

# Examiner's report

## F4 (ZWE) Corporate & Business Law

June 2015

### General Comments

The aim behind this report is for candidates to have feedback and an appreciation of the overall performance in the June 2015 F4 (ZWE) examination (Corporate and Business Law). As with the December 2014 paper candidates in the June 2015 paper were expected to answer 45 compulsory multiple choice questions from section A and 5 compulsory problem type questions from Section B.

### Section A

Section A is divided into 20 questions worth 1 mark each and 25 questions worth 2 marks each to make an aggregate of 70 marks. This section was reasonably well answered by the majority of the candidates. However a couple of questions posed a challenge to a significant number of candidates. A sample question is shown below:

Q38 Katarina Ltd has recently been made the subject of a judicial management order. John had previously presented a winding-up petition in regard to Katarina.

What will the effect of the judicial management order be on John's winding-up petition?

- A It will be heard by the court
- B It will be dismissed by the court if the judicial manager applies to it
- C It will be postponed for 12 months
- D It will be automatically dismissed

The issue that needed to be resolved relates to the effect of a judicial management order which is made after a prior winding up order had commenced. The correct answer is A - the prior winding-up order will be automatically dismissed and the judicial management process will be given a chance to take effect. This question was inadequately answered by many candidates.

All in all, the majority of the candidates answered Section A very well.

### Section B

Question 1(a) In light of the fact that John was a learner driver taking his first lessons in driving the standard of care which applies to him cannot be the same as that of an experienced driver who has a licence to drive. The driving instructor was grossly negligent in falling asleep whilst supervising a trainee driver and Quick Licence Driving School, the employers of the driving instructor are vicariously liable for the depictions of Andrew, their employee. The question was satisfactorily answered by most of the candidates.

Part (b) the partial defence to Dennis' claim is that of contributory negligence and the majority of the candidates answered this correctly.

Question 2(a) Related to the legal nature of the articles of association and this was satisfactorily answered by many candidates.

Part (b) equally part (b) which relates to the procedure that must be followed (special resolution) if the company were to alter its articles of association was satisfactorily answered by many candidates.

Part (c) However part(c) on the main restrictions on the alteration of articles of association posed a challenge to many candidates. The restrictions are the following:-

1. That the altered articles do not contain anything illegal
2. That they do not go outside the powers of the memorandum
3. That the alterations are not done in bad faith as far as interests of the members are concerned and
4. That the alterations must be for the benefit of the members.

Question 3(a) The majority of the candidates appreciated the fact that the company Makala Bottles (Pvt) Ltd would need to extend a loan to Kevin in terms of s73 Companies Act, Chapter 24:03 for purposes of purchasing its own shares (the new director's qualification shares).

Part (b) A significant number of the candidates did not appreciate the fact that since the shares were sold at a profit of \$100,000 this amount should be credited to the share premium account. In terms of s74 Companies Act, Chapter 24:03 the use of the share premium account is severely restricted.

Question (a) the question relates to the general duties of a director that Alice breached. Whilst the majority of the candidates wrote sound answers a few of the candidates tended to write very long answers on the question. This tended to affect the time that the candidates allocated for the rest of the questions which still had to be answered.

The question of prudent and equitable management and allocation of time to all the 5 questions (and each is worth 6 marks) under Section B cannot be overemphasized.

Part (b) the two remedies available to Human Capital (Pvt) Ltd against Alice would be rescission of the contract and damages. Most of the candidates answered this correctly.

Question (a) in the context of the facts of the problem the majority of the candidates were able to explain the offence of insider dealing very well.

Part (b) Looking at the facts of the case it is clear that Christine is guilty of insider dealing because at the time that she made the decision to sell her shares she had inside knowledge to the effect that the company was in real danger of making heavy losses. On the other hand, Emma sold her shares in the course of normal trading and the impending crisis was unknown to her and therefore she is not guilty of insider trading. On the whole question 5 was very well answered by most of the candidates.