

EXAMINATION NO. _____



2015 EXAMINATIONS

KNOWLEDGE LEVEL

PAPER 2 : LEGAL FRAMEWORK

TUESDAY 2 JUNE 2015

**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 - 7
3. The paper is divided into Sections **A** and **B**. All questions to be answered in Section **A** and **ANY TWO** from Section **B**.
4. Each question carries 20 marks.
5. Your answers should be supported by authorities, where appropriate.
6. This question paper should **not** be removed from the examination hall.
7. **DO NOT OPEN THIS PAPER UNTIL YOU ARE INSTRUCTED BY THE INVIGILATOR**

This question paper contains 3 pages

SECTION A

Answer all questions in this Section

1. (a) Case law is one of the major sources of law in Malawi. It is in fact a judgment of a court.

Required:

Mention and explain **three** elements which comprise a judgment of a court.

10 Marks

- (b) Explain **five** advantages of case law.

10 Marks

(TOTAL : 20 MARKS)

2. (a) Define the term “consideration” and explain its importance in a simple contract.

10 Marks

- (b) John Malonda sold 50kg of maize seed to Albert Kalima for K4,000. John told Albert that it was good seed and that Albert should expect not less than 100 bags of 50kg at harvest from one acre of land. Albert promised John that if he, Albert, got that high yield at harvest, he would pay an additional sum of K5,000 to John for having sold him good seed. Albert harvested 120 bags and proudly informed John of this. John has now asked Albert to pay him the promised K5,000.

Required:

Advise John on his legal position

10 Marks

(TOTAL : 20 MARKS)

3. (a) When a contract for the sale of goods has been breached against a seller, the seller has some remedies against the goods.

Required:

Explain the factors which may necessitate a seller to exercise his right against the goods.

5 Marks

- (b) Explain **three** rights which an unpaid seller may exercise against the goods of a buyer.

10 Marks

- (c) Explain the position, at law, if a seller has breached a condition of a contract for the sale of goods.

5 Marks

(TOTAL : 20 MARKS)

Continued/.....

SECTION B

Answer ANY TWO questions from this section

4. (a) Section 29(1) of the Employment Act provides for the right to notice period to both employer and employee before either party can terminate a contract of employment.

Required:

Explain how an employer or employee may validly terminate each other's contract of employment without complying with this statutory provision.

4 Marks

- (b) In relation to employment law, explain the meaning of the term "summary dismissal". **3 Marks**
- (c) Explain any **five** grounds which may lead an employer to summarily dismiss his employee. **5 Marks**
- (d) Mwathundu Clothing Co. Ltd wants to change its name to Shire Clothing Co. Ltd.

Required:

Explain the procedure that the company should follow to effect the change.

5 Marks

- (e) Explain the meaning of the term "unenforceable contract". **3 Marks**
(TOTAL : 20 MARKS)

5. (a) Identify and explain the main elements of a memorandum of association and articles of association, paying particular attention to the main functions and differences between the two documents. **12 Marks**
- (b) A registered company may be wound up by a petitioner relying on the ground of "just and equitable" that the company should be wound up.

Required:

Mention **four** situations which may be advanced by a petitioner to convince the court that it is indeed just and equitable that the company be wound up. **8 Marks**

(TOTAL : 20 MARKS)

Continued/.....

6. (a) Explain the following terms with regard to the creation of principal and agent relationship:
- (i) Express agency; **5 Marks**
- (ii) Implied agency. **5 Marks**
- (b) Egesi buys rice claiming that he is acting on behalf of Mandanda although Mandanda has not appointed him as his agent. The seller lets Egesi have two bags of Kilombero at slightly below the market price because, as part of the same contract, he takes three bags of Domasi rice at slightly above the market price. When Mandanda learns of what has happened, he tells the rice seller that he will accept and pay for Kilombero rice but not Domasi rice.

Required:

State whether or not Mandanda is bound to pay for Domasi rice. **10 Marks**
(TOTAL : 20 MARKS)

7. (a) Amigo Kashitigu was employed as a driver by Mbuya Ltd, a bottling company based at Ngabu. On the day that he reported for duty, he was given strict instructions never to carry unauthorized passengers, popularly known as *matola*, in the company's vehicles.

One day, he was asked to collect the company's goods from Blantyre. In total disregard for the company's standing orders, Kashitigu carried five unauthorized passengers who were also going to Blantyre. The vehicle was involved in an accident as Kashitigu was negotiating sharp bends up the escarpment. One of the passengers, Antonio Vazhi, sustained serious injuries. He is now planning to sue Mbuya Ltd for compensation for the injuries he sustained.

Required:

Advise Antonio Vazhi whether or not he should proceed with the action. **10 Marks**

- (b) In relation to agency law, explain the term "apparent authority". **5 Marks**
- (c) As a general rule, an employer is not liable for the acts of an independent contractor.

Required:

Explain **five** exceptions to this general rule. **5 Marks**
(TOTAL : 20 MARKS)

END