

STRICTLY CONFIDENTIAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN MALAWI

DECEMBER 2014 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC12: COMPANY LAW

EXAMINER'S REPORT

GENERAL COMMENTS

The paper adequately sampled the syllabus and the standard of the questions was appropriate for the Technician level. The pass rate, at 61%, was above average. It showed that a good number of the candidates had prepared well for the examination. However, many candidates also displayed the following common problems/weaknesses:

(a) Mastery of the subject matter

Most candidates were able to answer recall questions but failed in questions that required reasoning and application skills such as short scenario questions.

(b) Application of the law

Most candidates failed to apply the law to given problems. Some cited provisions of the law or case laws without connecting them to the question at hand. As such, they did not address the requirements of those particular questions. Some students applied the Companies Act 2013 which is not yet gazetted.

(c) Communication

A majority of the candidates displayed poor communication skills emanating from poor language background. The answers were full of grammatical errors, wrong punctuation, incorrect spelling of words and poor sentence construction which, at times, made the answer incomprehensible. For example; “.....a company has perpetual succession” – some candidates would say “a company is immortal”, “it does not die”. Another group of candidates confused the words “liable” with “reliable” and “dissolution” with “resolution”.

COMMENTS ON INDIVIDUAL QUESTIONS

QUESTION 1

The question was on the status of a company. Generally, most candidates answered section (a) correctly. However, a few candidates confused the word "association" in question 1(b) with a "company limited by guarantee". Perhaps, this is because most associations/charities are registered as companies limited by guarantee. In (d), some candidates mentioned "tax evasion" as one of the grounds for lifting the veil of incorporation. Tax evasion is provided for under section 119 of the Taxation Act.

QUESTION 2

The question was on company formation. The candidates were required to state the functions of the Registrar of Companies, contents of the register of members and to state how conclusive the certification of registration is. Most candidates understood it except that they split the role of the Registrar of Companies in "registering" companies from the role of the Registrar in "issuing" certificates of incorporation. These two roles are the same. This is because the certificate of incorporation is merely evidence of registration of a company. It is evidence that all the procedural requirements have been complied with and that any irregularities discovered thereafter cannot render a contract entered into with a third party void.

QUESTION 3

Part (a) was understood and well answered. However, in part (b), some candidates concluded that Joseph could obtain an injunction to restrain NPFL from effecting the alteration. Under the Companies Act, a company cannot be restrained by an injunction in the alteration of its articles of association. If anything, where the alteration causes breach of existing contractual obligation, a party is only entitled to damages.

In part (c), some candidates concluded that Miriam should get the shares that were allotted to her without her consent. This position was apparently premised on the mistaken understanding by such candidates that the mere fact that a company is entitled to alter its articles, then it can as well allot any more shares to members even without their consent. Such candidates mistook the absolute right of a company in 3(b) to extend to unilateral increase of shares allotted to a member. This is not a correct legal position.

QUESTION 4

The question was on company shares. Many candidates were able to define the three types of shares. However, a number of candidates failed to distinguish a transfer of shares (which is voluntary) from transmission of shares (which is by operation of law and hence, involuntary). A clear distinction between transfer of shares, on one hand, and transmission of shares, on the other hand, has to be made when the candidates are preparing for examinations.

QUESTION 5

The question was on company management. Candidates showed that they understand the different types of company meetings. A few candidates had problems with part (b) of the question.

QUESTION 6

Many candidates avoided this question on company directors. Those who attempted it confused the Rule in *Turquand* case with the doctrine of *Ultra Vires*. Perhaps the confusion may be based on the fact that both the Rule and the Doctrine are to do with exercise of authority. It should be emphasized that the Rule in *Turquand* case is to do with the authority of a director of a company, while the Doctrine of *Ultra Vires* is to do with authority of a company stemming from the power which the company has as spelt out in its Constitution.

QUESTION 7

The question was also on company directors. A few candidates were unable to discuss the ways in which they were able to outline the procedure for removing a director.

RECOMMENDATIONS

1. Candidates should be encouraged to understand the principles of law rather than memorizing facts. Many are only able to answer recall questions because they rely on memory. They fail in questions that call for analysis and application.
2. Teaching institutions should improve the teaching of English. A good number of candidates fail examinations because they fail to communicate their ideas/knowledge to the examiner. Poor command of the English language makes it difficult for examiners to understand what candidates intended to put across. Inappropriate vocabulary and poor grammar sometimes changes the meaning of a sentence altogether.

3. Candidates should strive to understand the requirements of a question before attempting it.

