

Examiner's report

F4 Corporate and Business Law (BWA)

June 2012

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General Comments

The examination consisted of ten compulsory questions each carrying 10 marks. Most candidates attempted all ten questions. There was no evidence of time pressure. Where questions were left unanswered, this appeared to be due to lack of preparation. Candidates performed well on questions 2, 5 and 10a. The questions candidates found most challenging were questions 1, 3a and 7. The difficulties experienced by candidates were largely due to lack of preparation in areas not often appearing in the examination. Candidates are encouraged to study all areas of the syllabus thoroughly. There is a need to provide detailed answers to questions. Rigorous preparation will ensure the requisite depth of knowledge in candidate's answers.

Specific Comments

Question One

This question required candidates to discuss the protection of human rights under Botswana's Constitution. Most candidates mentioned several rights and freedoms protected under Botswana's Constitution. However, many were unaware of the absence of second generation socio-economic rights and third generation solidarity rights in Botswana's Constitution. Many candidates correctly mentioned the *Unity Dow* decision, a leading case in the protection of Human rights in Botswana.

Question Two

This question required candidates to explain and distinguish between an offer and an invitation to treat. This question was well answered with most candidates making the distinction between an offer and an invitation to treat and citing relevant court decisions in support of their answers.

Question Three

Part (a) required candidates to describe the two types of partnerships in Roman-Dutch law. Most candidates struggled to answer this question. The reason for this was lack of preparation in this area. Candidates are encouraged to give each area of the syllabus adequate attention in their preparations.

Part (b) required candidates to explain the authority of partners in relation to partnership activities. This question was answered fairly well with most candidates discussing express and implied authority of partners in relation to partnership activities.

Question Four

Part (a) required candidates to describe the procedure for registering a private company. This question required an understanding of the procedures for registering a company under the Companies Act, 2003. Some candidates referred to procedures under the old Companies Act, which have now been superseded by new legislation. Answers in this area were on occasion partial and lacking in depth. Candidates are encouraged to prepare equally well in every area of the syllabus.

Part (b) required candidates to explain how the company's constitution can be altered. Performance on this question was average. Many candidates were able to correctly state the procedure for altering a company's constitution, however there was some confusion with some candidates who did not read and understand the question correctly and discussed alteration of a memorandum and articles of association into a constitution.

Question Five

This question required candidates to discuss the rules governing the maintenance of capital in Botswana and in the second part, the effect of issuing shares at a discount. This question was answered well by prepared candidates. Many candidates struggled with part (b) of the question, which was due to inadequate preparation.

Question Six

This question required candidates to distinguish between annual general meetings and special general meetings. The latter part of the question required candidates to distinguish between ordinary resolutions and special resolutions. The question was answered fairly well. Some candidates struggled with lack of depth in their answer to this question, which is due to inadequate preparation. Candidates are advised to study and understand procedural aspects of the syllabus, which often form the basis for knowledge based questions.

Question Seven

This question required candidates to define corporate governance. Part (b) of the question required candidates to identify and discuss various codes of corporate governance recognised in Botswana. Most candidates struggled in this question. Candidates were not familiar with various corporate governance codes recognised in Botswana and had difficulty in part (b). The need for better preparation in this area was noted.

Question Eight

This question required candidates to discuss the duty of care and skill of auditors. This question was answered fairly well. Well-prepared candidates correctly identified the duties of auditors and the shortcomings of Tshepo & Ross in their audit of Khumo Bank arriving at the conclusion that the auditors would be liable to the bank. However, few candidates were able to identify that liability was possible both under contract and under delict.

Question Nine

This question required candidates to discuss the legal requirements for a redundancy. Well-prepared candidates were able to identify the main issue in the question as one of redundancy. Some candidates approached the question as one of unfair dismissal without discussing the legal requirements for redundancy. Overall performance in this question was fair.

Question Ten

This question required candidates to discuss the director's duty not to use corporate property, information and opportunity to make a secret profit. The second part of the question required candidates to explain whether a resolution by the general meeting ratifying a director's secret profit would be valid at law. Part (a) of the question was well answered by many candidates. Some candidates struggled with part (b) of the question largely because of inadequate preparation.