

Examination No. \_\_\_\_\_

**THE PUBLIC ACCOUNTANTS EXAMINATION**  
**COUNCIL OF MALAWI**

**2009 EXAMINATIONS**

**FOUNDATION STAGE**

**PAPER 2: LEGAL FRAMEWORK**

**TUESDAY 8 DECEMBER 2009**

**TIME ALLOWED : 3 HOURS**  
**2.00PM - 5.00 PM**

**INSTRUCTIONS**

1. You are allowed **15 minutes** reading time **before the examination begins** during which you should read the question paper and, if you wish, make annotations on the question paper. However, you will **not** be allowed, **under any circumstances**, to open the answer book and start writing or use your calculator during this reading time.
2. Number of questions on paper - 8
3. This paper is divided into Sections **A** and **B**.
4. Answer **FIVE** questions **ONLY**; at least **TWO** from each Section.
5. Each question carries 20 marks.
6. Your answers should be supported by authorities, where appropriate.
7. This question paper should **not** be removed from the examination hall.
8. **DO NOT OPEN THIS PAPER UNTIL YOU ARE INSTRUCTED BY THE INVIGILATOR**

**This paper contains 5 pages**

**SECTION A**

**This is a multiple choice question. Indicate the correct answer to each of the questions by circling the correct number on the specially prepared answer sheet. Circle ONE answer ONLY for each question. The answer sheet should be fastened to your answer booklet.**

1. (a) Which of the following is the oldest source of law in Malawi?
  - (i) The Constitution of the Republic of Malawi;
  - (ii) Case law;
  - (iii) Custom;
  - (iv) Act of Parliament.
- (b) The High Court of Malawi has:
  - (i) Original jurisdiction only;
  - (ii) Appellate jurisdiction only;
  - (iii) Both original and appellate jurisdictions;
  - (iv) Jurisdiction on homicide offence only.
- (c) One of the constitutional documents of a company registered under the Malawi Companies Act is:
  - (i) The Constitution of the Republic of Malawi;
  - (ii) The articles of association;
  - (iii) Trust deed;
  - (iv) The partnership agreement.
- (d) A public company must have at least:
  - (i) Two directors and two shareholders;
  - (ii) One director and two shareholders;
  - (iii) Two directors and one shareholder;
  - (iv) Two directors and three shareholders.

**Continued/.....**

- (e) Which of the following statements is **not** correct?  
The Registrar of the High Court of Malawi is also:
- (i) the Registrar of the Malawi Supreme Court of Appeal.
  - (ii) the Sheriff of Malawi;
  - (iii) the Controlling Officer of the Judiciary;
  - (iv) a Judge of the High Court of Malawi.
- (f) Which of the following countries is not a member of the SADC region?
- (i) Tanzania;
  - (ii) Uganda;
  - (iii) Swaziland;
  - (iv) Mozambique.
- (g) The principle in the case of Hyde v Wrench (1840) is about:
- (i) Counter offer;
  - (ii) Revocation of an offer;
  - (iii) Communication of an offer;
  - (iv) Contract under seal.
- (h) A person can sue for breach of a simple contract only if he can prove that:
- (i) The terms of the contract were clear and certain;
  - (ii) He gave consideration;
  - (iii) Consideration must not be past;
  - (iv) The contract was made under deed.
- (i) In relation to the sale of goods, one of the remedies available to the parties against the goods is:
- (i) Damages;
  - (ii) Quantum meruit;
  - (iii) Injunction;
  - (iv) Lien;

**Continued/.....**

(j) Which of the following statements does **not** apply to a partnership form of business?

- (i) It is managed by at least two members;
- (ii) Its constitution is the partnership agreement;
- (iii) Its constitution is the memorandum of association;
- (iv) It is an unincorporated association.

**(TOTAL: 20 MARKS)**

2. (a) Explain the meaning of the following terms:

- (i) Common law **1 Mark**
- (ii) Equity **1 Mark**
- (iii) Claimant **1 Mark**
- (iv) Defendant **1 Mark**  
**4 Marks**

(b) The development of equity was based on a number of equitable maxims (or principles). The following are some of the examples:

- (i) He who comes to equity must come with clean hands.
- (ii) Equality is equity.
- (iii) Equity looks at the intent rather than the form.

Explain the meaning of **each** of these maxims. **9 Marks**

(c) Explain what is meant by the term “judicial precedent”. **4 Marks**

(d) Explain the meaning of “reversing a decision”. **3 Marks**

**(TOTAL 20 MARKS)**

3. (a) State the difference between an “offer” and “an invitation to treat”. **6 Marks**

(b) A condition that silence shall constitute acceptance cannot be imposed by the offeror without the offeree’s consent.

Comment on this statement. **10 Marks**

(c) Explain the meaning of “voidable contract”. **4 Marks**

**(TOTAL 20 MARKS)**

4. (a) Peter Malonda agreed to build a cottage for Joel Samuel for K50,000. After Peter had built half of the wall, Joel told him to stop working on the project because Joel was no longer interested in the project and is refusing to pay Peter any money for the work done.

**Required:**

Advise Peter.

**10 Marks**

- (b) Explain the term “frustration of contract” by reference to the facts and the principle in the case Taylor v Caldwell (1862). **8 Marks**
- (c) Define the word “consideration”. **2 Marks**
- (TOTAL 20 MARKS)**

**SECTION B**

5. (a) Explain the basic rule of *nemo dat quod non habet*. **4 Marks**
- (b) Explain the remedies available to an unpaid seller against the goods. **10 Marks**
- (c) State the **two** remedies against the buyer of the goods. **6 Marks**
- (TOTAL : 20 MARKS)**
6. (a) Mention **six** key features of a sole trader. **6 Marks**
- (b) Define the word “partnership” as used in business. **1 Mark**
- (c) By means of case law, explain the authority of partners in relation to their business. **7 Marks**
- (d) Explain any **six** methods through which a partnership business may be dissolved. **6 Marks**
- (TOTAL: 20 MARKS)**
7. (a) In relation to company law, explain the principle of “separate legal personality”. **10 Marks**
- (b) Outline **five** functions of the Registrar of Companies, also known as Registrar General. **10 Marks**
- (TOTAL 20 MARKS)**

**Continued/.....**

8. (a) Section 27 of the Employment Act requires every employer to give to each employee a written statement of particulars of employment.

**Required:**

Mention **eight** particulars of employment which an employer is obliged to give to each of his employees. **8 Marks**

- (b) Mention **three** types of contract of employment as provided by Section 25(2) of the Employment Act. **3 Marks**

- (d) State **five** grounds which an employer must prove if he is to successfully defend an action for summary dismissal brought against him by his employee. **9 Marks**  
**(TOTAL 20 MARKS)**

**END**