

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



**2014 EXAMINATIONS**

**KNOWLEDGE LEVEL**

**PAPER 2: LEGAL FRAMEWORK**

MONDAY 1 DECEMBER 2014

TIME ALLOWED : 3 HOURS  
2.00 - 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**

1. **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.**

- (a) Case law is:
- (i) Law made by an Act of Parliament
  - (ii) Law made by the Chief's Council
  - (iii) Law made by superior courts in the course of interpreting legislation
  - (iv) None of the above.
- (b) The following type of law is termed the "mother" of substantive law:
- (i) Customary law
  - (ii) Constitutional law
  - (iii) Criminal law
  - (v) Administrative law
- (c) Delegated legislation is also known as:
- (i) Principal legislation
  - (ii) Subsidiary legislation
  - (iii) Act of Parliament
  - (iv) Parliamentary Hansard.
- (d) The administrative head of the Ministry of Finance is:
- (i) The Honourable Minister of Finance
  - (ii) The Auditor
  - (iii) The Accountant General
  - (iv) The Secretary to the Treasury.

**Continued/.....**

- (e) A contract is formed when:
- (i) both parties have agreed on the terms of the contract
  - (ii) the offeree has given consideration
  - (iii) the parties have put the agreement in writing
  - (iv) one party called the offeror has not revoked his offer.
- (f) The terms of a contract may be called:
- (i) conditions
  - (ii) warranties
  - (iii) innominate
  - (iv) none of the above.
- (g) The rule in *Dunlop v Selfridge (1915)* is that:
- (i) consideration must not be past
  - (ii) consideration must move from the promisee
  - (iii) consideration must have some value but need not be adequate
  - (iv) consideration need not be adequate but it must have value.
- (h) The parties in a contract for the sale of goods are called:
- (i) offeror and offeree
  - (ii) principal and agent
  - (iii) seller and buyer
  - (iv) donor and donee.

**Continued/.....**

- (i) In relation to partnership law, the acts of one partner:
- (i) bind the partnership business and the other partners
  - (ii) bind the partnership business only
  - (iii) bind the other partners only
  - (iv) bind the senior partner only.
- (j) One of the grounds which may justify the members' voluntary liquidation of a company is:
- (i) compulsory liquidation
  - (ii) it is just and equitable that the company be wound up
  - (iii) that the directors of a company have made a declaration of its insolvency
  - (iv) that the business of the company is being run without promoters.

2. (a) Judicial precedent can either be overruled or reversed.

**Required:**

- (i) Explain how a precedent may be overruled. **2 Marks**
- (ii) Explain the difference between overruling and reversing a decision. **2 Marks**

- (b) Explain **five** advantages and **four** disadvantages of precedent. **16 Marks**  
(TOTAL : 20 MARKS)

3. (a) Custom is still classified as a legal source of law although it is now of little importance. Comment on this statement. **6 Marks**

- (b) A person who alleges the existence of custom as a source of law must prove its existence.

**Required:**

By means of case law, explain how a person may prove custom by using the tests of "antiquity" and "continuity". **14 Marks**  
(TOTAL : 20 MARKS)

Continued/.....

4. (a) The general understanding is that a contract is an agreement which binds the parties. This statement is somehow misleading because it is no longer accurate today.

**Required:**

Mention and explain **five** instances in which a contract is created without the need for an agreement between the parties.

**10 Marks**

- (b) Consideration must be of some value.

**Required:**

Discuss this rule.

**10 Marks**

**(TOTAL : 20 MARKS)**

**SECTION B**

- 5 (a) Section 57(3) of the Employment Act provides for certain circumstances of an employee's status in society or other engagements as not being valid reasons to warrant his or her dismissal or for imposing disciplinary action.

**Required:**

Explain any **five** examples of an employee's status in society or engagements which provide him such safeguard.

**10 Marks**

- (b) Jack Ntchito has recently been employed by PXL Co. Ltd as a Registry Clerk. He has been told that an employee who commits acts of misconduct may face "summary dismissal" or "constructive dismissal" as penalties. He asks you to explain to him the grounds to justify each of these penalties.

**Required:**

Explain to him the grounds that may lead to either summary or constructive dismissal.

**10 Marks**

**(TOTAL : 20 MARKS)**

**Continued/.....**

6. (a) In relation to the sale of goods, explain the terms which may be implied in a contract if the sale is one by sample. **5 Marks**
- (b) Albert agreed to buy 100 bags of Irish potatoes from Henry for K250,000. Albert took delivery of the goods on the terms that he would pay the price after selling the goods and that Albert would enjoy ownership of them when all that was owing had been paid.
- Albert has sold the goods to David but he fails to pay the purchase price to Henry.
- Required:**
- Advise Henry on his remedy. **12 Marks**
- (c) Explain the meaning of the phrase “sale under a voidable title”. **3 Marks**  
(TOTAL : 20 MARKS)
7. (a) Explain the meaning of the term “partnership”. **3 Marks**
- (b) What is the legal position of a partnership business? **2 Marks**
- (c) Discuss the liability of partners in tort and in contract. **9 Marks**
- (d) Explain the liability of a retired partner. **6 Marks**  
(TOTAL : 20 MARKS)
8. (a) In relation to company law, explain the meaning of each of the following terms:
- (i) paid-up capital **3 Marks**
- (ii) uncalled capital **4 Marks**
- (iii) reserve capital **4 Marks**
- (b) In relation to company law, explain the **two** types of charges on a company’s assets. **9 Marks**  
(TOTAL : 20 MARKS)

**END**