

STRICTLY CONFIDENTIAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN MALAWI

DECEMBER 2015 EXAMINATIONS

KNOWLEDGE LEVEL

PAPER P2: LEGAL FRAMEWORK

EXAMINER'S REPORT

GENERAL COMMENTS

This examination paper had seven questions divided into two sections A and B. Candidates were required to answer all three questions in Section A and any two from Section B which had four questions. A variety of questions were set. Some required the candidates to explain issues, to advise a party, and to comment on issues among others. Some questions required the candidates to recall facts while others required them to think and apply the law to given facts.

Only eight candidates wrote the examinations, four of whom got a pass mark. This is the lowest number of candidates to have entered for this paper in the last ten years.

COMMENTS ON INDIVIDUAL QUESTIONS

QUESTION 1

This question was divided into two parts (a) and (b). The question was about legal systems. It required the candidates to explain the circumstances under which a judge of an inferior court may disregard a precedent created by a judge of a superior court. Some candidates did not understand the question very well. They used common sense to answer it. This question required the candidates to use memory since it was a recall question. Guess work cannot be a basis for correct answer.

Part (b) was also a recall question. It required the candidates to explain the instances when Parliament may exercise control over delegated legislation. Some candidates explained the procedure for making delegated legislation. It is important that tuition providers take note of students' / candidates' problems in this area and ensure that the topic is adequately covered.

QUESTION 2

This question was on contract law. It was divided into three parts. Part (a) was on the rule of acceptance. It tested the candidates whether they understood the legal implication when an offeree introduces new terms on accepting an offer. Some understood the question but they were not able to support their answer with a case authority.

Part (b) was on the types of terms in a contract. The candidates answered it satisfactorily.

Part (c) was a short scenario question. It required the candidates to identify issues and advise Gilbert the legal position where a party to a contract makes a promise to pay a certain sum of money after the contract has been concluded. Some answered the question well.

QUESTION 3

This question was on sale of goods, in particular the *Romalpa Clause*, also known as the retention of title clause. It tested the candidates whether they understood the meaning of the Clause. Some found the question easy and were able to cite case authority.

Part (b) required the candidates to explain any two remedies which an unpaid seller has against a buyer. Just as in part (a) some candidates found the question easy while others found it difficult.

QUESTION 4

This question was on Employment Law and was divided into four parts. Part (a) was a scenario question. It intended to test the candidates on their understanding of the law where a casual labourer has continuously worked without break and the employer has continued to pay him wages.

This was a fair question. Six out of the seven candidates who answered it got a pass mark.

Part (b) was a recall question which required the candidates to explain who a skilled labour is. Almost all the candidates found the question simple. Part (c) was a short scenario question on unfair dismissal. It only required the candidates to explain the procedure for unfair dismissal. This was also well answered. Part (d) required the candidates to explain the difference between sick leave and maternity leave. Nearly all the

candidates answered the question satisfactorily. It appears that tuition providers explained to students the difference between the two.

QUESTION 5

This question was on Company Law and was divided into three parts. Part (a) was on formation of a company. The question intended to test the candidates if they understood the procedure for forming a company. Part (b) was on share capital and part (c) on grounds for compulsory liquidation of a company. All the parts were re-call questions. Candidates were required to use their memory to each question. Candidates answered the question correctly. Of the six candidates who attempted the question, five got a pass mark.

QUESTION 6

This question was on the law of agency. Part (a) required the candidates to demonstrate knowledge of an agent's authority which he/she may exercise in the course of duty. Part (b) required the candidates to explain the agent's fiduciary duties. This was another recall question. Candidates were expected to demonstrate knowledge of the law of agency. This was probably the most difficult question to many candidates because only one out of eight attempted the question which he got a good pass mark (19). This implies that tuition providers did not give adequate attention to Agency Law thereby creating a knowledge gap among the candidates.

QUESTION 7

This question was on Tort. Part (a) was on strict liability. A candidate who read this topic would have quickly remembered the famous case of Rylands v Fletcher (1865) and the rule formulated by the trial judge. He would then have linked the rule to absolute duty. Part (b) focused on breach of duty of care. A candidate who had studied negligence would have quickly remembered the famous case of Donoghue v Steven (1922). Candidates could have cited this case as they commented on the given facts.

