

**INSTITUTE OF BANKERS IN MALAWI**

**DIPLOMA IN BANKING EXAMINATION**

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

**OF ESTATES (IOBM – D217)**

**Date: Tuesday, 8th November 2016**

**Time Allocated: 3 hours (13:30 – 16:30 pm)**

**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.**

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

**SECTION A (60 MARKS)**

Answer **ALL** questions from this section.

**QUESTION 1**

Compare the following concepts:

1. Trust and Contract *(5 marks)*
2. Trust and Bailment *(5 marks)*
3. Personal Representatives and Trustees *(5 marks)*

**(Total 15 marks)**

**QUESTION 2**

(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**? *(7 marks)*

**(Total 15 marks)**

**QUESTION 3**

Write brief notes on the following types of trust:

1. Constructive Trust. *(5 marks)*
2. Special Trust. *(5 marks)*
3. Discretionary Trust. *(5 marks)*

**(Total 15 marks)**

**QUESTION 4**

1. Nkhonde, a public servant, has embezzled public funds to the tune of MK6, 000, 000. Using the funds, he has purchased a house in Area 12. He has been arrested for embezzlement. Advise the Government on its remedies against Nkhonde. *(5 marks)*

***(*Total 15 marks)**

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

Answer **ANY TWO** questions from this section

**QUESTION 5**

1. Differentiate between total intestacy and partial intestacy. *(4 marks)*
2. State under what circumstances will a give by Will fail? *(16 marks)*

**QUESTION 6**

1. Explain the following Wastes:
2. Ameliorating Waste. *(4 marks)*
3. Equitable Waste. *(2 marks)*
4. Permissive Waste. *(2 marks)*
5. Explain in detail **four** rules that a court of law will use to interprete a Will.

*(12 marks)*

**(Total 20 marks)**

**QUESTION 7**

Chiposi is a successful businessman with business interests in the three regions of the country. His mother appointed him trustee of her Trust whose beneficiaries are homeless kids. However due to his expanding business, Chiposi is not able to perform his duties and would like to appoint his friend Bonjesi who is a part-time teacher, to act as Trustee on Chiposi’s’s behalf. Is this possible and are there any restrictions to the appointment?

**(Total 20 marks)**

**QUESTION 8**

In order for a trust to be valid the “three certainties” must be present – Certainty of Words, Certainty of subject and certainty of object. With reference to cases, write noted on

1. The Certainty of Words *(8 marks)*
2. The certainty of subject *(7 marks)*
3. The certainty of object (*5 marks)*

**(Total 20 marks)**

**END OF QUESTION PAPER**