

Examination No. _____

THE PUBLIC ACCOUNTANTS EXAMINATION
COUNCIL OF MALAWI

2010 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC 8: BUSINESS LAW

THURSDAY 9 DECEMBER 2010

TIME ALLOWED : 3 HOURS
2.00PM 5.00PM

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. 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 4 pages

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

SECTION A

1. (a) State any **three** differences between bills of exchange and cheques. **6 Marks**
- (b) State the reasons for the crossing on a cheque. **2 Marks**
- (c) Define the term 'promissory note'. **2 Marks**
- (d) Explain the following in relation to bills of exchange:
- (i) Holder in due course **4 Marks**
 - (ii) Drawer **2 Marks**
 - (iii) Drawee **2 Marks**
 - (iv) Acceptance **2 Marks**
- 10 Marks**
- (TOTAL: 20 MARKS)**
2. (a) Define the term 'hire purchase agreement'. **3 Marks**
- (b) Mention **two** remedies of a creditor and **two** remedies of a debtor in a hire purchase agreement. **4 Marks**
- (c) Mention **three** advantages of a hire purchase agreement. **3 Marks**
- (d) Mention any **five** details that must be set out in a hire purchase agreement. **5 Marks**
- (e) Mention any **five** matters which, if included in a hire purchase agreement, would be invalid. **5 Marks**
- (TOTAL: 20 MARKS)**
3. (a) State clearly the operation of the system of courts in Malawi. **10 Marks**
- (b) In Malawi decisions of higher courts are binding on the lower courts. This is called the doctrine of precedent.
- Required:**
- (i) State any **two** advantages of this doctrine
 - (ii) State any **two** disadvantages of this doctrine. **4 Marks**

Continued/.....

(c) Explain the difference between the following, in relation to the doctrine of precedent:

- (i) *ratio decidendi* and *obiter dictum*
- (ii) reversing, overruling and distinguishing

6 Marks
(TOTAL: 20 MARKS)

4. State the differences between any **four** of the following legal concepts below:

- (i) Duress and undue influence; **5 Marks**
- (ii) Offer and acceptance; **5 Marks**
- (iii) A holder and a holder for value of a bill of exchange; **5 Marks**
- (iv) The consequences of a breach of a condition and breach of a warranty; **5 Marks**
- (v) A mercantile agent and a *del credere* agent. **5 Marks**

(TOTAL: 20 MARKS)

SECTION B

5. (a) Cite an Act of Parliament that protects a buyer from defective or unsuitable goods sold and state the conditions that are implied by the cited Act. **10 Marks**

(b) Steve bought a second-hand-car from The Car Market Ltd after seeing their advertisement which described the car as;

“A fabulous two-year-old car: driven 50,000 km only; the engine has recently been serviced; the brakes fully tested; and in original colour of sky blue”.

A week after Steve bought the car it would not start; there was an oily patch on the floor and the brakes had seized up. A couple of days later he met Clara, the previous owner, and she told him that the car was five years old, had been driven over 150,000 kilometers and the original colour was olive green. Steve reported all these points to The Car Market Ltd and their response was ‘it is now your car and nothing to do with us – *caveat emptor!*’.

Required:-

- (i) Advise Steve.

6 Marks

Continued/.....

- (ii) What does the Latin expression *caveat emptor* mean? **2 Marks**
 (iii) Mention **two** duties of the buyer under the Sale of Goods Act. **2 Marks**
(TOTAL: 20 MARKS)

6. (a) What is meant by **capacity** in the formation of a contract? **10 Marks**
 (b) James is 20 years old and his friend John is 22. They are both university undergraduates and they enjoy relaxing by Lake Malawi during their vacations. During this year's summer vacation, James and John decided to go on holiday and stay at the Beach Hotel in Mangochi. James booked the hotel and the contract stated that all drinks and extra food would be put on the bill. The hotel asked for a deposit of K20,000.00 which James paid but did not state his age. One night John became hopelessly drunk, did not know what he was doing and damaged hotel property. The following day they were asked to leave the hotel. The hotel gave them a bill for K60,000.00 for the damage they had caused and another for K100,000.00 for accommodation, food and drink. They refused to pay the outstanding bills although they both had sufficient funds to cover all the debts.

Required:

Advise the hotel on the recoverability of their losses.

10 Marks
(TOTAL: 20 MARKS)

7. (a) Patricia is a 20 year old business lady in the City of Zomba. Several months ago she bought a Toyota Starlet on hire purchase terms. The hire purchase agreement required that the car be comprehensively insured. She went to the Zomba Insurance Brokers, bought insurance and was given a cover note from the Expensive Insurance Company.

Several weeks ago Patricia had an accident and made a claim against the insurance company through the brokers. The insurance company is refusing to pay the cost of the damage because it claims that she was under their minimum age for insurance purposes. The insurance company had told the broker that it would not insure anyone under the age of 25 years and this was part of the agency contract between the Zomba Insurance Brokers and the Expensive Insurance Company. Patricia now seeks your advice.

Required:

Advise Patricia.

10 Marks

- (b) (i) Define the term 'consideration', as applied in the law of contract. **5 Marks**

Continued/.....

- (ii) Amos is a security guard at one of the many security firms in town. Although it was never part of his contract of employment, for many years Amos has been paid a bonus for each recorded incident. The firm is no longer as successful as it has been and it is no longer paying the bonus to Amos. Amos feels aggrieved as he has had a reduction in pay. He seeks your advice as to whether or not he is entitled to continue receiving the bonus payment.

Required:

Advise Amos.

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

8. (a) Chiku saw an advertisement in the local paper for a nearly new machine. The advertisement read:

‘A cutting machine: K7,000 or nearest offer. In good working order. Recently tested, approved and guaranteed by the Ministry of Works. Delivered to your address if within a 15 kilometer radius of our address.’

Chiku purchased the machine over the telephone and waited for delivery. An invoice was sent for K7,000 and it was paid. The machine never arrived. The supplier of the machine claimed that Chiku should have paid for delivery and that he had sold it to another customer, Sam, for K8,500. The supplier is prepared to return Chiku’s cheque for K7,000.

Required:

Advise Chiku.

10 Marks

- (b) What is the difference between a “director” and a “shareholder” in a company? **2 Marks**
- (c) Mention **four** duties of a director in a company. **4 Marks**
- (d) What are articles of association and a memorandum of association? **4 Marks**
(TOTAL: 20 MARKS)

END