

Examiner's report

F4 Corporate and Business Law (ZWE)

June 2011

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General Comments

In general, the candidates who sat for the June 2011 paper – F4 (ZWE) showed clear evidence of being adequately prepared. The overall performance was impressive and it is quite clear that comments that have been previously made by the Examiner have been of some benefit to a significant number of candidates.

A few of the candidates showed adequate preparations on sections or portions of the paper but regrettably were unable to answer the rest of the examination question paper. Candidates are strongly encouraged to prepare for the examination by studying the syllabus in its entirety.

Questions 1 to 7 are knowledge type questions. A candidate would be expected to fully understand the meaning of a question, interpret it properly and use relevant information in answering the question. The answer can be brief in words but broad in content. An answer will never be complete if it has not been underpinned by example such as case law or relevant statutory references.

The rest of the question paper (questions 8 – 10) is comprised of analysis type questions. In dealing with such questions, what is of critical importance is for a candidate to have a legally sound answer. The conclusion reached must be supported by relevant and authentic authorities. There should also be a balanced treatment of factual and legal issues and a conclusion on the law would necessarily be drawn in light of both the factual and legal issues raised by the questions.

Regrettably some candidates failed to evenly distribute the time available to the questions that had to be answered. Some questions were extensively answered (even where they attracted relatively few marks) at the expense of the rest of the paper.

Questions emanating from analysis type situations invariably require a candidate to come up with a conclusion that is based on the discussion that will have taken place..

Specific Comments

Question One

Part a) required candidates to show their appreciation of Zimbabwe's legal system by laying out differences between criminal and civil law and explaining these distinctions. Some of the differences that needed to be explained included the respective degrees of proof needed in criminal and civil law in order to impose liability and the parties involved. Relevant judicial decisions were also useful in explaining the differences.

Part b) required candidates to identify differences between an appeal and a review and accounting for these differences. Various differences such as the fact that an appeal is concerned with the substantive correctness of a judicial decision while a review is concerned with redressing procedural irregularities needed to be fully explained with the aid of decided cases such as *Fikilini (1990)*.

Part c) required candidates to explain and distinguish between the civil and criminal jurisdiction of the High Court. Candidates also had to explain that the High Court has unlimited jurisdiction in both civil and criminal matters. It was also necessary for candidates to note that there are some crimes such as treason and murder over which the High Court and not the magistrates' court has jurisdiction.

Generally the majority of the candidates answered this question well.

Question Two

Candidates had to explain clearly how the courts approach the question of damages before awarding them to an injured party in cases of breach of contract. More importantly there was a need to explain that although the general rule is that the courts will award damages for patrimonial or material loss in breach of contract cases, in appropriate and limited cases an exception is made to award damages for sentimental loss as well. Relevant case law was crucial in helping candidates explain their answers. This question was well answered by many candidates although in some cases the answers tended to include remedies other than damages, something which the question had not asked.

Question Three

The question sought to test candidates' knowledge of partnership law, particularly limited and unlimited partnerships. Candidates were required to identify and explain the differences between a limited and an unlimited partnership. In order for them to satisfactorily do this, candidates had to show a full appreciation of the concepts backed by case law authority. Whilst most of the answers were sound, a few answers tended to refer to a "fictitious" Partnership Act, something which does not exist do not have in Zimbabwe jurisdiction. The law on partnership (unless they are professional ones such as doctors, lawyers etc) is entirely based on the common law.

Question Four

Part (a) of the question required candidates to explain the statutory and common law duties of auditors. In order to explain the statutory duties, candidates had to refer to section 153 and 154 Companies Act (Chapter 24:03) and duties stated therein include the duty to make a report to members on the accounts examined by them. Case law was crucial in order to explain common law duties, such as the duty to act honestly and with reasonable skill, diligence and care and caution.

Part (b) required candidates to explain the law relating to the removal of an auditor. Sections 150 and 152 Companies Act (Chapter 24:03) provides for this and section 150 states that a company may at its general meeting remove a person who was previously an auditor, prior to the general meeting. Candidates had to focus more on statute law, than on common law. However the majority of the candidates answered this question well.

Question Five

This question focused on employment law, particularly on outlining the differences between an employee and an independent contractor and explaining these distinctions. The idea of subjection to orders and the question of supervision and control were some of the differences that needed to be laid out and clearly explained with the aid of relevant decided cases. The question of vicarious liability needed to be treated as well. This question was well answered.

Question Six

The question required candidates to show that they were conversant with company law by fully-explaining the differences between the duties played by executive and non-executive directors in a company. For instance, executive directors constitute the management of the company while non-executive directors do not. Candidates' answered this question well .

Question Seven

Part (a) required candidates to explain the concept of voluntary winding up and its effects in relation to company law. Sections 242 and 245 Companies Act (Chapter 24:03) mention that a company may for instance be wound up voluntarily if it resolves by special resolution that it be wound up voluntarily.

Part (b) required candidates to explain the reasons for compulsory winding up and not voluntary winding up of a company. Candidates had to refer to section 206 Companies Act which specifies the circumstances under which a company may be compulsorily wound up by the court. Some of the circumstances provided for by the Act, which candidates had to explain, include a situation where a company is unable to pay its debts and if the company ceases to have any members. Most candidates answered this question well.

Question Eight

This question required candidates to explain, in relation to the law of delict, whether the defendant had any defence, whether full or partial to the damages claimed by the plaintiffs. The defendant can raise contributory negligence as a defence against James Moyo, who did not heed the defendant's call to fasten his seat belt. In relation to Dennis Dube, who had his seat belt fastened, candidates had to explain that the defendant would be held liable because of the negligence of their driver.

Question Nine

Part (a) required candidates to ascertain and explain whether or not John Brown and his associates were liable for misstatements in the prospectus, in relation to Company law. Section 59 Companies Act (Chapter 24:03) if applied to the present facts, would show that John Brown and his associates are criminally liable for misstatements contained in the prospectus. This, together with section 58 of Act had to be explained if candidates were to perform well on this question.

Part (b) required candidates to give an explanation whether or not John Brown is eligible to be a promoter and/or a director of Sunshine Mines Limited. Section 173(1) Act provides an answer to this problem and according to that section, since John Brown was removed from the position of liquidator by the High Court, he needs a special dispensation from the court for him to act as a director of Sunshine Mines Limited, which he assisted in promoting and founding. However, there is nothing to stop him from being a promoter.

Question Ten

The question required candidates to give advice on the legality, or otherwise, of the shareholders' actions. Candidates had to explain that while in terms of the law, shareholders can vote to reduce the amount of the dividend, they cannot vote to increase it. Hence what the shareholders have done is completely illegal and without force of law (*Buenos Aires Great Southern Railway Company Ltd v Preston (1947)*). Both common law and the Companies Act provide answers for this problem. The majority of the candidates had difficulty answering this question because they mistakenly thought that the shareholders could override the decision of board of directors on the issue.