



# Examiners' report

## F4 Corporate and Business Law (ZWE)

December 2008

### General Comments

In general the majority of the candidates who sat for the December 2008 Corporate and Business Law Paper F4 (ZWE) showed clear evidence of adequate preparation. It is quite clear that comments that have been previously made by the Examiner have been taken on board by the majority of the candidates.

The current syllabus requires that candidates should answer all the ten questions and that being the case it behoves upon candidates to familiarise themselves with all the topics outlined in the syllabus. Some candidates showed a lack of familiarity with certain topics, for example the topic on governance and ethical issues relating to business.

Questions 1 to 7 are exclusively knowledge-based. A candidate should fully understand the meaning of a question, interpret it properly and use the relevant information in answering the question. Whilst it is possible for an answer to be brief in word it can still be broad in content. However, an answer can never be complete if it is lacking in case law or statutory authorities.

Questions 8, 9 and 10 comprise problem type questions and it is absolutely essential for candidates to make sure that they have a legally sound answer. The conclusion reached must invariably be supported by relevant and authentic authorities. There should be a balanced treatment of factual and legal issues and a conclusion on the law should necessarily be drawn pursuant to a discussion of the factual issues.

### Specific Comments

#### Question 1

The question required candidates to deal with one of the most topical issues in relation to the legal system i.e sources of law. Both legislation and customary law are very important sources of law in Zimbabwe and in the main, the question was satisfactorily answered. The marks were evenly split between the two subsections and candidates were required to give the two subsections roughly, equal treatment in terms of time and detail.

#### Question 2

(a) Although the topic of quasi-mutual assent is specifically spelt out in the syllabus, a significant number of candidates did not show evidence of having adequately prepared for this topic.

(b) This subsection was generally satisfactorily answered.

#### Question 3

The majority of the candidates seemed to have enjoyed answering both subsections of the question. They relate to contracts of employment and because of the practical nature of the topic in people's daily lives candidates seemed to have a very satisfactory appreciation of the issues at stake.

#### Question 4

(a) The answers tended to be too general. A reasonable answer would have made specific reference to sections 199, 205 and 206 of the Companies Act (Chapter 24:03) which specifically deal with both voluntary and compulsory liquidation.

(b) Whilst the majority of the candidates had a general idea of the philosophy underpinning judicial management, very little case law was cited. A reasonable answer would have indicated the circumstances under which judicial management can be a real alternative to winding up. Citation of section 300 of the Companies Act would have added value to the discussion.

### Question 5

Question 5(a) attracted only 3 marks whilst Question 5(b) attracted the balance of 7 marks and necessarily candidates were expected to have a more extensive discussion under Question 5(b). The definition of a private company as provided for by section 33 is very straightforward and nearly all the candidates got it right. A few candidates were under the impression that the minimum membership of a private company is two. Nothing could be further from the truth. The minimum number for both private and public companies is one. As for the distinction between shares and debentures it was critical to mention the point that whereas a shareholder is a member of the company, a debenture holder simply put, is a creditor and need not be a member. The other common law distinctions between the two were satisfactorily dealt with by the majority of the candidates.

### Question 6

As was intimated in the general introductory remarks, the syllabus has a section on governance and ethical issues in the conduct of business in Zimbabwe. However, the evidence available suggests that the majority of the candidates have not yet grasped the fundamentals of this very important topic. Issues such as money laundering and insider dealing are very relevant to current economic developments in Zimbabwe. As a matter of fact, in the last two or three years there has been a plethora of legislation and regulations which are meant to manage governance and ethical issues in business.

In summation, it can be said that the majority of the candidates probably found this question more challenging than the rest of the paper.

### Question 7

In the main, the question was well answered by the majority of the candidates. The only downside was that some candidates did not quite appreciate the major distinction relating to the approach of the courts in awarding damages in contract as opposed to damages in delict. For the avoidance of doubt, damages in contract should constitute the monetary value of what the plaintiff should have expected to get if the contract had been performed whereas delictual damages relate to the financial loss which the plaintiff could have avoided if the delict had not been committed.

### Question 8

(a) This was satisfactorily answered by the majority of the candidates. Candidates were able to appreciate the distinction between a firm offer, which can lead to the formation of a contract, and an invitation to treat, which is merely a solicitation for offers. Important case law such as **Crawley v Rex (1909)** was cited. Some of the answers were even able to recite a critical portion of Crawley's case, which captures the law in a very neat way. It says "the mere fact that a tradesman advertises the price at which he sells goods does not constitute an offer to members of the public to enter the shop and purchase goods; it amounts simply to an announcement of his intention to sell at the price at which he advertises..."

(b) The majority of the candidates were able to argue strongly in favour of an interdict being granted to Marvo Records (Pvt) Ltd against Melody.

### Question 9

In the main, this question was answered successfully and the preponderant view was that Esther could leave her employer Kufuma (Pvt) Ltd without the necessity of giving the requisite period of notice because the various incidents surrounding her employment situation amounted to constructive dismissal by the employer. Candidates performed well in this question.

### Question 10

(a) By and large this question was satisfactorily answered and the fact that it attracted 7 marks whilst part (b) attracted only 3 marks would indicate the level of detail and profoundness of the answer that was expected of

the candidates. The majority of the candidates were able to cite both the common law and statutory authorities which underpin this very important area of the law. In a nutshell, Rumbidzai had allowed a situation of conflict of interest to arise and her fiduciary duties towards her principal Smartwear (Pvt) Ltd were breached. Both the Companies Act (Chapter 24:03) and the common provide adequate remedies for such transgressions.

(b) The majority of the candidates appreciated the fact that because of her conviction, which did not carry the option of a fine, Sandra could not be a director without leave of the court. It would have been useful to cite both section 169(1) of the Companies Act (Chapter 24:03) and the case of **The Registrar of Companies v Oliver John Tengende (1976)**, which is directly in point.

In conclusion it can be noted that in the main some of the answers were really sound. Regrettably there were also a few answers which were unsatisfactory.