

STRICTLY CONFIDENTIAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN MALAWI

JUNE 2014 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC8: BUSINESS LAW

EXAMINERS REPORT

1. Introduction

The overall performance of the students had shown little improvement as compared to the December 2013 performance and was poor in many respects.

2. Question One

(a) State the function of the Commercial Credits Act. 4 Marks

(b) State in relation to the Hire Purchase Act:

(i) Three rights of a purchaser 6 marks

(ii) Five powers of the court in any action by a seller for the return of goods 5 marks

(c) Define the term 'hire purchase agreement'.

(TOTAL: 20 MARKS)

Comment

The question required students to state the function of the Commercial Credit Act. The question was poorly done. Most students stated that the Act regulates international trade, which is not the case. Students had problems outlining the rights of the purchaser as well as the powers of the court under the Hire Purchase Act. However, a good number of them were able to define a hire purchase agreement.

3. Question Two

(a) In relation to banking agreements, discuss:-

i. Any three rights of a banker; 6 marks

ii. Any three duties of a banker; 6 marks

iii. Any three duties of a customer; 6 marks

(b) Briefly discuss the importance of the Bills of Exchange Act. 2 marks

(TOTAL: 20 MARKS)

Comment

The question required candidates to cite rights and duties of a banker and a customer (in relation to banking agreements). This was poorly done as well. Some students did not appreciate the context in which the word 'banker' was used thinking it was an employee of a bank and not the bank itself. Others gave rights of any customer and not necessarily a bank customer, thereby missing the question.

4. Question Three

Chikwekwe has recently found a good source of making money in an agency relationship. He has been retained by a firm, Japan Motor Vehicle Connection limited (JMVC), that exports second hand motor vehicles from Japan to parts of Africa. Chikwekwe has received a consignment of 100 motor vehicles to sell in Malawi. He has never studied business law and needs your advice.

Required:

- (i) Outline Chikwekwe's right to a lien over JMVC's vehicles which are the subject matter of the agency. 5 marks**
- (ii) In what circumstances would an agent be deemed to have apparent authority? 5 marks**
- (iii) Mention three rights that Chikwekwe has in this agency relationship. 6 marks**
- (iv) State four circumstances that would cause an agency agreement to be terminated. 4 marks**

(TOTAL: 20 MARKS)

Comment

The question required students to discuss the law of agency. It was attempted by many students and many of them did well. It would appear that students are better conversant with the law of agency. However, few failed to discuss a lien as well as apparent authority.

5. Question Four

- (a) With the aid of relevant examples distinguish a contract from a tort and a crime. 15 marks**
- (b) Briefly outline the structure of the courts in Malawi. 5 marks**

(TOTAL: 20 MARKS)

Comment

Both part (a) and (b) of the question were familiar and most students did well. It was noted 5 marks for the second part of the question was on the lower side.

6. Question Five

(a) Using practical examples, comment on the following:-

- | | | |
|-----|-------------------------------|---------|
| i. | The tort of nuisance; | 5 marks |
| ii. | The tort of trespass to land. | 5 marks |

(b) KS Bank is a thriving bank in the city of Zomba. The bank has grown so big such that it intends to dispose off some of its smaller buildings and purchase new and more spacious buildings within the city.

KS Bank has engaged Titus & Ross a firm of registered property consultants. The firm has prepared a valuation report putting the value of the properties at K50 million. The report is authored by a junior valuer with little experience. After KS Bank had sold the assets for K50 million, it has transpired that the assets were undervalued by a sum of K10 million.

Required:

Advise KS Bank. 10 marks

(TOTAL: 20 MARKS)

Comment

This question was on the tort of nuisance, trespass to land and negligence. It was the least attempted question and done poorly too. It shows that students do not pay attention to other parts of the syllabus such as torts. The second part which was factual also caused a lot of students to desert the question.

7. Question Six

(a) Mr Blair, a Briton, intends to purchase various locally made goods from Malawi for sale in the United Kingdom. He has written to the Ministry of Trade and Industry inquiring as to how the property in goods passes to buyers upon the conclusion of a contract for sale of goods.

You are a technical assistant to the Minister of Trade and Industry and the Minister has requested you to reply to Blair's letter.

Required:

Advise Mr Blair as to when the property in goods passes to buyers under Malawi Law. 10 marks

- (b) Mention the rules that govern the delivery of goods upon the conclusion of a sale of goods contract. 5 marks**
- (c) Explain the relationship between the transfer of risk and the doctrine of frustration in sale of goods contracts. 5 marks**

(TOTAL: 20 MARKS)

Comment

This question was on sale of goods. Most students were more comfortable with the rules on passage of property in goods and less comfortable with rules on delivery of goods and frustration.

8. Question Seven

- (a) Mention the warranties that are implied in a sale of goods contract. 6 marks**
- (b) What is incorporated in the term 'purchase price', under hire purchase agreements? 7 marks**
- (c) Mention the conditions and warranties that are implied in a hire purchase agreement. 7 marks**

(TOTAL: 20 MARKS)

Comment

The question required students to discuss conditions and warranties in sale of goods and hire purchase contracts. Some students were not conversant with the same and went out discussing anything they knew about sale of goods or hire purchase agreements.

9. Question Eight

- (a) In relation to the law of contract define an offer and explain the meaning and effect of a counter-offer. 10 marks**
- (b) Mary lost her silver bracelet at the public swimming pool. She inherited it from her grand-mother and would do anything to get it back. She therefore placed an advertisement in the local newspaper offering an award of K100,000.00 to the person who found her bracelet. Thom, a regular swimmer at the public pool, found the bracelet on the pavement in front of the ladies rest room. Thom remembered that he saw an advertisement in the local paper regarding a missing bracelet. Later that afternoon he found the newspaper in his room and subsequently contacted Mary. Mary is very happy to have her bracelet back but says that she had changed her mind about paying the reward after she had placed the advertisement.**

Required:

Discuss whether Thomas can claim the K100,000 from Mary under the law of contract.
10 marks

(TOTAL: 20 MARKS)

Comment

This question was the most familiar question and was the most attempted question. The definition of offer and counter offer was mostly well done with a number of students being able to back their answers with case law and hence scooping full marks.

The second part of the question posed a few challenges. Firstly, some students, whilst arriving at the right conclusion, did not apply the case of **Carlill v Carbolic Snake Ball** and so lost some marks. Secondly, other students arrived at a wrong conclusion by considering the case of **Partridge v Crittenden** instead of **Carlill v Carbolic Snake Ball** and hence losing precious points.

10. Recommendations

- 10.1** It was evident that students chose to study some parts of the syllabus and ignored others completely. We therefore recommend that students and tutors alike learn to cover the whole syllabus when preparing for exams;
- 10.2** It is further recommended that the quality of English be improved;
- 10.3** Guessing must be replaced with legal logic, supported by relevant legal authorities;
- 10.4** We recommend that students and lecturers should always support their answers in law examinations with relevant legal authorities;
- 10.5** We recommend that students must be clearly taught how to approach factual questions in a law examination.