

Examiner's report

F4 Corporate and Business law (BWA)

June 2014



General Comments

The examination consisted of ten compulsory questions. Questions 1 through 7 were knowledge based questions. Questions 8, 9 and 10 were problem questions.

The vast majority of candidates attempted all ten questions. There was little evidence of time pressure. In some instances, candidates gave extremely short and inadequate answers. This appeared to be due to lack of knowledge as opposed to time pressure.

Candidates performed particularly well on questions 1, 2, 4, 5 and 6. The questions candidates found most challenging were questions 3, 7a and 7b. This is mainly due to candidates not understanding the syllabus areas well enough and also due to a failure to read question requirements carefully.

A number of common issues arose in candidate's answers:

- Extremely short and inadequate answers, which scored few, if any, marks
- Failing to read the question requirement clearly and therefore providing irrelevant answers.

Specific Comments

Question One

This question required candidates to explain the concept of human rights as expressed in the Constitution and any other legislation. This question was well answered by most candidates, who were able to identify specific human rights provided for in the Botswana Constitutional bill of rights. Very few candidates mentioned the bill of Children's rights found in the Children Act, 2009. Many candidates were able to mention relevant case law in this area including *Attorney General v. Unity Dow* (1992), *Sesana and others v. The Attorney General* (2006).

Question Two

Part a) required candidates to discuss the meaning and effect of a breach of contract. This question was relatively well answered by prepared candidates who were able to define a breach of contract and indicate the effect of a breach on the contract.

Part b) required candidates to discuss remedies for breach of contract. This question was well answered. Most candidates could name most of the remedies for breach of contract, which are specific performance interdict, cancellation and damages. Candidates who did not do well in this question named only one or two of the remedies instead of identifying and discussing all four.

Question Three

This question required candidates to explain the nature of the contract of employment. This question was inadequately answered. Many candidates opted to discuss the difference between a contract of service and a contract for services, which was misdirection. Candidates were required to discuss the essential elements of a contract of employment which are: a voluntary agreement; agreement between two legal persons; agreement by the employee to perform specified or implied duties for the employer; agreement by the employer to pay a fixed or ascertained wage; the employer's right to command the employee in the manner in which they carry out their duties; and a contract for a indefinite or specified period. Most candidates did not meet this requirement.



Question Four

This question required candidates to illustrate the effects of separate legal personality. This question was well answered with candidates discussing *Salomon and Salomon (1897)* and the Botswana case *Silverstone v Lobatse Clay Works (1996)*, which incorporated the doctrine of separate legal personality into Botswana's common law. Candidates also made mention of section 24 Companies Act 2003, which recognises the doctrine of separate legal personality in statute.

Question Five

This question required candidates to discuss the role and duties of company promoters. This question was well answered by prepared candidates. Candidates were able to state that the company promoter undertakes to form a company and takes necessary steps to do so. They also discussed the role of the promoters in deciding what form the company shall take, the business it shall engage, the raising of capital and acquisition of business or property. Last, candidates discussed the fiduciary position of the promoter in relation to the company they are forming and relevant case law in this regard.

Question Six

This question required candidates to distinguish between share capital and loan capital. This question was well answered with most candidates making the distinction between these two methods of raising finance for companies. Candidates who struggled in this question did so due to inadequate preparation in this syllabus area.

Question Seven

Part a) of this question required candidates to explain the idea of corporate governance. Most candidates were challenged by this question and answers were unsatisfactory..

Part b) this question required candidates to describe extra-legal codes of corporate governance. Most candidates struggled with this area of the syllabus familiarising themselves with various codes of corporate governance, and the rules contained therein. Answers were short and inadequate.

Question Eight

This question required candidates to discuss the procedure for conducting company meetings. Well prepared candidates were familiar with s. 109 as read with the second schedule of the Companies Act, 2003, which sets out the requirements for conducting company meetings. Candidates would also have been required to know which resolutions of a company meeting must be carried by special resolution requiring 75% of the vote. These are listed in s. 96 Companies Act, 2003 as follows: adoption, alternation or revocation of the company's constitution; approval of a major transaction; approval of an amalgamation of the company, and a resolution to wind up the company.

Question Nine

This question required candidates to explain the doctrine of capital maintenance and the prohibition against reduction of share capital. Performance on this question was average. Well prepared candidates were familiar with the rules of capital maintenance. Unprepared candidates struggled to explain the relevant rules and apply them to the problem. Candidates are advised to prepare thoroughly in each examinable area.

Question Ten

This question was in the area of delict requiring candidates to explain the duty of care and its breach. This question was well answered by candidates prepared in this area. Sound answers dealt with all requirements for a delict, which are wrongfulness, negligence, causation and loss. Candidates dealing with all four elements in their answer would have secured a reasonable mark in the question.

**Conclusion**

Coverage of the whole syllabus is required in order to attain a pass mark in this paper. All questions are compulsory and so preparation in all areas is essential. Candidates are encouraged to study all areas of the syllabus in order to be able to attempt all questions and achieve satisfactory marks in every question. Reading the question thoroughly and providing relevant, detailed responses is also essential to success.