

STRICTLY CONFIDENTIAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN MALAWI

DECEMBER 2015 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC8: BUSINESS LAW

EXAMINER'S REPORT

GENERAL COMMENTS

Generally, the candidates' performance was poor. Many candidates showed that they did not prepare well for the examination. They also failed to clearly express themselves due to poor grammar or wrong choice of words, thereby giving wrong meaning and interpretation in law terms.

COMMENTS ON INDIVIDUAL QUESTIONS

QUESTION 1

The question asked the candidates to outline the Court System in Malawi specifically on the Malawi Supreme Court of Appeal, the High Court, Magistrates' Courts, Child Justice Courts and the Industrial Relations Court.

Many candidates had an idea of how the courts are structured. They were able to state that the Malawi Supreme Court of Appeal is at the apex followed by the High Court. A point worth mentioning is that on High Court, many candidates did not know that there is also the Commercial Division of the High Court that deals with all matters commercial in nature.

On Magistracy, many candidates knew the different tiers under these courts. The only problem was on areas of jurisdiction in civil matters where many candidates were not sure of the amounts involved in terms of jurisdiction. On the Industrial Relations Court, some candidates stated that the court was established to deal with the conduct of industries, which of course, was not correct. The court is not there to regulate the conduct of industries, but rather all matters relating to labour or employment as stipulated in Section 110(3) of the Constitution.

QUESTION 2

This question had four parts. The first part of the question asked the candidates to mention the forms which a contract of sale of goods may take. It was surprising to note that many candidates failed this part of the question. The sale of goods contract may either be in writing, by word of mouth, partly in writing and partly by word of mouth or implied from the conduct of the parties. Many candidates mentioned legal requirements of a valid contract such as offer, acceptance, consideration and intention to enter into legal relations, which is incorrect. Others mentioned the terms of a contract such as express terms, implied terms, warranties and conditions. This was not correct either.

Part two of the question asked the candidates to explain the difference between liquidated and unliquidated damages. Some candidates got this part of the question correct. However, other candidates had no idea about the meaning of these damages. In simple terms, liquidated damages are those damages that are agreed to by the parties and inserted into the contract so that in case of breach, the innocent party will claim them. Unliquidated damages are damages that are not agreed by the parties so that in times of breach, the innocent party has to bring evidence for the court to determine the quantum payable.

Part three of the question asked the candidates to explain the circumstances under which writing is an essential requirement for the validity and enforceability of a contract. In general, the law demands that certain contracts be in writing or even under deed. These are contracts in relation to transfer of land and sale of shares. Despite not giving these examples of contracts, many candidates were able to mention the reasoning behind this requirement.

Part four of the question asked the candidates to explain the meaning of "accord" and "satisfaction" as stipulated in the law of contract. Accord and satisfaction means agreement and consideration, in simple terms. Accord and satisfaction may result into discharge of a contract where a party to the contract has done his part of the contract. If this happens, then a party has fulfilled his obligations and provided consideration. Upon agreement, the contract may be discharged. Many candidates were able to define the words accord and satisfaction but did not explain how this is used in the discharge of valid contracts. That is how they lost valuable marks.

QUESTION 3

This question had three parts.

Part (a) asked the candidates to state the function of Commercial Credits Act in commercial transactions. This question continues to pose a challenge to many candidates. The Act is useful in that it allows business owners to obtain loans while creating a charge over their trading assets as security for the loan obtained. Many candidates were able to state that this Act allows business people to obtain loans but failed short of mentioning the security part of it. Other candidates stated that the Act is there to facilitate international trade, which is not correct.

Part (b) asked the candidates to define the term “purchase price”. Many candidates had an idea of what purchase price is but some of the explanations were not concise.

Part (c) of this question was the one that posed a challenge to many candidates. This part required the candidates to mention the items that are excluded from the definition under the Hire Purchase Act. Many candidates failed to mention things like licence fees, insurance premiums, compensation or damages in terms of breach, interest and any charges in respect to installation. What most candidates mentioned were things like kinds of goods, others mentioned the rules governing transfer of property etc which was not correct.

Part(d) asked the candidates to mention equitable remedies that a court may potentially award in Malawi. These are specific performance, injunction and rescission. Few candidates mentioned these remedies. However, the majority mentioned damages. Damages are not an equitable remedy but rather a common law remedy. Many candidates were not aware of what equity is all about.

QUESTION 4

This question had four parts. The first part of the question asked the candidates to define tort. Many candidates got this question correct. Part two asked the candidates to give examples of torts. This was also well answered. The candidates were able to mention trespass, nuisance, defamation etc.

Part three of the question asked the candidates to explain the difference between civil and criminal torts. Many candidates were able to mention, generally, the differences between a tort and a crime in terms of prosecution, standard of proof, penalties etc. It was well answered.

Part four of the question was on a general rule: “Contract law that performance of an existing contractual obligation is no consideration for a promise for reward”. Many candidates explained the rule in its literal meaning. Others mentioned or explained issues pertaining to past consideration. The question required the candidates to explain the public duty imposed by law and existing contractual duty. In a nutshell, all those who are under public duty and those under contractual obligation do not provide any sufficient consideration as they are already under duty. The exception is that where these provide more than what is required, the law will always presume that sufficient consideration has been furnished.

QUESTION 5

This question had two parts. The first part was a short scenario question requiring the candidates to apply the tests used in identifying an employee. From the given facts, Pamela is an employee of the company. Candidates were supposed to explain the three tests used to determine the relationship between Pamela and the company, namely; control test, integration test and economic reality test. Candidates were required to apply these tests to the facts as given to establish whether Pamela was an employee or not. Unfortunately, many candidates explained the relationship without using the tests mentioned above. Since many candidates did not mention the tests as required, they lost valuable marks.

Part two of the question was also a scenario question on remedies available to Chikondi Phiri who was unfairly dismissed for visiting her doctor. The remedies available were re-instatement, re-engagement and compensation. Candidates were supposed to explain these remedies in detail. However, it was noted that the candidates were not able to mention these remedies. They instead explained what was supposed to happen before Chikondi was fired such as giving her an opportunity to be heard and notice. The few who mentioned the above remedies did not explain the meaning of the terms used and how they would apply to the given facts.

QUESTION 6

This question had two parts. The first part of the question asked the candidates to discuss the relationship between the law of agency and the legal maxim: “he who does an act through another is deemed in law to do it himself”. Candidates were required to explain how an agent effects the legal relations on behalf of a principal. It was pleasing to note that many candidates were

able to explain how agency relationship arises and went further to explain different roles in agency relationship. However, it has to be mentioned here that despite explaining the agency relationship, many did not apply that to the maxim as given. It was a simple task bearing in mind the fact that the candidates were good at explaining the law of agency.

Part two of the question asked the candidates to explain how agency of necessity and ratification arise. This was very well answered by many candidates though some failed to explain the requirements for this kind of agency to develop. Further, some candidates stated that this kind of agency arises when there is a minor who needs necessities such as food. This is not correct. The question of necessities only arises in law of contract when dealing with categories of people who cannot enter into a valid contract, especially, minors.

The other component asked the candidates to explain how agency of ratification arises. This was very well answered by many candidates. However, it was noted that many got this part of the question correct because they knew what ratification means in ordinary English. But for ratification to occur in law, there are requirements such as ratification needs to be full and not partial, within a reasonable time, principal should have capacity and exist during the ratification. This is what candidates failed to articulate.

QUESTION 7

This question had three parts. The first part asked the candidates to define a bill of exchange. This was very well defined by many candidates who attempted this question. Part two asked the candidates to explain the importance of bills of exchange in commerce. This was also very well answered by many candidates who attempted this question.

The third part asked the candidates to explain the distinction between a hire purchase contract and a sale of goods contract. Those who attempted this question answered it well.

CONCLUSION

The examination paper was fair. However, the quality of the candidates' answers gave the impression that their studying is not up to the standard. Answers requiring essays were written in note form because the candidates had difficulties to express themselves in correct English.

RECOMMENDATIONS

- Candidates ought to be reminded that all topics in the syllabus are examinable and that they should not choose topics when preparing for examinations. Candidates ought to prepare thoroughly for the examinations.
- Candidates ought to remember at all times the importance of citing authorities, especially in scenario questions. This therefore calls for the candidates to know some of the landmark cases in law.
- Candidates ought to remember the significance of the marks indicated against each question. A four line answer cannot earn 10 marks, and Inversely, a 2 mark question does not need a 10 line answer.

