

STRICTLY CONFIDENTIAL

THE PUBLIC ACCOUNTANTS EXAMINATION
COUNCIL OF MALAWI

2011 EXAMINATIONS

FOUNDATION STAGE

PAPER 2: LEGAL FRAMEWORK

TUESDAY 6 DECEMBER 2011

TIME ALLOWED : 3 HOURS
2.00 PM - 5.00 PM

SUGGESTED SOLUTIONS

SECTION A

1.
 - (a) (ii)
 - (b) (iii)
 - (c) (ii)
 - (d) (i)
 - (e) (iv)
 - (f) (iii)
 - (g) (i)
 - (h) (ii)
 - (i) (iv)
 - (j) (iii)

2. (a) It is true that not all agreements amount to a contract. The starting point is that all contracts whether simple or speciality, are agreements. Agreements are created when one person, the offeror, makes an offer to another person, the offeree. When the offeree has accepted an offer, an agreement is created which is essentially a contract. However, some agreements sound like contracts when in fact they are not. These are social or domestic agreements. Unlike agreements which are contracts, the parties to social or domestic agreements do not intend to be legally bound because their agreements are social or domestic in nature.

In ***Balfour v Balfour (1919)*** a husband agreed with his wife that while abroad, the husband would send a certain sum of money to his wife every week, but he failed to fulfill his promise and the wife sued him. The court held that an agreement of that nature and the parties did not intend to create legal relations.

- (b) My advice to Hurbert is that he should not take any action against Henry because Hurbert has done no more work than that he had initially agreed to do. According to given facts, the piece of land to be cultivated by Hubert was worth K7,000. Henry persuaded Hurbert to proceed with the work for an additional sum of K3,000 which would be K10,000 in total. Henry promised this figure when he saw that Hurbert was no longer interested to work and was about to abandon the job. The idea was to induce Hurbert to proceed with the work which had already started.

He was not given any extra work or additional piece of land other than that which he initially contracted to do. When Hurbert completed the work, he only did what he had agreed to do. He cannot sue for an extra payment of

K3,000 which he does not deserve. In *Stilk v Myrick (1809)* in which two members of the crew deserted in a foreign port. The master was unable to recruit substitutes and promised the rest of the crew that they should share the wages for the deserters if they could complete the voyage. The ship owners repudiated the promise. The Court held that in performing their existing contractual duties the crew gave no consideration for the promise of extra pay and the promise was not binding.

3. (a) It is correct to say that discharge of a contract by performance occurs where each party to a contract has fully performed his obligations under the contract. This is where each party has observed all the terms of a contract. This principle is supported by the case in *Cutter v Powell (1795)* in which the defendants employed Cutter as a second mate of a ship to sail from Jamaica to Liverpool at a wage of 30 guineas (£31.50) after completing the journey. Unfortunately, Cutter died on the way when the ship was 19 days away before Liverpool. Cutter's widow sued for a proportionate part of the agreed sum. The Court held that Cutter's widow was entitled to nothing since Cutter did not complete the voyage.

The second case in support of the principle is *Bolton v Muhadeva (1972)* in which the claimant agreed to install a central heating system in the defendant's home for £800. The work was defective and the system did not heat adequately and it gave off fumes. The defendants refused to pay for it. The Court held that the defendants could recover nothing.

- (b) The doctrine of substantial performance mitigates the common law principle of discharge of contract by total performance in that the doctrine of substantial performance applies mostly in contracts for building works. If the building contractor has completed the essential work and in doing so has completed a very large part of the work, he may claim the contract price less a deduction for the minor work. This may also be regarded as a deduction of damages for breach of warranty when the contract price is paid. This means that the plaintiff is entitled to some relief even though he has not fully and perfectly done the work.

This was the ruling in *Hoening v Isaacs (1952)* in which the defendant employed the claimant to decorate and furnish his flat for £750. There were defects in the furniture which could be put right at a cost of £56. The defendant argued that the claimant was only entitled to reasonable remuneration. The Court held that the defendant must pay the balance owing of the total price of £750 less the allowance of £56 as the claimant had substantially completed the contract.

4. (a) The employee's legal position where an undertaking or part of it is sold, transferred or otherwise disposed of is that the contract of employment of an employee in employment at the date of the disposition shall

automatically be transferred to the transferee and all the rights and obligations between the employee and the transferee and anything done before the disposition shall continue to apply as if they had been rights and obligations between the employee and the transferee and anything done before the disposition by or in relation to the transferor in respect of the employee shall be deemed to have been done by or in relation to the transferee – see Section 32(2) of the Employment Act 2000.

- (b) When an employer dies the position at law is that his death causes a contract of employment to terminate one month from the date of the employer's death unless it is otherwise terminated in terms of Section 57(1) of the Employment Act 2000.
- (c) The term "continuous employment" in relation to the Employment Act refers to a period of employment which begins from and includes the first day on which an employee begins to work for an employer and continues up to and including the date of termination of employment.
- (d) Where an employer employs labourers at certain seasons of the year, their contract is for a fixed term for the duration of the season. In the present case Evans Tobacco Estate employed Nyasa for successive seasons of the year 2010. This employment is deemed to have been a continuous employment other than one for fixed term. Section 43 of the Employment Act provides that where an employer is engaged in an undertaking in which it is customary to employ some employees only at certain seasons of the year and an employee is employed for successive seasons, the employee shall be deemed to have been continuously employed for the aggregate of all the time he has actually performed work for the same employer for continuous seasons.

SECTION B

- 5. (a) The Workers Compensation Act defines the word "employer" that includes the Government (except the armed forces of Malawi), a local authority, any body or association of persons, corporate or unincorporated and the personal representative of a deceased employer, and where the services of a worker are temporarily lent or let on hire to another person with whom the worker has entered into a contract of service or apprenticeship, the latter shall, for the purposes the Act, be deemed to be the employer.
- (b) The three types of injuries in which the employer is not liable to pay compensation to an employee who has suffered injury in the course of his employment are:
 - (i) an injury which incapacitates the worker for a period of less than seven days from earning full wages or salary at the work at which he was employed.

- (ii) any incapacity or death resulting from deliberate self-injury.
 - (iii) if it is proved that the injury to the worker is attributable to the serious and wilful conduct of that worker, or if the worker has at any time represented in writing to the employer that he was not suffering, or had not previously suffered, from that or a similar injury knowing that the representation was false.
- (c) The powers of the Workers' Compensation Tribunal are:
- (i) to enter and inspect, authorize any person to enter and inspect or examine any premises of interested persons for the purpose of enabling the tribunal to determine any question being considered by it.
 - (ii) to administer oaths and to order persons to attend and give evidence or to produce and give discovery and inspection of documents in like manner as in proceedings of the High Court.
 - (iii) to award costs of any proceedings before it and direct that such costs shall be taxed upon such scale and in such manner as may be prescribed by rules or to award a specific sum as costs.
 - (iv) to do all such things which it is required to or empowered to do by the Act.
6. (a) The three possible remedies which a seller has against a buyer who has breached a contract for the sale of goods are:
- the seller may bring action for the price if:
- (1) ownership in the goods has passed to the buyer and he wrongfully neglects or refuses to pay the price according to the terms of the contract.
 - (2) the price is payable on a certain day regardless of delivery and the buyer wrongfully neglects or refuses to pay it.
 - (3) The seller may sue for damages for non-acceptance if the buyer wrongfully refuses or neglects to accept and pay for the goods. In this case the claim may include any expense incurred by the seller such as in storing the goods, caused by the buyer's failure to take delivery after being requested to do so.

(b) When a seller has breached a contract for the sale of goods, the buyer too has remedies against the seller. The seller's liability depends upon whether the seller's breach amounts to a condition or a warranty.

(i) Breach of a condition

If the seller is in breach of a condition of the contract, the buyer may reject the goods unless he has lost his right to do so by accepting the goods or part of them. In addition, he may claim damages:

If the buyer has paid the price and consideration has failed entirely, e.g. as when the seller has no title to the good, or he delivers the goods which the buyer is entitled to reject, the buyer may sue or recover the price.

(ii) Breach of warranty

If there is a breach of warranty by the seller, or if the buyer is obliged to (or prefers) to deal with a breach of a condition by a claim for damages, the buyer may either reduce the amount paid to the seller by an allowance for the breach or sue for damages. The amount of damages is determined on principle similar to the seller's claim against the buyer.

In *Mason v Burningham (1949)* the claimant had sold a typewriter which turned out to be stolen property. She had to return it to the owner. In addition to the price paid, she claimed damages for breach of implied warranty of quiet possession including her expenditure in having the typewriter overhauled. The court held that damages should be awarded as claimed.

(c) The three circumstances when an unpaid seller of the goods has a right of resale are:

(i) if the goods are of perishable nature.

(ii) if the carrier acknowledges to the buyer or his agent that the goods have arrived at their original destination and are now being held on behalf of the buyer.

(iii) if the carrier wrongfully refuses to make delivery to the buyer or his agent.

7. (a) In relation to company meetings, the term the meeting is "properly convened" means that:

(i) the meeting must be called by the board of directors or other competent person or authority. If, however, there is some irregularity in the board meeting which convenes a general meeting and the members in a

general meeting nevertheless pass the resolution proposed, this may be taken as a waiver of irregularity.

- (ii) the notice must be issued to members in advance of the meeting so as to give them 14 days' notice of the meeting or 21 days notice if a special resolution is to be proposed. The members may agree to waive this requirement.
 - (iii) the notice must be sent to every member (or other person) entitled to receive it, but it need not be sent to a member whose only shares do not give him a right to attend and vote (e.g. as is the case with preference shareholders, nor need it be sent to a joint holder of voting shares who is not the first named holder on the register. If however, the business to be done must, by law, be disclosed to all members (for example proposals to pay compensation to directors for loss of office requiring approval, then notice of it must be sent even to members who are not entitled to vote on it.
 - (iv) the notice must include any information reasonably necessary to enable shareholders to know in advance what is to be done.
- (b) The three circumstances which may necessitate the giving of special notice of a resolution are:
- (i) when there is an intention to remove an auditor from office or to change the auditor.
 - (ii) to re-appoint a director who has reached a mandatory retirement age where the age limit applies as in the case of a public company.
 - (iii) to remove a director from office or to appoint a replacement after removal.
- (c) The term "holding out" is a principle of law in the law of agency. This means that if the principal (i.e. the company) holds out a person as its authorized agent, it is estopped (as against a person who has relied on the representation) from denying that he is its authorized agent and so is bound by a contract entered into by him on the company's behalf. The situation usually results from the board of Directors permitting a director to behave as if he were a managing director duly appointed when in fact he is not. A managing director does, by virtue of his position, have apparent authority to make commercial contracts for the company. If the board allows a director to enter into contracts, being aware of his dealings and taking no steps to disallow him, the company is usually bound.

8. (a) On the facts, we are told that Jones Dambo, who was Company Secretary for District Bank Ltd hired a car from Self-Drive Hire Car Company. He made his employer believe that the car was needed for official duties when in fact it was for private use. His employers the District Bank Ltd has refused to honour the bill for K30,000. The question here is whether the bank should pay the bill or not.

It should be noted that as Company Secretary, Jones Dambo was a senior manager of the company. He has capacity to bind the company by his acts because he has apparent authority to do so. The general principle of agency law is that if a person is employed in a capacity in which he does certain things for his principal, he has apparent authority to bind his principal by such actions on his behalf, unless the principal has denied him that authority and the other party has notice of the restrictions. Applying this principle, it seems obvious that Jones Dambo, as Company Secretary for District Bank Ltd, he was an agent of the bank and therefore had apparent authority to bind the bank by his action even though the car was used for the wedding of his sister, a purely private activity. In *Panorama Development Guilford Ltd vs Fidelis Furnishing Fabrics Ltd (1971)*, a secretary of a company ordered cars from a car hire firm, representing that they were required to meet the company's customers at a London Airport. Instead, he used the cars for his own purposes. The bill was not paid, so the car hire firm claimed payment from the company secretary's employers. The Court of Appeal held that the company secretary's employers were liable because he had apparent authority to make contracts such as the present one. The Court said that it is a normal function of a company secretary to enter into contracts concerned with the administration of the company.

Applying this principle District Bank Ltd is liable to pay the bill of K30,000.

- (b) A person may become a member or shareholder of a company if he agrees to be a member of the company and his name has been registered in the register of members. Entry of his name in the register of members is essential. Mere delivery to the company of a transfer does not make the transferor a member.

Subscribers to the memorandum are deemed to have agreed to become members of the company. The subscribers are liable to pay an amount equal to the normal value of their shares unless the company waives its rights against them by allotting all the authorized share capital to other persons.

- (c) Every company must keep a register of members which contains the following:
- (i) the name and address of each member and the class (if more than one) to which he belongs, unless this is indicated in the particulars of his shareholding.

- (ii) if the company has a share capital, the number of shares held by each. If the shares have distinguishing numbers, the members shares must be identified in the register by those numbers. If the company has more than one class of shares, the member's share must be distinguished by their class, such as preference or ordinary shares.
- (iii) the date on which each member became and eventually the date on which he ceased to be a member. The company must preserve entries relating to former members for 20 years from the date of their ceasing to be a member.

END

NOT FOR SALE