

STRICTLY CONFIDENTIAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN MALAWI

JUNE 2016 EXAMINATIONS

ACCOUNTING TECHNICIAN PROGRAMME

PAPER TC8: BUSINESS LAW

EXAMINER'S REPORT

GENERAL COMMENTS

Generally, the performance of the candidates was encouraging as many did well. Candidates showed that they were prepared for the examinations, looking at the way they tackled the questions. However, some showed signs of not being prepared, and others lack of fluency in the English language affected their performance, since explanations lacked clarity, hence ambiguous.

COMMENTS ON INDIVIDUAL QUESTIONS

QUESTION ONE:

This question had three parts.

Part (a) of the question was on the definition of a bill of exchange and its main characteristics. Many candidates got this question correct. However some stated that a bill of exchange was a mode of payment. Another group of candidates confused it with a letter of credit. On the main features, many candidates were able to extract the features from the definition. This question required the candidates to recall the facts which they learned in class.

Part (b) of the question was on definitions of accommodation bill and an inland and foreign bill. Many candidates were able to define what an inland bill and foreign bills are. However, serious challenges were encountered in defining an accommodation bill. A few candidates stated that an accommodation bill was a bill used to settle bills at a hotel. This was guess work at its best. An accommodation bill is a bill that is signed by the drawer for the purpose of lending his name to some other person.

Part (b) of the question was based on a hypothetical scenario. It tested the candidates on certain principles in banker customer relationships on how to draw cheques. Many candidates were correct to state that since the cheque was not crossed, Maggie did not have any claim against the bank. However, a few candidates were completely not conversant with the law of drawing cheques. They tried to apply the law of contract and agency relationship to this question which was not correct.

QUESTION TWO:

This question had four parts.

Part (a) asked the candidates to identify and comment on the types of goods as applied in the Sale of Goods Act. Many candidates got this question right.

Part (b) asked the candidates to state the difference between a sale and an agreement to sale. Again, this was very well done.

Part (c) asked the candidates to explain how the price of goods may be fixed in a contract for sale of goods. Many candidates did not get this part of the question correct. They mentioned market forces as the determining factor of the prices. Others even went further to state that prices are fixed by looking at quality and quantity of the goods on sale, which was not correct.

Part (d) asked the candidates to explain the measure of damages. This posed a serious challenge to many candidates. They stated that measure of damages is all about what one has lost using the market value. They failed to mention the principles governing measure of damages such as remoteness of damages. Other candidates outlined different kinds of damages, which was not what the question was looking for.

QUESTION THREE:

This question was in two parts.

Part (a) asked the candidates to identify and comment on any five sources of Employment Law in Malawi. It was not very well done by candidates. Many stated that the Industrial Relations Court and trade unions were sources of law in Malawi. This is completely wrong. Employment law in Malawi is governed by, among other statutes, the Constitution, the Labour Relations Act, the Employment Act 2000, the Pensions Act, Workers Compensation Act etc. Very few candidates were able to mention these Acts.

Part (b) tested the candidates on the meaning of written warning, demotion and suspension as applied in Employment Law especially on disciplinary matters. Many candidates had an idea of what these three terms mean. The only challenge was that they were not able to explain in detail how these come about in disciplinary matters.

QUESTION FOUR:

This question had five parts.

Part (a) required the candidates to define the term 'legal system'. Many candidates had an idea of what a legal system is. However, many thought that a legal system was only about courts in Malawi, which is not entirely correct. A legal system is not only about courts, but rather a system of laws, rules and regulations and institutions that are mandated to enforce these laws, rules and regulations. Courts are one of those institutions that enforce the laws, rules and regulations.

Part (b) asked the candidates to mention three types of received laws in Malawi. Many candidates were able to mention common law and equity. They failed to state that statutes of general application in force in England before 2nd August 1902 were part of received law in Malawi. Others only mentioned statutes, which was totally different from statutes of general application.

Part(c) asked the candidates to explain how the doctrine of precedent works in Malawi. Many candidates were able to explain what happens in this doctrine as far as the hierarchy of courts in Malawi is concerned. However, they did not explain the application of the doctrine with reference to hierarchy of courts in Malawi.

Part(d) asked the candidates to discuss the rules of interpretation of statutes. The candidates were able to mention the literal, golden and mischief rules of interpretation. However, the explanations of the mischief rule were sketchy.

Part(e) was on the meaning of a maxim *expressio unius est exclusion alterius*. Many candidates got the meaning of this maxim correct.

QUESTION FIVE:

This question had two parts. Part (a) required the candidates to explain the meaning of strict liability, vicarious liability and contributory negligence. On strict liability, many candidates had challenges. Very few candidates were able to explain what strict liability is. In simple terms, strict liability means liability that cannot be taken out by any plausible defence. Once an act or omission has

happened, the defendant will be liable despite any defence or lack of intention.

Candidates did not have problems on vicarious liability and contributory negligence.

Part (b) required the candidates to explain the importance of Bankers Commercial Credits. This was poorly answered as many candidates resorted to guess work. They stated that banks were there to provide banking services including credit, which was not what the question asked for. Banks provide credit/loans to clients, of course, but what the client does to secure the loan is what the question asked for.

QUESTION SIX:

This question had two parts.

Part (a) asked the candidates to define the term 'hire purchase agreement'. This was well answered. The question also asked the candidates to state the condition and warranties implied in a hire purchase agreement. Candidates got this part of the question correct.

Part (b) of the question was a hypothetical situation on lien, apparent authority and rights of an agent in an agency relationship. The only part of the question that caused problems was on apparent authority. Apparent authority arises when the principal, by word or conduct, represents to third parties that the agent has authority to act on his behalf.

QUESTION SEVEN:

This question asked the candidates to explain in detail the meaning of contracts in restraint of trade, misrepresentation, discharge of a contract and constructive dismissal. The candidates explained well the meaning of discharge of contracts and misrepresentation. On constructive dismissal, it was a challenge to many candidates as they confused it with summary dismissal. Constructive dismissal is when the employer does something that will make the employee not to continue in his employment and the employee is entitled to give a lesser notice to the employer.

On contracts in restraint of trade, many candidates stated that these were illegal contracts that the government forbids its citizens to undertake. This is not correct. These are contracts where a party restricts his future liberty to carry on his trade, business or profession in such a manner and with such people as he chooses.

RECOMMENDATIONS:

- Candidates ought to be reminded of the importance of citing authorities, especially in questions that are based on hypothetical scenarios. This therefore requires them to know some of the landmark cases in law.
- Candidates should pay attention to language. Many candidates fail the examinations due to poor English.
- Candidates ought to be encouraged to prepare thoroughly for the examinations.
- Candidates should be encouraged to give their own examples on the application of certain principles of law. However, these should be backed by authorities.
- Legal logic should replace "common sense" and guessing. Candidates must understand the law. They should be encouraged to enroll for classes rather than study on their own. They need assistance from experts who should be able to interpret the law to them.

