

**MARCH 2024 PROFESSIONAL EXAMINATIONS
BUSINESS & CORPORATE LAW (PAPER 1.3)
QUESTIONS AND MARKING SCHEME**

QUESTION ONE

- a) Ten members of a club (Agro Club), trespassed on a piece of land belonging to a public school. The club erected a wooden structure on the land in which they were residing. When the school authorities noticed their presence, they were then asked to vacate the land, but they defied the warning. The school authorities served written notice on them to remove the structure they have erected on the land, and vacate same within five days or risked their structure being demolished. The club decided to take legal action against the school authorities in the Supreme Court.

Required:

Explain whether Agro Club will succeed in their court action. **(5 marks)**

- b) State the courts in Ghana that have appellate jurisdiction. **(3 marks)**
- c) “All the Courts in Ghana have jurisdiction in matters relating to the fundamental Human Rights of every citizen”

Required:

Explain if the above is a true or false statement in terms of the provisions of the 1992 Constitution of the Republic of Ghana? **(2 marks)**

- d) The Managing Director of Dakubo Ltd, a company which engages in the business of iron rods production, on his own, contracted a loan of GH¢1,000,000 from Dilidom Bank. The loan is repayable in twelve months’ time. The Managing Director disclosed the contents of the agreement to his wife who is neither a Director nor a member of the company. In further disregard for the regulations of the company, the Managing Director squandered the loan contracted from the bank.

Required:

- i) Explain the concept of *Good Corporate Governance*. **(5 marks)**
- ii) From the scenario above, state **FIVE (5)** principles of Good Corporate Governance that may have been breached by the Managing Director of Dakubo Ltd. **(5 marks)**

(Total: 20 marks)

QUESTION TWO

- a) The Adiso District Council has been dumping garbage in a quarry close to residential area at Abobo, where Atta Mante resides, and that Atta Mante alleged that the dumping of the refuse has often caused offensive and pestilential smell from vapours in the area, and that the stench emanating from the refuse had seriously interfered with their comfort and well-being. The Council denied having caused any discomfort to Atta Mante and the other residents and contended that the act complained of by Atta Mante and other residents, were conferred on the Council by law.

Required:

Explain whether Atta Mante and the other residents will succeed in any court action against Adiso District Council. **(8 marks)**

- b) Azigipaa Ltd invited tenders for the purchase of a tanker, said to be lying off the Island Bebre, together with the oil it was said to contain. Tinda Oil Ltd submitted a tender for which Azigipaa Ltd accepted. Tinda Oil Ltd, went through considerable trouble and expense to modify a ship that the company owned for salvage work, and also brought equipment and engaged a crew. There was no tanker anywhere near the Island as described by Azigipaa Ltd. Tinda Oil Ltd has decided to take action in court against Azigipaa Ltd.

Required:

- i) In light of the provisions of the Sale of Goods Act, is Tinda Oil Ltd likely to succeed in its action? **(5 marks)**
- ii) List **TWO (2)** fundamental obligations of a seller under the provisions of the Sale of Goods Act 1962, Act 137. **(4 marks)**
- c) “*A third party who, without notice of any fraud of deficiency obtains a contractual benefit is entitled to keep it*”.

Required:

Briefly explain the accuracy or otherwise of the statement above. **(3 marks)**

(Total: 20 marks)

QUESTION THREE

- a) There are three main kinds of mistake which are recognised at common law in the law of contract.

Required:

Explain the **THREE (3)** kinds of mistake.

(5 marks)

- b) Kofi Ameyaw and Salia Sule, shareholders of Bubra Ltd, commenced an action in court against the company alleging that properties of the company had been misapplied and wasted, and that certain mortgages were improperly secured as guarantee with the company's properties. In their action, they also alleged that the company gave negligent advice which had resulted in their suffering economic loss which was personal and individual to them. Kofi Ameyaw and Salia Sule are seeking an order of the court for the company to account for the appointment of a Receiver.

Required:

- i) Explain the chances of Kofi Ameyaw and Salia Sule in their court action, in the light of the provisions of the Companies Act, 2019 (Act 992). **(9 marks)**
- ii) Explain **FOUR (4)** entities or organs through which a company can act pursuant to provisions of the Companies Act, 2019 Act 992. **(6 marks)**

(Total: 20 marks)

QUESTION FOUR

- a) Three individuals, namely, Agogo, Djiku and Esinam, worked for MNS Bank, upon completing their National Service for a period of five years. It is the case of the workers that for a period of five years the Bank engaged them as temporary employees. Sometime in the year 2023, the workers received letters from a firm called Bansey HR Ltd, an employment agency, engaged by MNS Bank. In the letter, the three individuals had been offered a contract agreement for a six month's period from 2 May, 2023 to 2 November, 2023 by Bansey HR Ltd, and assigned to the Bank.

The letters sought to change their status from temporary employees of the Bank to temporary employees of Bansey HR Ltd. The three workers, however, tendered their resignations from MNS Bank effective 2 June, 2023. The three workers then commenced an action in the High Court, Accra, claiming damages for wrongful termination, arguing that having worked for more than six months with the MNS Bank as contract workers, they had become permanent workers, and could not be transferred to Bansey HR Ltd.

The Bank resisted the action, arguing that in accordance with a new Policy of the Bank, the Management decided to outsource the employment of all its temporary staff, which include the three individuals, to the Bansey HR Ltd. The Bank contended that upon receipt of the letters from Bansey HR Ltd, the three workers on their own volition resigned and are therefore not entitled to their claim.

Required:

In the light of the provisions of the Labour Act, 2003, Act 651, explain the chances of the three individuals in their court action against MNS Bank. **(10 marks)**

- b) Three persons, Booker, Weah and Makafui agreed to set up a restaurant. The finance was provided almost entirely by one of them, Booker. Before the restaurant opened, furniture and equipment were purchased and laundry contract was entered into. Advertisements were placed in the newspapers and on television, apart from the fact that premises was acquired by the person who supplied the money. The parties then fell out and the business did not proceed as planned.

Required:

- i) Explain whether in the circumstances of the facts, there is a Partnership in terms of the provisions of the incorporated Private Partnership Act, 1962 (Act 152). **(5 marks)**
- ii) State **TWO (2)** liabilities of Partnership for action or transaction done in the course of a Partnership business. **(3 marks)**
- c) *“Statements made in a share Certificate, especially where the certificate bears the common seal of the company shall be absolute or unassailable evidence of the title of the person named in the Certificate”*

Required:

Explain if the above statement is the true position of the law in terms of the provisions of the Companies Act, Act 992. **(2 marks)**

(Total: 20 marks)

QUESTION FIVE

- a) State **TWO (2)** prohibited transactions in shares under section 58(1) of the Companies Act, 2019, Act 992 where a company limited by shares is prohibited from transacting in its shares. **(4 marks)**
- b) A loan taken by a company limited by shares may or may not be secured by a charge.

Required:

In reference to the above statement, explain the following:

- i) A fixed charge
- ii) A bond **(6 marks)**
- c) State **FIVE (5)** grounds that may lead to the winding up of a company pursuant to the provisions of Bodies Corporate (Official Liquidation Act, 1963, Act 180). **(5 marks)**
- d) Distinguish between “*Arrangement*” and “*Amalgamation*” in Company Law. **(3 marks)**
- e) What is a *Declaration of Insolvency*? **(2 marks)**

(Total: 20 marks)

SUGGESTED SOLUTION

QUESTION ONE

- a) The Supreme Court is the apex court of Ghana. Under article 129 of the Constitution of the Republic of Ghana, 1992 the Supreme Court shall be the final court of appeal and such appellate and other jurisdiction as may be conferred on it by the constitution or by any other law.

The claim by the ten (10) members of a club (Agro Club) is based on an alleged infringement of their human rights. The claim of the encroachment is grounded on an alleged infringement of their fundamental human rights by the school authorities under article 18 (1).

The 1992 Constitution states that if the claim is that which borders on infringement of one's fundamental human rights, the appropriate forum is the High Court and not the Supreme Court.

Article 18 provides that every person has a right to own property either alone or in association with others. It is the right of the ten (10) members to erect a wooden structure on the land in which they were despite their trespass. Acquisition of property follows the law. Having a right to own property does not mean that one can encroach on or occupy any land at all irrespective of who owns that land and then claim it as one's property.

It therefore constitutes trespass to land for anyone to enter the land of another person without the owner's consent and refuse to leave when ordered to do so. The occupation by the encroachers of the school's land without authority is unlawful.

The school can therefore eject them from the land without infringing any law. The ten (10) will fail in their action because their conduct is unilaterally occupying another person's land.

Commencing the court action in the Supreme Court is inappropriate. The action should have been commenced in the High Court pursuant to article 33.

Article 130 provides for the exclusive original jurisdiction of the Supreme Court in

- i) all matters relating to the enforcement or interpretation of the Constitution; and
- ii) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution.

In the current scenario, the Agro club decided to take legal action against the school authorities in the Supreme Court. By the provisions of articles 129 and 130 of the

Constitution of the Republic of Ghana the appellate and exclusive original jurisdictions of the Supreme Court do not fall within the matter under consideration.

The Agro Club will therefore, not succeed in its court action.

(5 marks)

b) **Courts with Appellate Jurisdiction.**

The judiciary under **article 126** of the Constitution of the Republic of Ghana include the Superior Courts of judicature which are:

- The Supreme Court,
- The Court of Appeal
- The High Court and Regional Tribunals

The following courts in Ghana have therefore, appellate jurisdictions:

- i) Under article **129** of the Constitution of the Republic of Ghana, **the Supreme Court** shall be the final court of appeal and shall have such appellate and other jurisdiction as may be conferred on it by the Constitution or by any other law. Appeal under article **131** lies from a judgment of the Court of Appeal to the Supreme Court on conditions.
- ii) Article **137** provides that the **Court of Appeal** has jurisdiction throughout Ghana to hear and determine appeals from a judgment, decree or order of the High Court and Regional Tribunal and such appellate jurisdiction as may be conferred on it by the Constitution or any other law.
- iii) Article **140 (1)** confers appellate jurisdiction on **the High Court** in civil and criminal matters and other jurisdiction as may be conferred on it by the Constitution or any other law.

(3 marks)

- c) Chapter eleven of the Constitution of the Republic of Ghana 1992 relating to the Judiciary confers on the High Court under article **140(2)** the jurisdiction to enforce the Fundamental Human Rights as guaranteed by the Constitution. The Constitution has earlier in article 33(1) empowered a person who consider that their fundamental human rights and freedoms has, or is being or is likely to be contravened to apply to the High Court for redress.

The Supreme Court under article 130 (1) of the Constitution of the Republic of Ghana, 1992 provides that subject to the jurisdiction of the High Court in the enforcement of fundamental Human Rights and freedoms as provided in article 33, the Supreme Court has jurisdiction in all matters relating to the enforcement or interpretation of the constitution. Implied therefore, is that the Supreme Court has interest in matters of Fundamental Human Rights or Freedom.

Thus under the Constitution of the Republic of Ghana, 1992 it is only the High Court that has jurisdiction in matters relating to Fundamental Human Rights and Freedoms.

(2 marks)

d)

i) The concept of Good Corporate Governance

The concept of good corporate governance is a function of a company/corporation. The concept of good corporate governance is to promote fairness, openness, and transparency in its responsibilities to stakeholders. Good corporate governance practices facilitate economic efficiency by focusing on value -enhancing activities and aid efficient allocation of scarce resources. This is achieved when companies/firms efficiently employ their assets, attract low cost capital, meet societal expectations and improve overall performance.

The concept of corporate governance incorporates the question of accountability, ethics and social responsibility to society and stakeholders and concerns the structures and procedures associated with direction in which an organization plans to chart. Whatever be its definition good corporate governance relates to the fundamental processes whereby ultimate corporate authority and responsibility are shared and exercised by shareholders, directors and management to ensure that corporate assets provided by investors are being put to appropriate and profitable use.

(5 marks)

ii) From the scenario the following principles of good corporate governance is breached by the Managing Director of Dakubo Ltd:

- Ethics
- Fairness
- Transparency
- Accountability
- Responsibility
- Efficiency
- Confidentiality
- Candour
- Honesty

(Any 5 points @ 1 mark each = 5 marks)

(Total: 20 marks)

QUESTION TWO

- a) The area under consideration is nuisance. Nuisance is divided into public nuisance and private nuisance although it is quite possible for the same conduct to amount to both.

A public nuisance is a crime while private nuisance is a tort. Nuisance actions have concerned pollution by oil or noxious fumes, interference with leisure activities, offensive smells from premises for keeping animals or noise from industrial installation.

The prevailing stance of nuisance liability is that of protection of the private rights in the enjoyment of land. So that control of injurious activities for the benefit of the community is incidental.

In narrowing the scenario to private nuisance, Winfield and Jolowicz on Torts define private nuisance as unlawful interference with a person's use or enjoyment of land, or in connection with some right over or in connection with it. Generally, the essence of nuisance is a state of affairs that is either continuous or recurrent or an activity which unduly interferes with the use or enjoyment of land. Not every slight annoyance therefore is actionable. Stenches, smoke, the escape of effluent and a multitude of different things may amount to nuisance.

In the present scenario the nuisance complained of is within the residential area of which Atta Mante and others reside. The claim is the recurrence of no more than the enjoyment of their rights to the land. The balance of interest is not being personal to Atta Mante but to the wider residential community.

Therefore, Atta Mante and the other residents will succeed in a court action against Adiso District Council.

(8 marks)

- b)
i) The question to begin with is, whether or not the tanker falls under the definition of goods under the contract for the sale of goods.

Goods as defined under section 81 of the Sale of Goods Act, 1962 ACT 137 include movable property and growing crops or plants and any other things attached to or forming part of the land which are agreed to be severed before sale by or under the contract of sale.

The next question is whether the tanker lying on the island Bebre is specific or unascertained goods.

Section 5(1) of the Sale of Goods Act, 1962 ACT 137 provides that the goods which form the subject of the contract of sale may either be specific goods identified and

agreed upon before or at the time when the contract is made or unascertained goods not being so identified and agreed upon.

Section 9 of the Sale of Goods Act, 1962 (Act 137) provides that in a contract for the sale of specific goods there is implied condition on the part of the seller that the goods are in existence at the time when the contract is made.

The scenario relates to the case of *McRae vs Commonwealth Disposal Commission* treated under common mistake. In that case the court awarded damages to the plaintiff on the ground that the commission had implicitly warranted the existence of the tanker. The case however had found attraction to sale of goods that although the view was expressed that it well may be to regard the contract for the sale of non-existing goods (tanker) as void.

As regards the application of the scenario to Act 137 the tanker which is non-existing neither falls under the category of unascertained goods which had not been identified.

The goods were non-existence and therefore Tinda Oil Ltd succeeds in its action.
(5 marks)

ii) Fundamental obligation of the seller

Section 8 of the Sale of Goods Act, ACT 137 provides that

- In the sale of specific goods, the fundamental obligation of the seller is to deliver those goods to the buyer.
- In a sale of unascertained goods, the fundamental obligation of the seller is to deliver to the buyer goods substantially corresponding to the description or sample by which they were sold.
- A provision in a contract of sale which is inconsistent with or repugnant to, the fundamental obligation of the seller, is void to the extent of the inconsistency or repugnance.

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

- c) The accuracy or otherwise of the statement depends on the contractual setting. This occurs in unilateral mistake where a fraudulent person assumes the name of person of repute. A contract is then concluded. The fraud then passes on the item of sale to a third party who purchases it in good faith. If there is no intention to avoid the contract the third party benefits from the contract.

However, the scenario is different where the original owner intends to deal with the named person and the said person only and attempts are made to avoid the contract with the fraudulent person. In that case no title passes to the third party. The cases of *Ingram vs Little*, *Phillips vs Brooks* and *Cundy vs Lindsay* explain the statement.

(3 marks)
(Total: 20 marks)

QUESTION THREE

- a) Three main kinds of mistake
The three kinds of operative mistake are,
- Common Mistake
 - Mutual Mistake
 - Unilateral Mistake

In **common mistake**, both parties make the same mistake. Each knows the intention of the other and accepts it, but each is mistaken about some underlying and fundamental fact. The parties, for example, are unaware that the subject matter of their contract has already perished.

In **mutual mistake**, the parties misunderstand each other and are at cross-purposes. A, for example intends to offer his Nissan Sunny car for sale, but B believes that the offer relates to Nissan Corona. Also owned by A.

In **unilateral mistake**, only one of the parties is mistaken. The other knows, or must be taken to know, of his mistake. Suppose, for instance, that A, agrees to buy from B a specific painting which A believes to be genuinely that of painter Offei but which in fact is not but a copy from Appia. If B is ignorant of A's erroneous belief the case is one of mutual mistake, but, if he knows of it, of unilateral mistake.

(1.667 marks each = 5 marks)

Source: Cheshire & Fifoot's Law of Contract

- b)
- a) Remedy against oppression 219.
A member or debenture holder of a company or, in a case falling within section 234, the Registrar may apply to the Court for an order under this section on the ground that
- (a) the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or debenture holders or in disregard of the proper interests of those members, shareholders, officers, or debenture holders of the company; or
 - (b) an act of the company has been done or is threatened or that a resolution of the members, debenture holders or a class of them has been passed or is proposed which unfairly discriminates against, or is otherwise unfairly prejudicial to, one or more of the members or debenture holders.

The issue is whether Kofi Ameyaw and Salia Sule can proceed as minority members on oppression. Section 219 of Act 992 headed Remedy against oppression is applicable to the scenario.

The complaint of Kofi Ameyaw and Salia Sule was that the properties of the company had been misapplied and wasted and that certain mortgages were improperly secured as guarantee with company's properties.

From the facts, the 2 shareholders are of the view that the action of the company in misapplying the property of the company and mortgage and the fact that the company gave negligent advice which resulted in personal economic loss.

The two are likely to succeed pursuant to section 219 which provision gives the two members the action of the company to be oppressive even though two members may be in the minority.

(9 marks)

ii) Four organs through which a company acts

According to section 144 (1), a company shall act through the members of the company in general meeting or the board of directors or through officers or agents, appointed by, or under authority derived from the members in general meeting or the board of directors.

- **Board of Directors:** The Board is the heart beat of the company. The Board decides on the policy initiatives of the Company, ensures declaration of dividends etc.
- **The Managing Director:** The Managing Director is the main man running the company. He spearheads the policy decision of the Board. He plays a crucial role in the running of the company. He has the power to bind the company and take variety of decisions.
- **The Annual General Meeting:** The Annual General Meeting is the congregation of shareholders to approve or disapprove the actions of business of the company normally on yearly basis. The Annual General Meeting approves the dividend declared by the Board of Directors, approves of the work of the auditors, election and re-election of Board of Directors etc.
- **Shareholders/Members:** The shareholders make the company through their memberships and subscriptions. They serve as the eye to sustain the company by their actions at the Annual General Meeting etc.

(4 points @ 1.5 marks each = 6 marks)

(Total: 20 marks)

QUESTION FOUR

- a) Section 12 of the Labour Act, 2003 ACT 651 provides that the employment of a worker by an employer for a period of six months or more or for a number of working days equivalent to six months or more shall be secured by a written contract of employment.

The three individuals, namely Agogo, Djiku and Esinam were said to have worked for 5 years as temporary workers in MNS Bank. On the strength of Section 12 of Act 651 MNS should have secured employment of the three as permanent workers by a written contract.

On the Bank's failure to do so the three individuals succeed in their court actions. As regards the resignation of the three individuals, section 15 of ACT 651 provides for the grounds for the termination that a contract of employment may be terminated *inter alia*

By the worker on the grounds of ill-treatment...

Section 63(3) of ACT 651 also provides that the termination of the worker's employment is unfairly terminated if with or without notice to the employer, the worker terminates the employment, because of ill-treatment of the worker, having regard to the circumstances of the case.

The ACT does not define what constitute ill-treatment. However, the circumstances of the facts that they were denied what was legally due them by not securing their employment by written contract of the three individuals imply ill-treatment.

Section 63(4) further provides that a termination may be unfair if the employer fails to prove that,

- (a) the reason for the termination is fair, or
- (b) the termination was in accordance with a fair procedure or ACT 651

The three individuals terminated their employment by resignation. The argument by the Bank that their decision to outsource the employment of the three, based on the new Policy is neither fair nor in accordance with fair procedure or as provided in Act 651 to secure the employment of three individuals by written contract of employment.

On the basis of section 63, the three succeed.

(10 marks)

- b)
i) **Section 1** of the Incorporated Private Partnerships Act, 1962 Act 152 defines partnership as the association of two or more individuals carrying on business jointly for the purpose of making profits.

Section 3(1) of Act 152 speaks of a copy of partnership agreement submitted to the Registrar upon registration of the partnership.

On the strength of section 1 there were association of two or more individuals who agreed to set up a restaurant. The individuals agreed to the kind of business they intended to carry on. Implied in the facts were that there was a partnership agreement with each partner contributing fiscally or in kind. From the facts only one of them contributed substantially, the parties then fell out and the business did not proceed as planned. The substantive leg of partnership under section 1 is the carrying on of business jointly for the purpose of profit. Since that was not done one cannot conclude that the parties were in partnership for business.

(5 marks)

- ii) Liabilities of partnership for action or transaction done in course of partnership business.

Section 12 of the Incorporated Private Partnerships Act, 1962 ACT 152 provides that

A partner is an agent of the firm for the purposes of the business of the firm.

The acts of the partners binds the firm if,

- (a) the acts were authorized, expressly or impliedly, by the other partners or were subsequently ratified by them;
- (b) the acts were done for carrying on in the usual way business of the kind carried by the firm, ...

Where the acts of a partner are for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless the partner is in fact authorized by other partners or the act is subsequently ratified by them.

Where it has been agreed between the partners that a restriction shall be placed on the power of any one or more of them to bind the firm, an act done in contravention of the agreement is not binding on the firm with **respect to persons having notice of the agreement.**

(An agreement purporting to limit the extent of the liability of the firm or the partners in respect of an act binding the firm is not effective except as between the actual parties)

When a tort is committed by a partner in the course of business approved by the partners, all the partners become jointly and severally liable to the person who has suffered a loss as a result.

(Any 2 points @ 1.5 marks each = 3 marks)

- c) **Effect of share certificates (Section 56)**

Statements made in a share certificate under the common seal of the company or as certified by two directors and the Company Secretary of the company, are prima

facie evidence of the title to the shares of the person named in the certificate as the registered holder and of the amounts of money paid and payable on the certificate.

Section 56 of the Companies Act, 2019 Act 992 affirms the true position of the law.
(2 marks)

(Total: 20 marks)

QUESTION FIVE

a) Prohibited transactions in shares 58.

A company shall not,

- alter the number of its shares or the amount of money remaining payable on those shares;
- release a shareholder or former shareholder from a liability on the shares;
- provide financial assistance, directly or indirectly, for the subscription or purchase of the shares of the company 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 @ 2 marks each = 4 marks)

b)

i) **A fixed Charge**

Debentures form part of company's loan capital. There are two types of secured debentures, namely debenture secured by a fixed charge and those secured by floating charge. A debenture secured by a fixed charge is a loan to the company for which specific property of the company such as land, building, a vehicle, a plant machinery or equipment is used as security to ensure repayment of the loan. In the case of a floating charge, the general assets or undertaking of the company and nothing in particular, is used to secure repayment of the loan.

A floating charge under section 90 of Act 992 does not preclude a company from dealing with its assets. However, the floating will be a fixed or specific charge upon the happening of an event, namely crystallisation. Crystallisation takes place among other things, when a receiver or a manager is appointed on the application of the debenture holder or the company goes into liquidation.

A fixed charge on a property has priority over a floating charge affecting that property unless the terms on which the floating charge was granted, prohibited the company from granting a later charge having priority over the floating charge and the person in whose favour that later charge was granted had actual notice of that prohibition at the time when the charge was granted to that person.

(3 marks)

ii) **A bond**

A bond is a written promise to pay money. It is an obligation to pay a fixed sum of money at a definite time with stated interest and it makes no difference whether a bond is designated by that name or by some other name, it possesses the characteristics of a bond.

(3 marks)

c) **Five grounds of winding up of a company**

- Within one year from the date of incorporation the company fails to carry on all of its authorized business.
- The company suspends any of its authorized business for a whole year.
- The company has no members.
- The business or objects of the company are unlawful.
- The company is being operated on illegal purpose. When a company carries on illegal activities, it is sometimes said to be engaged in fraudulent trading. A company formed or operating to defraud others may be wound up.
- The business being carried on by the company is not authorized by its Regulations.
- The company is unable to pay its debts. However, if the debt is genuinely disputed the company may not be wound up.
- Finally, the court may issue a winding up order if it is of the opinion that it is just and equitable that the company be wound up

(Any 5 points @ 1 mark each = 5 marks)

Source: Bondzi-Simpson Philip Ebow, Company Law Ghana.

d) **Arrangement** includes a re-organisation of the authorised shares of a company by the

- (a) consolidation of shares of different classes;
- (b) division of shares into shares of different classes; or
- (c) combination of the methods referred to in paragraphs (a) and (b)

- Arrangement may be by:
- Simple arrangements
- Arrangement by sale of undertaking for securities to be distributed.
- Arrangement with the sanction of the court.

Whereas

Amalgamation

Amalgamation in popular parlance is known as merger. A merger under Act 992 is:

- (a) absorption by which the undertaking, property and liabilities of one or more companies, including the company in respect of which a scheme is proposed, are to be transferred to another existing company; or

(b) formation of a new company by which the undertaking, property and liabilities of two or more companies, including the company in respect of which the scheme is proposed, are to be transferred to a new company and the consideration envisaged for the transfer is shares in the transferee company receivable by a member of the transferor company with or without any cash payment to that member;

(1.5 marks each = 3 marks)

Source: Companies Act, 2019 ACT 992- First Schedule

e) Declaration of Insolvency

Insolvency is a state of financial distress in which a person or company is unable to pay their debts. Insolvency is when liabilities are greater than the value of the company, or when a debtor cannot pay the debts they owe.

Declaration of insolvency suggests a company in receivership. The appointment of a receiver-manager suggests the changing of the guard from the existing directors to the receiver-manager and, in relation to the change, the directors are to present a written report of the state of affairs of the company to the receiver-manager. The statement must be filed by the directors with the receiver manager within 14 days or such longer period that the receiver manager in writing allow a statement, verified by an affidavit.

(2 marks)

(Total: 20 marks)