



Examiner's report

F4 (ZAF) Corporate & Business Law

For Paper Variant exams June 2017

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 counted 70 marks and Section B 30 marks. Candidates had two hours to complete the examination paper.

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

In Section A the majority of candidates performed satisfactory. Candidates need a good knowledge of the syllabus to be able to answer these types of questions and it seems if most were able to do that.

In Section B the performance was also satisfactory. In previous years candidates tended not to answer questions in the order they are asked, but rather to attempt the questions they are more comfortable with first. This was mostly not the case this year.

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

1. Failing to read the question requirement clearly and therefore providing irrelevant answers which scored few if any marks.
2. Poor time management between questions. Some candidates wrote far too much for some questions and this put them under time pressure to finish the remaining questions.

Many of the problems identified in previous Examiner's Reports were addressed during this session creating the impression that candidates learned from previous mistakes highlighted in the Reports.

Syllabus topics on which candidates performed well included the mutual mandate principle applicable to partnerships, insider trading and directors' duties. This has been an improvement from previous years. Syllabus topics on which candidates performed poorly included remedies for breach of contract.

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 statements given might be correct (or incorrect).

A question which presented candidates with particular difficulty is discussed below:

Three friends wish to start their own catering company. While driving one Saturday morning, they come across the perfect restaurant which is on the market. They wish to purchase the restaurant on behalf of the proposed company. They are unsure how they will be able to conclude the sale agreement as the company is not yet incorporated.

In view of these facts, which of the following statements in relation to the three friends is/are correct?

- (1) They can conclude a pre-incorporation contract
- (2) They have various options available in terms of legislation and the common law

(3) Under no circumstances do they have to comply with any formalities to conclude a pre-incorporation contract as long as the parties reach consensus

A 1 and 2 only

B 2 and 3 only

C 1, 2 and 3

D 1 only

(2 marks)

The correct answer is (A) as both (1) and (2) are correct. Statement (3) is not correct as section 21 of the Companies Act, 2008 requires that the pre-incorporation contract has to be in writing. It is unclear why candidates were not able to answer this question. Candidates should be clear on the various options available when concluding pre-incorporation contracts. They need to know the requirements and operation of a section 21 pre-incorporation contract as well as the common law options, namely the stipulatio alteri or the contract for the benefit of a third party. The relationship between the statutory pre-incorporation contract and the common law should be clear to candidates.

Comments about Section B performance

The majority of the candidates answered the questions asked in Section B in an acceptable manner. However, even though most candidates were able to answer the questions, detail was often lacking. Candidates also tended to provide unnecessary and irrelevant, although sometimes accurate, information. Candidates should read the questions carefully and only answered what was asked.

Conclusion

The performance of candidates relating to Section A and B of the June 2017 session was encouraging.

Most candidates made a reasonable attempt at every question.