

**INSTITUTE OF BANKERS IN MALAWI**

**DIPLOMA IN BANKING EXAMINATION**

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

**OF ESTATES (IOBM – D217)**

**Date: Tuesday, 17th November 2014**

**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 Agency *(7 marks)*
2. Trust and Contract *(5 marks)*
3. Trust and Bailment *(3 marks)*

**(Total 15 marks)**

**QUESTION 2**

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)*

**(Total 15 marks)**

**QUESTION 3**

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. *(6 marks)*
2. Discuss any **three** duties of a trustee. *(9 marks)*

**(Total 15 marks)**

**QUESTION 4**

1. Mr Mbala is one of the richest businesspersons in Mongolia. He has created a trust that upon his death, his property be put in a trust for the sole of the children of Mongolia in different spheres of life. The trust has mandated the trustees to decide on the beneficiaries at a particular time. In exercise of their powers, the trustees have paid school fees for all needy students in one of the districts in Mongolia. Parents of needy students from Phela district are not happy with the decision of the trustees, arguing that they too were supposed to benefit.

**Required**

(i) What kind of trust is created in this scenario? *(2 marks)*

(ii) Advise parents from Phela District on the legal position. *(7 marks)*

(b) What is a trust corporation as defined in the Trustees Act? *(6 marks)*

**(Total 15 marks)**

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

Answer **ANY TWO** questions from this section

**QUESTION 5**

1. Mention **three** basic types of grant of representation? *(6 marks)*
2. Tisunge is a son to Zeze from his first marriage. Upon the dissolution of the marriage, Tisunge was staying with his mother. Zeze re-married after the dissolution of the marriage. Zeze died two months’ ago. Tisunge has heard a rumour that his stepmother wants to obtain a grant from the Court to administer the deceased estate. Tisunge is of the considered view that this should not happen without his knowledge. He has approached you for advice. Please advise him on what he must do in these circumstances.

*(8 marks)*

1. Under what **two** circumstances will a grant be revoked? *(6 marks)*

**(Total 20 marks)**

**QUESTION 6**

1. Under what **four** circumstances will a court possess inherent jurisdiction to authorise a variation of terms in a trust? *(8 marks)*
2. Tasaukadala, a public servant, has embezzled public funds to the tune of MK2, 000, 000. Using the funds, she has purchased a house in one of the townships. The embezzlement has been discovered. Advise the Government on its remedies against Tasaukadala. *(6 marks)*
3. Describe **two** characteristics of equity jurisdiction? *(6 marks)*

**(Total 20 marks)**

**QUESTION 7**

X is a judge who has been given a case in which he has to interpret a will. Describe the four rules which he has to apply in order to interpret the will, where necessary make reference to cases.  **(Total 20 marks)**

**QUESTION 8**

John 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, john is not able to perform his duties and would like to appoint his friend Mike who is a part time teacher, to act as Trustee on John’s behalf. Is this possible and are there any restrictions to the appointment?

**(Total 20 marks)**

**END OF EXAMINATION PAPER**