

STRICTLY CONFIDENTIAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN MALAWI

DECEMBER 2014 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC8: BUSINESS LAW

EXAMINER'S REPORT

GENERAL COMMENTS

Although about 40% of the candidates have obtained a pass, the overall quality of the candidates' work was below the Examiner's expectation bearing in mind the fact that most of the questions were straightforward which mostly called for recall. As we have indicated in our previous reports, candidates showed that they were not well prepared for the examinations. It was apparent that some topics of the syllabus were not covered as the candidates were preparing for examinations.

COMMENTS ON INDIVIDUAL QUESTIONS

Question 1

This question was on various sources of law. Candidates were required to explain the given sources of law that included the constitution, legislation, custom, common law, equity, international law and academic writing. Candidates did very well in explaining all the sources of law except the constitution and academic writing.

It was very surprising to note that many candidates stated that the constitution was one of the received laws from England that came in August 1902. This was wrong. The constitution was not amongst the received laws from England. The constitution is or was made by our own people and later passed by the Malawi National Assembly. Candidates should be aware that the constitution is the supreme law of the land. All laws enacted by the National Assembly are to be in conformity with the provisions of the constitution. All the three branches of government derive their authority from the constitution.

Another source of law that caused problems was academic writing. Many candidates stated that academic writing emanates from laws made by different educational institutions in the country governing the conduct of

examinations and academic matters. This was not correct at all. Academic writing is a secondary source of law that emanates from books of eminent legal scholars in various aspects of the law. These books of eminent scholars are only referred to as a source of law when no precedents are available. They are only persuasive sources of law. Please note that its only writings of reputable/ eminent authors that are referred to, and not any other scholar.

Another group of candidates, though small, failed to explain how "custom" was also a source of law.

Generally, the candidates' performance in this question was below average.

Question 2

This question had five parts namely definition of a cheque, legal effect of crossings on a cheque, meaning of holder in due course, meaning of accommodation party and measure of damages against parties to a dishonoured bill. It was one of the least popular questions and the few candidates who attempted it scored very low marks.

Candidates were able to explain the meaning of a cheque, the legal effect of crossings on a cheque and the meaning of a holder in due course. However, they had difficulties in explaining the accommodation party and damages against parties to a dishonoured bill. On accommodation party, candidates mostly stated that someone who signs as a drawer is an accommodation party. This was not entirely correct. An accommodation party, apart from signing a bill as a drawer, acceptor or indorser, also aims at lending his or her name to some other person, and is liable on the bill to a holder for value. Many candidates failed to state this.

Candidates also failed to state the measure of damages against parties to a dishonoured bill. A good number of candidates did not even know what the question was looking for. Others only explained the rules governing measure of damages in simple contracts. Section 57 of the Bills of Exchange clearly stipulates the measure of damages to include the amount of the bill, interest thereon and expenses of noting or when protest is necessary, and the protest has been extended, the expenses of protest.

Question 3

The question asked the candidates to explain the exceptions to the *nemo dat quod non habet* rule and to define various categories of goods which included existing goods, future goods, specific goods, ascertained goods and unascertained goods.

Many candidates only mentioned the exceptions without explaining them and qualifications. Some candidates explained the rules for the passing of property under the Sale of Goods Act. This made them to lose valuable marks.

On defining the various categories of goods, candidates were able to define existing, future and specific goods. They failed to define ascertained and unascertained goods. Many candidates stated that these two categories of goods were not existing/manufactured, which was not correct. Ascertained goods are always in existence waiting for identification of the parties to a contract. The same applies to unascertained goods that are also in existence only that they are not identified as goods forming subject matter of the contract.

Question 4

This question asked the candidates to provide a hypothetical example of past consideration and inadequate consideration, to explain the postal rule, define consideration and summarize the rules governing consideration. Lastly, they were asked to explain the circumstances through which a debt can be legally discharged by the payment of a smaller sum of money.

Candidates had no serious challenges in defining past consideration and inadequate consideration. The question, of course, asked the candidates to give on hypothetical examples. It did not ask them to explain the meaning of past and inadequate consideration.

Although candidates had no problems in explaining the postal rule, they did not cite any case to back-up their explanation. The same applied to the definition of consideration and rules governing consideration. Candidates gave brilliant responses. However, they did not cite any legal authority to back-up their brilliant explanations.

Candidates had serious challenges in mentioning circumstances under which a debt can be legally discharged by the payment of a smaller some of money. Some candidates were able to state that where the parties have agreed, payment of a smaller sum will discharge the contract. This will only happen, of course, where the creditor consents, where a different chattel is used as payment, payment being made at a different place and where the doctrine of promissory estoppel applies.

Question 5

This question was not popular. It was taken from a topic that has just been introduced into the syllabus. Chances are that it was not covered during tuition. As a result, the performance on it was also very low. This question had three parts namely meaning of summary dismissal and ground thereof, constructive dismissal and three remedies that the Employment Act provides for in the event that an employer has been unfairly dismissed.

The question was poorly answered by the candidates who attempted it. Summary dismissal is termination of employment without notice or with less than that to which the employee is entitled. The key word is *without* or *with less* notice. Many candidates were not able to mention the issue of “no notice” or “with less notice”. Another group of candidates mentioned the circumstances where an employer would be justified to dismiss an employee summarily.

On constructive dismissal, many candidates got this question wrong. Constructive dismissal is where an employer does something that will make the employee not to continue with the contract of employment. It is different from summary dismissal in that way.

On remedies, many candidates mentioned damages. However, they were not aware of reinstatement and re-engagement as options.

Question 6

This question asked the candidates to distinguish between a tort and a contract, a tort and a crime, facts and holding in *Donoghue-v-Stevenson*, and nuisance.

Candidates were able to distinguish between a tort and a crime. However, they had problems in distinguishing a tort from a contract. Candidates were not aware that in tort, the law fixes duties whereas in a contract, duties are fixed by the contract itself. In tort, claim is for unliquidated damages, whereas in a contract its liquidated damages. Many candidates wasted time mentioning elements of a valid contract that are non-existent in tort such as acceptance and consideration. In *Donoghue v Stevenson* candidates were able to explain the facts, but failed to explain the holding.

On nuisance, many candidates failed this question. They thought that nuisance is when somebody fails to honour a contract. Nuisance is a tort affecting enjoyment of land. It is not about a contract. It can be either private or public.

Question 7

This question asked the candidates to explain how an agency relationship is created, terminated, the rights of a purchaser in a hire purchase agreement, the duties of an agent toward his principal and when an agent is deemed to have apparent authority. Many candidates scored good marks.

The only minor problem noted was on apparent authority. Some candidates stated that apparent authority arises when the agent through his or her conduct or words tells a third party that he or she is acting on behalf of a principal. This is not correct. Apparent authority arises when the principal, through words or conduct, presents to a third party that the agent has authority to act on his or her behalf as principal. So its not the agent telling a third party but a principal telling a third party.

RECOMMENDATIONS

- Candidates ought to be reminded that all topics are examinable and that they should not choose topics when preparing for the examinations.
- Candidates ought to be reminded the importance of citing authorities especially in factual questions. This, therefore, calls for them to know some of the landmark cases in law.
- Candidates should use applicable legal principles instead of common sense.
- Candidates ought to be reminded that they should answer questions with clarity. Many candidates fail the examinations due to lack of clarity in the way they respond to the questions. The standard of English also needs to be improved.
- Candidates ought to be encouraged to prepare thoroughly for the examinations.

