

STRICTLY CONFIDENTIAL

THE PUBLIC ACCOUNTANTS EXAMINATION
COUNCIL OF MALAWI

2009 EXAMINATIONS

FOUNDATION STAGE

PAPER 2: LEGAL FRAMEWORK

(DECEMBER 2009)

TIME ALLOWED : 3 HOURS

SUGGESTED SOLUTIONS

1.
 - (a) (iii)
 - (b) (iii)
 - (c) (ii)
 - (d) (i)
 - (e) (iv)
 - (f) (ii)
 - (g) (i)
 - (h) (ii)
 - (i) (iv)
 - (j) (iii)

(TOTAL : 20 MARKS)

2.
 - (a)
 - (i) The term common law refers to the body of legal rules which were developed by the common law courts in England and now embodied in legal decisions. **1 Mark**
 - (ii) The word equity means fairness or natural justice. It is one of the sources of law which consists of rules which emerged from the Court of Chancery, sometimes known as the Chancellor's Court in England. **1 Mark**
 - (iii) The word claimant, also known as plaintiff, refers to a person who complains or brings an action asking the court for relief for the loss or injury suffered. **1 Mark**
 - (iv) Defendant means a person against whom a civil action is brought or who is prosecuted for a criminal offence. **1 Mark**
 - (b)
 - (i) He who comes to equity must come with clean hands is an equitable maxim or principle which means that a person who wants to be fairly treated must also act fairly himself towards others. **3 Marks**

(ii) Equality is equity means that the law attempts to play fair and redress the balance that is, what is available to one person must be available to another. For example, equity does not allow the remedy of specific performance to be granted against a minor, and it does not allow a minor to benefit from the remedy either. **3 Marks**

(iii) Equity looks at the intent rather than the form means that a person may try to pretend that he is doing something in the correct form, but equity will look at what he is actually trying to achieve. For example, if an agreed damages clause in a contract is not a genuine estimate of the likely loss, equity will treat the clause as a penalty clause. **3 Marks**

(c) (i) Judicial precedent also known as case law or judge-made law is based on the principle of consistency. Once a matter of principle has been decided by a superior court such as the High Court or the Supreme Court of Appeal, it becomes a precedent. In any later case to which the principle is relevant, the same principle should be applied except in certain exceptions. **3 Marks**

(ii) Reversing a decision refers to a case, which for example, may be appealed to from the High Court to the Supreme Court of appeal. If the Supreme Court reverses the High Court decision, the first decision cannot be a precedent and the reversing decision becomes a precedent. However, if the original decision had been reached by following a precedent, then reversing that decision overrules the precedent which formed the ratio. **4 Marks**

(TOTAL : 20 MARKS)

3. (a) The difference between an offer and an invitation to treat is that an invitation to treat is an invitation made by one person to another inviting that other person to make an offer while an offer is a definite promise to be bound on certain specific terms. An offer can be converted into a contract by acceptance provided the other requirements of a valid contract are present, while an invitation to treat cannot be accepted. **6 Marks**

(b) It is true that silence cannot constitute acceptance simply imposed by the offeror without the offeree's consent. For example, if the offeror tells the offeree that if I don't hear any word from you about my offer, I shall consider that you have accepted the offer. This is a vague statement. If the offeree does not reply, his silence cannot be taken to be acceptance of the offer. In such cases no contract is created between the parties. In *Felthouse v Bindley(1863)* the plaintiff was engaged in negotiations to purchase his nephew's horse. There was some confusion as to the price so the plaintiff wrote to his nephew saying, "if I hear no more about him I shall consider the horse is mine at £30.15. The horse was at the time in the possession of the defendant, an auctioneer. The defendant sold the horse to another person by mistake. The

plaintiff sued the defendant in conversion alleging wrongful disposal of the plaintiff's property by the defendant. The defendant's defense was that the horse did not belong to the plaintiff, since there was no valid contract between the plaintiff and his nephew because the condition that silence constituted acceptance was ineffective. The defence succeeded. **10 Marks**

- (c) Voidable contract means the contract will bind both parties unless avoided before or within a reasonable time. If avoidance is delayed, the right to avoid is lost. In *Edward v Carter (1893)* 4½ years after reaching a majority age, Edwards wanted to avoid the contract. It was held to be an unreasonable delay and so he could not avoid the contract. **4 Marks**

(TOTAL : 20 MARKS)

4. (a) According to the given facts, my advice to Peter is that he should sue Joel for breach of contract and claim payment of money for the value of work that he has already done on a quantum meruit principle. Peter should exercise this right because he cannot lose the fruits of his labour. In *Planche v Colburn (1831)*, the plaintiff agreed to write a book on costume for £100 on completion. After the plaintiff had done some research and written part of the book, but before he had completed it, the defendant stopped publishing the book. It was held that the plaintiff had been wrongfully prevented from performing the contract and he was entitled to a quantum meruit. **10 Marks**

- (b) The facts and the principle in *Taylor V Caldwell (1863)* are that the defendant contracted to let a music hall to the plaintiff for four days. Before the first day the music hall was accidentally burned down. The plaintiff claimed damages, but it was held that the defendant was discharged from his obligation when the music hall was burned down. The contract was frustrated. The principle in the above case is that a contract is frustrated and therefore discharged if the whole basis of the contract is the continuous existence of a specific thing (ie the subject matter of the contract is destroyed). **8 Marks**

- (c) Consideration may be defined as some right, interest, profit or profit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. This definition was given by *Lush J in Currie v Misa (1875)*. **2 Marks**

(TOTAL : 20 MARKS)

SECTION B

5. (a) The basic rule of nemo dat quod non habet means “no man gives what is not his own”. This simply means that if there is a sale by a person who is not the owner of the goods, the buyer does not, as a general rule, acquire any title in the goods and he must return them to the true owner. **4 Marks**
- (b) The remedies available to an unpaid seller against the goods are:
- (i) A lien is the right to retain possession of goods but not to re-sell them until the contract price has been paid. **2 Marks**
 - (ii) Stoppage in transitu occurs where the seller has parted with possession of goods to a carrier for transmission to the buyer, he can stop the goods and re-take possession if the buyer becomes insolvent, that is if the buyer fails to pay his debts as they fall due. **3 Marks**
 - (iii) Resale of goods. The general rule is that lien and stoppage in transit do not give the unpaid seller any right to re-sell the goods. But the seller may re-sell the goods if:
 - (1) they are of perishable nature. **1 Mark**
 - (2) the buyer, after being given notice by the seller that he intends to re-sell the goods, does not pay for them within a reasonable time. **1 Mark**
 - (3) the seller has expressly reserved the right to re-sell if the buyer defaults in payment. **1 Mark**
 - (iv) Repossession of goods occurs where the seller has reserved the title to the goods until the contract price or any other debt owing to him by the buyer is paid, then he may repossess the goods if the buyer, being a company, goes into liquidation or receivership. **2 Marks**
- (c) The two remedies against the buyer of the goods are:
- (i) An action for the contract price provided the property in the goods has passed to the buyer. **3 Marks**
 - (ii) An action for non-acceptance for which damages is the difference between the contract price and the market price on the date fixed for acceptance, or if no date was fixed, at the time of refusal to accept. **3 Marks**

(TOTAL : 20 MARKS)

6. (a) The **six** key features of a sole trader who must register his business with the Registrar of Business Names Registration Act, are:
- (i) He has sole responsibility for the debts of the business and is liable personally for the whole debt. He has unlimited liability. **1 Mark**
 - (ii) He usually makes all the decisions and makes all the profits and stands all losses. **1 Mark**
 - (iii) There are no formalities for forming and ending the business; he may cease trading at any time. **1 Mark**
 - (iv) Upon the death of the sole trader, the business usually also ceases. **1 Mark**
 - (v) He has unlimited liability for his debts. **1 Mark**
 - (vi) The business is not a legal entity and therefore cannot be regarded as a company. **1 Mark**
6 Marks
- (b) A partnership is defined as the relation which subsists between persons carrying on business in common with a view to making profit. **1 Mark**
- (c) The authority of partners in relation to their business is that every partner is an agent of the firm and therefore has implied authority to bind the firm by transactions entered into by him in the ordinary course of business. Thus, an outsider who contracts with a partner within the scope of that implied authority may treat the firm as bound despite any restrictions on the authority of that partner to which the partners have agreed, unless the outsider knew of the restriction. In *Mercantile Credit v Garrod (1962)* A and B were partners in a firm which let garages and repaired cars. The partnership agreement expressly excluded buying and selling cars.
- Without B's knowledge, A, acting without the owner's consent, sold the car to a finance company for £700, paying the proceeds into the partnership account. The Court held that the partnership business was liable to repay the £700 to the finance company. The prohibition on buying and selling the partnership agreement did not entitle B (or the firm) to avoid liability since A's conduct was of a kind normally undertaken by persons trading as a garage, that is, A had apparent authority to sell cars. **7 Marks**

- (d) The six methods by which partnership business may be dissolved are:
- (i) If a partnership was entered into for a fixed time and that time has expired. **1 Mark**
 - (ii) If a partnership was formed for a specific purpose and that purpose has been achieved. **1 Mark**
 - (iii) By the death or bankruptcy of one partner, unless the partnership agreement provides otherwise. **1 Mark**
 - (iv) By subsequent illegality such as when an event occurs which makes it unlawful to continue the business. **1 Mark**
 - (v) By notice given by one partner if it is a partnership of indefinite duration. **1 Mark**
 - (vi) By order of the court granted to a partner for one or several reasons e.g. for permanent incapacity of a partner or if it is just and equitable to order the dissolution. **1 Mark**
- (TOTAL : 20 MARKS)**

7. (a) The principle of separate legal personality in relation to company law means that once a company has been incorporated, it becomes a separate legal person distinct from its members.

In *Salomon v Salomon & Co. (1897)*, Salomon formed a limited company with the other members of the family, and sold his business to the company for £39,000. He held over 90% of the company's shares. Salomon was a secured lender. Later, the company became insolvent and had to be wound up. The unsecured creditors claimed that they should have priority because Salomon and the company were in effect the same person. The House of Lords held that Salomon and the company were separate legal entities, the company had been validly formed, and that there was no fraud on the members or creditors. Salomon was, therefore, entitled to priority over unsecured lenders up to the amount of his secured lending the remaining assets. **10 Marks**

- (b) The Registrar of Companies also known as the Registrar General is an official of the Ministry of Justice and his functions are:
- (i) to issue certificates of incorporation and change of name. **2 Marks**
 - (ii) to be responsible for registration and safe custody of documents required by statute to be filed with him and to pursue companies which fail to comply with such requirements. **2 Marks**

- (iii) to issue certificates of registration of mortgages and charges. **2 Marks**
 - (iv) to provide facilities for the examination of filed documents by members of the public and to give copies of documents or certificates on payment of a fee. **2 Marks**
 - (vii) at the conclusion of the winding up of a company, the Registrar completes final dissolution by striking the company off the register. **2 Marks**
- (TOTAL : 20 MARKS)**

8. (a) The particulars of employment which every employer is required to give to each of his employees under Section 27 of the Employment Act are:
- (i) the names of the employee and of the employer. **1 Mark**
 - (ii) the date of the commencement of the contract. **1 Mark**
 - (iii) the rate of remuneration and the method of calculating remuneration. **1 Mark**
 - (iv) the intervals at which remuneration is paid. **1 Mark**
 - (v) the nature of the work to be performed. **1 Mark**
 - (vi) normal hours of work. **1 Mark**
 - (vii) any provision for termination of the contract other than those provided by the Act. **1 Mark**
 - (viii) any disciplinary rule applicable to the employee. **1 Mark**
- 8 Marks**
- (b) The three types of contract of employment as provided by section 25(2) of the Employment Act are:
- (i) a contract for an unspecified period of time. **1 Mark**
 - (ii) a contract for a specified period of time. **1 Mark**
 - (iii) a contract for a specific task. **1 Mark**
- 3 Marks**

- (c) The five grounds which an employer must prove if he is to successfully defend an action for summary dismissal brought against him by his employee are:
- (i) that an employee was guilty of serious misconduct which was inconsistent with the fulfillment of the expressed or implied conditions of the contract of his employment such that it would be unreasonable to require the employer to continue the employment relationship. **2 Marks**
 - (iv) that he habitually or substantially neglected his duties. **1 Mark**
 - (iii) that he lacked the skills that the employee either expressly or by implication held himself to possess. **2 Marks**
 - (iv) that he willfully disobeyed lawful orders that were given by the employer. **2 Marks**
 - (v) that he absented himself from work without permission of the employer and without reasonable excuse. **2 Marks**
- (TOTAL : 20 MARKS)**

END