

STRICTLY CONFIDENTIAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN MALAWI

DECEMBER 2015 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC12: COMPANY LAW

EXAMINER'S REPORT

GENERAL COMMENTS

The paper was fair and the candidate's performance, at 65%, was encouraging. However, markers encountered the following mistakes that were common among a majority, if not, all the candidates.

(a) Mastery of the subject matter

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

(b) Application of the Law

Most candidates were able to give correct answers to questions but failed to support their answers with relevant provisions of the law or cases. For those that were able to cite provisions of law or cases, they had hurdles in relating the law to the question as asked. They just reproduced memorized answers.

(c) Communication

The answers were marred by grammatical errors, including punctuation, incorrect spelling of words and poor sentence construction which, at times, left the answer ambiguous. Most candidates used interchangeably the words "liable" and "reliable".

COMMENTS ON INDIVIDUAL QUESTIONS

QUESTION 1

The question was on formation of a company.

In part (a) the candidates were required to state the advantages of forming a limited company over a partnership. Many candidates gave correct answers.

In part (b) they were required to state the disadvantages of forming a limited company over a partnership. Some candidates did not understand the question. They provided advantages of forming a partnership instead of explaining the disadvantages of forming a limited company.

Part (c) required the candidates to state the remedies that a company may have against a promoter's breach of duty. Some candidates mentioned rescission as one of the remedies but from the facts of the scenario, the correct approach would be to sue Peter Nyengo for damages and seek an order from the court to make him account for the secret profits or surrender the secret profits to the company.

QUESTION 2

This question was on company liquidation.

Part (a) required the candidates to state the difference between voluntary liquidation of a company by members and voluntary liquidation of a company by creditors. Many candidates failed to state the difference. They stated that voluntary liquidation by creditors is done through a presentation of a petition to wind up the company in court.

Part (b) required the candidates to define the term "**just and equitable**". Most of the candidates failed to define the term but instead gave instances where the court may grant the order for compulsory winding up of a company on the ground that it is just and equitable to do so.

Part (c) required the candidates to state at what stage in the process of a company's winding up are voluntary and compulsory winding up deemed to commence. Most candidates gave a general answer to both instances instead of giving two different answers to the two different types of winding up.

QUESTION 3

This question was a mixed bag.

Part (a) required the candidates to state four ways in which an individual may become a member of a company limited by shares. The error made by some candidates emanated from poor sentence construction whereby the effect of their answers was that they provided ways through which an individual ceases to be a member of a company limited by shares.

Part (b) required the candidates to state the ways through which an individual ceases to be a member of a company limited by shares. This part was ably answered.

Part (c) required the candidates to state the four acts which a company cannot do except by special resolution. Most of the answers were correct.

Part (d) required the candidates to apply their knowledge about a written resolution to a scenario that was given. Most candidates failed to apply their knowledge; they stated that the company secretary should adjourn the meeting.

Part (e) required the candidates to mention and explain two types of companies. Most of the answers were correct. However, candidates failed to differentiate between a public company, and a state owned company. Some even mentioned ESCOM as a public company.

QUESTION 4

This question was on company share capital.

In part (a) the candidates were required to define the term “reduction of capital” and “cancellation of capital”. Many candidates provided guess answers.

In part (b) the candidates were required to state the conditions that must be satisfied if a company wishes to reduce its capital. Many candidates also provided guess answers.

In part (c) the candidates were required to state the provisions which protect the interests of creditors where a proposed reduction of capital affects the creditors. Candidates failed to show understanding of the requirements of the question. It was apparent that the topic was not mastered.

QUESTION 5

This question was also on company formation.

Part (a) required the candidates to define the term Memorandum of Association (MOA). Some answers showed that some of the candidates did not even know that it is a document. Other candidates mixed up their answers and gave answers which defined the Articles of Association. Others were so overzealous that they even provided the contents of the MOA and yet part (b) required them to do so. A Memorandum of Association is a document that defines the company's objectives (the reason for its existence) and sets out the link between the company and outsiders.

Part (b) required the candidates to state 7 contents of a Memorandum of Association. Most of the answers were good. Other answers showed repetition and splitting of one answer into 2 or 3 points. Some candidates confused the

contents of a memorandum with those of Articles. Appointment of directors is provided in the Articles. This deals with internal affairs of a company.

Part (c) was a scenario question which required the candidates to state three methods which a company may use to change its name. Candidates were expected to mention through the registrar of companies, Minister of Trade and Court.

QUESTION 6

This question was on company directors.

Part (a) was a scenario question which required the candidates to apply their knowledge about the limitation on directors' authority and the rule in the case of *Royal British Bank v Turquand*. The question hinged on the indoor management of a company which, in brief, states that a third party dealing with a company in good faith is not presumed to have notice of the internal irregularities of the company. Most candidates were unable to apply both. Most answers showed the application of the rule in *Royal British Bank v Turquand* case only. Candidates failed to state the facts of the case and the decision of the court to show their understanding of the principle. To this end, Chichiri Motors are liable to pay the K15 million although the director acted in breach of the Articles.

Part (b) was on the director's removal from office. Most candidates made the error of stating that a director can be removed by a special resolution instead of an ordinary resolution. Others merely stated "resolution" without being specific. They left it to the examiner to choose for them. This shows guess work. Again most candidates were unable to state the procedure for the removal of the director.

QUESTION 7

This question was also on compulsory winding up of a company on the ground that it is just and equitable. Very few candidates attempted it. The candidates were required to apply their knowledge to a given scenario. Some students gave answers which were not even on company winding up on the “just and equitable” ground and yet the question was clearly on winding up of a company on the just and equitable ground. Other students showed failure to answer application questions.

RECOMMENDATIONS

Candidates should be encouraged to improve their English for better communication. They should be taught how to answer scenario questions which require reasoning and application skills. They should also be encouraged to study and prepare thoroughly for examinations. They should also try to understand the questions before attempting them.

