

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

**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**

**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. This 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 7 pages

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

**SECTION A**

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

1. (a) The legal system in Malawi is:
- (i) inquisitorial;
  - (ii) adversarial;
  - (iii) constitutional;
  - (iv) judicial.
- (b) The Headquarters of the African Union is in:
- (i) Malawi;
  - (ii) Libya;
  - (iii) Ethiopia;
  - (iv) South Africa;
- (c) The Head of the Malawi Bar is:
- (i) The Honourable the Chief Justice;
  - (ii) The Attorney General;
  - (iii) The Solicitor General;
  - (iv) The Director of Public Prosecutions.
- (d) The following is a common law remedy:
- (i) Damages;
  - (ii) Specific performance;
  - (iii) Injunction.
  - (iv) *Quantum Meriut*.

**Continued/.....**

- (e) The purpose of criminal law in Malawi is to:
- (i) ensure that the victim of the crime is adequately compensated for the injury or loss he has suffered;
  - (ii) make an order for aggravated damages so that the offender does not commit a similar offence in future;
  - (iii) punish the offender so that the victim of the crime feels satisfied and relieved;
  - (iv) punish the offender so as to deter him from committing other offences in future and also to set an example so that other members of the community should refrain from committing crimes.
- (f) An invitation to treat is:
- (i) a contract made by the parties but without being supported by an exchange of valuable consideration;
  - (ii) a contract made by the parties without clear agreed terms;
  - (iii) a statement not amounting to an offer.
  - (iv) a statement which is the same as an offer.
- (g) Privity of contract simply means:
- (i) a contract which creates private contractual relationship between the parties;
  - (ii) a contract which is entered into pursuant to the rules of equity;
  - (iii) a contract whose terms are strictly private and confidential;
  - (iv) a contract in which the court may exercise its discretion to award substantial damages to a party who has suffered loss.

**Continued/.....**

- (h) A contract for the sale of goods is:
- (i) a contract by which the seller transfers or agrees to transfer the right of possession of his goods to a buyer for money consideration called the price;
  - (ii) a contract by which the seller transfers or agrees to transfer the property in the goods to a buyer for a money consideration called the price;
  - (iii) a contract by which the seller agrees to relinquish his right of control of the goods to the buyer and strongly promises to transfer his right of ownership in the goods to the buyer for a money consideration called the price;
  - (iv) a contract which is legally binding between the parties who agree to observe all the terms of a contract provided money consideration called the price is paid.
- (i) A company cannot form itself. It needs someone to undertake the task. That person is called:
- (i) a director or member of the board of directors;
  - (ii) the Registrar of Companies;
  - (iii) a Trustee;
  - (iv) a promoter.
- (j) One of the documents to be delivered to the Registrar of Companies at the formation of a company is:
- (i) a deed;
  - (ii) a common seal;
  - (iii) a statutory declaration;
  - (iv) a Stock Transfer Form.

**(TOTAL: 20 MARKS)**

**Continued/.....**

2. (a) The statement that all agreements are contracts is very misleading.

**Required:**

To what extent do you agree or not agree with this statement?

**10 Marks**

- (b) Hubert agreed with Henry that Hubert should cultivate a piece of land for K7,000. The land belonged to Henry. After Hubert had cultivated only one third of the land, he became reluctant and decided to abandon the work. Henry persuaded Hubert to proceed with the work and promised him that he would pay him an additional sum of K3,000 after completing the work. Motivated by this promise Hubert continued to work and completed it. Henry paid K7,000 to Hubert and refused to pay him the additional sum of K3,000 as promised.

**Required:**

Advise Hubert whether or not he should take action against Henry.

**10 Marks**

**(TOTAL : 20 MARKS)**

3. (a) Discharge of a contract by performance is where each party has fulfilled or performed his contractual obligation and the agreement comes to an end.

**Required:**

With the aid of at least **two** case authorities, comment on this statement. **10 Marks**

- (b) How does the doctrine of substantial performance mitigate the common law principle of discharge of contract by total performance?

**10 Marks**

**(TOTAL 20 MARKS)**

4. (a) In relation to the Employment Act 2000, the general provision is that no contract of employment shall be transferred from one employer to another without the consent of the employee.

**Required:**

Explain the employee's position at law where an undertaking or part of it is sold, transferred or otherwise disposed of.

**5 Marks**

- (b) Explain the employee's legal position when an employer dies in the course of his contractual relationship with the employee.

**4 Marks**

**Continued/.....**

- (c) Explain the meaning of the term “continuous employment” as defined by the Employment Act. **3 Marks**
- (d) Evans Tobacco Estate has the tendency of employing labourers at certain seasons of the year. The Estate employed Nyasa Phiri for successive seasons of the year 2010 as follows: January to March, May to July and September to November.

**Required:**

Explain the legal position of Nyasa Phiri in relation to his contract of employment with Evans Tobacco Estate. **8 Marks**

**(TOTAL 20 MARKS)**

**SECTION B**

5. (a) How does the Workers Compensation Act define the word “employer”? **5 Marks**
- (b) The general provision in Section 4(1) of the Workers’ Compensation Act is that if an injury, other than the contraction of a scheduled disease, arising out of and in the course of his employment is caused to a worker, his employer is liable to pay compensation.

**Required:**

Explain **three** types of injuries in which an employer is not liable to pay compensation under the Workers’ Compensation Act. **7 Marks**

- (c) The Workers’ Compensation Act creates the Workers’ Compensation Tribunal.

**Required:**

Explain **four** powers of the Workers’ Compensation Tribunal given to it by statute. **8 Marks**

**(TOTAL : 20 MARKS)**

**Continued/.....**

6. (a) When a contract for the sale of goods has been breached by a buyer, the seller has three possible remedies against the buyer personally.

**Required:**

Explain the **three** circumstances under which a seller can seek remedy against a buyer. **6 Marks**

- (b) When a seller has breached a contract for the sale of goods, the buyer too has certain remedies against the seller.

**Required:**

Explain these remedies. **10 Marks**

- (c) Explain **three** circumstances when an unpaid seller of goods has a right of resale of the goods. **4 Marks**

**(TOTAL: 20 MARKS)**

7. (a) In relation to company law, the statutory provision relating to company meetings is that a meeting cannot make valid and binding decisions until it has been properly convened.

**Required:**

Explain the meaning of the term “properly convened”. **12 Marks**

- (b) Chiwanja Kato is a new shareholder in Mufulira & Co. Ltd. He has just learned that a special notice may sometimes be given to a company by a member in preparation for the company’s annual general meeting. He wants to know the circumstances which necessitate a special notice to be given to the company by a member.

**Required:**

Mention **three** circumstances which may necessitate the giving of a special notice to the company by a member. **3 Marks**

- (c) Explain the meaning of the term “agency by holding out”. **5 Marks**  
**(TOTAL 20 MARKS)**

**Continued/.....**

8. (a) Jones Dambo is Company Secretary for District Bank Ltd. On 20 January 2011, he went to Self Drive Car Hire Company and hired a motor vehicle, Toyota Carina registration no. BT 99, representing that it was needed for official use. The truth is that he used the car to transport visitors who came to Blantyre for the wedding of his sister, Rose. On 22 January Self-Drive Car Hire Company sent a bill to District Bank Ltd for K30,000. The Bank refused to honour the bill when they learned that the car had been used for purposes personal to Jones Dambo.

**Required:**

Advise District Bank Ltd of their legal position.

**10 Marks**

- (b) Explain the methods by which a person may become a member or shareholder of a company.

**4 Marks**

- (c) Mention and explain the contents of a company's register.

**6 Marks**

**(TOTAL 20 MARKS)**

**END**