

STRICTLY CONFIDENTIAL

THE PUBLIC ACCOUNTANTS EXAMINATION

COUNCIL OF MALAWI

2014 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC 8: BUSINESS LAW

THURSDAY 5 JUNE 2014

**TIME ALLOWED: 3 HOURS
2.00 PM – 5.00 PM**

SUGGESTED SOLUTIONS

SECTION A

1. (a) The Commercial Credits Act has the function of facilitating the borrowing by the proprietors of certain businesses on the security of trading assets and for purposes connected therewith and incidental thereto.
- (b) In relation to the Hire Purchase Act:
 - (i) the purchaser has the following rights:
 - (1) Right to be reinstated after return of goods to the seller (section 14).
 - (2) Right to pay outstanding balance of the purchase price (section 15).
 - (3) Right to terminate the hire-purchase agreement (section 17).
 - (ii) Under section 20 of the Hire-Purchase Act, the Court's powers include:
 - (1) Making an order for the return of the goods to the seller;
 - (2) Making an order for the return of a part of the goods to the seller
 - (3) Making an order, in the case of an instalment sale agreement, for the retention by the purchaser of part of the remainder of the goods;
 - (4) Making an order in the case of a hire-purchase agreement, for the transfer to the purchaser of the seller's title to the remainder of the goods;
 - (5) Making an order requiring the goods to be sold by public auction or by a private treaty.
- (c) In terms of section 2 of the Hire-purchase Act, a hire-purchase agreement means— (a) any contract whereby goods are sold subject to the condition that notwithstanding delivery of the goods the ownership in such goods shall not pass except in terms of the contract and the purchase price is to be paid in two or more instalments; (b) any contract which provides for the hiring of goods whereby the hirer has the right— (i) to purchase such goods after two or more instalments have been paid in respect thereof; or (ii) after two or more instalments have been paid in respect thereof, to continue or renew from time to time such hiring at a nominal rental, or to continue or renew from time to time the right to be in possession of the goods, without any further payment or against payment of a nominal amount

periodically or otherwise; whether or not the agreement may at any time be terminated by either party or one of the parties; (c) any other contract which has, or contracts which together have, the same import as either or both the contracts defined in paragraph (a) or (b) of this definition, whatever form such contract or contracts may take;

2. (a) (i) Rights of a banker are:
 - (1) To charge a reasonable commission for its services and interest upon loans and overdrafts;
 - (2) When payment is needed the customer (as creditor) must seek out the banker (as debtor). This reverses the common law rule that a debtor must seek the creditor;
 - (3) If cheques are drawn which, when presented, would create an unauthorised overdraft or an excess over an agreed limit, the cheques may be returned unpaid;
 - (4) With regard to overdrawn accounts, the balance is payable on demand unless, say, a facility letter has been issued by the bank which expressly states the terms and conditions under which demand may be made;
 - (5) A general lien exists over customer securities, which come into the bank's hands in the normal course of business.
- (ii) Duties of a banker are:
 - (1) To receive a customer's money and cheques, etc for collection;
 - (2) To repay this money on demand, during business hours, upon presentment of the customer's written order at the account holding branch or otherwise as agreed;
 - (3) To give reasonable notice before closing a credit account so that the customer can make other arrangements and have outstanding cheques cleared without damage to reputation;
 - (4) To maintain secrecy with regard to a customer's account and his financial affairs;
 - (5) To advise the customer immediately the forgery of the customer's signature is brought to the bank's attention.

(iii) Duties of a customer are:

- (1) To seek out the banker, if he requires payment. This reverses the common law rule that a debtor must seek the creditor;
- (2) Issue cheques only if he has sufficient credit balance or unutilized overdraft;
- (3) Pay charges as agreed or as reasonable;
- (4) Exercise reasonable care in drawing the cheque so that the bank will not be misled or that fraud or forgery will not be facilitated;
- (5) Advise the bank of any forgery of his signature, as otherwise, by the doctrine of estoppels, he may subsequently be prevented from denying the genuineness of it.

(b) The Bills of Exchange Act is important because it provides statutory law on the issuance and enforcement of Bills of Exchange, Cheques and Promissory Notes, and Matters Incidental thereto.

3. (a) (i) Chikwekwe would have a general or particular possessory lien on the Motor vehicles in respect of lawful claims arising in the course of the agency, he must be in lawful possession of the motor vehicles in the course of the agency and in the same capacity in which he claims the lien. There must be no agreement inconsistent with the lien nor must the motor vehicles be delivered with directions or for a purpose inconsistent with a lien.

(ii) An agent is deemed to have apparent authority when by his or the principal's words or conduct he represents or is represented to a third party as having authority to act on the principal's behalf. For example, where the principal holds out an agent as having authority to receive money on his behalf, third parties will be justified in giving the principal's money to the agent.

(iii) Rights of an agent are:

- (1) the right to remuneration
- (2) the right to an indemnity
- (3) the right to a lien; and
- (4) the right of stoppage in transitu.

(iv) The agency relationship can be terminated in the following ways:

- (1) By express revocation of it by the principal

- (2) By death of either the principal or the agent
- (3) By effluxion of time
- (4) By the execution or completion of the task.

4. (a) **A contract** is an agreement made between two or more parties which is intended to have legal consequences. Thus, if there is a breach of contract, the parties can go to court and obtain a remedy. Further than the intention to create legal relations, a valid contract must have the following elements;- there must be an agreement (offer and acceptance) – *Carill v Carbolic Smoke Ball Company (1893)*; there must be consideration, which is something of value; the parties must have capacity; and the contract itself should not be illegal or unenforceable by the courts. A contract is entered into voluntarily and the function of the law is merely to enforce or adjudicate on such agreements.

A tort is a civil wrong independent of a contract. It arises out of a duty imposed by law, and a person who commits a tortious act does not voluntarily undertake the liabilities which the law imposes on him. There are many kinds of torts with a common characteristic; injury of some kind inflicted by one person on another, for example the tort of negligence- *Donogue v Stevenson* (1932). The typical remedy in this branch of the law is an action for damages by the injured party against the person responsible for the injury.

A crime, on the other hand, is a public offence against the State, and, while an individual may be injured, the object of a criminal charge is to punish the offender, not to compensate the victim. Criminals are prosecuted, usually by the police, and if found guilty receive an appropriate punishment which may include a fine, community work, forfeiture say of a licence, imprisonment or death.

- (b) The structure of the courts in Malawi is as follows:- The **Malawi Supreme Court of Appeal** stands at the summit of the Malawi court structure. Its decisions are binding on all courts below it in hierarchy. It hears constitutional, civil and criminal appeals. This court hears appeals from the High Court. It has no original jurisdiction i.e. one cannot commence an action in the Supreme Court. The court has appellate jurisdiction only. Judges of the Supreme Court are called Justices of Appeal.

The **High Court of Malawi** hears appeals from magistrates' courts, and various tribunals that fall under it. Such appeals may be civil or criminal in nature. The High court has both original and appellate jurisdiction i.e. apart from hearing appeals, the high court can also hear matters at first instance. The High Court can sit as a Constitutional Court where the matter under consideration is constitutional in nature. Three judges sit in the constitutional court. The High Court can also sit as a Commercial Court where the matter is commercial in nature. Most of the matters in the High court are heard by a single judge.

Subordinate courts include the **Magistrates Courts**- which are divided into Resident Magistrates and other magistrates of various grades with varying powers and the **Industrial Relations Court** which hears labour cases.

SECTION B

5. (a) (i) **A nuisance** is an activity that substantially and unreasonably interferes with the use and enjoyment of land. The interference may be physical, such as vibration, the destruction of crops, or the throwing of objects upon the land. The interference may cause discomfort or a health risk from pollution, odors, excessive noise, dust, or noxious fumes. A nuisance may include offensive conditions on neighboring land that injures the occupants' mental peace through the problems those conditions create or threaten to create, or simply through their offensive nature. Common-law nuisance actions have been useful for challenging environmental damage.
- (ii) **The tort of trespass to land** is an unauthorized intrusion by a person or a thing on land belonging to another. If the intruder intended to be on another's property, it is irrelevant if the intruder mistakenly thought she owned the land or had permission to be on it. It is not necessary for the property owner to demonstrate actual injury to the property. For example, shooting a gun across another's property may be a trespass to land despite the fact that no physical damage occurs. Landowners have a right of peaceful enjoyment of their property. If, however, a person enters another's property to protect it from damage or to help someone on the property who is in danger, that is a defense against the tort of trespass to land.
- (b) The facts indicate that Titus & Ross are professionally negligent. The law requires that a person who professes a certain calling must perform the duties expected of him as a reasonable professional with such knowledge and experience would do. Professional negligence constitutes failure by a professional to use the proper care in doing something, i.e., the amount of care that an ordinarily prudent person would use under the same circumstances. For example, in **Thake v Maurice** [1984], a doctor who conducted a vasectomy but the patient was able to impregnate a woman was held to have been professionally negligent. In **Hedley Byrne and Co Ltd v Heller and Partners Ltd** (1964) the court said that professionals owe a duty of care to their clients.

In terms of the present facts, Titus & Ross are professional registered property consultants and so allowing a junior valuer with little experience, to do the report was negligent. This then resulted in the loss of K10 million through the undervalue.

KS Bank will be advised to sue for the lost sum of K10 million and damages for Titus & Ross' professional negligence.

6. (a) I would advise Mr Blair that according to section 20 of the Sale of Goods Act, unless a different intention appears, the time at which the property in the goods is to pass from the seller to the buyer shall be ascertained using the following rules:
- (i) where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods shall pass to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery or both are postponed.
 - (ii) where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property shall not pass until such thing be done and the buyer has notice thereof.
 - (iii) where there is a contract of the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property shall not pass until such act or thing is done, and the buyer has notice thereof.
 - (iv) When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein shall pass to the buyer:
 - (1) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction.
 - (2) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of the rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, or, if no time has been fixed, on the expiration of a reasonable time.
 - (3) where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon shall pass to the buyer.
 where, in pursuance of the contract, the seller delivered the goods to the buyer or to a carrier or other bailee or custodier for the purpose of transmission to the buyer, and does not reserve the right of disposed, he shall be deemed to have unconditionally

appropriated the goods to the contract.

- (b) The following are the rules as to delivery of goods:
- (i) Whether it is for the buyer to take possession of goods or the seller to send them to the buyer shall depend on the express or implied agreement of the parties.
 - (ii) Where under the contract of sale the seller is bound to send them to the buyer, but no time for sending them is fixed, the seller shall be bound to send them within a reasonable time.
 - (iii) Where the goods at the time of sale are in the possession of a third person, there shall be no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.
 - (iv) Demand or tender of delivery may be treated as unaffected unless made at a reasonable hour; and what is a reasonable hour shall be a question of fact.
 - (v) Unless otherwise agreed, the expenses of and incidental to putting the goods in a deliverable state must be borne by the seller.
- (c) The relationship between the transfer of risk and the doctrine of frustration is that, in terms of section 9 of the Sale of Goods Act, where there is an agreement for the sale of specific goods and subsequently the goods without any fault of the seller or buyer perish before the risk passes to the buyer, the agreement is thereby voided.

7. (a) The following warranties are implied in a sale of goods contract:
- (i) Implied warranty that the buyer shall have and enjoy quiet possession of the goods;
 - (ii) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time the contract is made.
- (b) In hire purchase price, the word purchase price includes:
- (i) the sale price;
 - (ii) any deposit;
 - (iii) compensation or damages for breach of the agreement;
 - (iv) money paid for licence or registration fees;

- (v) insurance premiums;
 - (vi) interests;
 - (vii) installation payments.
- (c) In every hire purchase agreement there shall be:
- (i) an implied warranty that the purchaser shall have and enjoy quiet possession of the goods.
 - (ii) an implied condition on the part of the seller that he is not and will not be precluded from passing the ownership of the goods to the purchaser at the time when the ownership is to pass.
 - (iii) an implied warranty that the goods shall be free from any charge or incumbrance in favour of any third party at the time when the ownership is to pass.
8. (a) (i) **An offer** sets out the terms upon which an individual is willing to enter into a binding contractual relationship with another person. It is a promise to be bound on particular terms, which is capable of acceptance- *Carlill v Carbolic Smoke Ball Co (1893)*. The essential factor about an offer is that it may, through acceptance by the offeree, result in a legally enforceable contract. The person who makes the offer is the offeror; the person who receives the offer is the offeree.
- (ii) **A counter-offer** arises where the offeree tries to change the terms of the original offer that has been made rather than directly accepting it. The effect of making a counter-offer is to bring the original offer to an end so it is no longer possible for that original offer to be accepted at a later time. For example, in *Hyde v Wrench (1840)*, Wrench offered to sell his farm for £1,000. Hyde offered £950, which Wrench rejected. Hyde then informed Wrench that he accepted the original offer. It was held that there was no contract. Hyde's counter-offer had effectively ended the original offer and it was no longer open to him to accept it.
- (b) This question deals with the law of obligations and specifically the law of contract. The facts show that there is a unilateral contract in which one party promises something in return for some action on the part of another party. Reward cases are typical examples of such cases. There is no compulsion placed on the party undertaking the action, but if they carry out the task requested they would receive the reward offered.

An offer is an undertaking, capable of acceptance, to be bound on particular terms. The person who makes the offer is the offeror; the person who receives the offer is the offeree. An offer sets out the terms upon which the offeror is willing

to enter into contractual relations with the offeree. An offer may, through acceptance by the offeree, result in a legally enforceable contract.

In **Carlill v. Carbolic Smoke Ball Co.** (1893) the company manufactured a patent "smoke ball" which, it claimed, prevented influenza. It advertised in the press that it would pay £100 to anyone who contracted influenza after taking one of its smoke balls. Mrs Carlill read the advertisement, bought a smoke ball from the chemist, and used it as directed. However, she promptly got influenza, and she sued the company for the promised sum of £100. The company claimed that it was a "mere puff", and not meant to be taken seriously. It was held by the court that the promise to pay £100 was a valid offer to the world at large. Mrs Carlill had accepted by complying with the conditions, and was entitled to the money.

Applying the foregoing to the facts of the scenario, it would appear that Mary has made a unilateral offer to the world at large. Thom was thus able to accept the offer by performing the required act. He did not have to inform Mary that he was accepting the offer; he simply had to perform the act. In the circumstances, Thom can claim the K100,000 from Mary. As for Mary's decision to revoke her offer, it is ineffective seeing that Thom did find the bracelet. She also did not make her decision to revoke the offer known to the world at large before Thom had already found the bracelet.

END