

**INSTITUTE OF BANKERS IN MALAWI**

**DIPLOMA IN BANKING EXAMINATION**

**SUBJECT: LAW OF TRUSTS, SETTLEMENT S & ADMINISTRATION**

**OF ESTATES (IOBM – D217)**

**Date: Tuesday, 6th May 2014**

**Time Allocated: 3 hours (13:30 am - 16:30 hours)**

**INSTRUCTIONS TO CANDIDATES**

1 This paper consists of **TWO** Sections, A and B.

2 Section A consists of 4 questions, each question carries 15 marks.

Answer **ALL** questions.

3 Section B consists of 4 questions, each question carries 20 marks. Answer **ANY TWO** questions.

4 You will be allowed **10 minutes** to go through the paper before the start of the examination, you may write on this paper but not in the answer book.

5 Begin each answer on a new page.

6 **Please write your examination number and not your student number on each answer book used. Answer books without examination numbers will not be marked.**

7All persons writing examinations without payment will risk expulsion from the Institute

8 DO NOT open this question paper until instructed to do so.

**SECTION A (60 MARKS)**

Answer **ALL** questions from this section.

**QUESTION 1**

1. In Malawi, many people are not well conversant with issues to do with wills. It has been proved that people do not understand the importance of writing wills. You have been approached by Zanga, who is a Director of one of the Non- Governmental Organisations, dealing with Women Rights as to the functions of a will. Please advise him. *(3 marks)*
2. Discuss any **three** duties of a trustee? *(12 marks)*

**(Total 15 marks)**

**QUESTION 2**

1. Describe in detail the following maxims of equity:

(i) Equity will not suffer a wrong to be without a remedy. (*4 marks)*

(ii) He who comes to equity must come with clean hands. *(3 marks)*

1. Mention **four** differences between Law of Trust and agency relationship.

*(8 marks)* **(Total 15 marks)**

**QUESTION 3**

Donald Trump who died in June 2013 was a real estate mogul who was living in the exclusive suburb of Mount Pleasant in Blantyre. Before his death he created a trust in which he left one of his plots to his last born daughter Ireen, for life and their after to Ireen’s 24 year old son Welbeck. The plot has a 5 storey block of flats on it. Ireen is a creative person and wants to add to the plot a swimming pool and playground with swings and other amenities for children and adults to use at their leisure. She believes she can claim more rent from the tenants. Knight Frank have created a report in which they value the plot at K100 million and after the improvements that Ireen is planning the value of the plot will be K150 million. Ireen contracts X Building Contractors to start the building of the swimming pool and playground. However right before the construction is about to finish, Welbeck gets an injunction restraining further construction of the swimming pool and playground claiming this is waste and Ireen should stop the construction. The High Court also orders Ireen to pay Welbeck damages to the tune of K20 Million. Ireen is not happy with this decision and has asked you to appeal the decision. What is your advice to Ireen and will she succeed? **(Total 15 marks)**

**QUESTION 4**

Describe defence of a trustee where legal proceedings are brought against him for breach of Trust? ***(*Total 15 marks)**

**SECTION B** **(40 MARKS)**

Answer **ANY TWO** questions from this section

**QUESTION 5**

Ferguson and Rooney are beneficiaries of a trust in which the settlor provided that all income of the trust should be given to Ferguson, Rooney and Open Arms Charity Home in the following proportions: Ferguson and Rooney 40% each and open arms 20%. Ferguson and Rooney want the trustees to give them the 20% that is paid to Open Arms Charity and they apply to the High Court for a variation of the trust to this effect. Can the court vary the terms of this Trust? **(Total 20 marks)**

**QUESTION 6**

(a) Jede has written a will in which he has given his house to his only son Mwayi. One of the witnesses to the will has revealed to Mwayi about his beneficial interest in the will. Jede has now decided to sell the house to raise money for his medical bills and farming. Mwayi, not conversant with the nature of a will, has approached you, for advice, on whether his father is at liberty to dispose of the house when it was given to him. Advise Mwayi on the legal position. *(7 marks)*

(b)State **three** ways through which executors may be appointed? *(6 marks)*

c) Define the term ‘strict settlement’? *(2 marks)*

**(Total 20 marks)**

**QUESTION 7**

(a) Describe **four** remedies against a trustee who is in breach of trust? (8 marks)

(b) Discuss and state briefly the legal principle established in the case of **saunders-v-vautier**? *(8 marks)*

(c) State **two** ways through which a trustee may be removed? *(4 marks)*

**(Total 20 marks)**

**QUESTION 8**

A trusteeship can be terminated by Death. Write notes on the consequences of the Death of a Trustee **(Total 20 marks)**

**END OF THE EXAMINATION PAPER**