

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

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

**2009 EXAMINATIONS**

**ACCOUNTING TECHNICIAN PROGRAMME**

**PAPER TC 8: BUSINESS LAW**

WEDNESDAY, 9 DECEMBER 2009

TIME ALLOWED : 3 HOURS  
9.00 AM - 12.00 NOON

**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. The paper is divided into Sections **A** and **B**.
4. **FIVE** questions **ONLY** to be answered; at least **TWO** questions from each section.
5. Each question carries 20 marks.
6. Your answers must be supported, where appropriate, by relevant decided cases and statutory provisions.
7. Begin each answer on a fresh page.
8. **DO NOT OPEN THIS PAPER UNTIL YOU ARE INSTRUCTED BY THE INVIGILATOR**

This question paper contains 5 pages

This question paper must **not** be removed from the examination hall.

**SECTION A**

1. (a) Define the term ‘**contract of sale of goods**’ as stipulated in the Sale of Goods Act. **3 Marks**
- (b) Mention **two** duties of a buyer under the Sale of Goods Act. **2 Marks**
- (c) What is meant by **title, possession** and **risk** in sale of goods contracts? **6 Marks**
- (d) What are the conditions implied in a Contract of Sale by Sample? **3 Marks**
- (e) What **three** remedies does an unpaid seller have, as against the goods *in rem*, under the Sale of Goods Act? **6 Marks**  
**(TOTAL: 20 MARKS)**
2. (a) (i) Explain and give **three** examples of what is meant by the term ‘**subsidiary legislation**’.  
**4 Marks**
- (ii) State the reasons for its increased use these days? **2 Marks**
- (b) Discuss any **three** rules of statutory interpretation. **6 Marks**
- (c) (i) What is the ‘**Doctrine of Precedent**’? **3 Marks**
- (ii) How does it operate in Malawian courts? **1 Mark**
- (d) Distinguish common law from equity. **4 Marks**  
**(TOTAL : 20 MARKS)**
3. (a) Peter and Mark want to set up a business of selling furniture. They register a company called Cane Furniture Ltd in which Peter has 70% shareholding while Mark has 30% shareholding. They use a loan from the bank to the tune of K1,000,000 to beef up the capital of the company and the loan is between Cane Furniture Ltd and the Bank. A year later and due to the recession, Cane Furniture Ltd makes losses to the tune of K1 million and the Bank asks the company to pay off the debt. However, the company only has cane chairs and when the bank sells off the cane chairs to recover the debt it only gets K300,000 and fails to recover the remaining K700,000. In the meantime Peter goes to the casino to gamble and wins K1,500,000. The Bank then sends Peter letter of demand asking Peter to pay the K700,000 owed by his company as he is one of the owners of the company.

**Required:**

With reference to case law discuss Peter’s defense, if any.

**Continued/.....**

- (b) Peter and John wish to do business as partners. Advise them, citing **three** advantages and **three** disadvantages of doing their business as partners. **6 Marks**
- (c) Discuss at least **three** differences between civil law and criminal law. **6 Marks**
- (d) (i) Explain the meaning of the term 'tort'. **1 Mark**  
(ii) Give any **one** example of a tort. **1 Mark**
- (e) When a judge is interpreting an Act of Parliament he may use internal aids to ascertain the meaning of the words therein. Cite any **two** internal aids to statutory interpretation. **2 Marks**

**(TOTAL: 20 MARKS)**

4. Give a brief discussion of the following terms:

- (a) Express Terms of a contract. **4 Marks**
- (b) Implied Terms of a contract. **4 Marks**
- (c) Contracts *Uberrimae Fidei*. **4 Marks**
- (d) Social and Domestic Agreements. **4 Marks**
- (e) Mutual mistake. **4 Marks**

**(TOTAL: 20 MARKS)**

**Continued/.....**

**SECTION B**

5. (a) What is a 'hire purchase agreement'? **4 Marks**
- (b) How does a hire purchase agreement differ from a bill of sale? **4 Marks**
- (c) Mr Phiri enters a renowned bicycle shop. He describes the type of bicycle he wanted and buys one approved by the shop owner as the type described. Behind the counter there is a notice in bold:  
 'GOODS ONCE BOUGHT ARE NOT RETURNABLE' Outside the shop Mr Phiri discovers that the bicycle he has bought is not the type he wanted and when he takes his first ride he falls to the ground and sustains injury due to defects occasioned by poor assembling of the bicycle.
- Required:**
- Explain in detail how the Sale of Goods Act and common law protect Mr Phiri in the circumstances. **8 Marks**
- (d) Most contracts are valid whether they are entered into in writing or by word of mouth. However, the law demands that certain contracts must be in writing if they are to be enforced by the courts. Making reference to any relevant law, give two examples of contracts that must be in writing. **4 Marks**  
**(TOTAL: 20 MARKS)**
6. (a) Making reference to relevant authorities:
- (i) Define the term 'Bill of Exchange'. **5 Marks**
- (ii) What are the main characteristics of a 'Bill of Exchange'? **5 Marks**
- (b) Explain how a 'Bill of Exchange' is discharged. **4 Marks**
- (c) State the difference between an inland bill and a foreign bill? **2 Marks**
- (d) Define the term cheque as stipulated in Section 73 of the Bills of Exchange Act. **2 Marks**
- (e) What is the effect of the words '**not negotiable**' on a cheque? **2 Marks**  
**(TOTAL: 20 MARKS)**

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7. Kabula Products Ltd is not performing well and is unable to employ a full time sales person. It has been decided to employ Klerani as an agent on a commission basis only.

**Required:**

- (a) (i) Explain to Klerani what the term 'agency' means. **2 Marks**  
 (ii) Discuss **four** examples of an agency relationship. **4 Marks**
- (b) (i) Explain to Klerani any **two** rights she is entitled to in the agency relationship. **2 Marks**  
 (ii) Explain to Klerani any **two** duties that she has assumed in the agency relationship. **2 Marks**
- (c) Kabula Products Ltd wishes to terminate the agreement with Klerani. Explain any **three** grounds on which it may terminate the agreement. **6 Marks**
- (d) The courts will examine whether **four** conditions have been satisfied before holding that a particular agency relationship is one of necessity. Discuss in brief the **four** conditions. **4 Marks**  
**(TOTAL: 20 MARKS)**

8. (a) (i) Define the term '**consideration**'. **2 Marks**  
 (ii) Describe **three** types of legal consideration? **3 Marks**
- (b) Distinguish between an offer, an invitation to treat and an acceptance. **6 Marks**
- (c) Titus has entered into a contract to supply quarry stones to the Government of Malawi for the construction of a rural road. Recently there has been change in the finances of the government and they no longer wish to be bound by the contract. The Government has given notice to Titus that they intend to cancel the contract. Titus wants to know on what grounds, if any, he can sue the government.

**Required:**

- Advise Titus. **7 Marks**
- (d) If a war had been declared on this government how, if at all, would your answer be different? **2 Marks**  
**(TOTAL: 20 MARKS)**

**E N D**