

Examiner's report

F4 Corporate and Business Law (BWA)

December 2013



General Comments

This paper consisted of ten compulsory questions. Of these, seven were knowledge based questions while three were problem questions. Four of the questions split the ten available marks into two sub questions of five marks each.

The general performance on this exam was fair. Most candidates attempted all ten questions. Candidates who did not attempt every question were constrained by their lack of preparation in all areas of the syllabus. In the premises, candidates are urged to prepare thoroughly for examination in each area of the syllabus.

Another general observation was that preparation by candidates might not have been as detailed as is necessary. Answers were in many instances very general, lacking in relevant particularity. Often, candidates failed to cite important judicial decisions to buttress their answers. Reference to the Companies Act, 2003 was also minimal resulting in answers that were unsupported by any authority. Hence, candidates who gave answers lacking in sufficient detail would have struggled to garner necessary marks.

Specific Comments

Question One

Part (a) required candidates to explain what is meant by case law. This question was well answered by most candidates. Candidates were able to identify case law as a source of law in Botswana emanating from the case law of the higher courts of Botswana. Candidates who gave a complete answer were also able to situate this source of law correctly in relation to other sources of law for instance statutes.

Part (b) required candidates to explain what is meant by the doctrine of judicial precedent. This question was well answered by candidates. Most candidates were able to properly describe the doctrine of judicial precedent and detail the manner in which judicial precedent works in Botswana's courts.

Question Two

Part (a) required candidates to define the various contractual terms. Most candidates were well prepared for this question. Candidates were able to list the three types of contractual terms: express, tacit and terms implied by law. Most candidates also provided a detailed discussion of the differences between the three contractual terms, thus meeting the requirement to define each term.

Part (b) required candidates to explain the effects of exclusion clauses and discuss instances where exclusion clauses may be rendered unenforceable. This question proved extremely difficult for most candidates. Few candidates were able to state the effect of an exclusions clause or discuss instances when such would be unenforceable. This was due to lack of detailed preparation. Candidates are advised to study each area of the syllabus with care.

Question Three

Part (a) required candidates to define the role of the agent and give examples of such relationships. Most candidates were able to define the role of an agent. Answers to this question were satisfactory. Candidates were also able to cite several examples of the relationships of agency.

Part (b) required candidates to define the authority of the agent. Many candidates struggled with this question. Defining the authority of the agent required the candidate to identify direct authority and ostensible authority. Many candidates struggled to define ostensible authority which is the authority arising where one person holds out another as their agent.

Question Four

This question required candidates to explain the way in which partnerships can be brought to an end. This question was generally well answered by candidates. Of the nine various methods of ending a partnership most candidates were able to state a satisfactory number.

Question Five

This question required candidates to describe the difference between various classes of shares. Well prepared candidates were able to tackle this question with ease. However, candidates who had not prepared adequately were able to name ordinary shares and preference shares and were unable to extend their discussion any further. Candidates are advised to prepare to give full answers which goes beyond merely stating the types of shares. A description of the share followed by a describing the differences between each type of share was required for full credit.

Question Six

This question required candidates to discuss the appointment procedure relating to, and the duties and powers of, a company secretary. In general, candidates were not well prepared for this question. Some answers given relied on common knowledge of the role of a company secretary in a company. Many answers were lacking in necessary detail on the appointment procedure which is found in the Companies Act, 2003. Answers also suffered from a lack of discussion of the powers and duties of the company secretary. Thorough preparation in this area was necessary.

Question Seven

This question requires candidates to explain insider trading and how the law seeks to control it. Most candidates were inadequately prepared for this question. Candidates are advised to study this area with care. Whilst many candidates were able to give a definition of the term insider trading, the majority of candidates did not discuss the control on insider dealing. Such a discussion would have required reference to section 324 Companies Act, 2003 which makes it an offence to deal in securities based on price sensitive information and prescribes civil liability for such insider trading against the wrongdoer where any person offers losses on account of such transactions.

Question Eight

Part (a) required candidates to explain the basis for a compulsory liquidation. This question was generally inadequately answered. Candidates unfamiliar with section 368 Companies Act, 2003 were unable to discuss the basis for compulsory liquidation. This is an important area of the syllabus as it deals with one of the methods in which companies come to an end. Familiarity with the Companies Act rules surrounding judicial winding-up is crucial.

Part (b) required candidates to explain some elements of the procedure involved in compulsory liquidation. Candidates struggled in this question. Answers showed an unfamiliarity with relevant rules of the Companies Act regarding compulsory liquidation. A discussion of section 376 Companies Act, 2003 was required in this question. Difficulties experienced by candidates in answering this question were largely as a result of lack of adequate preparation.

Question Nine

This question required candidates to discuss constructive dismissal. This question was generally well answered by candidates. Most candidates were able to discern from the facts that this was a case of constructive dismissal. Candidates were therefore able to conclude correctly that Nikiwe did have a valid claim against her employer, who had rendered the situation intolerable for her to continue in employment. Candidates were therefore able to recommend a suit against the employer for constructive dismissal and a claim for notice pay, loss of earnings and benefits as possible remedies.

Question Ten

This question required candidates to discuss the duty of care of auditors. This question proved difficult for most candidates. Many were not prepared to answer questions on the duty of an auditor to exercise reasonable care and skill. In the particular circumstances of this problem, the auditor had notice of issues that required further investigation. The auditor failed in their duty to exercise care and skill by not conducting an exhaustive investigation and certifying financial statements that did not reflect the true position of the company. The consequences for the auditor was a possible finding of liability for breach of the duty to exercise care and skill and the possibility of an order to compensate the audited firm for amounts wrongfully paid in dividends.