



# Examiner's report

F4 Corporate and Business law (BWA)

December 2014

## General Comments

The December 2014 examination introduced a new format in which candidates were asked to answer 45 multiple choice questions, worth 1 or 2 marks each, and 5 further questions worth 6 marks each in 2 hours.

All questions were compulsory. Some candidates did not attempt to answer all questions. Other candidates wrote long narrative answers in section B when what was required to garner 2 or 3 marks was short and succinct answers. The overall standard of scripts was reasonable.

## Comments about Section A

Performance in section A was generally reasonable. This suggests that candidates were well prepared and made good use of time to enable them to identify the correct answer in 45 multiple choice questions. Below are two sample questions for discussion where some candidates struggled to identify the correct answer.

## Sample Questions for discussion

Two questions have been identified for discussion. These examples are intended to assist candidates in selecting the correct answer.

**29 In the context of the Botswana legal system, what is the name of a clause in a statute which preserves existing rights?**

- A Preservation
  - B Schedule**
  - C Savings
  - D Preamble
- (2 marks)**

This question was testing knowledge in the interpretation of statutes in the Botswana legal system. The correct answer was C – a savings clause. A savings clause is a clause meant to preserve existing rights or powers and usually qualifies a main provision of an act. It is meant to avoid doubt and provide reassurance of the continuing existence of certain rights or powers.

A schedule is usually found at the end of a statute and it contains details or lists that are useful in the interpretation of the Act. A good example is the Companies Act 2003 which contains several schedules. A preamble is an introductory section of a statute intended to assist and explain the object of the act. The first distracter A – preservation was simply incorrect.

Thorough preparation in the syllabus area would have been essential in order to quickly eliminate incorrect answers and then work through possible distracters to identify the correct answer. The candidate who wishes to prepare well in this area should familiarise themselves with the structure of legislation and the interpretation of legislation in Botswana.

34 Paul plays professional football. He is injured in a rough tackle by John, a player from the opposing team. He breaks his nose. He is rushed to hospital in an ambulance. On the way, the ambulance is involved in an accident and Paul suffers an injury to his back.

Which of the following will John seek to rely on if Paul sues him for the back injury?

- A Res ipsa loquitur
- B Novus actus interveniens
- C Actio injuriarum
- D Volenti non fit injuria.

This question was testing the area of delict. In particular, the candidate was expected to identify the defence that John could successfully raise if sued by Paul. Many candidates opted for C – the *actio injuriarum*. This answer is incorrect because it does not apply to John. Paul would rely on the action injuriarum to seek damages from John, and not the other way around.

John would be seeking a defence to escape liability if sued by Paul. The correct answer is B - the *novus actus interveniens*, an intervening event for which John could not be held liable. John was not responsible for the back injury caused to Paul in the ambulance accident that occurred on the way to hospital. John would escape liability for the back injury by raising this defence. The other 2 distracters were simply incorrect.

Candidates should be familiar with common language used in the law of delict. Once the candidate is familiar with these terms, they will easily identify the correct answer in question in this area.

#### Comments about Section B performance

Performance in section B was fair. Candidates should be mindful that the questions are shorter in the new format. Consequently, the expectation is that candidates will provide succinct and accurate answers. Garnering full marks in short answer questions requires thorough preparation.

Some difficulties experienced by candidates in section B are as follows. The majority of candidates were unable to clearly state the legal consequences of an offer. Some provided answers that addressed offer in general. This would not have sufficed as the question was very specific in its requirements. In the area of promoters and pre incorporation contracts a common misstep was discussing the common law position without addressing statutory amendments found in s. 179 Companies Act, 2003. Candidates are encouraged to give careful thought to the questions and answer them as directly and accurately as possible.

#### Conclusion;

In general, performance in this session was fair. Candidates are advised to attempt all questions, to be thorough in their studies and aim for accuracy in the multi- task questions.