



# Examiner's report

## F4 (ZAF) Corporate & Business Law

June 2015

### General Comments

The examination consisted of two sections. Section A consisted of 45 compulsory multiple choice questions. Section B consisted of 5 compulsory, longer type questions (with sub-divisions). Section A was 70 marks and Section B 30 marks. Candidates had two hours to complete the examination paper. This introduced a new format and it seems if candidates are capable of answering questions based on this new format.

Candidates are expected to be acquainted with the whole of the syllabus.

In Section A the majority of candidates performed satisfactory. Candidates should have a sound knowledge of the syllabus to be able to answer these types of questions. It seems if most were able to do that.

In Section B a substantial number of candidates did not attempt all of the questions. Where questions were left unanswered by candidates, this appeared to be due to a lack of knowledge or inadequate exam technique, as opposed to time pressure.

Candidates tended not to answer questions in the order they are asked, but rather to attempt the questions they are more comfortable with first.

A number of common issues arose in candidate's answers:

- Failing to read the question requirement clearly and therefore providing irrelevant answers which scored few if any marks.
- Inadequate time management between questions, some candidates wrote far too much for some questions and this put them under time pressure to finish remaining questions.
- Not answering all of the questions, this might be due to inadequate time management as well as a lack of knowledge mentioned above.
- Not learning lessons from earlier examiner's reports and hence making the same mistakes.

Syllabus topics on which candidates performed well included remedies for a breach of contract (especially in the context of exclusion clauses), directors' duties and fraudulent and reckless trading. Syllabus topics on which candidates performed inadequately included financial assistance and pre-incorporation contracts. The overall standard of scripts was reasonable.

### *Comments about Section A performance*

Candidates generally performed well in this Section. It is important that candidates read these questions very carefully. Candidates need to make sure whether they should indicate the *correct* option or the *incorrect* option. They also need to pay attention to combination answers, where one or more of the options given might be correct (or incorrect).

Candidates were unable to answer the following question:

**Question 26**

Ken and Lee conclude a contract for Ken to provide the catering at Lee's wedding. Ken makes a mistake and writes the wrong date in his diary. He therefore does not arrive on the wedding day to do the catering.

**What is this an example of?**

- A Mora debitoris
- B Positive malperformance
- C Prevention of performance
- D Mora creditoris

**Option C** is the correct option. A debtor commits breach of contract in the form of mora debitoris if they do not perform at the agreed time. It must, however, still be possible to perform at a later stage. Mora debitoris has to be distinguished from prevention of performance. In some contracts the time of performance is so closely linked to the content of the obligation that proper performance cannot take place after the specified time. In such a case the debtor's culpable failure to perform at the agreed time will not constitute mora, but prevention of performance. This is the case in casu with the contract between Ken and Lee.

The majority of candidates opted for Option A. It is unclear why candidates did not answer this question satisfactory. It deals with the law of contract and specifically with breach of contract. It is important to know the difference between mora debitoris and prevention of performance as the debtor will have to pay damages in the case of prevention of performance as performance is no longer possible.

Candidates also performed inadequately in questions dealing with the business rescue plan and distributions. These questions are in the area of company law and candidates should ensure that they are familiar with the Companies Act, 2008.

*Comments about Section B performance*

Most of the candidates answered the questions asked in Section B in a satisfactory manner. Those candidates that did not perform well mostly did not answer all the questions. A majority of the candidates answered the questions in a clear and precise manner, only stipulating what was asked. This is best practice as candidates then do not waste time to explain correct, but often unnecessary, issues.

Candidates are still struggling with questions based on the Companies Act 2008, especially where the common law is still applicable. Company law is an important part of the work, especially based on the new rules brought about by the Companies Act 2008, and candidates must make sure that they understand this part of the syllabus. Candidates also struggled to answer questions on financial assistance satisfactorily. The Companies Act 2008 (S.44) regulates the situation where a company provides financial assistance for the acquisition of the company's securities. Candidates should ensure that they are familiar with the legislative provisions stating under which circumstances the provision of financial assistance is allowed. Candidates must always read questions very carefully, especially in the context of financial assistance. Candidates can be asked to explain the meaning of financial assistance;

they can also be tested on whether or not a specific set of facts contributes financial assistance and if it qualifies as financial assistance. Candidates should be able to explain whether it is allowed based on the requirements in the Companies Act 2008.

### **Conclusion**

Generally, candidates performed well in this paper. They answered the questions in Section B to the point. It seems if they read the questions carefully and made sure that they answered what was actually asked. However, some candidates did not perform well on very important topics like directors' duties and financial assistance.

Candidates should attempt all questions. While it is recognised that few individuals will be fully prepared to deal with every question, it should be possible to make a reasonable attempt at every question. In Section A distractors can often be eliminated by a process of deduction.