

**STRICTLY CONFIDENTIAL**



**2014 EXAMINATIONS**

**ACCOUNTING TECHNICIAN PROGRAMME**

**PAPER TC8: BUSINESS LAW**

**FRIDAY 5 DECEMBER 2014**

**TIME ALLOWED : 3 HOURS**

**SUGGESTED SOLUTIONS**

## SECTION A

### 1. Sources of law in Malawi:

- (i) **The Republican Constitution of Malawi (1994)** is the supreme law of Malawi. It provides that any act of Government or any law that is inconsistent with the provisions of the Constitution is, to the extent of such inconsistency, invalid. It also provides that all legal and political authority of the State derives from the people of Malawi and shall be exercised in accordance with the Constitution solely to serve and protect their interests. The Constitution establishes the three arms of Government: the Executive, the Legislature and the Judiciary and other constitutional bodies such as the Human Rights Commission.
- (ii) **Legislation** is the body of rules which have been formally enacted or made by Parliament. Parliament can enact law directly in the National Assembly or sometimes it gives powers to some other bodies to make law on its behalf. This is called delegated legislation. Laws made by parliament are referred to as *statutes*. Parliament is the only body in Malawi that can pass or change the law; Parliament may repeal earlier statutes, overrule case law developed in the courts and make law on subjects which have not been regulated by law before.
- (iii) **Custom-** includes rules of human actions established by usage which are adopted by the courts because they are followed by the society as a whole or in part. If an alleged custom is to be incorporated into law, it must be proved to exist in court. The following tests must be satisfied for the existence of a custom to be recognized: local custom must have existed since time immemorial; the right to exercise the custom must not have been interrupted; it must have been exercised through common consent and not by use of force; it must be reasonable- it must conform to the general view of right and reason prevailing in the community; and it should not be in conflict with statute law.
- (iv) **Common Law** refers to the law that was applicable throughout England. It was originally based on the unification of the various local customary laws of England. This law was used by Royal Judges in the Royal Courts to decide cases and is part of case law. Common law introduced the concept of precedent or *stare decisis* (let the decision stand). From the time that Malawi was colonized by Britain, common law became a source of law in Malawi.
- (v) **Equity** – is a system of doctrines and procedures developed by the Court of Chancery in its attempt to remedy some of the defects of the common law. It is part of case law. It introduced the concept of *fairness* and *flexibility*. Examples of equitable remedies include rescission, specific performance, injunction and right of redemption for a mortgagor.

- (vi) **International Law** - refers to international conventions and treaties. These do not become part of Malawi law until they are incorporated by an Act of Parliament or other domestic legislation. Examples include United Nations, African Union, SADC and International Labour Organisation (ILO) treaties.
  - (vii) **Academic Writings** - legal textbooks and articles by reputable authors are occasionally accepted as persuasive evidence of the law where no precedents are available. The weight accorded such evidence will depend on the author's legal standing.
- 2.
- (a)
    - (i) A cheque is defined in section 73 of the Bills of Exchange Act as a bill of exchange drawn on a banker.
    - (ii) The effect of a crossing is that the cheque may be met only by payment to a banker, and cannot be cashed over the counter of the paying bank. The Act provides that a banker who pays a crossed cheque otherwise than in accordance with the crossing will be liable to the true owner of the cheque for any loss the latter may incur by reason of the banker's default.
  - (b) A **Holder in due course** is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely: that he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact and that he took the bill in good faith and for value and that at the time the bill was negotiated to him, he had no notice of any defect in the title of the person who negotiated it. (section 29 of the Bills of Exchange Act)
  - (c) An **accommodation party** to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefore, and for the purpose of lending his name to some other person. An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. (Section 28 of the Bills of Exchange Act)
  - (d) According to section 57 of the Bills of Exchange Act, where a bill is dishonoured, the measure of damages includes:
    - (i) the amount of the bill;
    - (ii) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;
    - (iii) the expenses of noting, or, when protest is necessary, and the protest has been extended the expenses of protest;

3. (a) There are at least four exceptions to the *nemo dat quad non habet* rule under the Sale of Goods Act:
  - (i) **Estoppel:** section 23 of the Sale of Goods Act recognizes the *nemo dat* rule but goes further to provide that where the owner of the goods is by his conduct precluded from denying the seller's authority to sell, the buyer shall acquire a better title;
  - (ii) **Sale under a Voidable Title:** a "voidable title" is one whereby a person who is in possession of goods and is the apparent owner of them in fact does not possess a good title. The true owner can assert his better right to the goods, and "avoid" the possessor's title otherwise a buyer who buys the goods in good faith and without notice of the seller's defect of title shall acquire good title- section 24 of the Sale of Goods Act.
  - (iii) **Seller in Possession of Goods:** section 26 (1) of the Sale of Goods Act provides another exception to the "nemo dat" rule. This section reads as follows: "Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same".
  - (iv) **Buyer in Possession of Goods:** exactly the same result obtains if a buyer has possession of goods with the seller's consent, and before the property has passed the buyer sells or disposes of them, or of documents of title, to a sub-buyer. Provided the sub-buyer acts in good faith without knowledge of any lien of the original seller, or lack of title of the buyer, then he acquires a good title if the goods, or documents of title to them, are actually transferred to him – Section 26(2) of the Sale of Goods Act.
- (b) (i) **Existing Goods** - These are goods which are actually in existence – that is, substantially in a state in which the possession of them is capable of being transferred, at the time the contract of sale is made.
- (ii) **Future Goods** - These are goods which are **not in existence** at the time of the contract. Therefore, there cannot be a sale of them at that time, but only **an agreement to sell** when the goods are actually in existence. Goods that fall into this category may have to be manufactured before they become specific, or they may have to be grown.

- (iii) **Specific Goods** – these are not only existing goods but are essentially the actual goods **which will pass under the contract**. If you want to buy 10 sweets the seller takes off from the shelf a packet containing 100 sweets and puts aside 10 sweets- these are the specific goods.
  - (iv) **Ascertained Goods** – these are goods identified by both parties, e.g. "two of those bottles of wine". They are similar to specific goods.
  - (v) **Unascertained Goods** – these are goods which are usually in existence but which have not been specifically identified as the goods forming the subject-matter of the sale. When they have been so identified, they become "ascertained".
- (c) Section 9 of the Sale of Goods Act provides that where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement shall be thereby avoided. This means that the contract comes to an end through frustration.
- (iii) (a) A hypothetical example of
    - (i) **Past consideration** – Akim promising to give Mark some money because last year John worked in his garden.
    - (ii) **Inadequate consideration** – when a policeman demands to be paid for catching a thief, he will have provided inadequate consideration for the payment and so not entitled to it.
  - (b) **The Postal Rule** – states that where post is regarded as the proper way of acceptance, acceptance comes into effect and the offeror is deemed to have been communicated when the letter of acceptance is posted, correctly addressed and stamped. In *Adams v Lindsell* [1818] 1 B & A 681, the defendants were wool dealers in business at St. Ives, Huntingdon. By letter dated 2 September they offered to sell wool to the plaintiffs who were wool manufactures at Bromsgrove, Worcestershire. The defendants' letter asked for a reply 'in course of post' but was misdirected, being addressed to Bromsgrove, Leicestershire. The offer did not reach the plaintiffs until 7pm on 5 September. The same evening the plaintiffs accepted the offer. This letter reached the defendants on 9 September. If the offer had not been misdirected, the defendants could have expected a reply on 7 September, and accordingly they sold the wool to a third party on 8 September. The plaintiffs now sued for breach of contract. It was held that where there is a misdirection of the offer, as in this case, the offer is made when it actually reaches the offeree, and not when it would have reached him in the ordinary course of post. The defendants' mistake must be taken against them and for the purposes of this contract the plaintiff's letter was received 'in course of post'. The acceptance was made in course of post (no time limit was imposed) and was effective when posted on 5<sup>th</sup> September.

- (c) For any person to enforce a purported contract, he must show that he furnished some consideration for the same. In other words, any purported contract, is unenforceable at law unless supported by consideration. Consideration was defined in the case of **Currie v Misa** [1875] LR 10 Exch 153 at 162 in the following terms: “*a valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.*”

Consideration may be executory or executed. Executory consideration is a promise given for a promise. Executed consideration is an act done or completed in return for a promise. Consideration must not be past -see **Re McArdle** [1951] Ch 669. Consideration must move from the promisee - **Price v Easton** [1833] 4 B & AD 433, the defendant promised X that if X did certain work for him he would pay a sum of money. Consideration must be something of value but it need not be adequate **Chappell & Co. Ltd v. Nestlé Co. Ltd** [1960] AC 87.

- (d) A debt may be legally discharged by the payment of a smaller sum of money in the following circumstances
- (i) Where at the creditor's request, the debtor pays a lesser sum on an earlier date.
  - (ii) Where the debtor pays by a different chattel e.g. where the lesser payment has been made by cash instead of a cheque.
  - (iii) Where payment has been made at a different place than the parties agreed.
  - (iv) Where the doctrine of promissory estoppels applies .See- **Central London Property Trust Ltd. V High Trees House Ltd (the High Trees Case)** [1947] KB 130,

## SECTION B

5. (a) (i) **Summary Dismissal** (section 59 of the Employment Act) is termination of the contract of employment by the employer without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term. There are five grounds for summary dismissal:
  - (1) where an employee is guilty of serious misconduct such that it would be unreasonable to require him to continue the employment relationship;
  - (2) habitual or substantial neglect of duties;
  - (3) lack of skill that the employee holds out to have;
  - (4) willful disobedience to lawful orders given by the employer; or
  - (5) absence from work without permission of the employer and without reasonable excuse.
- (ii) **Constructive Dismissal** (section 60 of the Employment Act) is a form of unfair dismissal; an employee is entitled to terminate a contract of employment without notice or with less notice than that to which the employer is entitled where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship. Constructive dismissal was proved in *Banda v Dimon (Mw) Ltd* (2008) MLLR 92 where the defendant forced the plaintiff, a computer programmer, out of his job by taking away his office, accommodation, computer hardware and files.
- (b) **Remedies for Unfair Dismissal** are three-fold.
  - (1) Reinstatement may be ordered whereby the employee is to be treated in all respects as if he had not been dismissed.
  - (2) Re-engagement may be ordered whereby the employee is to be engaged in work comparable to that in which he was engaged prior to his dismissal or other reasonably suitable work from such date and on such terms of employment as may be specified in the order or agreed by the parties.
  - (3) An award of compensation award is the most popular. It is a lump sum of money assessed by the court considering immediate loss of wages; manner of dismissal and future loss.

6. (a) **Tort and Contract** -Tort aims principally at prevention or compensation of harms, whereas the core of contract is the idea of enforcing certain promises. Further in tort the content of the duties is fixed by the law whereas the content of contractual duties is fixed by the contract itself. Therefore, in order to find out whether a person has committed a tort you look at the law while to establish a breach of contract, you look at the terms of the contract agreed by the parties. However, in any factual situation there may be overlap between the law of torts and the law of contract. For instance, a claim for damages arising from a defective product may involve a complex web of issues under the Sale of Goods Act. The other difference is that in tort, the plaintiff's claim is for unliquidated damages, while in contract it is for liquidated damages. In contract they are liquidated because they are measured by the extent of the breach of the contract, while in tort they are unliquidated because they have to be determined by law for example you cannot tell how much is to be paid for a broken leg.
- (b) **Tort and Crime** -Crimes are those acts and omissions which society as a whole prescribes as being completely unacceptable. Crimes are normally prosecuted by the state through the criminal courts. Whereas, a tort is a civil action which an individual prosecutes in a civil court at his discretion. There are however, torts such as assault and battery, which may also be actionable as crimes and a civil remedy may be obtained after the completion of the criminal proceedings. The standard of proof in a civil suit case is on a balance of probabilities whilst in a crime it is beyond reasonable doubt.
- (c) In *Donoghue v Stevenson* [1932] AC 562, the defendants were manufacturers of ginger beer. A friend of the plaintiff purchased a bottle of ginger beer for the plaintiff. The plaintiff took some of the ginger beer but when she poured off the remainder of the contents of the bottle a decomposed snail floated out of the bottle. The plaintiff claimed that she suffered severe shock and became very ill as a result of this incident. She was unable to proceed against the manufacturers in contract because there was no contract between the parties. So she brought an action in tort against the manufacturers. It was **held** that the defendants being manufacturers of ginger beer owed a duty of care to the plaintiff as the ultimate consumer or purchaser of the ginger bottle making sure it did not contain some substance which was likely to cause injury to health.
- (d) A **nuisance** is concerned with unreasonable interference with a person's use or enjoyment of his land or some right in connection with his land. It concerns disputes between neighbors relating to their respective uses of land, but it can also apply to environmental disputes, e.g. where large factories pollute the atmosphere. A nuisance may be private or public nuisance. A Private nuisance is an unlawful interference with a person's use or enjoyment of land, or some right over or in connection with it for example a neighbor who blasts music in his house causing discomfort to his neighbors. A Public Nuisance is an act which materially affects the reasonable comfort and convenience of life of a class of the public/citizen such as pollution of a city.



7. (a) An agency relationship is created in the following ways:
  - (i) By express agreement
  - (ii) By implied agreement
  - (iii) By ratification
  - (iv) Through the doctrine of necessity
- (b) An agency relationship can be terminated in the following ways:
  - (i) By express revocation of it by the principal
  - (ii) By death of either the principal or the agent.
  - (iii) By effluxion of time
  - (iv) By the execution or completion of the task.
- (c) The following are the rights of a purchaser in a hire purchase agreement:
  - (i) The right to the return of goods repossessed by the purchaser for default of payment of instalments where the purchaser pays all the unpaid instalments.
  - (ii) A right to pay any instalment of the purchase price before it is due.
  - (iii) The right to terminate the agreement.
  - (iv) The right to be reinstated after return of goods to seller.
  - (v) The right to pay outstanding balance of purchase price.
- (d) An agent has the following duties towards his principal:
  - (i) Obedience to the instructions of the principal.
  - (ii) The duty to exercise due care and skill in performing his duties on behalf of the principal.
  - (iii) The duty to be honest and not to take bribes or make secret profits.
  - (iii) To avoid conflict of interest between his personal interests and his duties towards the principal.
- (e) An agent is deemed to have apparent authority when a person by words or conduct represents to a third party that the agent has authority to act on his behalf.

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