Exam in Fundamentals of the Georgian Business Law

**Time allowed: 2 hours**

**ALL the questions are compulsory and MUST be attempted.**

**Multiple Choice Questions (each correct answer is marked 2 points)**

1. Lili wrote to Kato stating that she was prepared to purchase Kato’s car for a specified sum of money. Lili posted the letter on 12 October, and Kato received the letter on 14 October. Kato’s reply agreeing to the sale was posted on 16 October and received by Lili on 18 October.

When did a legally binding contract come into effect?

A. 12 October

B. 14 October

C. 16 October

D. 18 October **(correct answer)**

2. In relation to a limited company, the financial liability of which of the following is limited?

A. The directors only

B. The shareholders only **(correct answer)**

C. The shareholders and the directors

D. The company

3. Which of the following is a valid reason for a company making an employee redundant?

A. Long-term absence due to serious ill health

B. Refusal of the employee to train in new skills required to do the job

C. Changes in technology and processes, making the job obsolete **(correct answer)**

D. Failure of the employee to meet minimum productivity requirements

4. Which of the following is an essential requirement for breach of a non-contractual obligation to be proven?

A. An unlawful action by one person adversely affecting another person

B. A monetary loss inflicted by one person upon another person

C. A breach of a duty of care owed by one person to another person **(correct answer)**

D. None of the above

5. In relation to contract law, which of the following statements is correct?

A. If an offer is partially accepted, a contract comes into effect

B. Contracts can never be formed by verbal agreement between the parties

C. An offer for goods displayed in a shop window at the advertised price can be rejected **(correct answer)**

D. To be capable of acceptance, an offer must include a time limit for acceptance

6. In relation to partnership law, what is the maximum liability of an unlimited partner?

A. Their capital contribution to the partnership

B. A proportion of the obligations of the partnership

C. All obligations of the partnership **(correct answer)**

D. None of the above

7. Which of the following is an example of a breach of a non-contractual obligation?

A. A supplier sending a defective product to a customer

B. A visitor to an office tripping on a worn carpet **(correct answer)**

C. A transport company failing to deliver an urgent consignment on time

D. A passenger denied boarding on a flight due to a computer system error

8. Which of the following is an offence under insider dealing legislation?

A. Tipping off an insider that they are under investigation

B. Speculating about market movements in a blog discussion

C. Sharing price sensitive information with another person **(correct answer)**

D. Failing to report a person engaged in insider dealing

9. In relation to a transaction made by an agent on behalf of a principal, what is the meaning of the term ‘ratification’?

A. The principal conferring authority on the agent to act on their behalf

B. Fulfilment by the agent of actions required under the agency contract

C. Acceptance by the principal of the agent’s actions subsequent to such actions **(correct answer)**

D. None of the above

10. For which of the following breaches of contract would a party have a right of offset?

A. A garage has repaired a car, but the owner of the car does not have sufficient funds to pay for the repair **(correct answer)**

B. An airline refuses to permit a passenger to board a flight due to overbooking, resulting in the passenger being delayed

C. An accountant who manages funds on behalf of a client has an overdue account receivable which the client cannot pay

D. The employees of an insolvent company are owed wages but retain laptops belonging to the company

11. In relation to a mortgage, under which of the following circumstances does the creditor become the owner of the property?

A. When the mortgage contract is signed by the creditor and the debtor

B. When the debtor fails to make repayments scheduled under the contract

C. When the debtor has defaulted and vacated the mortgaged property

D. When attempts to sell the property by auction have failed and the creditor purchases it **(correct answer)**

12. Which of the following is an example of public law?

A. A claim for negligence by a citizen who has been injured while on the premises of a company

B. An appeal by a company against a decision to refuse registration of a mass media body **(correct answer)**

C. A boundary dispute involving the occupants of neighbouring plots of land

D. A claim by an individual against their former spouse for alimony

13. A training company Ilo is based in Tbilisi. It is wholly-owned by Neo, who is a resident of Rustavi. Learn Company is taking legal action against Vid Company, a training materials provider, for supplying poor quality products. Vid Company is based in Kutaisi and is owned by Petre, a resident of Telavi.

At which location will the case be heard by a court?

A. Tbilisi

B. Rustavi

C. Kutaisi **(correct answer)**

D. Telavi

14. In relation to company insolvency, which of the following is a purpose of the observation stage?

A. To realise the assets of the insolvent company

B. To analyse the financial position of the company **(correct answer)**

C. To implement a new management structure

D. Neither of the above

15. In relation to capital and financing, to which of the following does the term ‘pre-emption rights’ refer?

A. Allotment of initial shares in the company to the founders

B. Issuing bonus shares, paid out of capital, to existing shareholders

C. The sale of new shares in the company to new shareholders

D. The issue of additional shares in the company to existing shareholders **(correct answer)**

16. What is a ‘dispositive norm’?

A. A standard term set down in a contract

B. A term in a contract that will apply unless explicitly excluded **(correct answer)**

C. Any essential term in a contract relating to its main purpose

D. None of the above

17. Vakho has entered into a contract with a client under which only the penalty specified in the contract, and no further losses, may be claimed in the event of default.

This is an example of which of the following?

A. Offset forfeit

B. Exclusive forfeit **(correct answer)**

C. Penalty forfeit

D. Alternative forfeit

18. What is the first stage of the money laundering process?

A. Layering

B. Placement **(correct answer)**

C. Consolidation

D. Integration

19. Assuming that the Charter of a company makes no explicit provisions in respect of voting at general meetings of shareholders, which of the following matters must be decided by cumulative voting?

A. Election of members of the board of directors only **(correct answer)**

B. Election of the directors and members of the internal audit commission

C. Appointment of executive directors and members of the tabulation commission

D. All matters requiring a vote by the shareholders

20. In relation to employment law, what is the minimum period of notice for termination of a labour contract during the probationary period?

A. Three days **(correct answer)**

B. Five days

C. Seven days

D. None of the above

21. Courts of cassation deal with which of the following?

A. Appeals against decisions in courts of first instance **(correct answer)**

B. Civil cases involving private individuals only

C. Cases relating to entrepreneurial activities

D. None of the above

22. In relation to securing obligations by a guarantee, which of the following is correct?

A. The principal debtor may terminate the guarantee at any time

B. The parties to the guarantee are the debtor and the guarantor

C. The guarantor may demand reimbursement if required to pay the debt **(correct answer)**

D. None of the above

23. On 10 November, Carlo had a telephone conversation with her new employer, agreeing to start her new job on 20 November. The new employer stated that her labour agreement would be available for signature on 19 November. However, due to the unexpected absence of another employee, Carlo was asked to start work on a project on 17 November. Carlo agreed to do so.  
When was Carlo’s contract with her new employer formed?

A. 10 November

B. 17 November **(correct answer)**

C. 19 November

D. 20 November

24. On which of the following matters are preference shareholders permitted to vote at a general meeting of shareholders?

A. Dividends

B. A proposed rights issue

C. Reorganisation of the company **(correct answer)**

D. None of the above

25. In relation to insolvency, a preferential transaction intended to secure a previously existing obligation may be challenged if made within what period of the acceptance of the bankruptcy petition?

A. One month

B. Three months

C. Six months **(correct answer)**

D. None of the above

**Open-ended Questions**

1. Art Company had three limited edition prints for sale, each signed by the original author. On 2 October, Gio, the manager of the company, wrote to two customers of the company, offering each of them the opportunity to purchase one print for the price of GEL 500,000, payable in full by 31 October.

Ana, the first customer, replied stating that he would be prepared to purchase one print. However, she added that he would not be able to pay until 10 November and assumed that this would be acceptable.

Sally, the second customer, also stated that she would buy a print and sent Art Company a remittance of GEL 450,000 as she assumed that her usual 10% discount would be applied, as it did for her previous two purchases.

*a) Explain whether Art Company’s letter to the customers was an offer, capable of acceptance to form a binding contract.*

*(5 marks)*

*(b) Explain whether contracts have been formed between Art Company and the two customers.*

*(10 marks)*

*(15 marks)*

2. Inga and Avto are experienced theatrical directors and have decided to form a business together to develop and promote new stage productions. Inga has some capital, but this is insufficient to meet their requirements. Avto has very little capital. Both are prepared to take risks, so if their proposed business fails they feel they can secure salaried employment reasonably easily.

Guga is a friend of Inga and Avto and is prepared to offer funding of up to 4 million GEL, but would not be prepared to risk any more than this. Although Guga is willing to help his friends, he has no interest in managing any entity that they choose to form.

None of the individuals have any experience of business management and wish to keep administrative formalities and costs to a minimum.

(*a) Explain the extent to which a limited partnership would meet the needs of Inga, Avto and Guga.*

*(7 marks)*

*(b) Explain the extent to which an unlimited partnership would meet the needs of Inga, Avto and Guga.*

*(8 marks)*

*(15 marks)*

3. Neto Company is a public company that provides highly specialised IT consultancy services to corporate clients. It is a member of the stock exchange. The company has been growing rapidly, but to fund further expansion it needs to raise more capital.

Shota is a wealthy entrepreneur who has expressed a willingness to invest a substantial sum in Neto Company. However, she is only prepared to do so if the company can guarantee her a 10% annual return on her investment, a place on the board of directors for five years and an ability to recover her investment if she decides to withdraw her funding.

*(a) Explain the extent to which Shota’s needs could be met by investing in ordinary shares of Kilobyte Company.*

*(5 marks)*

*(b) Explain the extent to which Shota’s needs could be met by investing in bonds issued by Kilobyte Company.*

*(5 marks)*

*(10 marks)*

4. Aki Company has been experiencing falling profits and occasional liquidity crises in the recent past. Although it now has a recovery plan, the directors feel that they need to raise funds urgently.

The directors have decided to sell a large warehouse to property developers. This will raise a sum equivalent to 44% of the value of Aki Company’s assets.

The shareholders of Aki Company are divided on this issue. While some regard the sale of the warehouse as a necessary platform upon which a company turnaround can be launched, others feel that the sale is ill-advised and will result in the company paying excessive costs for alternative storage facilities. One shareholder has pointed out that the property development company to which the warehouse will be sold is partly owned by relatives of the Chairman of Aki Company.

*(a) In relation to the proposed sale of the warehouse, explain the legal safeguards upon which the shareholders can defend the company’s interests.*

*(5 marks)*

*(b) Explain how the Chairman’s conflict of interest should have been addressed, and actions that the shareholders can take if they are dissatisfied with how the company has dealt with the conflict of interest.*

*(5 marks)*

*(10 marks)*

**Answer 1**

(a) The letter included the essential terms, including price and quantity, and also included a time limit, which is not an essential term which informed prospective purchasers of what they had to do to acquire a print.

As the communication was consistent with the commercial activity of Art Company, recipients would be entitled to assume that there was an intent to be bound.

The letter has all of the attributes of an offer.

(b) Ana has asked to pay later than the deadline specified by Art Company and has therefore responded to the offer with a counter-offer. This cancelled the original offer and proposed a new offer, which Art Company could accept or reject.

Sally assumed that a 10% discount would be available to her. However, this was not specified in the offer by Art Company, and so must also be regarded as a counter-offer. If could be argued that if a 10% discount was a normal feature of a long-standing business relationship, Sally’s reply could be an acceptance. However, it is clear that the discount applied to only two previous transactions.

Neither Ana nor Sally have entered into a contract with Art Company.

**Answer 2**

(a) The limited partnership meets most of the needs of the individuals. Inga and Avto have unequal financial contributions to make and can therefore decide for themselves on how contributions, costs and profits are split between them.

Guga is prepared to invest up to 4 million GEL but does not wish to play any part in the business. This is consistent with the position of an investing partner.

The limited partnership would enable the partners to keep administrative formalities and costs to a minimum.

(b) The unlimited partnership form is less suitable for the needs of Inga, Avto and Guga.

As in the limited partnership model, Inga would stand to lose any capital they invest should the business fail. This disadvantage would also apply to Boris if he decided to become an unlimited partner, and it is clear that he wishes to avoid this.

If the business is formed as an unlimited partnership, Inga could be partners and enter into a borrowing agreement with Guga, who would play no part in the business at all.

The unlimited partnership would enable the partners to keep administrative formalities and costs to a minimum.

**Answer 3**

(a) Shota could not be guaranteed an annual rate of return of 10% on her investment in ordinary shares, as dividends must be financed out of earnings. Therefore, if the company failed to make sufficient profit, the desired return would be illegal. It would also be improper to pay Shota a higher dividend to that paid to other shareholders.

Shota could be offered a place on the board of directors but this could not be guaranteed for five years, as the general meeting of shareholders re-elects directors every year. Theoretically, if Shota was removed by the shareholders she could be co-opted immediately to resume her role, but this would probably be unacceptable to the shareholders.

If Shota decided to withdraw her investment he could sell his shares, but their capital value could be more or less than the value of her original investment. The company could also redeem her shares if it was prepared to follow the due legal process for doing so.

(b) Shota could be offered a fixed return of 10% on an investment in bonds if this was acceptable to the company.

Shota could be offered a place on the board of directors but this could not be guaranteed for five years, as the general meeting of shareholders re-elects directors every year. As a bondholder, Shota may be able to insist on a covenant in the bond contract to exert certain controls over the board’s activities.

Shota could not withdraw his investment at will, unless this was an express condition in the bond contract. However, bonds have an expiry date, so Shota would be guaranteed the return of her capital, assuming that the company remained a going concern.

**Answer 4**

(a) Under the provisions of the Law on Joint-Stock Companies, any transaction valued in excess of 25% of the company’s assets is a major transaction. The sale of the warehouse is 44% of the value of Aki Company’s assets, which means that it can be approved unanimously by the board of directors. However, if the directors are not unanimous, the decision must be taken by the general meeting of shareholders.

An additional safeguard is that the shareholders can take action against the directors if they consider that the directors are not acting in good faith, or in the company’s best interests. If there are grounds for doubting the integrity of the directors, the shareholders can request an investigation by the internal audit commission.

Finally, the shareholders can dismiss one or more of the directors if they feel it is appropriate to do so. This would require putting a resolution to a general meeting of shareholders, which would then require a majority vote. Alternatively, the dissentient shareholders could nominate one or more candidates for election to the board, in opposition to the current directors.

(b) The Federal Law on Joint-Stock Companies requires directors to disclose conflicts of interest on initial appointment to the board and subsequent to this. If the Chairman has not done so, this provision of the Federal Law has been violated.

At the time that the sale of the warehouse was considered, the Chairman should have acknowledged the conflict of interest by not participating in the discussion of the proposal and by not voting on the matter.

Depending on whether or not the Chairman’s relationship with owners of the property development company was a linear family relationship, the transaction could be deemed to be a related party transaction, which would be decided by the general meeting of shareholders.