

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

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

**2013 EXAMINATIONS**

**ACCOUNTING TECHNICIAN PROGRAMME**

**PAPER TC 8: BUSINESS LAW**

**THURSDAY 5 DECEMBER 2013**

**TIME ALLOWED : 3 HOURS**  
**9.00 AM - 12.00 NOON**

**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. In relation to the Malawi legal system:

- (a) Explain the meaning of ‘interpretation of statutes.’ **2 Marks**
- (b) Explain the **four** rules used by the courts in interpreting statutes. **8 Marks**
- (c) Write brief notes on the following:
- (i) Received laws. **3 Marks**
- (ii) Legal system. **3 Marks**
- (iii) Sources of law in Malawi. **4 Marks**

**(TOTAL: 20 MARKS)**

2. (a) With the aid of **three** decided cases, explain in detail, the meaning of ‘an offer’ and distinguish it from ‘an invitation to treat’. **10 Marks**
- (b) Mention and describe **five** terms that may be identified in a contract. **5 Marks**
- (c) In a sale of goods transaction, each party is entitled to bargain so that each one of them gets a good deal as a way of either saving money or making a good profit.

**Required:**

At what point can bargaining be said to amount to a counter offer? **5 Marks**  
**(TOTAL: 20 MARKS)**

3. (a) Zizwani offered to sell three vehicles to Bongani at a total price of K6 million. He told Bongani to communicate his acceptance by sending a fax on or before Christmas day. On Christmas day Bongani’s fax machine developed a fault and therefore, could not be used to send the fax. Instead, Bongani sent an e-mail through his smart phone the following day, Boxing Day, accepting Zizwani’s offer. Although Zizwani received the email, he is refusing to sell the vehicles to Bongani.

**Required:**

Discuss whether or not Bongani can successfully sue Zizwani for breach of contract. **6 Marks**

**Continued/.....**

- (b) Employment contracts are, to some extent, similar to an agency relationship in that they both involve one party working for another.

**Required:**

- (i) Mention **two** other similarities between an employment contract and an agency relationship. **2 Marks**
- (ii) Mention **two** differences between an employment contract and an agency relationship. **2 Marks**
- (c) Paul's parents have just died in a car accident and have left a lot of property which includes seven houses and a fleet of cars. During his bereavement, Paul has had a lot of support and words of comfort from his parish priest and his Principal at school. Paul has grown so fond of the parish priest that he looks up to him for advice in everything he does.

He has thus decided to sell all the seven houses to the parish priest at a value of K6 million although the real value of the property would be in excess of K40 million.

Paul's sister who had been in the United States of America all this while has just arrived and wants the houses to be given back to Paul and his sisters. She alleges that Paul was unduly influenced into selling the property by the priest, an allegation which the priest denies.

**Required:**

- (i) In what circumstances would undue influence exist? **5 Marks**
- (ii) Advise the priest what he should prove in order to rebut the presumption or allegation of undue influence. **5 Marks**

**(TOTAL: 20 MARKS)**

**Continued/.....**

4. (a) In relation to the law on sale of goods, explain the following terms:
- |                                  |                |
|----------------------------------|----------------|
| (i) Delivery.                    | <b>2 Marks</b> |
| (ii) Document of title to goods. | <b>2 Marks</b> |
| (iii) Future goods.              | <b>2 Marks</b> |
| (iii) Specific goods.            | <b>2 Marks</b> |
| (iv) Acceptance.                 | <b>2 Marks</b> |
- (b) Karen is engaged by Ngoni to act as his representative in order to negotiate with prospective sellers of land which he wishes to buy in North Gate Suburbs, an exclusive area in the northern suburbs of Lilongwe. Ngoni informs Karen that under no circumstances must she actually purchase any land without his express approval, and Ngoni informs Karen that the maximum price he is prepared to pay is K10 million. Karen proceeds to conclude a contract with Keith for the purchase of land for K15 million in Area 25, a much less prestigious area. Ngoni is extremely dissatisfied with both the location of the property and the purchase price.

**Required:**

Advise Ngoni on the nature of the agency relationship and his remedies against Karen in the circumstances.

**10 Marks**

**(TOTAL: 20 MARKS)**

**SECTION B**

5. Alan, a man aged 27, had consumed a lot of alcohol one Monday morning at Manje Township. He left for home on foot in the late afternoon. His route took him to a busy road close to the centre of Blantyre City. Alan decided to take a chance and cross the road some distance from the traffic lights where a pedestrian crossing was. He looked to the right and noticed that the lights were red and that there were two cars just approaching the traffic lights. Then he looked to the left and began to cross the road. As he reached the centre of the first lane, he realised that the cars were now approaching at high speed and that he might not be able to reach the central reservation. He hesitated for a moment and the next thing, bang! he was hit by the car driven by Bill.

Alan was taken to hospital and detained there for 10 weeks suffering from multiple injuries. After leaving hospital, Alan slowly recovered, but still suffers from mild post-traumatic stress disorder and has pain in his legs which were operated on immediately after the accident. Alan will always walk with a slight limp and he may develop arthritis at some distant future date as a result of the accident. He also has numerous scars on his face and arms, and will require cosmetic dental surgery, at a specialized hospital outside Malawi, to replace his damaged teeth. He is paying for private dental treatment and hopes to recover the cost of this from Bill.

The estimated speed of the car which hit Alan was 100 km/h in a 60 km/h limit zone and he is lucky to have survived at all.

The facts show that Bill has committed a tort against Alan.

**Required:**

- (a) Distinguish the main aims of a tort from those of a contract. **5 Marks**
- (b) It can be concluded from the facts that Alan contributed to his injuries. Explain the meaning of the defence of contributory negligence in relation to the facts. **6 Marks**
- (c) Assuming traffic police officers have taken Bill into custody for an offence of over speeding; advise Alan what remedies the prosecution is likely to achieve. **6 Marks**
- (d) Advise Alan if he can sue Bill, and if so, what remedies, if any, is he likely to obtain from the court. **3 Marks**  
**(TOTAL: 20 MARKS)**

6. (a) Moyo, Sawopa and Tembo are vendors in Lilongwe Market. They wish to form a partnership, selling stationery and other consumables within the City of Lilongwe. They have information that you are studying Business Law and would like some advice from you.

**Required:**

Advise the **three** on any **five** distinguishing features between a partnership and a registered company. **10 Marks**

- (b) Outline the **four** circumstances under which a partnership may be dissolved under the Partnership Act. **10 Marks**  
**(TOTAL: 20 MARKS)**

**Continued/.....**

7. (a) Identify any **five** possible parties to a bill of exchange. **5 Marks**
- (b) Distinguish an inland from a foreign bill of exchange. **2 Marks**
- (c) Outline any **three** types of indorsements that may be found on a bill of exchange. **3 Marks**
- (d) Alick draws a cash/bearer cheque for K100,000.00 on Balaka Bank Ltd and gives it to Carol as part of a transaction. The cheque is stolen from Carol by Daniel. Daniel gives the cheque to Ellen, his girlfriend as a valentine's gift. Using the cheque, Ellen buys assorted clothing from Febbie who owns a fashion shop for ladies.

Meanwhile, Carlo has discovered that her cheque was stolen by Daniel who has since migrated to South Africa. Carlo asks Alick to stop payment the cheque but it is too late as Febbie has already cashed the cheque.

**Required:**

Identify the parties to the bill and advise them on their legal position in terms of the Bills of Exchange Act.

**10 Marks**  
**(TOTAL: 20 MARKS)**

8. (a) Define the term 'hire purchase agreement'. **6 Marks**
- (b) What is included within the term "purchase price" under the hire purchase agreements? **7 Marks**
- (c) State the conditions and warranties implied in a hire purchase agreement.

**7 Marks**  
**(TOTAL: 20 MARKS)**

**E N D**