

STRICTLY CONFIDENTIAL

THE PUBLIC ACCOUNTANTS EXAMINATION
COUNCIL OF MALAWI

2010 EXAMINATIONS

FOUNDATION STAGE

PAPER 2: LEGAL FRAMEWORK

MONDAY 6 DECEMBER 2010

TIME ALLOWED : 3 HOURS
2.00 PM - 5.00 PM

SUGGESTED SOLUTIONS

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

2.
 - (a) The function of the Committee Stage in the process of passing legislation in the National Assembly is that it examines a bill section by section and may amend it where necessary. The committee exercises this function because although it comprises members of main political parties, it also includes some members who are experts in the relevant subject under scrutiny.
 - (b) Parliament exercises control over delegated legislation in that it restricts and defines the powers to make rules and keeps the making of new delegated legislation under review. Some delegated legislation does not take effect until approved by affirmative resolution of Parliament. Some delegated legislation is supposed to be laid before Parliament before it takes effect. Members of Parliament may, in this process, propose a negative resolution to veto a delegated piece of legislation to which they object.
 - (c) Delegated legislation can be challenged in the courts on the grounds that it is *ultra vires*, that it exceeds the prescribed limits or that it has been made without due compliance of the correct procedure. If the objection is valid, the court declares the delegated legislation void.
 - (d) The disadvantages of delegated legislation are that Parliament loses control of the law-making process and that this legislation is so bulky that it is difficult for persons who may be affected by it to keep abreast of the changes. However, ignorance of the law is not accepted as an excuse for infringing it.

3.
 - (a) The term “sources of law” is used in different senses and these are:
 - (i) The historical sources which are common law and equity.

- (ii) The legal sources which are the means by which the law is currently brought into existence. There are, in practice, three legal sources. The two most important today are case law (or judicial precedent) and legislation (or statute law). Custom is now of little practical importance as a source of law, but it is still classified as a current source.
 - (iii) The subsidiary sources are currently responsible for direct creation of law. They include regulations, rules, orders and bye-laws which are made under Acts of Parliament.
- (b) In a judicial decision *ratio decidendi* means the reasons for a decision and *obita dicta* means a statement made by a judge “by the way”.

A judgement usually starts with a summary of the facts of the case and probably a review of earlier precedents and possible alternative theories. The judge then makes statements of law applicable to the legal problems raised by the material facts. Provided these statements are the basis of the decisions they are known as *ratio decidendi* of the case. The significance of *ratio decidendi* is that it is an essential element or principle which binds future judges. If a judge’s statements of legal principle do not form the basis of the decision, or if his statements are not based on the existing material facts but on hypothetical facts, they are known as *obita dicta*. Their significance is that a latter court may respect such statements but it is not bound to follow them. They are only of persuasive authority.

- (c) Although there may be a number of legal principles to consider when deciding a case, there are a variety of facts which may be presented. Apart from identifying the *ratio decidendi* of an earlier case, it is also necessary to consider how far the facts of the previous and latest case are similar. Facts are never identical. If the differences appear significant, the court may “distinguish” the earlier case on the facts and thereby avoid following it as a precedent. This is the main impact on the court’s decision. However, the court creates a new precedent which will be followed by the inferior courts when the facts appear to be similar.
4. (a) My advice to Rhodwell on his legal position in this matter is that if he brings a claim in the court against Jack for breach of contract, he will not succeed. The brief facts of the case are that Jack has promised Rhodwell to testify in his defense on claim of causing injury to Simon. He has promised to pay K200,000 to Rhodwell if Rhodwell can successfully give evidence in his favour. This appears to be a contract between the parties because there is an offer and acceptance, an offer having been made by Jack and acceptance having been signified by Rhodwell. Rhodwell has acted on the promise made by Jack by testifying in Jack’s favour. The

action taken by Rhodwell appears like consideration entitling Rhodwell to enforce Jack's promise. Unfortunately, it is not. This is so because every citizen in every country has an obligation under the law to give evidence in court whether as state or defence witness. When Rhodwell went to court to testify in court as Jack's defence witness, he only performed an existing obligation imposed on him by law (statute or common law). Such action by Rhodwell cannot be considered as consideration for a promise for a reward. The promise by Jack to pay K200,000 to Rhodwell was void and had no legal force. It is wholly unenforceable at law. Jack's proposition that K50,000 would be appropriate is also void.

Based on the law stated above, Rhodwell is hereby advised not to take any action because he has no cause of action. In the case of *Collins v Godfrey (1831)* the claimants had been summoned to give evidence on behalf of the defendants in the case. The claimant alleged that the defendants had promised to pay him six pounds for appearing in court. The court held that there was no consideration for this promise because the claimant was obliged to appear in court by law. The principle laid down in this decision is that where a person performs an existing obligation imposed by statute, such performance cannot be considered as consideration for a promise of reward. This is so because every person has an obligation under the law to give evidence in court.

- (b) It is true that when businessmen enter into commercial agreements, it is presumed that there is an intention to enter into legal relations unless this is expressly disclaimed or the circumstances displace that presumption. Any express statement by the parties of their intention not to make a binding contract is conclusive.

In *Rose and Frank v J R Crompton Brothers (1923)*, a commercial agreement by which the defendants appointed the claimants as their distributor in the USA expressly stated that it was "not subject to legal jurisdiction in any country". The defendant terminated the agreement without giving notice as required, and refused to deliver the goods ordered by the claimants, although they had accepted these orders when placed. The court held that the general agreement was not legally binding, but the orders for goods were separate and binding contracts. The claim for damages for breach of the agreement failed, but the claim for damages for non-delivery of goods ordered succeeded.

SECTION B

5. (a) My advice to George is that he should proceed to take action for the recovery of the bicycle from Henry or its value if it is not in the original condition. The reason is that Billy, the seller of the bicycle, has no right to sell it because he is not the owner of the bicycle. Since he lacks title, he

cannot validly give ownership in the bicycle which he himself does not own. This rule satisfies the *nemo dat non quod habet* principle which states that no one can give what he does not have. Under the law, therefore, Henry, who bought the bicycle does not acquire good title. He is obliged, by law, to return it to Billy in terms of Section 14 of the Sale of Goods Act except if the exceptions to the *nemo dat non quod habet* rule apply.

- (b) The term implied “warranty of quiet possession” means, in the first place, that when a person sells goods to the buyer, he gives an implied condition that he has the right to sell the goods. In addition, the seller also gives an implied warranty that the buyer shall have quiet possession of the goods and that the goods are free from any encumbrance or challenge by a third party unless it was disclosed to the buyer when the contract was being made.
 - (c) The goods sold are of “satisfactory quality” means that whenever goods are sold to the buyer, there is automatically an implied term which is a condition that the goods supplied by the seller under a contract of sale are of satisfactory quality in that:
 - (i) they are fit for the purposes for which goods of the kind in question are commonly supplied. If the goods are fit for one purpose, but not other purposes then they are not of satisfactory quality.
 - (ii) they are free from minor defects. If the goods have a series of minor defects, they are not of satisfactory quality.
 - (iii) they are durable and remain of satisfactory quality for a period which could be expected by a reasonable man.
 - (iv) they are goods with superficial damage but which operate properly. This aspect affects matters of sale of new motor cars.
6. (a) The retention of title clause also known as the **Romalpa Clause** means that in most commercial contracts, possession of goods may pass to the buyer but ownership does not pass until the price is paid. This is just a general rule. Unless the clause expressly retains title even after the resale or incorporation, the supplier is not entitled to any portion of the sale proceeds of the manufactured products. This was the decision in **Borden (UK) Ltd v Scottish Timber Ltd (1979)**. If the buyer resells the goods when there is an express provision allowing resale before title passes, the proceeds of sale are held by the buyer as trustee for the supplier.

- (b) In a contract which is either wholly or substantially for the provision of services, the law is that:
 - (i) If the supplier of services is acting in the course of business, he will carry out the service with reasonable care and skill and within a reasonable time.
 - (ii) If consideration is not determined by the contract, the party contracting with the supplier will pay a reasonable charge or price.
 - (c) The facts given in this question show that there is no contract for the sale of goods within the meaning of the Sale of Goods Act because there is no agreement to transfer ownership of the car until Edward exercises his option to or not to buy.
 - (d) The seller has failed to meet his legal obligations in that 10.00 pm is not during normal business hours. The seller has not given the buyer a reasonable opportunity to inspect the goods.
- 7.
- (a) Private sector organisation means that sector of the economy comprising all activities that are not government owned. Business organizations in the private sector exist to make profit and include sole traders, partnerships and private and public companies.
 - (b) Economies of scale means economies that arise within a firm as output increases and average total cost falls. The economies of scale arise from technical factors (such as employing larger, more efficient machines) and from managerial factors such as specialization, bulk buying and mass marketing.
 - (c) The six advantages for treating the business of a sole trader as a separate entity are:
 - (i) the need to create an identifiable presence in the market.
 - (ii) the need to satisfy regulations on tax and employment.
 - (iii) the need for a business entity to deal with bankers, suppliers and customers.
 - (iv) the informality of establishing the business.
 - (v) the informality of running the business i.e. there is no legal requirement to publish accounts or to keep records except for tax purposes.
 - (vi) the desire to be one's own boss.

- (d) The term “limited liability” in the context of business organizations means an arrangement by which the owners of a business that fail have their individual responsibility for its debts limited in some way. The most common situation is where shareholders in a company are responsible for the unpaid debts only to the extent of any unpaid amount for their shares. For example, they may have paid only K1 per share. Should the business fail, they will be called upon for only K1 for each share owned, no matter how large the size of the company’s outstanding debt.

8. (a) The main difference between shareholder and debentureholder are:
- (i) A shareholder is a proprietor or owner of a business but a debentureholder is a creditor of the company. As a member, a shareholder may vote at general meetings, a debentureholder has no such right, though exceptionally he may have votes if the Articles and the deed allow.
 - (ii) In the event of liquidation, debentures, like other debts, must be repaid in full before anything is distributed to shareholders.
 - (iii) Interest, at the agreed rate, must be paid on debentures even if it is necessary to pay out of capital in doing so. A shareholder only receives dividends if they can be paid out of distributable profits and the company decides to declare a dividend.
- (b) A shareholder may bring a representative action against directors of a company for a wrong which has been done to the company on behalf of a group of shareholders when the same personal right of a number of shareholders has been infringed.
- (c) My advice to Sam Gogo is that he should not proceed to take action in the matter because he has no *locus standi* to sue in the sense that he is not, in law, the right person who is aggrieved by the action of Jack Mazere. Since the wrong was made against the company, the company is the proper person with *locus standi* to sue. This is so because once a company is formed, it acquires a separate legal personality from the members who formed it. It can, therefore, sue and be sued in its own name since it has rights and obligations like any natural person. In *Foss v Harbottle (1853)*, Foss a minority shareholder brought action against the directors of the company alleging that the directors had defrauded the company by selling land to it at an inflated price.

The court dismissed the action and held that:

- (i) the company as a person separate from its members is the only proper claimant in an action to protect its rights or property.

- (ii) the company, in a general meeting, must decide whether or not to bring such legal proceedings.

Based on the above case law, Sam Gogo cannot succeed unless the matter is one to which common law and statutory law exceptions apply.

- (d) A shareholder may bring a derivative action against directors on a wrong done to the company where the wrongdoers are in control and prevent the company itself from suing. This is permitted only in exceptional circumstances for the general rule is that the proper plaintiff in an action brought in respect of a wrong done to the company is the company itself.

END

NOT FOR SALE