

Examiner's report

F4 (BWA) Corporate & Business Law

For Paper Variant exams December 2015

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the December 2015 examination. It identifies strengths and weaknesses demonstrated by candidates, and also highlight best practices that those presenting themselves for the examination in the future should consider in order to maximise their prospects of success.

The December 2015 examination was in a format through which candidates were asked to answer 45 multiple choice questions, worth 1 or 2 marks each in Section A with a total of 70 marks and a further 5 short answer questions worth 6 marks each in Section B.

Candidates performed well in questions concerning contract law, delict and business associations. Candidates struggled somewhat in questions concerning the raising and maintenance of capital, employment, corporate governance and the legal control over bribery. There was little evidence of time pressure as most candidates completed the paper.

Sample question for discussion from Section A

This section of the report discusses two questions from Section A in which candidates experienced difficulties.

Question 43

Tinashe is employed by Water Tech (Pty) Ltd. Tinashe formed his own business and hired his wife, Jane, as manager. Tinashe's business sells wares similar to Water Tech (Pty) Ltd. Tinashe also refers many customers of Water Tech (Pty) Ltd to his own company, promising discounts in the process.

Which employee's duty has Tinashe breached?

- A To be obedient
- B To refrain from misconduct
- C To further the employer's business interests
- D To enter into and remain in service

The correct answer is C.

The most important point to note with regard to this question and with regard to all multiple choice questions in general is that the distractors offered as possible answers will often seem plausible or correct. A well prepared candidate will be able to distinguish between incorrect distractors and the correct answer only through thorough preparation.

This question was concerned with employees' duties. The particular duty that was breached was the duty to further the employer's business. It is an employee's duty to obey all lawful orders, however, this duty has not been breached in this particular scenario and so option A was incorrect. Similarly an employee is required to refrain from acts of misconduct. However, in this particular case, referring customers to another store where he has an interest was not an act of misconduct but a breach of Tinashe's duty to further his employer's business interests and not his own. The last distractor was the least plausible answer.

Candidates are advised to prepare thoroughly in all areas in order to give themselves the best possible chance of identifying the correct answer in multiple choice questions.

Question 12

Following breach of contract, which of the following may the claimant recover?

- A Patrimonial damages
- B Exemplary damages
- C Nominal damages

The answer is A

A similar issue arose in the question above: some candidates correctly identified the answer but many selected option C which is nominal damages. In our law, there is a requirement to prove loss following a breach of contract in order to claim damages. Nominal damages, or damages given even where no actual loss is proven, cannot be recovered following a breach of contract. The well prepared candidate would be able to distinguish between the different types of damages offered as possible answers and to identify the correct type of damages. Thus, a thorough understanding of the syllabus material is key to success.

Comments about Section B performance

Section B performance was fair. The areas tested were contract law, the law of partnerships, raising capital, directors' duties and legal control over bribery. Candidates struggled the most with the question on raising capital and the question tackling legal control over bribery. Candidates are encouraged to prepare thoroughly in these two areas, paying attention to different methods of raising capital and in particular how each can be distinguished from the next. Candidates should also familiarise themselves with the provisions of relevant legislation governing bribery and money laundering in Botswana in order to be able to tackle similar questions effectively in the future.

Conclusion

Performance in this exam session was fair. Candidates are advised to prepare thoroughly on all topic in the syllabus in order to give themselves the best chance of success.