

Examination No. _____

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

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 are **not** 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 7 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) Magistrates are appointed by:
- (i) the President on the recommendation of the Chief Justice;
 - (ii) the President on the recommendation of the of the Judicial Service Commission;
 - (iii) the Chief Justice on the recommendation of the Judicial Service Commission;
 - (iv) the Chief Justice on the recommendation of the Registrar of the High Court of Malawi.
- (b) The term judicial independence means that the Judiciary:
- (i) exercises its independence on the nature of cases it should hear and determine;
 - (ii) in the exercise of its powers and functions is independent of any person or authority except the President;
 - (iii) can pass a sentence on the accused as may be prescribed by law;
 - (iv) is independent of the influence and direction of any other authority in the exercise of its functions, powers and duties.
- (c) The following is a major source of law in Malawi:
- (i) Act of Parliament;
 - (ii) Delegated legislation;
 - (iii) Code of Practice;
 - (iv) Canon Law.

Continued/.....

- (d) In relation to company law, the term *ultra vires* means:
- (i) a transaction which is within the scope of the objects clause and therefore enforceable;
 - (ii) a transaction which is within the scope of the objects clause but unenforceable;
 - (iii) a transaction which is outside the scope of the object clause and therefore unenforceable.
 - (iv) a transaction which is outside the scope of the object clause but enforceable.
- (e) A bye-law is:
- (i) a type of delegated legislation made by a standing committee of the Malawi Parliament;
 - (ii) a type of delegated legislation made by local authorities;
 - (iii) a type of delegated legislation made by the Chief's Council;
 - (iv) a type of delegated legislation made by Parliament sitting as a committee of the whole house.
- (f) A void contract is:
- (i) a contract by which the parties are not bound and if they transfer property under it, they can recover their goods even from a third party;
 - (ii) a contract by which the parties are not bound and if they transfer property under it, they cannot recover their goods from a third party;
 - (iii) a contract which is unenforceable at law.
 - (iv) a contract whose consideration has not been given in order for it to be enforced at law.

Continued/.....

- (g) Once a contract has been formed, it remains in existence until discharged. The most common means of discharging a contract is:
- (i) by breach;
 - (ii) by frustration;
 - (iii) by agreement;
 - (iv) by performance.
- (h) In relation to the sale of goods, the term “the seller’s lien” means:
- (i) the seller’s right to re-sell the goods in his possession except if the price is paid or tendered;
 - (ii) the seller’s right to retain the goods in his possession until the price is paid or tendered;
 - (iii) the seller’s right to stop the goods of another while in transit until the price is paid or tendered;
 - (iv) the right of the seller to pledge the goods in his possession except if the price is paid or tendered.
- (i) In relation to the sale of goods, the following words do not represent the buyer’s remedies for breach of contract:
- (i) rejection of the goods;
 - (ii) damages for non-delivery;
 - (iii) acceptance of the goods;
 - (iv) specific performance.
- (j) When a company wishes to alter its name it passes:
- (i) a special resolution;
 - (ii) an ordinary resolution;
 - (iii) an extra-ordinary resolution;
 - (iv) a written resolution.

(TOTAL: 20 MARKS)

Continued/.....

2. (a) When a Bill is to be passed into law, it goes through various stages in the National Assembly.

Required:

Explain the function of the Committee Stage in the process of passing legislation. **5 Marks**

- (b) In what way does Parliament exercise control over delegated legislation? **5 Marks**
 (c) Under what circumstances can delegated legislation be challenged in court? **5 Marks**
 (d) Mention **two** disadvantages of delegated legislation. **5 Marks**
(TOTAL 20 MARKS)

3. (a) Explain the different sources of law. **6 Marks**

- (b) Explain the meaning and the significance of *ratio decidendi* and *obita dicta* in a judicial decision. **8 Marks**

- (c) What factors may prompt a court to distinguish the facts of a case and what impact does this have on the court's decision? **6 Marks**
(TOTAL 20 MARKS)

4. (a) Jack was in bad terms with Simon. One day, Jack, without any good reason, stabbed Simon on the head alleging that Simon was rude to him. Simon sustained serious head injuries. He now intends to sue Jack for damages for the injuries he sustained. Jack has learned that he is to appear in court to answer a claim for willfully causing injury to Simon. As Jack prepares for his defence, he persuades Rhodwell to be his defence witness to testify in his favour. He promises to pay Rhodwell K200,000 if the court enters judgement in Jack's favour. The court relies heavily on Rhodwell's defence evidence and rules in Jack's favour. However, Jack is reluctant to pay Rhodwell the full amount of K200,000 because he feels that this is too much. Jack feels that K50,000 would be appropriate.

Required:

By means of case law, advise Rhodwell on his legal position. **10 Marks**

- (b) 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.

Required:

By means of case law, comment on this statement. **10 Marks**
(TOTAL 20 MARKS)

Continued/.....

SECTION B

5. (a) Billy borrowed a bicycle from George so that he could get to the market. While at the market, he sold it to Henry for K10,000. George has learned that his bicycle has been sold to Henry. He wants to get his bicycle back.

Required:

Advise George whether or not he will be able to recover his bicycle from Henry.

8 Marks

- (b) Explain what is meant by the term “implied warranty of quiet possession”.

4 Marks

- (c) Explain what is meant by saying that the goods sold are of “satisfactory quality”.

8 Marks**(TOTAL : 20 MARKS)**

6. (a) Many commercial contracts now contain a retention of title clause often known as a *Romalpa Clause*.

Required:

Explain the meaning of the *Romalpa Clause*, and by means of case law, explain the circumstance under which the *Romalpa Clause* does not apply.

7 Marks

- (b) Explain the relevant law when a contract is either wholly or substantially for the provision of services.

6 Marks

- (c) John agrees to sell his car to Edward for K500,000 on hire purchase. Edward must pay regular hire charges for two years and at the end of that period Edward will have an option to or not to buy the car on payment of a further sum of K100,000.

Required:

State whether there is a contract for the sale of goods within the meaning of the Sale of Goods Act.

4 Marks**Continued/.....**

- (d) The parties to a contract for the sale of non-perishable goods agreed that the goods shall be delivered to the buyer's premises "during normal business hours." The seller then states that the only time of day that the goods can be delivered is 10pm and that the goods must be accepted or rejected immediately on delivery. At that time a caretaker will be present to receive the goods but he is not competent to inspect them.

Required:

In what ways has the seller failed to meet his legal obligations? **3 Marks**
(TOTAL: 20 MARKS)

7. (a) Explain what is meant by "private sector organisation". **4 Marks**
- (b) Define the term "economies of scale". **4 Marks**
- (c) Some individuals set up businesses as sole traders and may run the business under a different name e.g. "Peter Malonda trading as Mapoto Enterprises".

Required:

Mention **six** advantages of treating a business of a sole trader as a separate entity. **6 Marks**

- (d) Explain the meaning of the term "limited liability" as used in business organizations. **6 Marks**
(TOTAL 20 MARKS)

Continued/.....

8. (a) Explain the difference between “shareholder” and “debenture holder”. **8 Marks**
- (b) Under what circumstance(s) may a shareholder bring a representative action against directors when a wrong has been done to the company? **2 Marks**
- (c) Jack Mazere, a director in Carina (Malawi) Limited sold a motor vehicle registration Number BH 1111 to the company for K3 million. When the vehicle was later valued by a qualified valuer, it transpired that the real price for the motor vehicle should have been K1.5 million. Sam Gogo, a minority shareholder in the company felt aggrieved by Jack Mazere’s conduct and intends to take action to have the sale declared null and void.
- Required:**
- Advise Sam Gogo of the legal position. **10 Marks**
- (d) When may a shareholder bring a derivative action against directors in respect of a wrong done to the company? **3 Marks**
- (TOTAL 20 MARKS)**

END