

EXAMINATION NO. \_\_\_\_\_

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

**2013 EXAMINATIONS**

**FOUNDATION STAGE**

**PAPER 2: LEGAL FRAMEWORK**

**TUESDAY 4 JUNE 2013**

**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 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. 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 question paper contains 5 pages

**SECTION A**

**This is a multiple choice question. Indicate the correct answer to each of the items by circling the correct number on the specially prepared answer sheet. Circle ONE answer ONLY for each item. The answer sheet should be fastened to your answer booklet. Each item carries 2 marks.**

1. (a) The controlling officer for the Malawi Judiciary is:
  - (i) The Honourable Chief Justice;
  - (ii) The Registrar of the High Court and Supreme Court of Appeal;
  - (iii) The Sherrif of Malawi;
  - (iv) The Chief Courts Administrator.
- (b) Which of the following persons do not form part of the National Assembly?
  - (i) The President;
  - (ii) Ministers and Deputy Ministers;
  - (iii) Speaker;
  - (iv) Members of Parliament.
- (c) The Industrial Relations Court (IRC) has:
  - (i) Criminal jurisdiction only;
  - (ii) Civil jurisdiction only;
  - (iii) Both civil and criminal jurisdiction;
  - (iv) None of the above.
- (d) The legal mandate to interpret legislation is vested in:
  - (i) The National Assembly;
  - (ii) The President;
  - (iii) The courts;
  - (iv) The Attorney General.

**Continued/.....**

- (e) The principle in the case *Carlill v Carbolic Smoke Ball Co. Ltd (1893)* is about:
- (i) Counter offer;
  - (ii) Revocation of an offer;
  - (iii) Termination of an offer;
  - (iv) General offer.
- (f) The term of a contract which goes to the root of that contract is said to be:
- (i) An innominate term ;
  - (ii) A condition;
  - (iii) A total breach.
  - (iv) A warranty.
- (g) *Caveat emptor* is a term which means:
- (i) Let the buyer beware;
  - (ii) The buyer must pay to the seller all the amount due and payable in a contract for the sale of goods;
  - (iii) Breach of contract for the sale of goods;
  - (iv) Specific performance.
- (h) In relation to employment law, a servant is said to be:
- (i) Employed under a contract for services;
  - (ii) Employed for a fixed term contract;
  - (iii) Employed under a contract of service;
  - (iv) Employed for an unspecified period.

**Continued/.....**

- (i) A partnership business is regulated by:
- (i) The Companies Act;
  - (ii) The Trustee Incorporation Act;
  - (iii) The Constitution of the Republic of Malawi;
  - (iv) None of these .
- (j) In relation to company law, a company secretary is said to have:
- (i) Apparent authority to bind the company;
  - (ii) Actual authority to bind the company;
  - (iii) Executive authority to bind the company;
  - (iv) Nominal authority to bind the company.

**(TOTAL: 20 MARKS)**

2. (a) Explain the difference between “overruling precedent” and “reversing a decision”. **5 Marks**
- (b) Explain what is meant by “distinguishing the facts of a case”. **4 Marks**
- (c) What factors necessitate a court to avoid a binding precedent? **11 Marks**
- (TOTAL : 20 MARKS)**

3. (a) Henry Malamulo has been elected to Parliament in the just ended Parliamentary by-elections. As a new member of Parliament, he does not know the procedure to be followed in Parliament for passing a Bill into law. He then asks you to explain to him the parliamentary procedure.

**Required:**

Explain to him the procedure as requested.

**10 Marks**

- (b) Parliament and the judiciary do exercise some control over delegated legislation.

**Required:**

Comment on this statement.

**10 Marks**  
**(TOTAL 20 MARKS)**

**Continued/.....**

4. (a) What is the legal implication when goods for sale are exhibited in a shop window or on the shelves in a shop? **8 Marks**
- (b) James offered to sell his goods to Harold for K20,000. Harold received the offer but did not respond to it. James had indicated in his offer to Harold that if he, James, heard nothing to the contrary from Harold, he, James would assume that Harold had accepted the offer and that the goods would be dispatched to him. When James saw that a reasonable time had elapsed without response from Harold, James dispatched the goods to Harold. However, Harold rejected the consignment.

**Required:**

Advise James on his legal position in the matter.

**12 Marks**  
**(TOTAL 20 MARKS)**

**SECTION B**

5. (a) The general provision is that the terms of a contract are agreed upon by the parties at the time of entering into that contract. However, in certain circumstances, the courts may imply a term in a contract on behalf of the contracting parties.

**Required:**

By means of case law, explain the circumstance(s) under which the courts may imply a term in a contract.

**10 Marks**

- (b) The term “*res extincta*” is one of the elements of a common mistake in a contract.

**Required:**

How is common mistake made between the parties on the element of *res extincta*?

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

6. (a) In relation to a contract for the sale of goods, explain the term “implied warranty of quiet possession” as provided for by the Sale of Goods Act. **10 Marks**
- (b) Under what circumstances should an unpaid seller of goods exercise his right of resale of the buyer’s goods? **5 Marks**
- (c) Explain the principle which was laid down in the case *Aluminium Industrie Vaassen BV v Romalpa Ltd (1976)*. **5 Marks**

**(TOTAL: 20 MARKS)**

**Continued/.....**

7. (a) Explain the grounds which an employer may rely upon when dismissing his employee. **4 Marks**
- (b) An employee may sometimes have a good case for unfair dismissal against his employer.

**Required:**

State the remedies that an employee may seek for unfair dismissal. **8 Marks**

- (c) Section 63(4) of the Employment Act provides four guidelines which the court should follow when awarding compensation to an employee who has been unfairly dismissed.

**Required:**

Explain the **four** guidelines.

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

8. (a) Mention and explain the documents which are required to be submitted to the Registrar of Companies at the formation of a company. **12 Marks**
- (b) Explain the mode of paying for shares in a company. **5 Marks**
- (c) The payment of dividends may only be made out of a company's profits available for that purpose. The power to declare a dividend is given by the articles which usually follow the model in Table A.

**Required:**

Explain the **three** models as stipulated in Table A.

**3 Marks**  
**(TOTAL 20 MARKS)**

**E N D**