but he was stopped from giving his views, on the ground that he was not a member of Nusef Ltd. He was instead advised to listen to the discussion and report back to the member he represented. This was not in line with the provision of law. Therefore, stopping Bamo from discussing company matters was not lawful.

- (iv) Section 179 (1) of the Companies Act 2012 is to the effect that the expenses of and incidental to an investigation by an inspector appointed by the registrar shall be paid by the person who applied for the investigation, who may recover the expenses from the company.

In the instant case, a few members applied to the Registrar of Companies for assistance and the registrar appointed an inspector to find out if company affairs were carried out in a satisfactory manner. The inspector presented a document that outlined all expected expenses for the inspection to the members who had applied for inspection. The members paid expenses but when they later on demanded for a refund from the company, the directors ignored their demand. The law in such a matter provides for a refund of expenses from the company. Therefore, the company was liable to refund expenses for the inspection of the company.

**(v) Remedies available to the aggrieved parties:**

- Mugezi and others may seek for a court order to declare the resolution unlawful.
- Zange and Musigire may seek for a court order to declare the transfer of shares lawful.
- Bamo may seek for a court order declaring that stopping his discussion was unlawful.
- Members may seek the registrar's order that the company refunds inspection expenses.

### **Solution 3**

**Issues:**

- (i) Whether Wange had a cause of action against Buloka.
- (ii) Whether Buloka's boy contributed to his injury, thus reducing Muzimbi's liability.
- (iii) Whether other partners are justified to dissolve Nkola partnership.
- (iv) Whether the beneficiaries of Lukadde's estate are justified to request for another trustee.
- (v) Whether there are any remedies for the aggrieved parties.

## Resolution of issues:

- (i) Trespass to land occurs when a person makes an unauthorised entry upon land and thereby interferes with another person's lawful possession of that land (*Aliyenka v Kinawa, 2020*).

In the instant case, Wange who had brought an engineer to have a look at his land, found Buloka moving around the plot of land. When questioned about what he was doing, Buloka said that he had seen the vacant land, got interested in it, and was just taking a closer look at it. Clearly, Buloka had not sought permission from Wange to enter into his plot of land, this amounting to trespass. Therefore, Wange had a cause of action against Buloka.

- (ii) A person is guilty of contributory negligence if he ought reasonably to have foreseen that if he did not act as a reasonable prudent man, he might hurt himself and must consider that others may be careless (*Gaaga Enterprises Ltd v SBI International Holdings & 2 others, 2005*).

In this case, Buloka had cautioned his 14-year-old boy not to go riding outside the office compound, but the boy ventured outside the gate, riding down the road. At the corner, he failed to control the bicycle, and rolled into an excavation of Muzimbi's neighbouring area, thereby sustaining injuries. As a result, Buloka blames Muzimbi for leaving his land unattended to, despite the risks likely to occur. However, there was partial contributory negligence of Buloka's son, who had been cautioned not to go outside the compound and was old enough to determine the consequences of his actions. He went against the caution of his father and did not act reasonably by staying inside the compound. Therefore, Buloka's boy contributed to his injury, thus reducing Muzimbi's liability.

- (iii) Section 35 (1) of the Partnerships Act 2010 provides that a partnership may, at the option of the other partners, be dissolved by the death of any partner.

In this case, Kasobeza who was one of the partners got arrested following his involvement with a case of his friend Bingi, who was involved in robbery. Kasobeza died in before the case had commenced in court and when news got around in social media, other partners apart from Tembu, wanted to dissolve the partnership. The law provides for dissolution of a partnership when a partner dies. Therefore, other partners are justified to dissolve Nkola partnership.

- (iv) Section 40 (2) of the Trustees Act, 2000 provides that court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a person of unsound mind.

In the instant case, Bingi who was a trustee for Lukadde's estate was arrested for robbery, convicted and sentenced to imprisonment for three years. The beneficiaries of Lukadde's estate thereafter requested the directors to have another trustee appointed but the directors hesitated because they had been

working well with Bingi. This is against the law, which provides for appointment of a new trustee where a trustee is convicted of a felony. Therefore, the beneficiaries of Lukadde's estate are justified to request for another trustee.

**(v) Remedies available to the aggrieved parties:**

- Wange may sue Buloka for trespass on his land.
- Muzimbi may seek for a court order declaring contributory negligence of Buloka's boy.
- Other partners may seek for an order of court to dissolve Nkola partnership.
- Beneficiaries of Lukadde's estate may seek for a court order to appoint a new trustee.

**Solution 4**

**Issues:**

- (i) Whether managers of Bakozi Cooperative Society were justified to announce payment of dividends.
- (ii) Whether the refusal to pay extra allowances to Nsonga was lawful.
- (iii) Whether the credit manager was justified to instruct the reclaiming of tools taken by Mufupi.
- (iv) Whether Bakozi Cooperative Society was justified not to receive equipment from Tool Masters Ltd.
- (v) Whether there are any remedies for the aggrieved parties.

**Resolution of issues:**

- (i) Section 46 (1) of the Cooperative Society Act 2020 provides that no registered society shall pay a dividend without the prior written consent of the registrar and the written acknowledgement of the registrar that a balance sheet has been lodged with him or her, disclosing the surplus funds out of which the dividend is to be made.

In the instant case, in a general meeting where payment of dividends was to be pronounced, Tagaba requested the managers to inform members about society documents sent and received from the registrar of Cooperative Societies. Members were only informed that the society's balance sheet had been lodged with the registrar, but that since the registrar's office takes time to provide responses, the society could go ahead with its business as usual. A dividend payment was thereafter announced. This was not in line with the provisions of law. Therefore, managers of Bakozi Cooperative Society were not justified to announce payment of dividends.

- (ii) Section 6(3) of the Employment Act 2006 is to the effect that discrimination in employment shall be unlawful and for the purposes of this Act, discrimination includes any distinction, exclusion or preference made on the basis of political opinion which has the effect of nullifying or impairing the treatment of a person

in employment, or of preventing an employee from obtaining any benefit under a contract of service.

In this case, Nsonga, an employee of Bakozi Cooperative Society discovered that his fellow workmates had the same political opinion but he was of a different political opinion and that the society gave allowances to all employees who affiliated to the famous political opinion. On inquiry, Nsonga was informed that he would get allowances after assuring the society about his political affiliation. This was a clear case of discrimination against Nsonga, because of his political affiliation. Therefore, the refusal to pay extra allowances to Nsonga was not lawful.

- (iii) Section 55 of the Sale of Goods and Supply of Services Act 2018 provides that when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit and resuming possession of the goods as long as they are in the course of transit, and may retain them until payment.

In the instant case, Bakozi Cooperative Society agreed to sell farm tools on credit to Mufupi, to be paid in a month's time. On the day Mufupi collected the farm tools, the society's credit manager got information that Mufupi had been sued in court for bankruptcy. The credit manager made an order to reclaim the farm tools from Mufupi, who by that time had driven away with the tools, but he was stopped by the society vehicle and all the tools were taken back to the society's stores. This was a lawful action taken by the Cooperative society. Therefore, the credit manager was justified to instruct the reclaiming of the farm tools taken by Mufupi.

- (iv) Section 34 (1) of the Sale of Goods and Supply of Services Act 2018 provides that it is the duty of the buyer to accept and pay for the goods in accordance with the terms of the contract of sale.

In the instant case, Bakozi Cooperative Society entered into an agreement to buy equipment worth UGX 6 million from Tool Masters, which was to make delivery to the society's stores in four days' time and upon which, the society had to make full payment for the equipment. Two days later, the society got another supplier at a more affordable price. When Tool Masters Ltd delivered the equipment on the third day, the store manager was instructed not to receive the equipment and no payment was made by the Cooperative society.

The society was in breach of the duty to accept and pay for the equipment as it had been agreed. Therefore, Bakozi Cooperative Society was not justified not to receive equipment from Tool Masters Ltd.

**(v) Remedies available to the aggrieved parties:**

- Tagaba may seek for a court order declaring that dividends were unlawfully declared.
- Nsonga may complain to the labour officer for an order to be paid the extra allowances.
- The Society may seek for a court order to declare legality of reclaiming tools from Mufupi.
- Tool Masters Ltd may seek for a court order compelling the society to perform its obligations.

## **Solution 5**

### **(a) Brief meaning of the following:**

- (i) *General acceptance of a bill of exchange:* This is an acceptance whereby the drawee of a bill of exchange signs his/her name on the bill with or without the word "accepted" and without indicating any conditions of payment or time.
- (ii) *Qualified acceptance of a bill of exchange:* A qualified acceptance is made subject to some condition or qualification, which varies the effect of the bill. The condition may be in regard to time, location, or fulfillment of any other thing, etc.
- (iii) *Negotiation of bill of exchange:* A bill of exchange is negotiated when it is transferred from one person to another, in such a manner as to constitute the transferee the holder of the bill. (*S. 30 (1) of the Bills of Exchange Act, 2000*).
- (iv) *Restrictive endorsement of a bill of exchange:* An endorsement is restrictive if it prohibits further negotiation of the bill or expresses it is as a mere authority to deal with the bill as thereby directed, and not a transfer of ownership of the bill (*S. 34 (1) of the Bills of Exchange Act, 2000*).
- (v) *Discharge of an instrument for a bill of exchange:* An instrument for a bill of exchange is discharged when all rights and obligations arising under the instrument completely cease to exist (*S.35 (1) (b) and S. 58 (1) Bills of Exchange Act, 2000*).

### **(b) Circumstances under which an agent may be held personally liable to third parties:**

- (i) *Express assumption of personal liability:* A third party may transact with an agent and create a condition that the agent should be personally liable on the contract, and if the agent agrees to it, he /she will be personally liable for any consequent breach of the contract.
- (ii) *Trade Custom:* Sometimes, the trade usage or customs of a particular trade provide that the agent shall be personally liable for the contract. In such cases, the agent incurs personal liability towards third parties.

- (iii) *Signing in own name:* Where an agent signs a negotiable instrument in his/her own name without clarifying that that he signs as an agent, he/she will be held liable on such an instrument.
- (iv) *Non-existent principal:* When an agent purports to act as an agent but is actually acting in his own behalf and there is a no principal or when he/she executes a deed in his/her own name, the agent is held personally liable on it (*S.167 Contracts Act 2010; Schmatz v Avery, 1851*).
- (v) *Concealed or undisclosed principal:* An agent may not disclose the principal on whose behalf he/she is acting at the time of entering into the contract. In such a case, the agent becomes personally liable on the contract.
- (vi) *Acting without or in excess of authority:* When an agent acts in excess of his/her authority or acts without express or implied authority, the principal is under no liability on the contract. The agent will be held personally liable for breach of implied warranty of authority. This may happen where an agent is not aware of the death or insanity of the principal, since such a happening terminates an agent's authority (*S. 160 Contracts Act, 2010; Younge v Tonybee, 1910*).
- (vii) *Acting for an incompetent Principal:* When the principal is incompetent to enter into a contract e.g. a minor, then an agent will be held personally liable on contracts entered into.
- (viii) *Foreign Principal:* When a contract is made by an agent for the purchase or sales of goods on behalf of a principal residing another country, then the agent is presumed to be personally liable to third parties.

## **Solution 6**

### **(a) When a party to a contract does not fulfill obligations, the possible consequences are as follows:**

- (i) *Rescission:* This is where a party who has suffered breach refuses further performance of the contract on his/her part and treats the contract as non-existent.
- (ii) *Action for damages:* Nominal damages are awarded by court where in order to vindicate the plaintiff's right to performance of the contract, where the plaintiff has not suffered loss as a result of the defendant's breach (*C&P Haulage v Middletown, 1983*). Substantial damages may be awarded to the plaintiff as compensation for a loss the plaintiff has actually suffered (*Hadley v Baxandale, 1854*). The main aim of damages is to place the injured party as far as possible in the position he would have he would have been if the contract had been performed.

- (iii) *Sue on a quantum meruit*: This is a claim based on an implied promise arising from the acceptance of an executed agreement, for the value of work done by a party to the contract, where a party has partially fulfilled his/her obligations (*Planche v Colburn, 1831*).
- (iv) *Sue for specific performance*: Court may order the defendant to perform the contract as he /she had promised to do, where the person who has suffered a legal injury would not get adequate remedy by compensation with damages (*Beswick v Beswick, 1968*).
- (v) *Sue for an injunction*: This is an order of court where court restrains a party to the contract to do or refrain from continuously doing a wrong thing. This order is issued at the discretion of court, where an order for specific performance would not be available (*Warner Brothers v Nelson, 1937*).

**(b) The different ways in which to know what amounts to civil law or criminal law:**

- (i) *Definition*: Criminal law is the law that regulates disputes or relationships between the state and its citizens. It is primarily concerned with acts or omissions or conduct that is prejudicial to the community. Civil law on the other hand, refers to laws regulating relationships and disputes between individuals, groups and organisations, whether legal or natural persons. It is primarily concerned with the violation of private rights.
- (ii) *Rules of procedure*: whereas the Criminal procedure Code provides for rules of procedure in criminal courts, the Civil Procedure Act provides for the rules used in civil procedure.
- (iii) *Parties*: Parties to a criminal are the state versus the defendant. On the other hand, parties to a civil case are the plaintiff versus the defendant.
- (iv) *Standard of proof*: The standard of proof to prove the accused person's guilt in criminal law is "beyond reasonable doubt", while the standard of proof for a plaintiff to prove a case in civil cases is on a balance of probabilities".
- (v) *Burden of proof*: The burden of proof in criminal cases is on the state while in civil cases it is on the plaintiff.
- (vi) *Remedies*: Remedies available in criminal cases include fines, imprisonment and death, whereas remedies in civil cases include damages, specific performance and injunctions.



# TEST PAPER 24 SOLUTIONS

## CPA (U) NOVEMBER 2024

### Solution 2

#### Issues:

- (i) Whether there was a valid contract between Funga Ltd and Treasure Plans Ltd.
- (ii) Whether Mbazi was liable for the contract he made on behalf of Funga Ltd.
- (iii) Whether members were justified to complain about the conduct of company affairs.
- (iv) Whether the directors were justified not to invite the auditor for a general meeting.
- (v) Whether there are any remedies available to the aggrieved parties.

#### Resolution of issues:

- (i) Section 54 (2) of the Companies Act 2012 provides that a company may adopt a pre-incorporation agreement with its formation and registration, made on its behalf. In the instant case, Mbazi signed a contract with Treasure Plans Ltd, for a business deal on behalf of the Funga Ltd, prior to its incorporation. After incorporation, the company adopted all contracts made on its behalf. Therefore, there was a valid contract between Funga Ltd and Treasure Plans Ltd.
- (ii) Section 54 (3) of the Companies Act 2012 provides that in all cases where the company adopts a pre-incorporation contract, the liability of the promoter of such company shall cease.  
In this case, Funga Ltd.'s contract with Kiwani Ltd provided that a party pulling out of the contract before its performance would compensate the other party for any loss incurred. Funga Ltd disassociated itself from the contract after incorporation and referred Kiwani Ltd's demand note to Mbazi. This was contrary to the terms of the agreement since Funga Ltd had adopted the contract after incorporation. Therefore, Mbazi was not liable for the contract he made on behalf of Funga Ltd.
- (iii) Section 248 (1) of the Companies Act 2012 provides that a member of a company to whom shares are transferred or transmitted may petition for an order of Court that the company affairs are being conducted in a manner unfairly prejudicial to the interests of its members, including him/herself.  
In the instant case, Tunza and other members of the company were not treated well and were denied the right to carry out different tasks, despite requests for positive response. This was a form of oppressive treatment of members, which was against the law. Therefore, members were justified to complain about the conduct of company affairs.
- (iv) Section 170 (4) of the Companies Act 2012 provides that the auditors of a company are entitled to attend any general meeting of the company and to receive all notices of and other communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors.

In this case, Bala inquired about the company auditor's absence in the recent general meeting, to which the directors' response was that the auditor did not have to attend because the directors had all audit information, which they would give to the members. Therefore, the directors were not justified not to invite the auditor for a general meeting.

**(v) Remedies available to the aggrieved parties:**

- Treasure Plans Ltd may seek for a court order declaring validity of the contract.
- Mbazi may seek for an order of Court declaring him not liable for Funga Ltd's contract.
- Funga Ltd members may petition court for an order against oppression of members.
- Members may seek for a court order to compel the auditor's presence in meetings.

**Solution 3**

**Issues**

- (i) Whether Yanga was liable for obligations of Byonna firm.
- (ii) Whether Byonna firm was liable to compensate Ntunda Ltd.
- (iii) Whether Mubuya's neighbor was justified to sue Dalu for the injury of his son's eye.
- (iv) Whether Tifu was justified to sell the estate property.
- (v) Whether there are any remedies available to the aggrieved parties.

**Resolution of issues:**

- (i) Section 11 of the Partnership Act 2010 provides that a person who has been admitted to the benefits of a partnership while still a minor shall, on attaining the age of majority, be liable for all obligations incurred by the partnership from the date of his/her admission, unless he/she gives public notice within a reasonable time, of his/ her repudiation of the partnership.

In this case, Yanga was admitted to the firm at 16 years and has since been benefitting as a member for two years. When notified about contributing towards the firm's obligations, he thought it was too soon. However, he has attained 18 years and has no plans to retire from the firm. Therefore, Yanga was liable for obligations of Byonna firm.

- (i) Section 12 of the Partnership Act 2010 is to the effect that where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, loss or injury is caused to any person not being a partner in the firm, the firm is liable for the loss to the same extent as the partner so acting or omitting to act. In the instant case, Mubuya who usually markets the firm's products, delivered less than the purchased products to Ntunda Ltd. It was verified that Mubuya took products for customers, but delivered less products to Ntunda Ltd. Ntunda Ltd incurred loss when penalized for not providing the agreed number of products to its

customers and thus has demanded compensation from Byonna firm. Other partners did not want to pay but it has been proven that their fellow partner(mubuya) caused loss while in the course of ordinary business. Therefore, Byonna firm was liable to compensate Ntunda Ltd.

- (ii) A dangerous recreational activity is a recreational activity which involves a significant risk of physical harm. A plaintiff's claim will be defeated if the plaintiff's harm resulted from the happening of an obvious risk of such a dangerous recreational activity.
- (iii) There is a breach of the duty of care only where the defendant's conduct amounts to recklessness or a very high degree of carelessness (Blake v Galloway, 2004). In the instant case, Mubuya's son, Dalu, hit and injured the eye of the son of Mubuya's neighbor when he threw back the piece of wood that had hit his leg. Dalu was not among the group of children playing and throwing back the wood was not recklessness or a high degree of carelessness. On the other hand, the neighbour's son had consented to being involved in the dangerous recreational activity (voluntarily assumed the risk from the game). Therefore, Mubuya's neighbor was not justified to sue Dalu for the injury of his son's eye.
- (iv) Section 16 (1) of the Trustees Act 2000 provides that where trustees are authorized by the instrument creating the trust to apply for capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale of all or any part of the trust property for the time being in possession.
- (v) In this case, Tifu who is the trustee for the estate was appointed and provisions of appointment included the ability to take or do any reasonable action to maintain properties for the beneficiaries. When some siblings learnt about the sale of one property, they thought it was not right, despite Tifu's explanation about the need for finances to upgrade all properties. The appointment document provided for the trustee's power to do anything to maintain the trust properties, which Tifu did. Therefore, Tifu was justified to sell the estate property.

**(v) Remedies available to the aggrieved parties:**

- Byonna firm may seek for a court order declaring Yanga's liability for obligations of the firm.
- Ntunda Ltd may seek for a court order to compel Byonna firm to compensate it.
- Dalu may seek for a court order declaring voluntary assumption of risk by the neighbor's son.
- Tifu may seek for a court order to declare that he had power to sell the estate property.

## **Solution 4**

### **Issues:**

- (i) Whether the society was justified to deny Mputu to exercise his rights as a member.
- (ii) Whether it was lawful for Jogo to vote a second time.
- (iii) Whether the society was justified to take action against Tenters Ltd.
- (iv) Whether monthly deductions for house contributions from Kijana's salary were lawful.
- (v) Whether there are any remedies available to the aggrieved parties.

### **Resolution of issues.**

- (i) Section 16(1) of the Cooperative Societies (Amendment) Act 2020 provides that a member of a registered society shall not exercise any of the rights of a member until he or she has made such payment to the society in respect of membership or has acquired such interest in the society as may be prescribed by regulations made under this Act or by the byelaws of the society.

In the instant case, Tukola cooperative society was registered to carry out retail business, among other things. Mputu who is a member of Tukola cooperative society has refused to meet the society payments, like the subscription fee. Consequently, he is often prevented from exercising his rights as a member. What Mputu was doing was against the law. Therefore, the society was justified to deny Mputu the exercise of his rights as a member.

- (ii) Section 18(1) of the Cooperative Societies (Amendment) Act 2020 provides that each member of a registered society shall have one vote only as a member in the affairs of the registered society.

In this case, members voted for some vacant positions in the society but when votes for one position tied for two candidates, Jogo who is one of the society directors, declared that he would take another vote. When he voted again, the member he voted for the second time was declared to take up that position. What Jogo did was contrary to the provision of law. Therefore, it was not lawful for Jogo to vote a second time.

- (iii) Section 16 of the Sale of Goods and Supply of Services Act 2018 provides that where materials are used under a contract for the supply of services, there is an implied term that the materials will be sound and reasonably fit for the purpose for which they are required.

In this case, the society had contracted with Tenters Ltd for the provision of tents during an event that the society carried out but the tents which Tenters Ltd provided for the society were bad and leaked when it rained. The tents were not reasonably

fit for the purpose wanted by the society. Tenters Ltd did not even make any positive response to the society's complaints. Therefore, the society was justified to take action against Tenters Ltd.

- (iv) Section 46(1)(c) of the Employment Act 2006 provides that deductions from remuneration due to an employee are permitted by way of reasonable rent or other reasonable charge for accommodation provided by the employer for the employee, or the employee's family, where the employee has agreed to the deduction. In the instant case, Kijana was provided with a society house for accommodation, as per the employment contract he Kijana signed. He was, however, unhappy about monthly salary cuts which were a contribution towards the accommodation. Kijana had signed the contract and this presupposed his agreement with the terms of the contract. The deductions were made within the law. Therefore, monthly deductions for house contributions from Kijana's salary were lawful.

**(v) Remedies available to the aggrieved parties:**

- The society may seek for a court order to compel Mputu's payments as required.
- Members may seek for a court order declaring Jogo's second vote unlawful.
- The society may seek for a court order for payment of damages by Tenters Ltd.
- The society may seek for the labour officer's order declaring Kijana's deductions lawful.

**Solution 5**

**a) Explanation of terms in accordance with the Bills of Exchange Act, 2000:**

**(i) *A bill payable to bearer:***

A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank (S. 7 (3) Bills of Exchange Act, 2000).

**(ii) *A bill payable to order:***

A bill is payable to order when expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable (S.7 (4) Bills of Exchange Act, 2000).

**(iii) *A Bill payable on demand:***

A bill is payable on demand when it is expressed to be payable on demand, or at sight, or on presentation; or in which no time for payment is expressed (S.9 (1) (a) & (b) Bills of Exchange Act, 2000).

**(iv) *A bill payable at future time:***

A bill is payable at a determinable future time within the meaning of this Act when it is expressed to be payable at a fixed period after date or sight; on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain (*S. 10 (1)(a) & (b) Bills of Exchange Act, 2000*).

**b) Duties of an agent to the principal.**

- Due diligence in performance of duties: In carrying out tasks for the principal, an agent has to display any special skills he professes to have (*S.146 (1) Contracts Act, 2010*). He/ she must, thus, obtain the best price that is reasonably obtainable, for the principal.
- Account: An agent must render true account to his/her principal whenever requested for, and pay all sums received for the principal (*Section 152, Contracts Act, 2010*).
- No conflict of interest: An agent has a duty not to do things that conflict with the principal's interest. This would amount to becoming a principal as against his employer (*Armstrong v Jackson, 1917*).
- No secret profits: An agent must not make any profits for himself, out of the property he/she is entrusted with by the principal (*Regal (Hastings) Ltd v Gulliver, 1942*).
- No delegation of authority: An agency relationship is personal, and the agent must not delegate the authority given to him (*S. 125 (1) Contracts Act, 2010*).
- Confidentiality: The agent must carry out his tasks in good faith, without disclosing information or documents entrusted to him, which would be acting against the principal's interests (*Weld-Blundell v Stephens, 1974*).
- Act as per directions: An agent has a duty to carry out his work in accordance with the directions given by the principal (*S. 145 Contracts Act, 2010*).
- To inform: An agent must communicate or inform the principal about any matter, especially where there is any difficulty faced by him/her (*S.148 Contracts Act, 2010*).

## Solution 6

### (a) The different sources of law in Uganda:

- **The Constitution:** The constitution is the supreme law of the land, prevailing over any other laws or customs. In the event that any law or custom is inconsistent with the Constitution, such law or custom is, to the extent of its inconsistency, void (Art. 3 (2) of the Constitution, 1995).
- **Written law/Legislature:** This is the law made and passed by Parliament as the law-making body, following the due process (Article 79 of the Constitution, 1995). As a law making body, Parliament may amend or abolish statutes or rules of law, as deemed appropriate.
- **Common Law:** This is a result of English law developed and administered by English Courts, from the customs of the people. It is an unwritten source of law which developed through the use of precedents. It is generally a rigid application of rules, which called for improvement.
- **Equity:** The doctrine of equity refers to "fairness" or "justice", developed to supplement rules and procedures of common law, which was found to have defects like inadequate remedies, technicalities or rigidity. Therefore, where common law and equity are in conflict, equity prevails.
- **Customs:** This is law mainly sourced from customs of people, trade or usage, in as far as it is not repugnant to natural justice, equity and good conscience. Its use must not be incompatible with any written law.
- **Rules of natural justice and conscience:** This source of law is used where no express rule is applicable to a civil matter before Court (S. 14 Judicature Act; S.10 Magistrates Courts Act). Courts may adjudicate cases depending on judicial discretion, with the instinctive vast knowledge and experience in the law.

### (b) Rules governing consideration under the law of contract:

- **It need not be adequate:** The requirement for consideration is that it should have some value and courts do not inquire into adequacy. It is a bargain made by parties, which should not be interfered with.
- **It must not be past:** This rule seeks to prevent the lapse of time between the act and the promise which is given in return. There are, however, conditions provided in some instances to allow past consideration.
- **It must move from the promisee:** This rule presupposes that a person can only enforce a promise where he/she provided consideration for it.
- **It must be of some value:** Where an act or promise has some economic value, the law recognizes it as consideration.

## TEST PAPER 25 SOLUTIONS

### CPA (U) MAY 2024

#### **Solution 2**

##### **Issues:**

- (i) Whether the intended dismissal of Moga from directorship was justified.
- (ii) Whether Kato's appointment as a company secretary was lawful.
- (iii) Whether the denial of Bukenya to represent DB Ltd was lawful.
- (iv) Whether Patel was justified to sue Kaki Ltd.
- (v) Whether there are any remedies available to the aggrieved parties.

##### **Resolution of issues:**

- (i) Section 195(3) (1) & (2) of the Companies Act 2012 provide that a company may remove a director by ordinary resolution, which resolution requires a special notice. In the instant case, Moga refused to comply with Kitwe's request to send him a monthly airtime allowance, as a result of which, Kitwe convinced other shareholders to dismiss Moga with immediate effect. The dismissal was not done by a resolution following a special notice to that effect. Therefore, the intended dismissal of Moga from directorship was not justified.
- (ii) Section 190 (1) & (2) of the Companies Act 2012 provides for the qualification of a company Secretary, to include an advocate of the High Court and a member of any of the specified bodies.  
In this case, Kitwe's son Kato graduated with a first class honours degree in education majoring in English and when Kitwe called for a shareholders' meeting, he convinced all members except Tekisoboka, that Kato was competent enough to occupy the office of Secretary. Kato was neither an advocate of the High Court, nor a member of any of the bodies specified in the Act. Therefore, Kato's appointment as a company secretary was not lawful.
- (iii) Section 146 (1) (a) & (2) of the Companies Act 2012 provides for a company which is a member of another company to authorize a person as its representative at any members' meeting and such person to exercise the same powers on behalf of the company as the company could exercise, if it was an individual shareholder. In the instant case, DB Ltd had shares in Kaki Ltd and appointed Bukenya as its representative. However, during an Annual General Meeting, Bukenya's presentation to Kaki Ltd members on behalf of DB Ltd was dismissed and security personnel were told to escort him out of the meeting. This was against the provision of law. Therefore, the denial of Bukenya to represent DB Ltd was not lawful.
- (iv) Section 276 of the Companies Act 2012 provides that where any person in any report, balance sheet or other document required for the purposes of this Act,



willfully makes a statement false in any material particular, knowing it to be false, he or she commits an offence.

Furthermore, an auditor is liable to the investors where the investor relies on an untrue report of the auditor. If a person is so placed that others could reasonably rely upon his judgment, skill or ability, and such a person allows his information or advice to be passed on to another person who, will rely on it, then a duty of care arises (*Hedley Byrne & Co Ltd v Heller, 1964*).

In the instant case, concerned Sekifere & Co, the auditor of Kaki Ltd presented an unqualified report where it had over-stated company assets in the statement of financial position. The report was relied upon by Patel, who invested Shs 200 million in the company but later discovered the truth when the company went under receivership. Kaki Ltd.'s auditor owed a duty of care to report the truth. Therefore, Patel was justified to sue Kaki Ltd.

**(v) Remedies available to the aggrieved parties:**

- Moga may seek for a court order to declare his dismissal from directorship unlawful.
- Tekisoboka may seek for a declaratory order of court that Kato's appointment was unlawful.
- DB Ltd may seek for a court order declaring that Bukenya lawfully represented DB Ltd.
- Patel may seek for a court order for damages against Kaki Ltd.

**Solution 3**

**Issues:**

- (i) Whether Picho was justified to receive remuneration of Shs 4 million monthly
- (ii) Whether Bena's refusal to contribute to the firm loan was lawful.
- (iii) Whether the replacement of Kwazi with Amo as trustee for Lante's estate was lawful.
- (iv) Whether Amo had a cause of action against Kwazi and his neighbour.
- (v) Whether there are any remedies available to the aggrieved parties.

**Resolution of issues:**

- (i) Section 26 (f) of the Partnerships Act 2010 provides that no partner shall be entitled to remuneration for acting in the partnership business.  
In the instant case, Picho wanted to pay himself monthly remuneration of Shs 4 million because of his tremendous contribution to the firm. This was against the provisions of the law.
- (ii) Under section 19 (1) of the Partnership Act 2010, a person who is admitted as a partner into an existing firm does not become liable to the creditors of the firm for anything done before he or she became a partner.

In this case, Bucho firm acquired a loan from Kibusu Financial Services before Picho and Buju's wives and children were admitted into the firm as partners. Although Buju informed the new partners that they had to contribute to the loan since they all use the firms' car, it was against the law. Therefore, Bena's refusal to contribute to the firms' loan was lawful.

- (iii) Section 35 (1) of the Trustee's Act 2000 is to the effect that where a trustee appointed by a court or otherwise, remains out of Uganda for more than twelve months, then another person may be appointed in the place of the trustee remaining out of Uganda.

In the facts, Kwazi who had been the sole trustee of the estate of the late Lante went to China in January 2022, and was replaced by Amo as the new trustee in February 2023, after Mesa, a beneficiary, successfully petitioned court to remove Kwazi. Kwazi returned to Uganda in March 2023, which was 14 months after he had gone. Therefore, the replacement of Kwazi with Amo as trustee for Lante's estate was lawful.

- (iv) Joint tortfeasors are jointly and severally liable for the whole damage resulting from a tort (*Arneil v Paterson, 1931.*)

In this case, Kwazi's dog together with his neighbour's dog attacked Amo's sheep which were grazing in a nearby grassland. When Amo sent them a notice of intention to sue, Kwazi resisted, arguing that Amo just wanted to cover up his wrongdoing concerning the estate of the late Lante, while Kwazi's neighbour admitted that his dog attacked the sheep, but was only willing to pay part-damages. It is evident that each of the dogs caused the whole damage as they attacked together, so that Kwazi and his neighbour were jointly and severally liable for the whole damage as joint tortfeasors. Therefore, Amo had a cause of action against Kwazi and his neighbour.

**(i) Remedies available to the aggrieved parties:**

- Buju may seek for a declaratory order of court that all partners must share profits equally.
- Bena may seek for a court order declaring non-liability of new partners for the firm loan.
- Amo may seek for a court order declaring him to be the lawful trustee for Lante's estate.
- Amo may seek for a court order for payment of damages by Kwazi and his neighbor.

## **Solution 4**

### **Issues:**

- (i) Whether the denial of Ndakwe's attendance of the Cooperative's meeting was lawful.
- (ii) Whether it was lawful for Gom Cooperative not to assign Roku any duty.
- (iii) Whether Ngoye Ltd breached the contract with Ndakwe by sale of materials to Haji Mafuta.
- (iv) Whether Lee Ltd is liable to refund Gom Cooperative's part-paid money for the fertilizers.
- (v) Whether there are any remedies available to the aggrieved parties.

### **Resolution of issues:**

- (i) Section 16 (2) (a) of the Cooperate Societies Act 2020 provides that a member of a cooperative society shall have a right to attend, participate and vote for decisions taken at all general meetings of the society.
- (ii) In this case, Ndakwe who was a member of the society was not invited for the general meeting because he was out of the country. He, however, came back on the day for the meeting but when he entered the meeting hall, he was ordered to vacate because he had not been invited. This was against the provision of law. Therefore, the denial of Ndakwe's attendance of the Cooperative's meeting was not lawful.
- (iii) Section 40 (1) (a) of the Employment Act 2006 provides that every employer shall provide his or her employee with work, in accordance with the contract of service. In the instant case, Ndakwe's son, Roku who has a 5 year employment contract as an accountant with Gom Cooperative since 1 July 2022 has been reporting to work as per the contract but has never been assigned any duty and his salary has never been paid on time, to date. This was against the provision of law relating to an employer's duty. Therefore, it was not lawful for Gom Cooperative not to assign Roku any duty.
- (iii) Section 13 (2) (a) of the Sale of Goods and Supply of Services Act 2018, in a contract of sale, there is an implied term that the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made.  
The information relating Haji Mafuta had not been given to Ndakwe yet an agreement for purchase of materials had been made, and Ndakwe had made part-payment. Ngoye Ltd's action to give the materials to Haji Mafuta was against the provision of law. Therefore, Ngoye Ltd breached the contract with Ndakwe by sale of materials to Haji Mafuta.

- (iv) Section 17 (2) (a) of the Sale of Goods and Supply of Services Act, 2018 provides that in the case of a contract for sale by sample, there is an implied condition that the quality of the bulk shall correspond with the quality of the sample.

In this case, Gom Cooperative which also deals in the supply of fertilizers, received a sample of a new Chinese type of fertilizer from Lee Ltd in December 2022, ordered for 100 bags for which it paid 50% of the purchase price. However, when the fertilizers were delivered, they were tested and compared with the sample and found to be different in color and smell. This finding was against the implied condition for both qualities to be corresponding. Therefore, Lee Ltd is liable to refund Gom Cooperative's part-paid money for the fertilizers.

**(v) Remedies available to the aggrieved parties:**

- Ndakwe may seek for a court order declaring his right as a member to attend meetings.
- Roku may complain to the labour officer for an order to be assigned duties.
- Ndakwe may seek for a court order for payment of damages for breach by Ngoye Ltd.
- Gom Cooperative may seek for a court order to compel payment of a refund from Lee Ltd.

**Solution 5**

**Brief explanation of the following:**

**(a) Parties to a bill of exchange:**

- (i) Drawer: A drawer is a person who issues the bill of exchange, addressing it to the drawee.
- (ii) Drawee: This is a person to whom the bill of exchange is issued. A drawee may be referred to as the debtor and the drawer as the creditor, especially in banking transactions.
- (iii) Payee: This is the person to whom the money is to be paid by the drawee. The payee finally receives the payment on the due date.
- (iv) Endorser: An endorser is the person who signs the back of the bill, thereby negotiating it. In negotiation of a bill, there is no limit to the number of endorsers for that bill.
- (v) Endorsee: The endorsee is the person to whom a bill is negotiated by an endorser. There is no limit to the number of endorsees.

### **(b) Duties of an agent to the principal:**

- (i) *Obey instructions:* An agent has a duty to do the work as instructed by his/her principal, or else he may be liable for breach (*S. 145 (1) Contracts Act, 2010*).
- (ii) *Exercise care, skill and diligence:* In carrying out his work, the agent must use the same effort or enthusiasm he would have used for his own work must be used for the principal's work (*Keeple v Wheeler, 1927; S. 146 (1) Contracts Act, 2010*).
- (iii) *Render proper accounts:* An agent has a duty to keep proper accounts, such that whenever the principal requires to know about the accounts, an agent must be ready to provide records to that effect (*S. 147 Contracts Act, 2010*).
- (iv) *Communication:* An agent must inform the principal about all matters relating to the agency (*S. 148 Contracts Act, 2010*).
- (v) *No conflict of interest:* An agent must not carry out any acts that bring about his/her interest in conflict of his duty as an agent and personal interest with the principal's interest (*Armstrong v Jackson, 1917*).
- (vi) *No make of any secret profits:* An agent should not perform his/her duty where he/she would have any material or financial benefit accruing to him/her without the knowledge of the principal (*Andrews v Ramsay & Co., 1903*).
- (vii) *Confidentiality:* An agent must not disclose confidential information or documents of his/her principal to any third party.
- (viii) *Not to delegate authority:* Wherever delegation is not the ordinary way of business, an agent must not establish a relationship of principal/agent between his own principal and a third party, as this creates confidence issues (*De Bussche v Alt, 1878; S.125 (1) Contracts Act, 2010*).
- (ix) *Payment of sums received:* An agent must pay to a principal, all sums received on the account of the principal (*S. 152 Contracts Act, 2010*).

### **Solution 6**

#### **(a) Factors that can vitiate a contract:**

- (i) **Misrepresentation:** This is an untrue statement of fact which is made by a contracting party to the other party before the time of contracting, which induces the person to whom it is made, to enter into the contract. Such misrepresentation makes a contract voidable at the option of the innocent party (*Derry v Peek, 1889*).
- (ii) **Mistake:** Mistake can vitiate a contract where it is an operative mistake, that is, where it operates to destroy the consensus which is the basis of such contract. In such a mistake, parties are deemed to not to have agreed on anything. The mistake must be of fact, and not of law (*Lewis v Avery, 1971*).
- (iii) **Duress:** At common law, duress is where there is an illegal threat to use violence against a contracting party or his/her close relative, exerted by the other contracting party or third party on his/her behalf, and calculated to produce fear

or loss of life or bodily injury as a means of forcing the victim to enter into the contract (Barton v Armstrong, 1976). Proof of duress vitiates such a contract.

- (iv) Undue Influence: Under the doctrine of equity, contracts may be set aside due to undue influence. Undue influence is when pressure is exerted by one person who has moral authority over another. The victim contracts without exercising his own judgment and free will, relying on the advice of that dominating party. Examples are the solicitor/client, doctor/patient, and parent/child relationships.
- (vi) Illegality: Where a contract is unenforceable, it is illegal and void because it may be contrary to law, where it is contrary public policy or forbidden by statute. Contracts like those tending to corruption in public life, promoting sexual immorality, prejudicial to administration of justice, trading with an enemy in war time, for future separation, in restraint of trade and marriage, will all be illegal and unenforceable.

**(b) Five different types of courts in Uganda, starting from that of highest jurisdiction:**

- (i) Supreme court: This is the highest court of appeal in Uganda. It hears appeals from the Court of Appeal in civil, criminal and constitutional. It also has original jurisdiction for cases of presidential election petitions. It is a court of record.
- (ii) Court of Appeal: This court hears civil and criminal appeals from the High Court. it also hears matters concerning the interpretation of the constitution, when constituted as the constitutional court. The court of appeal is also a court of record.
- (iii) High Court: The High Court has unlimited original and appellate jurisdiction in all civil and criminal matters from subordinate courts. It, too, is a court of record.
- (iv) Chief Magistrates court: this is one of the subordinate courts, with fiscal jurisdiction of up-to Shs 50 million. There is no limited jurisdiction for this court where a matter is governed only by civil customary law.
- (v) Magistrate Grade I court: This, is also a subordinate court, with jurisdiction of matters that do not exceed Shs 20 million. This court also has no limited jurisdiction for matters governed only by civil customary law.

# TEST PAPER 26 SOLUTIONS

## CPA (U) AUGUST 2024

### SOLUTION 2

#### Issues:

- (i) Whether the shifting of a company hub and headquarters in Bifuna municipality was lawful.
- (ii) Whether the director's intention to cancel 300 company shares was lawful.
- (iii) Whether the creditors' objection to reduction of the company's share capital was justified.
- (iv) Whether it was lawful for Buuza to pay a charge before accessing company minutes.
- (v) Whether there are any remedies available to the aggrieved parties.

#### Resolution of issues:

- (i) Section 10 (1) (c) of the Companies Act 2012 is to the effect that a company may, by special resolution, alter its Memorandum of Association with respect to the objects of the company so far as it may be required to enable it to enlarge or change the local area of its operations.

In the instant case, Kingo Ltd manufactures small industrial tools in the urban center but has many customers based in Bifuna municipality, which is a semi-urban area where it has a small manufacturing base. In the next general meeting, the directors intend to have a duly passed resolution to alter the Memorandum of Association, to have a sizeable company hub located in Bifuna municipality, and to have company headquarters there. It is not against the law to relocate and increase size of the company. Therefore, the location of a company hub and headquarters in Bifuna municipality was lawful.

- (ii) Section 71 (1) (e) of the Companies Act 2012 provides that a company limited by shares, if authorized by its Articles of Association, may alter the conditions of its Memorandum of Association by cancelling shares which at the date of the passing of the resolution, have not been taken by any person and diminishing the amount of its share capital by the amount of the shares cancelled.

In this case, the company's Memorandum of Association provided for 1,500 shares but in the directors decided to have only 1,200 shares, by cancelling 300 shares that had not been taken by anyone. They intended to table the matter in the general meeting. When some members scrutinized the company's Articles of Association, it was found that there was no specific reference towards matters concerning such changes in the conditions of the Memorandum of Association. This indicated that there was no authorization by the company Articles of Association to cancel shares, as the directors intended to do. Therefore, the director's intention to cancel 300 company shares was not lawful.

- (iii) Section 77 (2) (a) of the Companies Act 2012 is to the effect that where a proposed reduction of share capital involves diminishing of liability in respect of unpaid share capital and if the court so directs, a creditor of the company who, at the date fixed by the court is entitled to any debt or claim which, would be admissible in proof against the company, is entitled to object to the reduction.

In this case, the directors intend to reduce the share capital of the company so that liability for the unpaid share capital is diminished. Their view was that once a confirming order is secured from court, it would be easy to reduce the share capital in a legally acceptable manner and pave way for better management of the company. However, some company creditors whose claims are almost due, were against this decision, and this is provided for by law. Therefore, the creditors' objection to reduction of the company's share capital was justified.

- (iv) Section 153 (1) of the Companies Act 2012 is to the effect that the books containing minutes of proceedings of any general meeting of a company shall, during business hours be open to the inspection of any member without charge.
- (v) In the instant case, Buuza who was determined to do his own quiet investigations, requested the company Secretary for minutes of proceedings of the previous general meeting. However, he was informed that the directors must first provide for the charge he has to pay before accessing the minutes. This was not in accordance with the provisions of law. Therefore, it was not lawful for Buuza to pay a charge before accessing company minutes.

**(vi) Remedies available to the aggrieved parties:**

- Directors of Kingo Ltd may seek for a court order declaring that the location of a hub and company headquarters in Bifuna municipality was lawful.
- Members of Kingo Ltd may seek for a court order to stop the director's intention to cancel 300 company shares.
- Company creditors may seek for a court order to declare the reduction of the company's share capital unlawful.
- Buuza may seek a court order to declare no charge required to access the minutes.

**SOLUTION 3**

**Issues:**

- (i) Whether the requirement for the estate of Yosef to pay the debt to Pesa Lenders was lawful.
- (ii) Whether the partners were justified to continue working with Musigire instead of Tambula.
- (iii) Whether Nsonga firm was liable to pay Kiki Enterprises.
- (iv) Whether Nsonga firm was liable for Lugendo's death.
- (v) Whether there are any remedies available for the aggrieved parties.



### **Resolution of issues:**

- (i) Section 9 (3) of the Partnerships Act 2010 is to the effect that the estate of a partner who dies, not having been known to the person dealing with the firm to be a partner, is not liable for partnership debts contracted after the date of the death.

In the instant case, Nsonga firm was earmarked to be a supplier of equipment and tools and it borrowed more money from Pesa Lenders after Yosef's death, to enable it meet the high demand. The money was supposed to be repaid within six months but because the Ebola virus was no more, the firm made less profits and failed to pay the debt. This debt was obtained after the death of Yosef. Therefore, the requirement for the estate of Yosef to pay debt to Pesa Lenders was not lawful.

- (ii) Section 25 (1) & (3) of the Trustees Act 2000 provide that a trustee intending to remain out of Uganda for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person the execution or exercise during the trustee's absence from Uganda of all or any trusts, powers and discretions vested in him or her as trustee and, the power of attorney shall be revoked by his/her return.

In this case, Tambula who was a trustee for Yosef's children travelled outside the country for 3 months. He granted a Power of Attorney to Musigire to handle all matters of the trust and he did this so well that when Tambula returned, the partners continued working with Musigire instead of Tambula. This was against the law because Tambula's return automatically revoked Musigire's power of attorney. Therefore, the partners were not justified to continue working with Musigire instead of Tambula.

- (iii) S. 5 (1) of the Partnerships Act 2010 provides that an act or instrument relating to the business of the firm and done or executed in the firm name, or in any other manner showing an intention to bind the firm by any person authorised to bind the firm, whether a partner or not, is binding on the firm and all the partners.

In the instant case, Gongo who was an active partner in getting business for the firm entered into an understanding with Muyambi, to get a supplier of medical syringes for the firm. Muyambi got Kiki Enterprises and the firm bought syringes worth Shs 3 million, through a transaction made by Muyambi with Kiki Enterprises, and a part-payment of Shs 1 million was made. When no more payment was made, Kiki Enterprises demanded payment from Muyambi, who forwarded the demand note to Gongo and Gongo presented the demand note to the firm. However, other partners refused to pay on the grounds that Muyambi was not a partner and the firm could not pay debts that were not incurred by partners.

However, the understanding between Gongo and Muyambi, as well as the transaction between Muyambi and Kiki Enterprises were made in the interest of the firm, with an intention to bind the firm, and the firm made part-payment for the debt. Therefore, Nsonga firm was liable to pay Kiki Enterprises.

- (iv) The law of torts upholds the defense of "Voluntary Assumption of Risk" which is to the effect that a person cannot complain of damages resulting from a risk he/she voluntarily consented to run (*Khimji v Tanga-Mombasa Transport Company, 1962*).
- (v) Furthermore, the defense of voluntary assumption of risk (*volenti non-fit injuria*) is premised on the argument that when a person engages in an activity by which they accept and are aware of the risks inherent in it, they cannot later complain if they sustain an injury during the activity. They also cannot seek compensation for that injury. The idea is that if a plaintiff has assumed the risk, the defendant does not owe any legal duty to the plaintiff (*Acaye v Saracen (Uganda) Limited & 2 others, 2011*)

In the instant case, the firm's truck driver got an accident and escaped without any serious injury when the truck slipped into a river that had burst its banks. The driver had given a lift to Lugendo, and when they got to the swollen river that had spread to the road, the driver hesitated to drive through it. However, Lugendo insisted that they try, since they were in a big truck. As a result of the accident, Lugendo died and his family intends to sue the firm and its driver for liability. Lugendo had known the danger or risk of driving through the water, he had appreciated the danger and voluntarily assumed the risk by insisting that they drive through the water, despite the driver's earlier hesitation to do so. The firm can prove all requirements for this defense. Therefore, Nsonga firm was not liable for Lugendo's death.

**(vi) Remedies available to the aggrieved parties:**

- Yosef's wife may seek for a court order declaring Yosef's estate not liable to pay the debt.
- Tambula may seek for a court order to compel partners to stop working with Musigire.
- Kiki Enterprises may seek for a court order to compel payment by Nsonga firm.
- Nsonga firm may seek for a court order to declare its non-liability for Lugendo's death.

## **SOLUTION 4**

### **Issues:**

- (i) Whether Kwesiga Society's failure to inform the registrar about its new address was justified.
- (ii) Whether the dismissal of Mukozi was lawful.
- (iii) Whether Gamba's refusal to pay Diluz Enterprise was justified.
- (iv) Whether Fandi's refusal to pay Gamba was justified.
- (v) Whether there are any remedies available to the aggrieved parties.

### **Resolution of issues:**

- (i) Section 20 (1) of the Cooperative Societies Act 2020 provides that every registered society shall have a registered address to which notices and communication may be sent and shall send to the registrar notice of every change of address within a month of the change.

Furthermore, section 80 (1) (a) of the Cooperative Societies Act 2020 provides that it shall be an offense under this Act if a registered society or an officer or a member of a registered society fails to do or to allow to be done any act or thing which is required to be done by this Act or by any regulations made under this Act.

In the instant case, Kwesiga cooperative society moved its head office from the city center to Tawuni municipality, which was near the city center. A year passed after moving the society's headquarters but no communication about the new address was given to the registrar of cooperative societies. Despite the request made by Pindo who is one of the members, the management team just laughed at him and told him to mind his other business.

Therefore, Kwesiga Society's failure to inform the registrar about its new address was not justified.

- (ii) Section 75 (f) of the Employment Act 2006 provides that an employee's refusal or proposed refusal to join a labour union shall not constitute a fair reason for dismissal or for the imposition of a disciplinary penalty.

In the instant case, Mukozi refused to join the union which most employees of Nkwesiga Bank subscribed to. He ignored all efforts made by the bank to persuade him to join the union. Following a disciplinary committee session, Mukozi was dismissed on the grounds of failure to comply with workers' conditions of employment. This was against the provision of the law. Therefore, the dismissal of Mukozi was not lawful.

- (iii) Section 22 of the Sale of Goods and Supply of Services Act 2018 provides that where there is a contract for the sale of unascertained goods, property in the goods shall not pass to the buyer until the goods are ascertained.

In this case, Gamba agreed with Diluz Enterprise to supply him with hand-washing machines, which he would resell to his customers. It was agreed that he would make full payment after receiving the machines. When the machines were delivered, Gamba refused to pay on the grounds that the hand-washing machines that were delivered did not match the type demanded by Gamba's customers. Therefore, Gamba's refusal to pay Diluz Enterprise was justified.

- (iv) Section 27 (1) of the Sale of Goods and Supply of Services Act 2018 provides that unless otherwise agreed, goods remain at the seller's risk until the property in the goods is transferred to the buyer.

In this case, Gamba agreed to sell glass materials to Fandi, for use as a raw material to produce various products. After packing and handing them to the transporter, Gamba informed Fandi that his goods were on the way to the agreed destination. An accident happened on the way and the glass materials were damaged. Fandi refused to pay, claiming that he was not supposed to pay for any mishaps on the way and he had to receive materials which he could use, not the damaged materials that Gamba sent. According to law, risk *prima facie* passes with property and the glass materials got damaged before Fandi had received them. Therefore, Fandi's refusal to pay Gamba was justified.

**(v) Remedies available to the aggrieved parties:**

- Nkwesiga bank may seek for a court order to declare it was not liable for Gamba's loss.
- Mukozi may complain to the labour officer for unlawful dismissal.
- Gamba may seek for a court order to declare non-passing of property until ascertained.
- Fandi may seek for a court order to declare that risk cannot pass to him before delivery.

**SOLUTION 5**

**(a) Different ways of endorsing a cheque:**

- (i) *Blank endorsement:* This is where the bill or cheque specifies no endorsee. Its effect is to convert the order bill into a bearer bill. An endorsement in

blank specifies no endorsee, and a bill so endorsed becomes payable to bearer (*S. 33 (1) Bills of Exchange Act, 2000*).

- (ii) *Special endorsement: A special endorsement specifies the person to whom or to whose order the bill is payable. (S. 33 (2) Bills of Exchange Act, 2000).*
- (iii) *Restrictive endorsement: An endorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership of the bill (S. 34 (1) Bills of Exchange Act, 2000).*
- (iv) *Conditional endorsement: Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid whether the condition has been fulfilled or not (S. 32 (1) Bills of Exchange Act, 2000).*

**(b) The different types of agents:**

- (i) **Auctioneer:** This is a person who sells or offers for sale goods of another person where purchasers are the highest bidders. An auctioneer has the authority to receive the purchase price and can sue in his own name. He has possession of the goods to be sold and a lien on the goods for his charges. His role is to be an agent for the seller before the sale but becomes the agent for the purchaser after the sale.
- (ii) **Broker:** This is an agent who bargains and contracts in matters of trade for a compensation called brokerage. A broker has no possession of the goods and consequently no lien on them. He cannot buy or sell in his name and has no authority to sue in his name.
- (iii) **Factor:** This is a mercantile agent with the authority to either sell goods or raise money on the security of the goods. A factor has implied power to sell goods in his name and receive payment for goods sold. He also has a lien on the goods in his possession for all charges and expenses properly incurred in lawful execution of his duties.
- (iv) **Del credere agent:** This is an agent who guarantees due payment of the price of all goods sold by him, in consideration of a higher reward than is usually given. In case a buyer does not pay, the agent pays but he is not liable when a buyer does not accept the goods.
- (v) **Universal agent:** A universal agent is appointed to act for the principal in all matters. This, in many ways, is a general agent, who does anything within the authority given to him.

- (vi) **Special agent:** A special agent is appointed for one particular purpose. His authority is to do that particular act or act in that particular transaction.
- (vii) **Banker:** A banker is an agent when he pays the customer's cheque when he has sufficient funds available in his account.

## **SOLUTION 6**

### **(a) Rules of consideration as provided in the law of contracts:**

- (i) *Consideration must be real*, with some value but need not be adequate (*White v Bluetts, 1853*).
- (ii) *Consideration must not be past*: No past act or forbearance that took place before the promise is made can be taken to be consideration (*Remcardle case, 1951*).
- (iii) *Consideration must move from the promisee*: Only a party to the contract can enforce a promise and a stranger to the consideration cannot sue on a contract, even where it is made for his/her benefit (*Dunlop v Selfridge, 1915*).
- (iv) *Consideration must be in excess of an existing obligation*. A person who has a contractual obligation or duty to perform an act does not give any consideration for a promise to perform that contract (*Foakes v Beer, 1884*).
- (v) *Consideration must be legal*: The consideration must not be prohibited by law or against public policy (*Foster v Driscoll, 1929*).

### **(b) The different sources of law in Uganda:**

- (i) *Constitution*: The constitution of the republic of Uganda 1995 is the supreme law of the land. Where any other law is found with provisions that are in contradiction with the constitution, the constitutional provision takes precedence over that other law.
- (ii) *Legislation*: Legislation or enacted law is made by Parliament. It contains statutes and rules made directly by Parliament or indirectly by delegated legislation made by bodies like local authorities or a minister on behalf of Parliament.
- (iii) *Common law*: This is law originating from English customs and developed by judges using the principle of stare decisis. It now consists of the non-statutory law of England, excluding rules of equity.

- (iv) *Doctrines of equity*: This refers to a set of rules formulated to supplement the rules of common law, in order to remedy defects in common law. Common law was also found to be so rigid and equity was formulated to bring more fairness in the administration of justice. It also provided more remedies for certain wrongs, as common law remedies were not satisfactory.
- (v) *Case law*: This is law contained in judicial decisions, where lower courts follow decisions of higher courts in cases which have similar facts and points of law. The binding part of decisions is that which constitutes reasons for the decisions. Where no applicable legal principles exist, judges create new rules of law to govern the facts before them, thus making future precedents.
- (vi) *Customary law*: Customary law originates from the habitual practices and traditions of people. It is unwritten law and only applies where it is not repugnant to natural justice and morality, and where it is not inconsistent with any written law.
- (vii) *Doctrines of natural justice*: Doctrines of natural justice are used by judicial officers to avoid any bias and to ensure that the right to a fair hearing is upheld. In using the doctrines, in administration of justice, individuals are not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of a case, a fair *opportunity to answer it, and the opportunity to present their own case*. Where a decision affects rights or interests, doctrines of natural justice are used (*Ridge v Baldwin*, 1964).

## TEST PAPER 27 SOLUTIONS

### CPA (U) DECEMBER 2024

#### Issues:

- (i) Whether Hinda was a member of Zizo Ltd.
- (ii) Whether the directors were justified to deny Hinda's attendance of meetings.
- (iii) Whether the auditors were justified not to present a report to the company.
- (iv) Whether Bana and others were justified to seek the registrar's intervention.
- (v) Whether there are remedies available to the aggrieved parties.

#### Resolution of issues:

- (i) Section 47 (1) of the Companies Act 2012 provides that the subscribers to the memorandum of a company shall be taken to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.  
In the instant case, Hinda was one of the four people who incorporated Zizo Ltd and subscribed to its Memorandum and Articles of Association. Therefore, Hinda was a member of Zizo Ltd.
- (ii) Section 141 (a) of the Companies Act 2012 gives general provisions as to meetings, including notices of company meetings to be served on every member of the company in the prescribed manner by the articles of the company or Table A of the Companies Act, 2012.  
In the instant case, the directors had on several occasions held meetings excluding Hinda, on the ground that he had not paid up for the shares allotted to him, thus not considered to be a member who could attend meetings. The non-payment for shares had nothing to do with Hinda's right to receive notice to enable him attend company meetings. Hinda was a member of the company and had a right to receive notices and to attend company meetings. Therefore, the directors were not justified to deny Hinda's attendance of meetings.
- (iii) Section 170 (1) of the Companies Act 2012 requires auditors to make a report to members on the accounts laid before them and on other accounting records in a general meeting.  
In the instant case, Kambura Associates who were auditors of Zizo Ltd, did not present a report on the accounts of the company in the general meeting. The directors and some members were of the opinion that an audit report would be a wastage of time and resources, especially because the company was doing well financially. This was against the law. Therefore, the auditors were not justified not to present a report to the company.
- (iv) Section 174 (b)(iv) of the Companies Act 2012 provides that the registrar shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the registrar directs, if it appears to the registrar that there are circumstances suggesting that its members have not been



given all the information with respect to its affairs which they might reasonably expect, or that it is desirable to do so.

In this case, Bana and other members are of the opinion that the company is not managed well. They are not aware of audit information and feel that the company affairs are not focused to a positive outcome. Bana and other members want the registrar of companies to intervene in the matter, as a way forward. This was in line with the law. Therefore, Bana and others were justified to seek the registrar's intervention.

**(v) Remedies available to the aggrieved parties:**

- Hinda may seek for a court order declaring him as a member of Zizo Ltd.
- Hinda may seek for a court order declaring his right to attend company meetings.
- Members may seek for a court order to compel the auditors to present their report.
- Bana and others may apply for the intervention of the registrar of companies.

**SOLUTION 3**

**Issues:**

- (i) Whether Bayoko's wife and children are justified to remove Zaviyo as trustee.
- (ii) Whether Tadi and Mito are justified to demand for profits from Jono.
- (iii) Whether Betta firm is liable to pay Nim traders.
- (iv) Whether Kakuzi Ltd is liable for the damage of Koma's car.
- (v) Whether there are remedies available to the aggrieved parties.

**Resolution of issues:**

- (i) Section 3 of the Trustees Act 1954 provides that a trustee may invest any trust funds in his or her hands, whether at the time in a state of investment or not.

In this case, Bayoko died and Zaviyo who was Bayoko's trustee invested trust money in the shares of RIV Holdings, a telecommunication company, by buying 3,000 shares. Zaviyo had a duty as a trustee to invest trust funds, where interest or profits could be obtained. His action was within the law. Therefore, Bayoko's wife and children are not justified to remove Zaviyo as trustee.

- (ii) Section 31 of the Partnerships Act 2010 provides that every partner must account to the firm for any benefit derived by him/her without the consent of the other partners from any transaction concerning the partnership, or from any use by him/her of the partnership property, name or business connection.

Furthermore, section 26 (a) of the Partnerships Act 2010 provides that all the partners are entitled to share equally in the capital and profits of the business.

In the instant case, Tadi, Mito and Jono were partners in Tripple Enterprises, which tasked Jono to buy pharmaceutical products for the firm. Unknown to Tadi and

Mito, Jono sold some products to his Somali friend and made profits, later on replacing the pharmaceutical products after the sale. Jono did not account to the other partners the profits he made out of the transaction, as required by law. Therefore, Tadi and Mito are justified to demand for profits from Jono.

- (iii) Section 5 (2) of the Partnership Act 2010 provides that the act of a partner who does any act for the purpose of carrying on the ordinary course of business of the firm binds the firm and his/her partners, unless the partner so acting does not have authority to act for the firm in the particular matter.

In the instant case, Mito partnered with Rau to form Betta firm, which dealt in stationary. Rau purchased goods on credit from Nim Traders, where payment had to be made at the end of the month. When two months elapsed without payment, Nim traders' manager demanded for payment, but Mito told him that he was not aware of any credit supplies and Nim traders' demands were made to the wrong person. Rau's credit purchase was made in the course of business, for Betta firm, and was binding to Betta firm.

Therefore, Betta firm is liable to pay Nim traders.

- (iv) The law of torts provides for vicarious liability of a master for the acts of his employee, whereby an employer is liable for the any tort which his employee commits in the course of his employment.

Furthermore, an employee who in the course of his employment deviates from the authorised route, does not cease to be in the course of his employment (*Nzarirehe v Kagubire, 1968*).

In this case, Ojo a driver of Kakuzi Ltd had to make a delivery but deviated from his usual route, passed by his home, and on the way from his home, he collided with Koma's motor vehicle. Koma's demands from Kakuzi Ltd for funds to repair his vehicle were rejected by the Managing Director, who referred him to Ojo. This was wrong since Ojo was still in the course of his employment.

Therefore, Kakuzi Ltd is liable for the damage of Koma's car.

- (v) Remedies available to the aggrieved parties:
- Zaviyo may seek for a court order to declare intended removal as trustee unlawful.
  - Tadi and Mito may seek for a court order compelling Jono to account for profits.
  - Nim traders may seek for a court order to compel payment by Betta firm.
  - Koma may seek for a court order for payment car repair costs by Kakuzi Ltd.

## **SOLUTION 4**

### **Issues:**

- (i) Whether Wulia was liable to Tuziba for Zabu cooperative society's contract.
- (ii) Whether Rufu was liable to refund Wulia and her husband's money.

- (iii) Whether Tyron was justified to reject the printer and to claim for refund of its price.
- (iv) Whether Potra is liable to refund \$600 to Tyron.
- (v) Whether there are remedies available to the aggrieved parties.

**Resolution of issues:**

- (i) Section 6A (1) provides that a contract which purports to be made on behalf of a cooperative society before the cooperative society is formed, has effect, as one made with the person purporting to act for the cooperative society.  
Furthermore, Section 6A (2) A cooperative society may adopt a pre-incorporation contract with its formation and registration made on its behalf without a need for novation. In this case, Tuziba contracted with Wulia on behalf of Zabu Corporative Society, which was not yet registered. Tuziba entered into the contract believing that the Society was duly registered but when he later issued a demand note for payment, the Society did not pay. The society never adopted the contract entered for it by Wulia. Therefore, Wulia was liable to Tuziba for Zabu cooperative society's contract.

- (ii) Section 15 (2)(b) of the Sale of Goods and Supply of Services Act 2018 provides that there is an implied condition that the goods supplied under a contract are reasonably fit for that purpose, where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the skill or judgement of the seller, whether the seller is the manufacturer or not.

In this case, Wulia and her husband started a tour company and consulted Rufu, a car dealer, and stated that they wanted vehicles which were ideal for touring. Rufu recommended the "Jeep Wrangler" type and relying on the advice, they bought two Jeep Wranglers from Rufu. Shortly after the purchase, the cars proved to be unsuitable for touring, consequent to which, Wulia and her husband returned the vehicles to Rufu, demanding for a refund of their money. This was in line with the law despite Rufu's purported disclaimer in the contract for sale, because there was an implied undertaking in the contract as to quality and fitness for the purpose.

Therefore, Rufu was liable to refund Wulia and her husband's money.

- (iii) Section 22 of the Sale of Goods and Supply of Services Act 2018 provides that where there is a contract for the sale of unascertained goods, property in the goods shall not pass to the buyer until the goods are ascertained.

In the instant case, Wulia contracted for the sale of a printer to Tyron. It was agreed that the printer would be properly assembled and delivered to Tyron by bus. Wulia assembled the printer but it got damaged on the way and Tyron refused to accept it. He instead wanted to recover the price of the printer from Wulia. At

the time of contracting, Tyron had not yet ascertained that the printer was okay, so the property in the goods had not yet passed to him.

Therefore, Tyron was justified reject the printer and to claim for refund of its price.

- (iv) Section 79 of the Bills of Exchange Act 2000 provides that where the banker on whom a crossed cheque is drawn, in good faith and without negligence, pays it, if crossed generally, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner of the cheque.

Furthermore, Section 80 of the Bills of Exchange Act 2000 provides that where a person takes a crossed cheque which bears on it the words "not negotiable", he/she shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he or she took it had.

In this case, Tyron drew a cheque in blank and crossed it with the words "Not negotiable." His daughter (Migo) who was supposed to fill in the amount payable and the drawee as Halisi Bank Limited, inserted an amount of \$600 instead of \$200. She delivered the cheque to Potra as payee, in payment of a personal debt. As provided by law, Potra could not get a better title to the cheque from Migo, who had falsely filled the details of the cheque. Halisi Bank had also paid in good faith, and could not be responsible for the loss. It was Potra who never got good title to the cheque. Therefore, Potra is liable to refund \$600 to Tyron.

**(v) Remedies available to the aggrieved parties the parties:**

- Tuziba may seek for a court order to compel Wulia to pay for the society contract.
- Wulia and husband may seek for a court order for Rufu's refund of their money.
- Tyron may seek for a court order for a refund of the printer price from Wulia.
- Tyron may seek for a court order to compel Potra to refund his \$600.

## **SOLUTION 5**

**(a) Ways in which a principal-agent relationship may be created:**

- (i) *Express agreement:* This can be done either by spoken or written appointment, or partly orally and partly in writing (*S.122 (2) Contracts Act, 2010*).

An example is the grant of a power of Attorney.

- (ii) *Implied:* The principal-agent relationship may be inferred from circumstances and conduct of the parties (*S.122 (2) Contracts Act, 2010*).

- (iii) *Ratification:* An agency relationship may be created where an act is done by one person on behalf of another but without the knowledge or authority of that other person, the person on whose behalf the act is done may ratify or disown the act (*S. 130 (1) Contracts Act, 2010*).

The person who adopts the transaction is the principal and the transaction is treated as if he had initially authorized it.

- (iv) *Necessity*: A principal-agent relationship may be created in an emergency, where an agent has authority to do any act for the purpose of protecting a principal from loss, as would be done by a person of ordinary prudence, under similar circumstances (*S.124 Contracts Act, 2010*).

This may arise in commercial or domestic matters. At common law, a person, may do certain things in relation to perishable goods, as if he had been expressly authorized to do so by the owner.

- (v) *Marriage or cohabitation*: Under common law a wife can pledge husband's credit for necessities, suitable to her husband's station in life (*Nanyuki General trading stores v Mrs. Peterson, 1948*).

In such a case, the husband has to pay for the goods as if he had expressly told the wife to take them on credit.

- (vi) *Estoppel*: This principal-agent relationship occurs where a man is under a legal duty to disclose some fact to another and he does not do so, the other is entitled to assume the non-existence of the fact (*Spiro v Lintern, 1973*).

This implies that a person who is under a legal duty to inform a third party that the person purporting to for him as his agent is in fact not his agent but fails to do so, may be estopped from saying that the apparent agent is not his agent

**(b) Permitted deductions from an employee's remuneration, as provided by the Employment Act, 2006:**

Section 46 of the Employment Act 2006 provides for the permitted deductions from an employee's remuneration. These are as follows:

- (i) *Tax, rates, subscriptions or contribution*: Where the law imposes deduction of an amount in respect of any tax, rate, subscription or contribution, it will be a permitted deduction from the employee's remuneration (*S.46 (1) (a) Employment Act, 2006*).
- (ii) *Provident or pension fund or scheme*: Where an employee gives his/her written consent to a deduction being made in respect of any amount representing a contribution to any provident or pension fund or scheme established or maintained by the employer or some other person, it will be a permitted deduction remuneration (*S.46 (1) (b) Employment Act, 2006*).
- (iii) *Rent or accommodation charge by employer*: Where an employer provides accommodation or housing by way of reasonable rent to the employee or the employee's family, and the employee has agreed to such deduction, it is considered to be a permitted deduction (*S.46 (1) (c) Employment Act, 2006*).

- (iv) *Union dues:* It is permitted for an employer to deduct union dues where an employee is a member of such union (*S.46 (1) (d) Employment Act, 2006*).
- (v) *Attachment by operation of law:* An employer is permitted to deduct an amount of money from the employee's wages as an attachment by operation of law, provided that any such attachment shall not be more than two-thirds of all remuneration due in respect of that pay period (*S.46(3) Employment Act, 2006*).

## **SOLUTION 6**

### **(a) Circumstances under which a contract may be rendered void:**

- (i) *Lack or failure of consideration:* An agreement or a contract which is made without consideration is void (*S. 20(1) Contracts Act, 2010*).  
A contract must be an agreement made with the free consent of parties, so that it can be legally binding (*S. 10(1) Contracts Act, 2010*).
- (ii) *Agreement in restraint of profession or trade:* An agreement which restrains a person from exercising a lawful profession, trade or business of any kind, is to that extent void, unless the restraint is reasonable in respect to the interests of the parties concerned and in respect to the interests of the public. (*S. 21(1) Contracts Act, 2010*).
- (iii) *Agreement in restraint of legal proceedings:* Any agreement which restricts a party absolutely, from enforcing his/her rights in respect of a contract, by legal proceedings or which limits the time within which the party may enforce his or her rights is void to that extent (*S. 22 (1) Contracts Act, 2010*).
- (iv) *Uncertainty:* An agreement, the meaning of which is not certain or capable of being made certain, is void (*S. 23 Contracts Act, 2010*).
- (v) *Agreement by way of wager:* An agreement made by way of an unlicensed wager is void, whereby "wager" means a promise to pay money or other consideration on the occurrence of an uncertain event (*S. 24 (1) & (2) Contracts Act, 2010*).
- (vi) *Agreement to do impossible act:* Where an agreement is to do an act which is impossible to perform, such agreement is void. A contract becomes void, where the contract is to do an act which, after the contract is made, becomes impossible or

unlawful or which by reason of an event which the promisor could not prevent, becomes impossible or unlawful (*S. 25 (1) & (2) Contracts Act, 2010*). An act shall be taken to be impossible of performance if in law or the course of nature, no person can do or perform it (*S. 25 (4) Contracts Act, 2010*).

(vii) *Reciprocal promise to do legal and illegal acts*: Where a person makes a reciprocal promise, first to do a certain thing which is legal, and then under specified circumstances, to do a certain thing which is illegal, the promise to do the legal thing shall be a contract but the promise to do an illegal thing shall be a void agreement (*S. 26 Contracts Act, 2010*).

(viii) *Alternative promise, one part being illegal*: Where an alternative promise is made, where one part is legal and the other part illegal, only the legal part may be enforced, while the illegal part will be void (*S. 27 Contracts Act, 2010*).

**(b) Distinction of civil law from criminal law:**

- (i) *Purpose*: Criminal law is designed to protect the state's welfare from actions deemed threatening or harmful to its overall safety, while civil is primarily concerned with the violation of private rights in a community or society.
- (ii) *Parties*: Whereas the parties in a criminal law case are the state against an accused person, the parties in a civil suit are the plaintiff against the defendant.
- (iii) *Remedies*: Criminal law punishes the offender by imprisonment, fine, etc. while civil law mainly compensates the plaintiff or restores him as much as possible to the desired state, by use of damages, injunctions or specific performance of obligations.
- (iv) *Standard of proof*: The standard of proof in criminal law is beyond any reasonable doubt, while the standard in civil cases is based on a balance of probabilities.
- (v) *Burden of proof*: In criminal cases prosecution must prove that the accused person is guilty. On the other hand, the burden of proof in civil cases rests on the plaintiff, to prove that the defendant violated a right.