

**NOVEMBER 2020 PROFESSIONAL EXAMINATIONS  
BUSINESS AND CORPORATE LAW (PAPER 1.3)  
CHIEF EXAMINER'S REPORT, QUESTIONS AND MARKING SCHEME**

**EXAMINER'S GENERAL COMMENTS**

Given that the learning material for the Institute was available, the Examiner was expecting candidates to perform better in this examination than the previous diet but there was rather a drop from 39.49% to 34.13%.

**STANDARD OF THE PAPER**

The standard of the paper was same as the previous diet in terms of the depth of answers required. The questions were well spread over the syllabus and each question had weights equivalent to the requirements of the syllabus. There was no typographical mistake or errors in the paper. The marks allocated to the questions were fair and there were no corrections made during the coordination.

**PERFORMANCE OF CANDIDATES**

The general performance of candidates was poor compared to previous sittings. The likely reason for the poor performance include the following:

- Unpreparedness of candidates.
- Many candidates were not conversant with the new Companies Act and its requirements in questions 2, 3 and 5.
- Another difficulty was that some candidates found it difficult to analyze cases and also were not familiar with formats for answering scenario cases. Even though there were no marks allocated for formatting of such answers. Candidates will gain more points and consider all the issues in the case if they present a structured answer.
- Some candidates were probably learning only some topics for the examination and this paper was well spread across the entire syllabus.
- Most of those who attempted Question 5 had very high marks because the mark allocation for that question was favorable but this question was not answered by quite a number of candidates.

**NOTABLE STRENGTHS & WEAKNESS OF CANDIDATES**

**Strengths**

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

**Weaknesses**

Many candidates performed poorly in answering the company's law questions. They could not fully comprehend some of the areas such as variation of class rights, prohibited transaction in shares etc, and it was a reflection of their low performance in those areas. Company Law questions cover 45% of the entire examination and must be taken seriously.

The fact that some questions were not attempted was not good enough. Candidates should be encouraged to practice and attempt all the questions to the best of their ability instead of answering part of a question very well and leaving the rest unanswered.

The use of wrong tenses and grammatical errors by candidates continue to be an issue. The overall implication of the issues above is the lower performance recorded as compared to the previous diet.

## QUESTION ONE

- a) Abaabase Ltd, a printing company located on the Main Campus of the University for Development Hohoe, employed Kweku Ofori as a new store keeper with HND Purchasing & Supply qualification in January 2017. He started very well but because the controls were deficient, he was able to steal GH¢28,500 worth of paper and cartridge for his private photocopying business which is run on the same University Campus. After an audit exercise, this deal was discovered and the Chief Executive Officer has directed that the company takes both civil and criminal action against Kweku Ofori. Courts impose punishment on convicts according to their respective jurisdictions.

**Required:**

- i) As a Business Law Student, the Chief Executive Officer has asked you to advise him on the appropriate court in which this case can be filed and why? **(4 marks)**
- ii) Which courts constitute the Superior Courts and what are their unique features? **(6 marks)**
- b) Workers of KAK DEE Ltd, embarked on a strike action in support of a strike action embarked upon by A&T Industrial Ltd. The workers of A&T Industrial Ltd declared the strike action after Management of their company ignored their demands for improved COVID-19 safety measures, among other demands. Workers of KAK DEE Ltd, in their solidarity action, stated that the conditions under which they also work were similar to those for which workers of A&T Industrial Ltd work and thus embarked upon the strike action.

Prior to the decision to resort to an industrial action, the leaders of the workers union of A&T Industrial Ltd orally told management of the company that they were proceeding with the industrial strike. The parties failed to agree to refer the dispute to voluntary arbitration, as provided in the conditions of service of employees resulting in the workers of A&T Industrial Ltd going ahead with the industrial action.

**Required:**

Explain whether the strike action resorted to by the workers of KAK DEE Ltd and A&T Industrial Ltd were justified. **(10 marks)**

**(Total: 20 marks)**

## QUESTION TWO

- a) P&Q Company, an incorporated non-governmental organization has been formed with the object of greening the environment and sponsoring deprived children to go to school up to Junior High School level. In the course of operation, the key officers of the company took a decision that the company goes into salt mining without reference to the office of the Registrar-General.

Under this new arrangement, huge profits were made, the Board of Directors was reconstituted and unexpected debts were incurred. In doing so, the 17 year old daughter of the Executive Director known as the whiz-kid in financial matters, became a Board member. The Registrar of Companies has been alerted on the happenings at the company.

**Required:**

From the legal perspective;

- i) Analyze the new arrangement and give reasons if any, why the officers and P&Q Company will be liable. **(5 marks)**
  - ii) What are the likely actions to be taken by the Registrar-General in the circumstance of this case? **(5 marks)**
- b) State **TWO (2)** prohibited transactions in shares under section 56(1) of the Companies Act, 1963 ACT 179 where a company limited by shares is prohibited from transacting in its shares. **(4 marks)**
- c) A loan taken by a company limited by shares may or may not be secured by a charge.

**Required:**

Explain the following:

- i) A fixed charge
  - ii) A bond **(6 marks)**
- (Total: 20 marks)**

**QUESTION THREE**

- a) Identify **TWO (2)** processes required to vary the class rights of shareholders without the sanction of the Court. **(4 marks)**
- b) Explain the term amalgamation as used in company law. **(3 marks)**
- c) Briefly explain take-over in relation to a company. **(3 marks)**
- d) Asamoah is a board member of Darling Company Ltd, a limited liability company with 5% shareholding by the Ghana Government. Asamoah was appointed to the board three years ago by the Founder/Executive Chairman. Kofi Mintah the Founder/Executive Chairman, and majority shareholder of the company in accordance with the regulations, shall appoint five of the nine-member board. Two of the board members represent workers groups and the other two come from other shareholders including the government. Asamoah consented in writing to his appointment but the Minister of Information just announced the revocation of Asamoah's appointment to the board. Kofi Mintah called Asamoah to inform him that the government's announcement was null and void and should be ignored.

**Required:**

- i) Explain whether the Minister of Information was justified in nullifying the appointment of Asamoah. **(6 marks)**
  - ii) What **TWO (2)** remedies, if any, are available to Asamoah in the circumstance of the case? **(4 marks)**
- (Total: 20 marks)**

#### QUESTION FOUR

- a) Osrodo Leather Co. Ltd used a solvent in their tanning business. The solvent escaped from beneath the works and eventually filtered into the water supply, polluting Adade Water Co. Ltd's dam. Adade Water Co. Ltd was forced to abandon the dam to develop new water supplies. Consequently Adade Water Co. Ltd took legal action against Osrodo Leather Co. Ltd.

**Required:**

Briefly explain the chances of Adade Water Co. Ltd, in the light of the Rule in Rylands Vrs Fletcher. **(8 marks)**

- b) A Company known as Asempa Quarry Ltd, invited tenders for the supply of 2000 bulldozers to be delivered within seven months. Maxwell put in a tender intimating that he is prepared to supply the bulldozers at fifty thousand Ghana Cedis (GH¢ 50,000.00). The company accepted the tender by a letter, and subsequently gave various orders which were executed by Maxwell. The Director of Finance claims there is no valid agreement to support the payments.

**Required:**

- i) State briefly the legal effect of the company's actions. **(6 marks)**
- ii) The maxim "Caveat Emptor" and "Caveat Venditor" sounds a note of caution to contracting parties. State **THREE (3)** things that are required of a wary contracting party.

**(6 marks)**

**(Total: 20 marks)**

#### QUESTION FIVE

- a) Explain briefly, whether a share qualification is part of the necessary prerequisites for the appointment as director in a company. **(5 marks)**
- b) What **TWO (2)** conditions apply where the regulations of a company require share qualification? **(10 marks)**
- c) Explain whether consideration is always a requirement for a contract to be valid? **(5 marks)**

**(Total: 20 marks)**

## SOLUTION TO QUESTIONS

### QUESTION ONE

a)

- i) The court to seek redress on the matter of Abaabase Ltd is the Circuit Court which has a maximum amount within its jurisdiction is GH¢50,000 as compared to the District Court which has GH¢20,000 as its limit.

(4 marks)

- ii) The Ghanaian court system and the Judiciary comprise both the Superior Courts of Judicature and the Lower Courts.

The Superior Courts in descending order are as follows:

- The Supreme Court
- The Appeal Court
- The High Court
- The Regional Tribunal
- Lower Courts
- The Circuit Court
- The District Court
- Juvenile Court
- National House of Chiefs
- Regional House of Chiefs
- Traditional Council

(Any 6 points for 6 marks)

- b) **Section 159** of the Labour Act, 2003, Act 651 states as follows:

“Where,

(a) *the parties fail to agree to refer the dispute to voluntary arbitration, or*

(b) *the dispute remains unresolved at the end of the arbitration proceedings,*

*either parties intending to take strike action or institute lock out, shall give written notice of this this to the other party and the Commission, within seven(7) days after failure to agree to refer the dispute to voluntary arbitration or the termination of the proceedings”*

**Section 168(1) of Part XIX** headed **STRIKES**, and with a subheading, **Illegal strike or lockout**: states as follows:

“ (1) *Subject to sections 159 and 160, a strike or lockout is legal if it is in sympathy with or in support of a strike action taken by another worker or group of workers against their employer on account of an industrial dispute with the employer”*

In the scenario in the question, the industrial action embarked upon by the workers of KAK DEE Ltd, in solidarity with the one embarked upon by the workers of A&T Industrial Ltd, is not illegal in itself in terms of section **168(I) of the Act 651**, which is subject to **Section 159**. (1 mark)

- However, the strike action embarked upon by workers of A&T industrial Ltd was in breach of Section 159 of Act 651.
- By the terms of Section 159 of Act 651, the workers of A&T industrial Ltd were required to give a seven (7)-day written notice to their employers and the National Labour Commission before embarking on the said industrial action, particularly, in a situation where the parties

had failed to agree to refer the dispute to voluntary arbitration.

(2marks)

- In the instant case, the workers of A&T Industrial Ltd, **ORALLY** told the management of the company that they were proceeding with the industrial action. The workers did not also notify the National Labour Commission in writing as required by Section 159(1) of Act 651. The strike action embarked upon by the workers of A&T Industrial Ltd was, therefore, illegal in terms of Section 159(1) of Act 651.

(2 marks)

- **Section 168(1) of Act 651** makes the action of KAK DEE Ltd in solidarity with the workers of A&T Industrial Ltd, who also have similar grievances, legal only to the extent that it does not offend **Section 159 of Act 651**.

(2 marks)

- In view of the fact that the action for which the workers of KAK DEE Ltd solidarized with the workers of A&T Industrial Ltd, was not legal, the strike action and the lock-out were also illegal. Therefore, the action of the workers of the KAK DEE Ltd and A&T Industrial Ltd was not justified in law.

(3 marks)

(Total: 20 marks)

### EXAMINER'S COMMENTS

The a) part of the question required candidates to discuss an appropriate court in which a civil case to the tune of GH¢28,500 could be heard. This has to do with the jurisdiction of courts. The Circuit Court has a maximum amount GH¢50,000 within its jurisdiction as compared to the District Court which has GH¢20,000 as its limit. The courts in which this suit can be filed are the Circuit Court or the High Court.

Also candidates were to mention the courts that constitute the Superior Courts and state their unique features. This was a straightforward question. Many candidates answered this question satisfactorily and highlighted the role of each of the Courts as follows:

- The Supreme Court
- The Court of Appeal and
- The High Court and
- The Regional Tribunal

Even though the Regional Tribunal is no more in use, the constitutional provision has not been amended and thus it remains part of the Superior Court.

For the b) part of the question, most candidates came to the right conclusion without supporting it with sufficient authority or bases. The conclusions made were fair, but several candidates were not familiar with Section 159 of the Labour Act, 2003, Act 651 which states as follows:

*"Where,*

*(a) the parties fail to agree to refer the dispute to voluntary arbitration, or*

*(b) the dispute remains unresolved at the end of the arbitration proceedings,*

*either parties intending to take strike action or institute lock out, shall give written notice of this to the other party and the Commission, within seven (7) days after failure to agree to refer the dispute to voluntary arbitration or the termination of the proceedings"*

A few of the candidates correctly raised the point that the workers of A&T industrial Ltd were required to give a seven (7)-day written notice to their employers and the National Labour Commission before embarking on the said industrial action, particularly, in a situation where the parties had failed to agree to refer the dispute to voluntary arbitration.

## **QUESTION TWO**

a)

i) Reasons the officers and P&Q Company should be punished.

Sections 10 and 182 of the Companies Act, 1963 ACT 179 provide the sources for answering the question.

- The first part of the case is applicable to an incorporated company limited by guarantee. **(1 mark)**
- Section 10 of ACT 179 provides that a company limited by guarantee shall not be incorporated with the object of carrying on business for the purpose of making profits. **(1 marks)**
- Where a company limited by guarantee carries on business of making profit, the officers and members of the company who are cognizant of the fact that it is so carrying on business are jointly and severally liable for the payment and discharge of the debts and liabilities of the company incurred in carrying on that business and the company and those officers are each liable to a fine. Thus the company and their key officers will be subject to a fine with the key officers additionally bearing the debts incurred. **(3 marks)**

ii) Likely actions to be taken by the Registrar-General

- Section 182 of ACT 179 provides for certain categories of persons who are incompetent to serve on Board of incorporated. One of such persons is a minor. Any of such persons caught in violation of the section is liable on conviction to a fine or imprisonment. **(2 marks)**
- The 17 years old daughter is a minor under the laws of Ghana. She is therefore, caught under section 182 and is incompetent to serve on the Board. The Registrar of Companies will proceed on criminal matter against the 17 year old. The company and every director will be also subject to be fined. **(3 marks)**

b) Section 56 (1) prohibits transaction in shares by the company as follows:

- Alter the number of its shares.
- Alter the amount remaining payable on those shares.
- Release a shareholder or a former shareholder from a liability on the shares.
- Provide financial assistance, directly or indirectly for the subscription or purchase of its shares or the shares of its holding company.
- Acquire by way of purchase or otherwise any of its issued shares or any shares of its holding company.



**(Any 2 points for 2 marks each)**

**(4 marks)**

c)

i) Section 86 (2) of ACT 179 provides that debentures may be secured by a fixed charge on certain of the company's property. Once the property is subject to the fixed charge, the company cannot dispose of it without reference to the debenture holders. The asset subject to fixed charge is bare land, a building, a vehicle, plant machinery or equipment. Enforceability of a fixed charge allows the court to appoint a receiver-Section 87(5) of ACT 179. **(3 marks)**

ii) A bond is a written instrument to pay money or do some act if certain circumstances occur or a certain time elapses. The distinguishing feature of a bond is that it an obligation to pay a fixed sum of money, at a definite time with a stated interest. **(3 marks)**

**(Total: 20 marks)**

### **EXAMINER'S COMMENTS**

In analyzing the new arrangement by P&Q Company, most candidates did not raise adequate points to earn the full marks. Candidates were expected to understand and explain that where a company limited by guarantee carries on business of making profit, the officers and members of the company who are cognizant of this fact are jointly and severally liable. The company and their key officers will be subject to a fine and the key officers will additionally bear the debts incurred in carrying on that profit-making business. Further, the 17 years old daughter of the Executive Director is a minor under the laws of Ghana and does not qualify to be a director as was suggested in the case.

Also, most candidates did not have any idea on the prohibited transaction in shares by companies which includes alteration of the number of its shares; alteration of the amount remaining payable on those shares; release a shareholder or a former shareholder from a liability on the shares; provision of financial assistance, directly or indirectly for the subscription or purchase of its shares or the shares of its holding company and acquire by way of purchase or otherwise any of its issued shares or any shares of its holding company.

### **QUESTION THREE**

a)

- By a special resolution to alter the company's Regulations to insert provisions regarding the variations of the rights of a class or to modify the terms of those provisions.
- The alteration shall require the prior written consent of the holders of at least three-fourths of the issued shares of each class
- The sanction of a special resolution of holders of the shares of each class.

**(2 points for 2 marks each)**

**(4 marks)**

b) Amalgamation means a merger of the undertakings or a part of the undertakings of two or more companies or of the undertakings or part of the undertakings of one or more companies and one or more bodies corporate. **(3 marks)**

c) A take-over occurs when all or the majority shares of a company are acquired by another natural or corporate person. The natural person or corporate entity that acquires the shares then has control over appointments to the Board of Directors and to management positions.

Instances of take-overs in Ghana are 1) transfer of majority shares and control of 70% Ghana Telecom Ltd to Vodafone Ltd of UK; Total Ghana Ltd acquired controlling interest of Mobil Ghana Ltd and took over its assets including the Mobil House in Accra. **(3 marks)**

d)

i) Darling Company Case

- The Regulations of a company may provide for the appointment of a director or directors by a class of shareholders, debenture holders, creditors, employees or any other person.
- The regulations registered is a contract under seal and binds all members, officers and the company until amended. (Cf. Sec 21 of Act 179)
- So far as Darling Company regulations gives Kofi Mintah the right to appoint five directors including Asamoah, then Asamoah's directorship cannot be revoked by government.
- Government has no sole authority under the regulations to dissolve the BOD or appoint or remove any BOD member except those that nominations made by government.
- Government's right over appointment or removal of directors can only be exercised with other shareholders regarding the two slots allocated to them by the regulations.
- A person shall not be appointed a director of a company unless that person has, prior to the appointment, consented in writing to be appointed.
- By giving a written acceptance on his appointment, Asamoah's appointment complied with both Sec 181 of Act 179 and Darling's regulations.
- Sec 185 provides for removal of directors which excludes announcement by government.
- In accordance with Section 185, a company may by ordinary resolution at a general meeting remove from office all or any of the directors despite anything in its Regulations or in an agreement with the director. A resolution to remove a director shall not be moved at a general meeting unless notice of the intention to move it has been given to the company not less than thirty-five days before the meeting at which it is to be moved.
- Asamoah can resign, be removed, vacate his position if he becomes incompetent in any way under the Act (e.g., insane etc) or under the regulations (e.g. director's share qualification, if required).
- Asamoah and Kofi Mintah can enforce their rights if the government persist.

- Sec 324 of Act 179 provides that if legal proceedings are instituted by a person, that person shall sue in a representative capacity on behalf of that person and any other members of a class.
- Asamoah should believe Kofi Mintah as the government announcement is null and void and should be ignored.

**(4 points for 1.5 marks each)**

**(6 marks)**

ii)

- Asamoah can resign, be removed, vacate his position if he becomes incompetent in any way under the Act (e.g., insane etc) or under the regulations (e.g. director's share qualification, if required). Since his competence is not being challenged, Asamoah and Kofi Mintah can enforce their rights if the government persist.
- Asamoah should believe Kofi Mintah as the government announcement is null and void and cannot be effective since procedurally his appointment has not been terminated as a director. The directive should therefore be ignored.
- Sec 324 of Act 179 provides that if legal proceedings are instituted by a person, that person shall sue in a representative capacity and on behalf of any other members of that class. A court action for *Prohibitio* can be also be sought by Kofi Mintah to stop the government from further attempts to unilaterally remove Asamoah as a Director.
- Asamoah remains a director and can seek redress in court to nullify the government's announcement.

**(2 points for 2 marks each)**

**(4 marks)**

**(Total: 20 marks)**

### EXAMINER'S COMMENTS

The most popular answers in this question were on 3b) and 3c) where straightforward answers were given by candidates on both Amalgamation and Takeover. Many candidates also had a clear understanding that a special resolution of at least three-fourth vote of members is required to alter the company's regulations and to vary the rights of a class.

In the last part of question 3, candidates failed to make reference to the Companies Act on appointment of a director(s) by a class of shareholders, debenture holders, creditors, employees or any other person. Candidates also missed the opportunity to discuss procedures for the removal of a director. This involves resolution to remove a director which was not moved at a general meeting, notice of the intention to move it has been given to the company not less than thirty-five days before the meeting at which it is to be moved.

## QUESTION FOUR

a) The rule in **Rylands Vrs Fletcher (1868)** was stated by House of Lords in the following terms.

*“where a person for his own purposes bring and keeps on land his occupation anything likely to do mischief if it escapes, he must keep it at his peril, and if he fails to do so, he is liable for all damages naturally occurring from the escape”.*

- In the instant case, there was escape of the solvent from the container being used by Osrodo Leather Co. Ltd and that the solvent finally percolated into the water supply run by Adade Water Co. Ltd.
- However, the issue that would make the Rule applicable in the instant case is whether the Osrodo Leather CO. Ltd could not reasonably have foreseen that the spillage or solvent over time would contaminate the water supply.
- It is to be noted that to make the Rule fully applicable, there should be a essential requirement of foreseeability, apart from the fact that there must be an escape of a thing that inflicts injury from a place over which the alleged tort feasor has occupation.
- In the instant case Osrobo leather Co. Ltd could not have reasonably foreseen that the spillage of the solvent over time would contaminate the water supply.
- In the circumstance of this case, the legal action taken by Adade Water Ltd to claim compensation under the Rule in **Rylands Vrs Fletcher**, will not succeed. It may be said that the strict liability for the escape only arises if Osrodo Leather Co. Ltd have foreseen that the escape solvent might cause damage.
- From the facts, there is no such evidence of foreseeability on the part of Osrobo Leather Co. Ltd.

**(4 points for 2 marks each)**

**(8 marks)**

b)

i)

- Acceptance in the Law of Contract follows an offer, which is a proposal by one party to the other by which he/she promises or undertakes to do or give (or forbid from doing or giving something if the other party also does or gives a specific thing). Acceptance, therefore, is assenting to the offeror’s proposal
- In the instant case, the Assempa Quarry, invited tenders, which are valid and sufficient offer of performance, for the supply of a specific quantity of bulldozers to be delivered within seven (7) months.
- The issue that ought to be determined is whether the acceptance of Asempa Quarry Ltd, is an acceptance in the legal sense so as to produce a binding contract.
- There is no doubt that the tender is an offer. The Company stated that it would specifically require 2000 bulldozers and these are to be delivered in seven(7) months.
- Therefore, the Assempa Quarry’s acceptance of the tender is an acceptance in law, and, therefore, creates an obligation for the company.
- Maxwell is, therefore, bound to deliver, while the Assempa Quarry Ltd, is bound to accept any quantities delivered by Maxwell in any manner in seven (7) months.

- That acceptance of Assempa Quarry Ltd, to the offer in its legal sense is complete as soon as requisition for a definite quantity of bulldozers is made. The contract is sufficiently certain to be enforced.

**(6 marks)**

ii)

- Caveat Emptor means “let the buyer beware”. It is applied to resolve disputes related to goods, services and property. According to this principle, onus is placed on the consumers, to carry out due diligence and the seller is not liable for any product which is damaged, defective or does not meet the expectations of the buyer.
- Sarkodie-Addo JSC in *Ansah v Joe* (1961) GLR 395 – 401 explained the maxim as follows: “A purchaser must look out for himself: caveat emptor. He must take precautions for his own protection - if he does not he "asks for it" and cannot complain if he "gets it".”
- Caveat Venditor means “let the seller beware”, which imposes a greater responsibility on the sellers themselves for the goods and services that they sell. It suggests that there is an implied warranty existing in each product against defect and the buyer need not perform due diligence to check the quality of such products. The onus is now on the sellers to make sure the buyer makes a reasonably informed choice and to compensate for defective products.
- This maxim has been modified by statute: Section 13 of the Sale of Goods Act, 1962, Act 137. The law brings in contrast the maxim; caveat venditor which is ‘Let the Seller Beware’. Here, the duty is cast on both the seller and the buyer to be cautious or careful.
- Section 13 provides that the law does not provide any implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied. However, there is an implied condition in a particular contract that the goods are free from defects which are not declared or known to the buyer before or at the time when the contract is made or that the seller expressly provides for a warranty or condition.
- The import is that buyers would always have to be on the lookout because the law does not provide automatic protection. The buyer has to make known everything he/she requires in clear terms before the conclusion of the contract. Also, the buyer must make sure he/she is making the purchase from the right source, especially where it is verifiable.

**(3 points for 2 marks each)**

**(6 marks)**

**(Total: 20 marks)**

### EXAMINER’S COMMENTS

Candidates generally did not perform well in answering this question as they displayed their poor appreciation of law of tort. Some candidates were clear with the rule in *Rylands Vrs Fletcher* which provides that “*where a person for his own purposes bring and keeps on land his occupation anything likely to do mischief if it escapes, he must keep it at his peril, and if he fails to do so, he is liable for all damages naturally occurring from the escape*”. However, many candidates failed to raise the point that the conditions for the application of this rule did not fully apply to *Osrobo leather Co. Ltd* because it could not have reasonably foreseen that the spillage of the solvent over time would contaminate the water supply.

The meaning of caveat venditor and caveat emptor were mixed up by some candidates. Caveat Venditor means “let the seller beware”, which imposes a greater responsibility on the sellers themselves for the goods and services that they sell. Caveat Emptor means “let the buyer beware”. It is applied to resolve disputes related to goods, services and property and the import is that buyers would always have to be on the lookout because the law does not provide automatic protection. Most candidates who tried performed well because the question required short straight forward answers but some were not confident in their explanations.

## QUESTION FIVE

- a) Reference is to be made to Section 183(1) of Act 179. The said section states that, unless the company’s Regulations otherwise provide, it is not necessary for a director to be a member of a company or to hold shares therein, as a qualification for his appointment. **(5 marks)**
- b)
- Where the Regulations require share qualification every director must obtain the specified shares qualification within two (2) months after his appointment or within such shorter period as may be fixed by the Regulation. If he fails to do so or after the expiration of that period he ceases to hold his qualification. **(5 marks)**
  - If a Company at any time amends its Regulations so as to introduce or increase the requirement of a share qualification, every director holding at the date of such alteration shall have two(2) months, thereafter, to obtain his qualification and shall not vacate his Office unless he fail to do so. **(5 marks)**
- c)
- Consideration in the law of contract may consist of some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other. **(3marks)**
  - Consideration is always a requirement to make a contract valid and enforceable. Consideration must be present in all contractual relationships. **(2 marks)**
- (Total: 20 marks)**

## EXAMINER’S COMMENTS

The first part of question five was missed by most of the candidates but a few rightly stated that is not a necessary condition for a director to be a member of a company or for him/her to hold shares as a qualification for appointment. However, where the Constitution requires share qualification, every director must obtain the specified shares qualification within two (2) months after his appointment or within such shorter period as may be fixed by the Constitution.

The c) part of question five was the most popular in the entire examination. Candidates gave their best in explaining consideration as a fundamental requirement to make a contract valid and enforceable.

## **CONCLUSION**

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

- Candidates should be examined on frustration of contract as this is a major risk to businesses amidst the COVID-19 pandemic.
- Candidates should also be examined on partnership arrangements and problems associated with such businesses.
- The rotation of auditors has been a topic that affects many firms and businesses, candidates should be examined on the relevance of this to private companies.
- Companies Act constitutes 45% of the entire examination and candidates should be encouraged to learn that area thoroughly. This law is very related and applicable to Accountant's field of work and should be taken serious. If possible an intervention on this area of law should be carried out for candidates.
- The Institute should encourage candidates to familiarize themselves with the learning materials on Business and Corporate Law. This material provides an overview and details of the entire syllabus and should also be used to guide the Examiners in setting questions so that the suggested solutions could be easily referenced from the book.