

Examiner's report

F4 (BWA) Corporate and Business Law December 2012



General Comments

The examination consisted of ten compulsory questions. The first seven questions were knowledge based. The last three questions were problem-based. Each question carried 10 marks.

Most candidates attempted all ten questions, and there was little evidence of time pressure. There were some candidates that left questions unanswered. This appeared to be due to lack of preparation.

Candidates performed particularly well on questions 2, 3, 4a, 6, 9 and 10. The questions candidates found most challenging were questions 1, 4b, 5a, 5b, 5c, 7 and 8. This is mainly due to incomplete answers resulting from inadequate understanding of the areas tested.

A number of common issues arose in candidates' answers:

- Failing to answer all the questions due to inadequate preparation
- Providing more than the required amount of material or too little material in questions with sub questions
- Failure to apply the law to the facts in problem-based questions
- Not citing relevant sections of the Companies Act and not being familiar with important cases.

Specific Comments

Question One

This question required candidates explain the structure and operation of the court system.

Most candidates were able to name and discuss the most common courts. Some candidates did struggle with less familiar courts like the Land tribunal and Courts Martial. Significantly, few candidates were able to discuss the operation of the court system because they had an inadequate understanding of the relationship between all courts.

Question Two

This question required candidates to explain the remedies available for breach of contract.

This question was generally well answered with most candidates being able to name the remedies for breach of contract, discuss them, and cite some authorities in support of their answers.

Question Three

This question required candidates to explain how the authority of an agent is established.

Candidates gave sound answers to this question. The candidates were able to discuss the various methods in which an agent is authorised by their principle. Candidates performed well in this question.

Question Four

Part (a) required candidates to explain and distinguish between a sole trader, a partnership and a company.

Candidates answered this question well. The answers showed good preparation in the differences between various business associations in Botswana. Some candidates spent too much time on this part of question four and gave more information than was necessary giving too little importance to part (b) of the question.

Part (b) required candidates to explain the meaning and effect of limited liability.

This question was inadequately answered. Most candidates had difficulty explaining limited liability or citing any authority in support of their answers. Citation of section 91 Companies Act 2003, *Salomon v Salomon* (1857) and *Silverstone (Pty) Limited v Lobatse Clay Works (Pty) Limited* (1996), were required.



Question Five

Part (a) required candidates to define companies' borrowing powers.

Most candidates did not give a satisfactory answer to this question. Candidates did not state that the company's power to borrow is exercised by its directors and that a company's power to borrow derives from its constitution. Many candidates did not answer this question.

Part (b) required candidates to explain the meaning of debentures.

Most candidates attempted to answer this question. However, most answers were incomplete. This is probably as a result of inadequate preparation.

Part (c) required candidates to explain the differences between shares and debentures.

Candidates attempted this question. There was lack of familiarity with this area of the syllabus evident from the answers. Candidates are encouraged to study corporate finance thoroughly as it is an important area of corporate law.

Question Six

This question required candidates to discuss the appointment procedure relating to, and the duties and powers of, a company secretary.

This question was fairly well answered. Some candidates were unable to give a response for all the elements of the question. In particular, the duties of the company secretary were in some instances not well explained by candidates.

Question Seven

This question required candidates to explain the meaning and procedure involved in voluntary liquidation.

Candidates had some difficulty with this question. The greatest challenge was the distinction between a creditors' voluntary winding up and a members' voluntary winding up. Candidates unable to make this distinction could not garner many marks.

Question Eight

This question required candidates to discuss liability in delict arising out of negligence.

Lack of preparation and unfamiliarity with the area of delict was prevalent in candidates' responses. The elements of a claim for damages were not always well enumerated or discussed. In future, candidates are encouraged to cover each area of the syllabus sufficiently.

Question Nine

This question required candidates to distinguish between a contract of service and a contract for services.

This question was answered well. Most candidates were able to identify the correct contract as one of service or employment and to discuss the three tests used to distinguish between contracts for services and contracts of service.

Question Ten

This question required candidates to discuss whether directors may be interested in a transaction to which the company is party.

This question was well answered. Candidates were familiar with the principles and cases in the area of directors' duties. In future, candidates are encouraged to rely on and cite section 130 Companies Act 2003 that codifies directors' duties.