

STRICTLY CONFIDENTIAL

INSTITUTE OF CHARTERED ACCOUNTANTS IN MALAWI

JUNE 2014 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC12: COMPANY LAW

EXAMINER'S REPORT

GENERAL COMMENTS

Although the paper was not difficult, many candidates failed. However, some performed extremely well. The main reasons were:

1. Lack of understanding of the subject;
2. Failure to understand the questions;
3. Failure to cite legal authorities and lack of seriousness;
4. Poor communication skills.

COMMENTS ON INDIVIDUAL QUESTIONS

QUESTION 1

This question was about company formation. Part(a) required the candidates to mention items which are stipulated in a Memorandum of Association. Many answers were correct. Part (b) required the candidates to state the effect of the Memorandum and Articles of Association upon the company, its members and outsiders. Many answers were wrong because most candidates were confused and were giving the distinction between the Memorandum and Articles. Part (c) required them to state the definition of "lifting the Corporate veil". Most answers were correct but many showed low communication skills. Part (d) required them to mention the circumstances under which the veil of incorporation may be lifted in the Companies Act. Some candidates

were confused because of failure to understand the question and were giving circumstances under the common law.

QUESTION 2

This question was also on company formation. In part (a) the candidates were required to state the functions of the Registrar of companies. Although most answers were correct, some were clearly a result of guesswork. In part (b) they were required to state the contents of a register of a company limited by shares. Many answers were wrong and guess work. Part (c) required them to differentiate between public and private companies. Most answers were correct.

QUESTION 3

This question was on shares. Part (a)(i) required the candidates to define the term share. The answers provided were right, but marks were lost because of poor communication skills. Part (b)(ii) required the candidates to give the main types of shares. Most answers were good but some answers lacked understanding of the question. Part (a)(iii) required the candidates to explain how the issue of shares at a premium is permissible. Many answers were incorrect and showed failure to understand the topic and question. Part (b) required the candidates to mention the uses of a share premium account. Few answers were good, while most were wrong as a result of guesswork.

QUESTION 4

This question was on company formation. Part(a)(i)(ii) and (iii) required the candidates to define the term promoter, his functions and the point at which his role ends, respectively. Candidates were able to define him and state where his role ends, but they were confusing his functions and fiduciary duties. Part (b) was a factual question on the promoter's liability for pre-incorporation contracts. Most answers were wrong and showed failure to apply the law to a factual situation.

QUESTION 5

This question was on directors and protection of persons dealing with the company. Part (a) was on the rule in *Turquand Case*. Many answers showed that the candidates did not understand the question and were just mixing things in their answers therefore the scores were consequently poor. Part (b) was on termination of director's appointment. Most answers were correct although some were guesswork.

QUESTION 6

This question was on company liquidation. Part (a) required the candidates to state who can apply to court for a company to be wound up compulsorily. The answers given were right although some showed that the candidates did not understand the question. Part (b) required them to state grounds for winding up a company. Most of the answers were good but some were as a result of guess answers. Part (c) required them to state the circumstances where a company is deemed to be unable to pay its debts. The answers were very poor.

QUESTION 7

This question was on company's loan capital. Many candidates avoided this one. The few who attempted it gave incorrect answers. Part (a) was a factual question which tested the candidates' knowledge on the remedies of a secured debentureholder. Most answers were wrong and showed less understanding of the topic. Part (b) tested their knowledge on the legal position of the receiver. Very few candidates were able to give the correct answer. Part (c) and (d) tested their knowledge on effects of the appointment of a receiver. Some of the answers were correct but many were wrong.

QUESTION 8

Part (a) and (b) of this question were on company management and general meetings. Most of the candidates avoided this one too. The few who attempted it gave correct answers. Part (a) required the candidates to define a general meeting and the answers given were generally good. Part (b) required them to mention the people entitled to attend and speak at general meetings. The answers were good but some were guesswork. Part (c)(i)(ii) and (iii) were on voting procedure at general meetings. The answers were extremely poor. Most answers showed that the candidates did not understand the topic and the question. Only very few candidates answered part (c)(i) correctly. Again only very few candidates scored half marks for part (c)(iii).

CONCLUSION

The paper was not difficult but the candidates did not perform well for the following reasons:

1. They did not study the topic fully;
2. They did not understand what was being asked in the questions;
3. They were failing to communicate effectively because of poor sentence construction and wrong spellings;
4. They did not know how to answer factual questions;
5. They did not prepare well for the examinations and some just lacked seriousness.

RECOMMENDATION

1. It is recommended that the candidates be encouraged to improve their English for better communication.

2. They should learn how to answer factual questions.
3. They should also be encouraged to study hard and to make sure that they understand the questions before attempting to answer.

