



# Examiners' report

## F4 Corporate and Business Law (ZWE)

June 2008

### General Comments

Generally the June 2008 F4 (ZWE) paper had a few outstanding candidates and there is evidence that the level of preparation by the majority of the candidates has improved. However unlike the preceding syllabus where there was some choice for candidates, the new syllabus demands that candidates answer all the ten questions. Necessarily, it becomes prudent for candidates to familiarise themselves with all aspects of the syllabus, extensive as it may be.

The paper involves ten questions, the first seven being knowledge-based questions and the rest involving problem type questions. Candidates are expected to be able to answer all the questions adequately. In terms of examination technique, the performance of the candidates overall was satisfactory. However, a few candidates were unable to attempt all the mandatory ten questions. Whilst the majority of the candidates appreciated the fact that a law paper must ultimately involve citation of cases which underpin the various legal concepts at any stage, regrettably, a few of the candidates were not conversant with the relevant case law.

### Specific Comments

#### Question 1

Candidates were expected to list five fundamental human rights which are guaranteed under the Constitution of Zimbabwe. Whilst the majority of the candidates were able to list at least four of these fundamental human rights, in a few cases, candidates were unable to list the requisite number.

Some of the more popular examples included the right to life, freedom of association, freedom of religion, freedom of assembly, the right to own property and protection against inhuman or degrading punishment. It was critically important for candidates to explain how these freedoms work in practice and the fact that most of them have got derogations, which subtract from their being absolute concepts. For example, the right to life is subject to the derogation that the High Court of Zimbabwe can competently impose the death penalty in certain given situations, e.g. for first-degree murder and treason.

In the main, most of the candidates were able to answer this question satisfactorily.

#### Question 2

The question related to the principles which regulate and govern the award of damages in breach of contract cases. A few candidates were unable to tell apart the distinction between damages for breach of contract and damages in delict or tort. By and large, damages for breach of contract are meant to put the aggrieved party in the position that he would have occupied had the contract been performed adequately and properly whereas damages in delict are meant to place the plaintiff in the position he would have been had the delict not been committed.

Although a few of the candidates failed to make the distinction between contractual and delictual damages, the majority of candidates satisfactorily answered the question.

#### Question 3

The question related to the wrong of passing off and the remedies available to an aggrieved plaintiff. In order to prove that the delict of passing off has been committed, it is essential for the plaintiff to prove firstly the existence of goodwill or reputation in relation to the goods or services they offer. The basic idea is that a trader should not make a false representation that his products are those of another. It was imperative to cite pertinent case law on the topic. Although the majority of the candidates were able to define the concept of passing off and the attendant remedies thereof, the answers were rather deficient in relation to case law.

#### **Question 4**

This was a fairly straightforward question in which the majority of the candidates were able to distinguish between executive and non-executive directors. Most of the answers were reasonable. Candidates were able to produce competent answers in spite of the lack of citation of case law.

#### **Question 5**

As a general rule where a question is split into two or more parts with an equal number of marks per part, the assumption of the examiner is that candidates will give equal treatment particularly in terms of detail to each part. However if the parts enjoy unequal marks, candidates would be expected to give more detail to the part which attracts more marks. In this case, both parts attracted equal marks.

Part a) -This question in the main was well answered and candidates were expected to highlight the duties of an employee. Citation of relevant case law would have naturally enhanced the quality of the answer.

Part b) - Candidates were expected to list at least five ways by which a contract of employment may be terminated. Again citation of relevant case law was a definite must. Although the contract of employment is of its own kind, some candidates were able to cleverly use general principles pertaining to ordinary contracts in answering the question.

#### **Question 6**

Part (a) -The majority of the candidates answered this question very well. All that was needed was an inventory of some of the major duties of a company secretary. Among his multi-faceted responsibilities, he keeps statutory books, submitting annual returns to the registrar and ensuring compliance with the various administrative regulations, which may be made in terms of the Companies Act Chapter (24:03). He is the nerve centre of the company's activities and is its chief administrative officer.

Part (b) - The question demanded knowledge of specific provisions of the Companies Act, which define the various resolutions. Section 133 (1) defines the requirements of a special resolution and Section 133 (4) says that any other resolution at a general meeting, which is not special resolution, shall be an ordinary resolution. Finally, a written resolution is one which is passed in terms of Section 134. There was a tendency by a sizeable number of candidates to answer this question in very generalised terms without specific reference to the provisions of the Act. As the question was entirely regulated by the Act, reference to specific provisions thereof was unavoidable.

#### **Question 7**

The question demanded knowledge of the concept of corporate governance and how it operates in practice in Zimbabwe. Corporate governance refers to the processes, structures and procedures by which a business entity's affairs are directed and managed in order to enhance shareholder value. Good corporate governance accordingly entails performance ethos and accountability, and the role of the board of directors and the company secretary is inextricably linked to the concept of good corporate governance. Although the majority of the candidates appreciated the concepts of corporate governance, the answers tended to be too generalised. It would have been useful to draw examples from jurisdictions such as the United States, Australia and the United Kingdom, where best practices of corporate governance are firmly entrenched as part of the business ethos and structure.

#### **Question 8**

The problem-type question relates to the fundamental issues of offer and acceptance, counter-offer and the distinction between a firm offer and an invitation to treat during negotiations leading to the conclusion of a contract. It is quite clear that there was no concluded contract between Ngoni and Themba. Neither is Ngoni bound by Brinah's purported acceptance. This is an area of law that is replete with case law and it was

imperative for candidates to underpin their answers by citing relevant case law. The majority of candidates did not encounter too many difficulties in answering this question.

#### **Question 9**

The question relates to the various principles that underpin the law of partnership. Most of the candidates gave creditable answers and a few outstanding ones were able to cite relevant case law. It was important to underscore the fact that partners are jointly and severally liable for the partnership's debts and a partner who has had his property sold in execution can recover the share by which the other partner was liable from that partner. In this case, Tymon can recover from Tunga his pro rata share of the partnership debt.

#### **Question 10**

The probable attitude of the court in light of the facts of the case is that compulsory winding up of Kufumaishungu (Pvt) Ltd can be granted by the courts primarily on the basis of the company's inability to settle its debts, S206 (f). The other reason upon which winding up can be ordered can be based on S206 (g), which says that a company can be wound up by the court if the court is of the view and opinion that it is just and equitable to do so. The prospects that the court will grant Shoko Enterprise (Pvt) Ltd's petition for the compulsory winding up of Kufumaishungu (Pvt) Ltd are very high. This was one of the best-answered questions and the relevant statutory provisions were appropriately cited by the majority of the candidates.