

TC 8: BUSINESS LAW - SYLLABUS

AIMS OF THE COURSE

To develop candidates' understanding of the broad range of basic legal principles and the ability to apply this knowledge in various business transactions.

LEARNING OBJECTIVES

On completion of this module, candidates will be able to:

- i. Explain the various sources of law in Malawi.
- ii. Explain the organization of the courts and administration of the courts in Malawi.
- iii. Distinguish between civil and criminal liability.
- iv. Explain the basic principles related to law of torts.
- v. Explain the principles of the law of contract.
- vi. Describe the law relating to labour and employment in Malawi.
- vii. Explain the principles of the law of agency.
- viii. Explain the law relating to sale of goods.
- ix. Describe the law relating to negotiable instruments
- x. Describe the law relating to personal property security

FORMAT AND STANDARD OF THE EXAMINATION PAPER

There will be a three hour examination and the question paper will have five questions each carrying equal marks. Students will be required to answer all questions. Candidates will be expected to demonstrate an understanding of a wide range of topics covered by the syllabus. Emphasis will be more on knowledge levels than application of skills. Students will nevertheless be required to show ability to use this knowledge to solve legal problems. They will also be expected to cite case law and discern the legal principles enunciated in such cases. The demonstration of basic legal logic will be a hallmark of the examination. Students must show that they understand that common sense is not law or a substitute for legal logic. Candidates will lose marks for failing to communicate clearly including grammatical errors.

SPECIFICATION GRID

This grid shows the relative weightings of subjects within this module and should guide the relative study time spent on each. Over time the marks available in the assessment will equate to the weightings below, while slight variations may occur in individual assessments to enable suitably rigorous questions to be set.

1. The Malawi Legal System	20
2. The Law of Tort	10
3. The Law of Contract	20
4. Employment Contracts	10
5. Agency	10
6. Sale of Goods	10
7. Negotiable Instruments	10
8. Personal Property Security	10
Total	100

LEARNING OUTCOMES

1. The Malawi Legal System

In the assessment, candidates may be required to:-

- a. Define a legal system
- b. Define law and its types
- c. Define judicial review
- d. Distinguish civil from criminal liability
- e. Explain the meaning of administrative justice and its advantages and disadvantages
- f. Explain the system of courts and administration of justice in Malawi
- g. Explain the doctrine of precedent and its advantages and disadvantages
- h. Explain the process of law making in the Malawi Parliament.
- i. Discuss sources of law in Malawi, including legislation, case law, custom and equity
- j. Discuss rules of Statutory Interpretation

2. The Law of Tort

In the assessment, candidates may be required to:-

- a. Define the law of tort
- b. Distinguish a tort from other wrongs
- c. Explain key concepts in the law of tort including causation, remoteness of damage, vicarious liability and strict liability
- d. Distinguish a contract of service from a contract for services
- e. Discuss examples of torts including the tort of negligence, nuisance and defamation
- f. Discuss the general defenses in tort.

3. The Law of Contract

In the assessment, candidates may be required to:-

- a. Explain the elements of a valid contract
- b. Distinguish offer from acceptance
- c. Distinguish an offer from a counter offer and an invitation to treat.
- d. Define acceptance and outline rules relating to acceptance.
- e. Define consideration and its types
- f. Explain the meaning of 'intention to create legal relations'
- g. Discuss the extent to which capacity affects the validity of a contract
- h. Distinguish a condition from a warranty
- i. Define an exclusion clause and how the same may be incorporated into a contract

- j. Define the doctrine of privity of contract and its exceptions
- k. Explain the effect of a mistake on the validity of a contract
- l. Define a misrepresentation and its types
- m. Define duress and distinguish it from undue influence
- n. Distinguish illegal contracts from unenforceable contracts, void and voidable contracts.
- o. Explain the extent to which contracts in restraint of trade are valid
- p. Discuss the circumstances under which a contract can be terminated.
- q. Explain types of injunctions
- r. Discuss the possible remedies for breach of contract

4. Employment Contracts

In the assessment, candidates may be required to:-

- a. Comment on sources of employment law
- b. Define types of employment contracts
- c. Explain how a contract of employment may be terminated
- d. Explain the meaning of probation
- e. Definition and explain the entitlement and calculation of severance allowance
- f. Explain employment law concepts including hours of work, overtime and minimum wage
- g. Outline and comment on types of leave
- h. Explain disciplinary action that an employer may take against an employee
- i. Discuss the requirements of the law for a dismissal to be fair
- j. Distinguish summary dismissal from constructive dismissal
- k. Discuss remedies for unfair dismissal
- l. Discuss the Labour Relations Act - freedom of association, dispute resolution (strikes and lock outs) and the role of the Industrial Relations Court
- m. Discuss the relevance of the Workers Compensation Act, Occupation Safety, Health and Welfare Act and International Labour Organisation Conventions.

5. Agency

In the assessment, candidates may be required to:-

- a. Define the agency relationship
- b. Relate the doctrine of privity of contract to the law of agency
- c. Explain types of agents
- d. Explain the authority that an agent may have
- e. Discuss how an agency relationship may be created
- f. Discuss respective rights and duties of both the principle and the agent
- g. Distinguish an agency contract from other types of contracts such as employment contracts
- h. Explain how an agency relationship may be discharged

6. The Contract of Sale of Goods

In the assessment, candidates may be required to:-

- a. Define a sale of goods contract
- b. Define types of goods
- c. Distinguish property from possession and risk.
- d. Discuss the rules applicable to passage of property in goods
- e. Explain the meaning of retention of title

- f. Discuss the *nemo dat rule* and its exceptions
- g. Explain how a contract of sale of goods may be discharged
- h. Define the term delivery in sale of goods contracts
- i. Discuss implied terms in relation to description and quality of goods
- j. Explain the remedies of an unpaid seller
- k. Distinguish real from personal remedies of an unpaid seller
- l. Explain remedies of a buyer

7. Negotiable Instruments

In the assessment, candidates may be required to:-

- a. Define types of negotiable instruments
- b. Define a bill of exchange and its types
- c. Explain the liability of parties on a bill of exchange
- d. Compare and contrast a bill of exchange from a cheque and a promissory note
- e. Explain crossings that may appear on a cheque
- f. Define acceptance in relation to bills of exchange
- g. Define a holder in due course
- h. Describe how a bill of exchange is discharged
- i. Explain how a bill of exchange is used in practice

8. Personal Property Security

In the assessment, candidates may be required to:-

- a. define relevant terms such as security interest, after-acquired property etc
- b. Explain the law relating to the enforceability of a security interest in personal property
- c. Explain the process of perfection of security interests
- d. Explain the process of enforcement of security interests and their priorities.
- e. Explain the objectives of the Personal Property Security Act
- f. Explain the rights and duties of a secured creditor and a debtor.
- g. Discuss the significance of the Personal Property Security Act

REFERENCE

ICAM Business Law Manual

TC12: COMPANY LAW

AIMS OF THE COURSE

To develop candidates' understanding of company law theory and practice in Malawi

LEARNING OBJECTIVES

On completion of this module, candidates will be able to:

- i. Explain the formation of a company, fundamental features of a company and classification.
- ii. Explain the basic or fundamental framework of the limited company.
- iii. Discuss the legal effects of incorporation of a company.
- iv. Explain the company membership and concepts of shares transferability.
- v. Discuss capital and financing of companies.
- vi. Discuss company administration in relation to some key management personnel.
- vii. Mention the various arrangements available to a company for survival in the competitive world, and the globalization.
- viii. Explain different aspects of company reorganization, receivership and liquidation and the role of the liquidator.

FORMAT AND STANDARD OF THE EXAMINATION PAPER

The examination will contain five questions each carrying 20 marks. Candidates will be required to answer all questions. Answers must be supported by case and statutory authorities. Candidates will lose marks for grammatical errors and failing to communicate accurately.

SPECIFICATION GRID

This grid shows the relative weightings of subjects within this module and should guide the relative study time spent on each. Over time the marks available in the assessment will equate to the weightings below, while slight variations may occur in individual assessments to enable suitably rigorous questions to be set.

1) Nature of a company	
2) Formation of a company	10
3) Promotion	5
4) The Constitution of a company	10
5) The Corporate Status of a Company	10
6) Corporate Decision Making	5
7) Corporate Transactions	5
8) Shareholders Rights, Liabilities, Remedies	10
9) Share Capital	5
10) Maintenance of Share Capital	5
11) Loan Capital	10
12) Directors and Secretaries	5
13) Duties of Directors	10
14) Accounts and Auditors	5
15) Winding up	5
Total	100

LEARNING OUTCOMES

1. Nature of a company

Candidates will be able to define and explain the legal personality and the nature of a limited liability company as compared to other forms of business organizations such as partnerships; the office of Registrar of Companies and types of companies.

2. Formation of a company

In the assessment, candidates may be required to:-

- a. Explain the relevance of the office of the registrar of companies
- b. Distinguish a company from a sole-trader, partnership and other associations
- c. Define types of companies
- d. Explain the significance of a promoter in the formation of a company.
- e. Explain the duties of a promoter and remedies for breach of duties.\
- f. Discuss liability under pre-incorporation contracts.
- g. Explain the legal effect of the certificate of incorporation.

3. The Constitution of a Company

In the assessment, candidates may be required to:-

- a. Define Memorandum of Association and Articles of Association and their relationship and contents.
- b. Explain the contractual effect of the Memorandum of Association and Articles of Association.
- c. Explain rules on company names and how the name may be changed.

4. The Corporate Status of a Company

In the assessment, candidates may be required to:-

- a. Explain the rule in *Salomon v Salomon*.
- b. Explain the legal effects of incorporation
- c. Define the term 'lifting the corporate veil'
- d. Explain the circumstances under which the veil of incorporation may be lifted by legislation and by the courts

5. Corporate Decision Making

In the assessment, candidates may be required to:-

- a. Define the roles of the shareholders' meeting and the Board Meeting
- b. Explain the types of shareholders' resolutions
- c. Explain the *Duomatic Principle*
- d. Explain rules governing voting in shareholders meetings
- e. Discuss the requirements for ratify of directors' acts done in breach their duty.
- f. Explain residual powers that the general meeting has over the Board Meeting

6. Corporate mandate and authority

In the assessment, candidates may be required to:-

- a. Define the doctrine of ultra vires in Company Law.

- b. Explain the facts, rule and exceptions to the case of *Royal British Bank vs Turquand*
- c. Explain the concept of 'constructive notice'.

7. Shareholders Rights, Liabilities, Remedies

In the assessment, candidates may be required to:-

- a. Define the rights and obligations of a shareholder.
- b. Explain the meaning of limited liability.
- c. Explain the facts, rule and exceptions to the case of *Foss v Harbottle*.
- d. Discuss how the law protects minority shareholders.

8. Share Capital

In the assessment, candidates may be required to:-

- a. Define a share.
- b. Describe types of shares issuable by a company
- c. Define a prospectus.
- d. Explain key concepts such as par value/nominal value, rights issue, transfer of shares and transmission of shares

9. Maintenance of Share Capital

In the assessment, candidates may be required to:-

- a. Discuss the importance of maintaining capital of a company.
- b. Explain mechanisms provided by the law to help a company maintain its share capital.
- c. Explain conditions that must be satisfied if a company wishes to reduce its capital.

10. Loan Capital

In the assessment, candidates may be required to:-

- a. Define a debenture
- b. Explain types of debentures.
- c. Discuss the importance of the Personal Property Securities Act 2013.
- d. Discuss the remedies available to a holder of a secured and an unsecured debenture
- e. Distinguish a fixed from a floating charge and their priorities.
- f. Explain the meaning and relevance of Company Re-organization.
- g. Explain the significance of the Insolvency Act 2016.

11. Directors and Secretaries

In the assessment, candidates may be required to:-

- a. Define a director
- b. Explain types of directors and their qualifications
- c. Explain the role of the company secretary
- d. Explain the meaning of 'enlightened shareholder value' concept

12. Duties of Directors

In the assessment, candidates may be required to:-

- a. Explain common law duties of directors
- b. Explain statutory duties of directors

- c. Explain the consequences for breach of directors' duties.

13. Accounts and Auditors

In the assessment, candidates may be required to:-

- a. Define the role of the Malawi Accountants Board. And ICAM
- b. Explain accounting and auditing requirements for companies in Malawi.
- c. Define the qualifications of an auditor
- d. Explain the rights and duties of an auditor.

14 Winding Up

In the assessment, candidates may be required to:-

- a. Define winding up of a company
- b. Discuss grounds for compulsory winding up of a company
- c. Distinguish voluntary liquidation from compulsory liquidation
- d. Explain the circumstances under which a company may be wound up voluntarily
- e. Explain powers of a liquidator.

REFERENCES

ICAM *Company Law Manual*, 2017

Companies Act, Number 15 of 2013

Muhome, A H (2016), *Company Law in Malawi*, Assemblies of God Press.

P 2: LEGAL FRAMEWORK

AIM OF THE COURSE

To develop candidates' understanding of the legal framework in relation to company and business law, and the ability to apply this knowledge in various business transactions and decisions

On completion of this module, candidates will be able to:

- i. Explain the various sources of law in Malawi.
- ii. Explain the organization of the courts and administration of the courts in Malawi.
- iii. Distinguish between civil and criminal liability.
- iv. Explain the basic principles related to law of torts.
- v. Explain the principles of the law of contract.
- vi. Explain the law relating to sale of goods.
- vii. Explain the principles of the law of agency.
- viii. Describe the law relating to labour and employment in Malawi.
- ix. Explain the formation of a company, fundamental features of a company and classification.
- x. Explain the basic or fundamental framework of the limited company.
- xi. Discuss the legal effects of incorporation of a company.
- xii. Explain the company membership and concepts of shares transferability.
- xiii. Discuss capital and financing of companies.
- xiv. Discuss company administration in relation to some key management personnel.
- xv. Mention the various arrangements available to a company for survival in the competitive world, and the globalization.
- xvi. Explain different aspects of company reorganization, receivership and liquidation and the role of the liquidator.

FORMAT AND STANDARD OF THE EXAMINATION PAPER

The examination will contain five questions each carrying 20 marks. Candidates will be required to answer all questions. Answers must be supported by case and statutory authorities. Candidates will lose marks for grammatical errors and failing to communicate accurately.

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1. The Malawi Legal System	10
2. The Law of Contract	20
3. Sale of Goods	10
4. Employment Contracts	10
5. Agency	10
6. The Law of Tort	10
7. Company Law	30
 Total	 100

LEARNING OUTCOMES

1. The Malawi Legal System

In the assessment, candidates may be required to:-

- a. Define a legal system
- b. Define law and its types
- c. Define judicial review
- d. Distinguish civil from criminal liability
- e. Explain the meaning of administrative justice and its advantages and disadvantages
- f. Explain the system of courts and administration of justice in Malawi
- g. Explain the doctrine of precedent and its advantages and disadvantages
- h. Explain the process of law making in the Malawi Parliament.
- i. Discuss sources of law in Malawi, including legislation, case law, custom and equity
- j. Discuss rules of Statutory Interpretation

2. The Law of Contract

In the assessment, candidates may be required to:-

- a. Explain the elements of a valid contract
- b. Distinguish offer from acceptance
- c. Distinguish an offer from a counter offer and an invitation to treat.
- d. Define acceptance and outline rules relating to acceptance
- e. Define consideration and its types
- f. Explain the meaning of 'intention to create legal relations'
- g. Discuss the extent to which capacity affects the validity of a contract
- h. Distinguish a condition from a warranty.
- i. Define an exclusion clause and how the same may be incorporated into a contract
- j. Define the doctrine of privity of contract and its exceptions
- k. Explain the effect of a mistake on the validity of a contract
- l. Define a misrepresentation and its types
- m. Define duress and distinguish it from undue influence.
- n. Distinguish illegal contracts from unenforceable contracts, void and voidable contracts.
- o. Explain the extent to which contracts in restraint of trade are valid.
- p. Discuss the circumstances under which a contract can be terminated.
- q. Explain types of injunctions.
- r. Discuss the possible remedies for breach of contract

3. The Contract of Sale of Goods

In the assessment, candidates may be required to:-

- a. Define a sale of goods contract
- b. Define types of goods
- c. Distinguish property from possession and risk.
- d. Discuss the rules applicable to passage of property in goods
- e. Explain the meaning of retention of title
- f. Discuss the *nemo dat rule* and its exceptions
- g. Explain how a contract of sale of goods may be discharged
- h. Define the term delivery in sale of goods contracts
- i. Discuss implied terms in relation to description and quality of goods
- j. Explain the remedies of an unpaid seller
- k. Distinguish real from personal remedies of an unpaid seller
- l. Explain remedies of a buyer

4. Employment Contracts

In the assessment, candidates may be required to:-

- a. Comment on sources of employment law
- b. Define types of employment contracts
- c. Explain how a contract of employment may be terminated
- d. Explain the meaning of probation
- e. Definition and explain the entitlement and calculation of severance allowance
- f. Explain employment law concepts including hours of work, overtime and minimum wage.
- g. Outline and comment on types of leave
- h. Explain disciplinary action that an employer may take against an employee
- i. Discuss the requirements of the law for a dismissal to be fair
- j. Distinguish summary dismissal from constructive dismissal.
- k. Discuss remedies for unfair dismissal.
- l. Discuss the Labour Relations Act - freedom of association, dispute resolution (strikes and lock outs) and the role of the Industrial Relations Court
- m. Discuss the relevance of the Workers Compensation Act, Occupation Safety, Health and Welfare Act and International Labour Organisation Conventions.

5. Agency

In the assessment, candidates may be required to:-

- a. Define the agency relationship
- b. Relate the doctrine of privity of contract to the law of agency
- c. Explain types of agents
- d. Explain the authority that an agent may have
- e. Discuss how an agency relationship may be created
- f. Discuss respective rights and duties of both the principle and the agent
- g. Distinguish an agency contract from other types of contracts such as employment contracts
- h. Explain how an agency relationship may be discharged

6. The Law of Tort

In the assessment, candidates may be required to:-

- a. Define the law of tort
- b. Distinguish a tort from other wrongs
- c. Explain key concepts in the law of tort including causation, remoteness of damage, vicarious liability and strict liability
- d. Distinguish a contract of service from a contract for services
- e. Discuss examples of torts including the tort of negligence, nuisance and defamation
- f. Discuss the general defenses in tort.

7. Formation of Company

In the assessment, candidates may be required to:-

- a. Explain the relevance of the office of the registrar of companies.
- b. Distinguish a company from a sole-trader, partnership and other associations.
- c. Define types of companies
- d. Explain the significance of a promoter in the formation of a company.
- e. Explain the duties of a promoter and remedies for breach of duties.
- f. Discuss liability under pre-incorporation contracts.
- g. Explain the legal effect of the certificate of incorporation.

8. Constitution of a Registered Company

In the assessment, candidates may be required to:-

- a. Define Memorandum of Association and Articles of Association and their relationship and contents
- b. Explain the contractual effect of the Memorandum of Association and Articles of Association
- c. Explain rules on company names and how the name may be changed.

9. The Legal Status of a Registered Company

In the assessment, candidates may be required to:-

- a. Explain the rule in *Salomon v Salomon*
- b. Explain the legal effects of incorporation
- c. Define the term 'lifting the corporate veil'
- d. Explain the circumstances under which the veil of incorporation may be lifted by legislation and by the courts

10. Corporate Decision Making

In the assessment, candidates may be required to:-

- a. Define the roles of the shareholders' meeting and the Board Meeting.
- b. Explain the types of shareholders' resolutions
- c. Explain the **Duomatic Principle**.
- d. Explain rules governing voting in shareholders meetings
- e. Discuss the requirements for ratify of directors' acts done in breach their duty.
- f. Explain residual powers that the general meeting has over the Board Meeting

11. Corporate Transactions

In the assessment, candidates may be required to:-

- a. Define the **doctrine of ultra vires** in Company Law.
- b. Explain the facts, rule and exceptions to the case of *Royal British Bank vs Turquand*.
- c. Explain the concept of ‘**constructive notice**’.

12. Shareholders

In the assessment, candidates may be required to:-

- a. Define the rights and obligations of a shareholder
- b. Explain the meaning of limited liability.
- c. Explain the facts, rule and exceptions to the case of *Foss v Harbottle*.
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13. Share Capital

In the assessment, candidates may be required to:-

- a. Define a share.
- b. Describe types of shares issuable by a company
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- d. Explain key concepts such as par value/nominal value, rights issue, transfer of shares and transmission of shares.

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- a. Discuss the importance of maintaining capital of a company
- b. Explain mechanisms provided by the law to help a company maintain its share capital.
- c. Explain conditions that must be satisfied if a company wishes to reduce its capital.

15. Loan Capital

In the assessment, candidates may be required to:-

- a. Define a debenture
- b. Explain types of debentures.
- c. Discuss the importance of the Personal Property Securities Act 2013
- d. Discuss the remedies available to a holder of a secured and an unsecured debenture
- e. Distinguish a fixed from a floating charge and their priorities
- f. Explain the meaning and relevance of Company Re-organisation
- g. Explain the significance of the Insolvency Act 2016.

16. Directors

In the assessment, candidates may be required to:-

- a. Define a director
- b. Explain types of directors and their qualifications
- c. Discuss the duties of directors
- d. Explain the role of the company secretary
- e. Explain the meaning of ‘enlightened shareholder value’ concept
- f. Explain the consequences for breach of directors’ duties.

17. Accounts and Auditors

In the assessment, candidates may be required to:-

- a. Define the role of the Malawi Accountants Board. And ICAM
- b. Explain accounting and auditing requirements for companies in Malawi.
- c. Define the qualifications of an auditor
- d. Explain the rights and duties of an auditor.

18. Winding Up

In the assessment, candidates may be required to:-

- a. Define winding up of a company
- b. Discuss grounds for compulsory winding up of a company
- c. Distinguish voluntary liquidation from compulsory liquidation
- d. Explain the circumstances under which a company may be wound up voluntarily
- e. Explain powers of a liquidator.

REFERENCES

ICAM *Legal Framework Manual*, 2017
Companies Act, Number 15 of 2013