

**INSTITUTE OF BANKERS IN MALAWI**

**DIPLOMA IN BANKING EXAMINATION**

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

**OF ESTATES (IOBM – D217)**

**Date: Tuesday, 5th November 2013**

**Time Allocated: 3 hours (13:30 – 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.**

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

**SECTION A (60 MARKS)**

Answer **ALL** questions from this section.

**QUESTION 1**

Consider allthe **three** scenarios below and advise whether they can result into a trust. Justify your answer.

1. A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of C." *(5 marks)*
2. A bequeaths certain property to B "hoping he will continue it in the family".

*(5 marks)*

1. A bequeaths certain property to B, requesting him to distribute it among such members of C's family as B should think most deserving. *(5 marks)*

**(Total 15 marks)**

**QUESTION 2**

The Law imposes a number of duties on trustees and one of them is the duty to invest. Discuss the extent of the duty to invest. **(Total 15 marks)**

**QUESTION 3**

A gift is a gratuitous transfer of ownership of any property. One of the main categories of gifts is *donatio mortis causa* ( gifts of property by a donor in contemplation of, and conditional upon, his death). Briefly discuss the **three** conditions that must be complied with in order for a *donatio mortis causa* to be effective. **(Total 15 marks)**

**QUESTION 4**

A will is normally made for the purpose of making dispositions of property to take effect on or after the testator's death. With emphasis on how a will differs from other *inter vivos* dispositions, briefly discuss the essential characteristics of a will before and after the death of the testator. ***(*Total 15 marks)**

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

Answer **ANY TWO** questions from this section

**QUESTION 5**

Pofera Salambura, a wealth business magnet bequeaths MK 20 million to Kaumphawi on condition that Kaumphawi shall marry Pofera Salambura's daughter Mbeta Salambura. Considering that Mbeta Salambura was dead at the date when the will was made, Advise Kaumphawi on the effect of that fact on the bequest.

**(Total 20 marks)**

**QUESTION 6**

A trustee's powers may be administrative or dispositive. Administrative powers are those relating to prudent management in the discharge of the trustee's duty to maintain the trust estate whilst dispositive powers are those intended to have an actual effect on the benefits which the beneficiaries become entitled to receive.

1. What is the extent of such powers? *(4 marks)*
2. Briefly discuss any **four**  powers that a trustee possesses. *(16 marks)*

**(Total 20 marks)**

**QUESTION 7**

Mpondamatiki bequeaths a legacy to **"Thomas, the son of my brother John"**. The testator has one brother only named John, who has no son named Thomas, but has a

son whose name is William. Advise the executor of Mpondamatiki’s will if William will have the legacy**. (Total 20 marks)**

**QUESTION 8**

With illustrations, discuss any **five** maxims of equity.  **(Total 20 marks)**

**END OF THE EXAMINATION PAPER**