

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

**THE PUBLIC ACCOUNTANTS EXAMINATION**  
**COUNCIL OF MALAWI**

**2011 EXAMINATIONS**

**ACCOUNTING TECHNICIAN PROGRAMME**

**PAPER TC 8: BUSINESS LAW**

**THURSDAY, 9 JUNE 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 are **not** 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. The paper is divided into Sections **A** and **B**.
4. **FIVE** questions **ONLY** to be answered; at least **TWO** questions from each section.
5. Each question carries 20 marks.
6. Your answers must be supported, where appropriate, by relevant decided cases and statutory provisions.
7. Begin each answer on a fresh page.
8. **DO NOT OPEN THIS PAPER UNTIL YOU ARE INSTRUCTED BY THE INVIGILATOR**

This question paper contains 5 pages

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

**SECTION A**

1. (a) Mention **three** ways in which an artificial legal entity may come into being. **3 Marks**
- (b) Define the following terms:
  - (i) Corporate sole; **2 Marks**
  - (ii) Corporate aggregate; **3 Marks**
  - (ii) Public Limited Company. **3 Marks**
- (c) Explain the liability of the members of a partnership formed under the Partnership Act. **3 Marks**
- (d) Felix, Kelious and Dziko formed a partnership 10 years ago, although Felix was a sleeping partner and never had anything to do with the running of the business. Two years ago the partnership employed Chris as its manager. The partners subsequently left much of the day-to-day work to Chris who has let it be known generally that he has become a partner, although he has not.

The business of the partnership is not doing well and the available assets cannot cover all the debts of the partnership.

**Required:**

Consider and explain the potential liabilities of the partners and that of Chris.

**6 Marks**

**(TOTAL: 20 MARKS)**

2. (a) In sale of goods, what is meant by 'retention of title'? **5 Marks**
- (b) The common law rule contracts is that the seller is not under legal duty to draw the attention of the buyer to all the defects in the goods under sale (*caveat emptor*).

**Required:**

Explain how the Sale of Goods Act has modified this position?

**6 Marks**

**Continued/.....**

- (c) Many people, as consumers, are not protected by Privity of Contract; for example a friend being taken out to a restaurant for a meal.

**Required:**

How does common law protect them against injury?

**5 Marks**

- (d) Mention **two** general duties of a buyer of goods under the Sale of Goods Act.

**4 Marks**

**(TOTAL: 20 MARKS)**

3. (a) In relation to the law of contract, explain the meaning of the following terms:

(i) An offer, **4 Marks**

(ii) A counter-offer, **3 Marks**

(iii) A tender, **3 Marks**

(iv) The postal rule for acceptance of an offer. **3 Marks**

- (b) Mention any **four** ways in which an offer comes to an end. **4 Marks**

- (c) Define the term '**anticipatory breach**' of a contract. Give an example. **3 Marks**  
**(TOTAL: 20 MARKS)**

4. (a) When a judge has ascertained the facts of a case before him, he must apply the law to the facts in order to arrive at a decision. There are various sources of law that the judge may use.

**Required:**

Discuss the following sources of law:

(i) Statute law, **3 Marks**

(ii) Case law, **3 Marks**

(iii) Equity, **2 Marks**

(iv) Customary law. **2 Marks**

**Continued/.....**

- (b) Mention **two** examples of external aids that a judge may use in interpreting an Act of Parliament. **2 Marks**
- (c) (i) Why is special legislation needed to protect those who buy goods on hire-purchase terms? **3 Marks**
- (ii) What are the **two** main types of protection given to the hirer of goods under the Hire-Purchase Act? **5 Marks**
- (TOTAL: 20 MARKS)**

### **SECTION B**

5. Discuss any **four** of the following cases:

- (i) *Carill v Carbolic Smoke Ball Company* (1893) **5 Marks**
- (ii) *Bettini v Gye* (1876) **5 Marks**
- (iii) *Poussard v Spiers* (1876) **5 Marks**
- (iv) *Donoghue v Stevenson* (1932) **5 Marks**
- (v) *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* (1953) **5 Marks**
- (TOTAL: 20 MARKS)**

6. (a) Mariam was selling her cottage at Senga-Bay and Farook was considering buying it. Farook wrote to Mariam's accountant, Frank, and requested information about the annual turnover of the cottage. The accountant wrote to Farook informing him that the cottage's annual sales are 'in the region of K10 million'.

Farook purchased the cottage and subsequently found that although several years ago the turnover had once approached K10 million, generally it was about K5 million a year.

**Required:**

Advise Farook in the tort of negligence.

**6 Marks**

**Continued/.....**

- (b) (i) In the law of torts, what is meant by ‘**contributory negligence**’? **2 Marks**
- (ii) Cite **one** example of a situation in which contributory negligence is present. **2 Marks**
- (c) Mention **five** factors that can vitiate a contract. Support your answers with examples. **10 Marks**

**(TOTAL: 20 MARKS)**

7. (a) Define the term ‘**exclusion clauses**’ also known as ‘**exemption clauses**’ in contract law. **2 Marks**
- (b) State the **three** circumstances under which exclusion clauses may be incorporated into a contract. **6 Marks**
- (c) How are exclusion clauses interpreted by the courts? **2 Marks**
- (d) The classic case of **Hadley v Baxendale** (1854) describes the rules relating to damages for breach of contract.

**Required:-**

Comment on the following heads as discussed in the said case of **Hadley v Baxendale**:-

- (i) Remoteness of damage, **4 Marks**
- (ii) Causation and damage, **2 Marks**
- (iii) Mitigation of loss, **2 Marks**
- (iv) The measure of damages. **2 Marks**

**(TOTAL: 20 MARKS)**

**Continued/.....**

8. Mr Phiri owns a mansion in Chimaliro, Mzuzu City. He desires that the mansion wears a new luxurious paint. He enters into a contract with Masters Construction Company to do the painting.

Zangazanga Paints Ltd approaches Mr Phiri and convinces him to instruct Masters Construction to buy paints made by Zangazanga Paints Ltd. In their persuasion, Zangazanga Paints Ltd assures Mr Phiri that their paint is of the highest quality on the market and that it would last a period of not less than 10 years without peeling off.

Masters Construction proceeds to enter into a contract for the supply of the paint with Zangazanga Paints Ltd.

After successful completion of the works, Mr phiri is perplexed to observe that the paint from Zangazanga Paints Ltd is substandard and, in fact, it lasts six months only before peeling off from the walls.

The facts demonstrate that Zangazanga Paints Ltd have made a misrepresentation. There are four elements that must be present before the courts will hold that a particular statement is a misrepresentation.

**Required:**

- (a) (i) State the **four** elements. **4 Marks**
- (ii) State the **three** types of a misrepresentation. **6 Marks**
- (b) Zangazanga Paints Ltd has now been sued by Mr Phiri. In their defence they contend that Mr phiri was not a party to the contract between them and Masters Construction and so cannot maintain an action against them:-

**Required:**

- (i) What doctrine of contract law is Zangazanga Paints Ltd advancing? **1 Mark**
- (ii) Discuss the doctrine. **4 Marks**
- (iii) In your opinion, do you think that the defence advanced by Zangazanga Paints Ltd will succeed? Explain your answer. **5 Marks**

**(TOTAL: 20 MARKS)**

**E N D**