Examiner’s report

F4 Corporate and Business Law (LSO)
December 2013

ACCA

General Comments

The examination consisted of ten compulsory questions. Three of them were problem scenario questions. As usual, the examination was sufficiently testing to reveal those candidates who did not prepare well for the examination. However it did provide considerable opportunity to candidates to score high marks.

This was the second examination based on the Companies Act (CA) 2011. To the dismay of the marker, several candidates chose to apply the provisions of the CA 1967, which resulted in inadequate marks.

For the first time in many years, a significant number of candidates did not attempt all ten questions. There was little evidence of time pressure. Not answering all questions appeared to be due to a lack of knowledge or inadequate examination technique, as opposed to time pressure. This affected the overall result.

The performance of candidates overall continued to be unsatisfactory with a large number appearing to be unprepared for the examination. However, there is clear evidence of a growing number of candidates performing unsatisfactorily.

The format does not help candidates who do topic spotting or question spotting. It demands that all candidates have to look at the syllabus, keeping in mind that all topics in syllabus have to be mastered. The old practice of selecting few topics and ignoring others simply does not work. It also requires them to practise time management. The questions were clear in their demands and in line with the familiar pattern of the past examination papers. Many answers showed very superficial familiarity with the content of the course and the prescribed textbook.

The law examination is a technical examination and requires a good knowledge and understanding of the technical rules at the very least; problem scenario questions also require skills to analyse facts and then to apply the rules to the facts. Candidates and teachers should note that the problem scenario questions require much more in the way of analysis and application.

The overall result would have been considerably higher had candidates paid sufficient attention to the CA 2011 and the suggested answers to the past examination questions to get a feel of what is expected of them. The answers are available on the ACCA website; your course lecturer too could acquire them for you. Pay special attention to problem scenario questions. Candidates would do considerably better if they are asked to do mock examinations based on past question papers. Two or three such mock examinations would reveal where they have to improve upon and go a long way to improve their marks in the examination. Another suggestion is to ask the candidates to summarise the suggested answers to past examination papers in not more than 2 to 2 ½ pages. This should help them learn the technique of time management and to focus on what is asked in the question.

The key to marks lies in the breadth of knowledge of the leading cases. They are not many in any case. Candidates must also practise writing out the answers to questions; their prescribed textbook has many to choose from. This would give them the confidence and the ability to organise their thoughts. It was clear to the marker that the candidates on the whole did not prepare for the examination well, did not revise the syllabus and chose to ignore leading cases, as well as, key statutory provisions of the CA 2011. Too much guesswork and common sense were used to answer the questions. There is no substitute for hard work and thorough preparation.

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

- Failing to read the question requirement clearly and therefore providing irrelevant answers which scored few if any marks.
- Inadequate time management between questions, some candidates wrote far too much for some questions and this put them under time pressure to finish remaining questions.
- Not learning lessons from earlier examiner's reports and hence making the same mistakes.
- Inadequate layout of answers.

Specific Comments

Question One

This question was in two parts: the first part asked candidates to explain terms implied by custom or trade usage in the law of contract, the second part exclusion clauses.

A local custom has been defined to mean a particular rule which has existed in a locality from time immemorial and obtained the force of law in that locality, even though it was not consistent with the common law of the land. To be valid, a local custom must not be contrary to any statute: *Van Breda v Jacobs* (1921). A large number of candidates discussed this part of the question very well. Many referred to the *Van Breda* case too. However there was a tendency of several candidates to describe customs as terms that are entered into by conduct such as someone boarding a taxi, and the fact that quite a few candidates limited their answer to customs only.

A trade usage may be implied by law in a particular trade which has its own trade usages. A trade usage applies to a particular trade throughout the country. It does not have the force of law but could become a term of the contract in two ways: first, if both parties to a contract are familiar with the trade usage, then it may be presumed that they have tacitly agreed to make that usage a term of their contract. Second, if one party is ignorant of the trade usage, they would be bound by that trade usage only if it can be shown that the trade usage has been universally and uniformly observed within the particular trade, that it has been long-established, is notorious, reasonable and certain, and does not conflict with any rule of positive law which the parties could not alter by their agreement. A trade usage need not exist from time immemorial and must not be inconsistent with the common law of the land. Parties, of course, are free to exclude a trade usage by expressly agreeing to the contrary. Not many candidates discussed trade usage part of the question well. Only a part of the question on usage was answered by the candidates.

The spheres of operation of custom and trade usage differ. A rule of common law can be replaced by a valid custom but a trade usage can only vary contractual rules. While a local custom has to be proved beyond a reasonable doubt, a trade usage need not be proved as strictly. The classical *turba tertium* (Latin, for a crowd of witnesses) is not required; the evidence of one witness alone which is clear, convincing and consistent is enough. Instances of the usage having been acted upon should also be provided to establish the existence of the usage. No candidates discussed this.

Exclusion clauses
A party to a contract may attempt to include a term which excludes or limits their liability for the consequences of a breach of contract or negligence. Such clauses are known as exclusion clauses. They may be an express term in a contract or may be incorporated into the contract by reference to another document, or a notice or a ticket. This part of the question was answered correctly by most candidates.

Courts have tried to limit the effect of such clauses. The defendant may rely on an exclusion clause only if it has been incorporated into the contract, and, in addition, if the exclusion clause, as a matter of construction, extends to the loss in question. If the plaintiff signs a contractual document containing the exclusion clause, the plaintiff is bound by it, even if the plaintiff has not read the document and regardless of whether the plaintiff understood it or not. This part of the question too was answered correctly by most candidates.

If the exclusion clause is contained in an unsigned document, then the situation is a little different. If it is contained in a notice or on a ticket, it will be up to the defendant being sued for a breach to establish that the document or ticket was of a type that could be presumed to be part of the contract, and that reasonable steps were taken to bring the term to the notice of the person receiving the ticket. The term must also be brought to the notice of the other party before, and not after, the contract has been formed. Not many candidates discussed this part of the answer.

Even if an exclusion clause is incorporated in the contract either by signature or by reasonable notice, the courts, while interpreting it, 'lean against them'. It means that courts will not allow a party to exempt themselves from liability unless the exemption clause clearly covered the breach that has occurred. Courts interpret the exclusion clause narrowly and any ambiguity or uncertainty in the wording of the exclusion clause is interpreted against the *proferens*, i.e. the party who drew that clause. Only a very small minority discussed this.

Question Two
Summary dismissal is dismissal without notice. Section 63(2) (d) Labour Code 1992 allows an employer to dismiss an employee where there is a serious misconduct of such a nature that it would be unreasonable for the employer to continue to employ them during the notice period. Under s.79 (2) Labour Code 1992, an employee dismissed fairly for serious misconduct is not entitled to severance payment either. Dishonesty, theft, fraud, bribery, embezzlement and the like, drunkenness on duty, gross negligence or incompetence, wilful disobedience of lawful orders, revealing trade secrets of the employer, persistent idleness, competing with the employer in the same line of business and serious absenteeism have been held as instances of misconduct: *Lehlohonolo Khoboko v Lesotho Building Finance Corpn* (1994). The Labour Court has held, more than once, that going on an illegal strike amounts to a misconduct: *Lesotho Haps Development Co v. Employees of the Lesotho Haps Development Co* (1995). Very few candidates referred to the relevant sections of the Labour Code 1992, or the examples of serious misconduct in common law. *Tesekuoa Tsekoa and Others v General Manager; Lesotho Flour Mills and Others* (1988) was referred to by many candidates.

In certain circumstances, misconduct outside the contract of employment may justify summary dismissal if there is a sufficient and clear nexus between such misconduct and the employer's business or if the misconduct is such that it seriously impairs the ability of the employee to carry out their duties in a satisfactory manner. A very small minority discussed this part of the answer.

A large number of candidates did not read the question carefully. The question asked them to discuss summary dismissal. Many candidates chose to discuss dismissals generally and focussed on unfair dismissal and constructive dismissal.

The, overall performance on this question was unsatisfactory.

Question Three

This question required the candidates to explain and distinguish between liquidated damages and penalty clauses.

Liquidated damages are an amount representing a genuine pre-estimate by the parties of the loss which the injured party is likely to suffer through a breach of contract. A penalty, on the other hand, is an extravagant sum in the nature of a threat held over the other party for the purpose of securing their performance. It is designed to intimidate them to comply with the contract.

If the sum payable is liquidated damages, then, provided the plaintiff can prove a breach they are entitled to the sum. The courts take an entirely different view of penalties. Since they are imposed only to secure performance, the plaintiff must prove not only the breach of contract but also the actual damage they have suffered. The plaintiff can recover damages, but not more than the amount of the penalty.

The courts have formulated the following rules whether a sum is a penalty or liquidated damages for deciding the issue:
(a) If the sum is extravagant in relation to the greatest loss which could follow from a breach, it is a penalty. (b) If the obligation is to pay a certain sum of money and the parties agree that if the promisor fails to do so they shall pay a much larger sum, this is a penalty.
(c) If a single lump sum is payable upon the occurrence of one or more of several events, some of which may result in serious damages and others in merely trivial loss, there is a presumption that this is a penalty. (d) It follows from the presumption above that if one sum is payable upon only one breach, this may be regarded as indicative of liquidated damages. However, this too is only a presumption and it can be rebutted.

No candidates discussed this question well. Several candidates wrote that liquidated damages were payable when a business is in liquidation and penalty was payable for late delivery. Several others wrote that liquidated damages were akin to general damages and discussed *Hadley v. Baxendale* (1874) while penalty was akin to special damages. The candidates should take note that displaying their knowledge about areas not asked does not help them to get marks. The overall performance in this question was unsatisfactory.

Question Four

Defective consumer products create a serious risk for an unwary consumer. This is typified by the celebrated English case of *Donoghue v Stevenson* (1932). In the Anglo-American jurisprudence, it is covered by what is called products liability law. In Lesotho's law, an Aquilian action would lie.

In accordance with the legal convictions of the community (*boni mores*), the manufacturer has a duty to take reasonable steps to prevent defective products from being placed on the market and infringing the interests of consumers: *Ciba-Geigy (Pty) Ltd v Lushof Farms* (2002). A manufacturer acts wrongfully if they make a defective product commercially available which causes damage to a consumer of the product. The presence of a defect in a product is a necessary pre-requisite for wrongful conduct of a manufacturer.

Apart from wrongfulness, the plaintiff has to establish that there was negligence (fault) on the part of the manufacturer. Since a plaintiff has no knowledge of, or access to, the manufacturing process either to determine its workings generally or, more particularly, to establish negligence in relation to the making of the product which has apparently caused the injury complained of, British courts use the doctrine *res ipsa loquitur* (facts speak for themselves). This doctrine raises two presumptions: first, the presumption that the manufacturer used an unsuitable manufacturing process, and the second, the presumption that the manufacturer's employees were negligent in executing the manufacturing process. In practice, it is very difficult for a manufacturer to rebut these and, as a result, a no-fault liability arises.

Lesotho courts do not use the *res ipsa loquitur* doctrine to impose a no-fault or strict liability on manufacturers of defective products. The courts have declined to do so, saying that it was a task for the legislature. As a result, the plaintiff's remedy is limited to the Aquilian action to protect their physical integrity: *Wagener and Cuttings v Pharmacare Ltd* (2003).
No candidates answered this question well. Most of the candidates discussed the *Donoghue* case and then wrote a common sense answer without any reference to legal principles. Some referred to the *res ipsa loquitur* doctrine but failed to explain its role and significance. Some referred to the facts of the *Ciba-Geigy* case but did not discuss what the court said in the context of the question. Several candidates did not answer this question.

Question Five

This question required a discussion of the various ways in which the relationship of the principal and agent can be created. Most candidates correctly discussed that the relationship can be created by express or implied agreement. Many discussed *Coetzer v Mosenthals Ltd* (1963) as well.

Most candidates correctly discussed that the relationship of principal and agent can be created or extended retrospectively under the doctrine of ratification. However, no candidates discussed the conditions that need to be satisfied before a principal can ratify the acts of an agent.

A large number of candidates also discussed agency by estoppel but discussed its operation incompletely.

On the whole, this was the question that most of the candidates answered well and scored high marks.

Question Six

This was another question that almost all the candidates did not read properly. The question clearly asked the candidates to explain the circumstances when the corporate veil may be lifted under the Companies Act (CA) 2011. No candidates answered what the question demanded; all the candidates discussed the circumstances when the veil can be lifted by a court and mixed it up when it may be lifted under the CA 2011.

Many candidates discussed what was s.29 CA 1967 which provided for the lifting of the corporate veil if the number fell below the statutory minimum. This is no longer the case under CA 2011.

Under s.17 CA 2011, it is mandatory for every company to state its full name, including its number issued by the Registrar, and address clearly on all documents issued or signed by or on behalf of the company. If the company fails to do so, the directors or its officers who knowingly or negligently cause the failure are jointly and severally liable to compensate any person who suffered loss as a result. It makes no difference that the third party has not been misled by the misdescription. No one discussed this adequately. Most candidates did not discuss it at all.

Section 63 CA 2011 requires that a director must always act in good faith in the interests of the company when exercising their powers or performing their duties. The directors, including former directors, are severally and individually liable to the company, its shareholders and any other person for any loss suffered by the company, its shareholders or any person as a result of the directors' failure to perform their duties. Both fraudulent and wrongful trading are incompatible with the directors' duty to act in good faith in the interests of the company. If so, they can be made liable, individually and severally, not only to the company and its shareholders but to any other person as well for any loss they may have suffered as a result of fraudulent and wrongful trading. No candidates discussed this

Section 94 CA 2011 obliges the board of directors to produce group accounts at the end of the financial year. The group accounts may consist of more than one set of consolidated statements dealing respectively:

(i) with the company and subsidiaries and their sub-subsidiaries, or
(ii) with the company and each of the subsidiaries, or
(iii) with the company alone but expanding the information about the subsidiaries in the company's own statements, or (iv) any combination of these. Several candidates did refer to holding/subsidiary relationship and that this could be another instance of the lifting of the corporate veil.

This was another question in which candidates performed unsatisfactorily. Candidates must read the question carefully and limit their answer to what the question requires them to answer. Many candidates wrote page after page discussing when courts may lift the corporate veil and wasted their valuable time. This does not help the candidates and does not earn them marks.

Question Seven

This question tested the understanding of the candidates regarding the limitations placed on the powers of a company to issue shares at a discount under the Companies Act (CA) 2011.

There is nothing in the CA 2011 or in the model articles of association that allows a company to issue shares at a discount. Almost all candidates stated that CA 2011 allows a company to issue shares at a discount of 5%. *Ooregum Gold Mining case* (1892) was discussed. No one pointed out that the utility and rationale of the rule have been questioned. First, once a company starts trading, a company's net asset value may not correspond with its share capital. Accordingly, a creditor is normally interested not so much in the nominal or paid-up share capital of the company, but the assets and liabilities at a particular time. In other words, it is not entirely accurate to say that creditors look to the nominal share capital as their security. Second, when a company nears insolvency, its shares may trade at less than the nominal value. If the company wishes to raise more capital, it cannot expect investors to pay more than the prevailing market price for the shares. Yet the *Ooregum Gold Mining case* (1892) prevents a company from accepting the economic reality in the pricing of the new issue of shares, even though it may help the company to come out of insolvency. The creditors are very likely to benefit if the value of share capital goes up, no matter how little, through the new issue.

From a practical point of view, *Ooregum Gold Mining case* (1892) rule has lost its utility completely because nowadays virtually every company intentionally keeps the price of their nominal shares low and raises most of the capital from the share premium. A subsequent issue with a lesser premium does not attract the wrath of *Ooregum* rule. Section 19(2) CA 2011 authorises the board of directors to 'decide the consideration for which the shares shall be issued' and further, 'resolve that in their opinion the consideration for and terms of issue are fair and reasonable to the company and to all existing shareholders.' The directors supporting the resolution must certify this in writing and lodge the certificate with the Registrar within 15 days of the resolution. The primary objective of s.19(2) is to regulate the issue of shares by a company for non-cash consideration, which is quite common. In *Re Wragg* (1897), it was observed that provided a company does so honestly and not colourably, an agreement to pay for property or services in paid-up shares is valid and binding on it. Since the vendor may sell his property or his services at a profit, it may be possible to 'water' the shares by accepting in payment something actually worth less than their normal value. But if the 'consideration given by way of payment is a mere blind or clearly colourable or illusory, it would be ineffectual. The effect of ss.19(2) and 63(3) CA 2011 is to require the board to certify in writing that the non-cash consideration for the issue of shares is fair to the company and all its shareholders and makes the directors, including former ones, liable, severally and individually, to the company, shareholders and any other person for any loss suffered by the company. No candidates discussed this part of the answer.

s.19(8) CA 2011 makes it lawful for a company to pay a commission or grant discount to any person in consideration of his or her subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company, provided such commission or discount does not exceed 5% of the issue price, is authorised by the directors and disclosed in the prospectus or statement in lieu of prospectus. Candidates read this to mean that under the CA 2011 companies have a general power to issue shares at a discount of 5%, which is not the case. What CA 2011 does is to extend the 5% commission rule that under CA 1967 was payable only to intermediaries to even its shareholders but only when an issue has been made either under a prospectus or statement in lieu of prospectus. It would not cover the situation in *Ooregnum* case where a rights issue was made.

Candidates should remember that law is a technical subject and the little technicalities must be respected.

Question Eight
The problem scenario dealt with a pre-incorporation contract. A pre-incorporation contract has been defined under the Companies Act (CA) 2011 as a contract made by a person on behalf of a company before and in contemplation of its incorporation.

Royal Hotel Company Ltd may be liable on a pre-incorporation contract made on its behalf under s.10 CA 2011. Section 10 requires that before entering into a pre-incorporation contract on behalf of the company, the promoters first must reserve the proposed name of the company with the Registrar and then incorporate the company with the same name within 14 days. It is assumed that Samuel made his offer after making sure that all this had been done by the promoters. If not, then the pre-incorporation contract becomes null and void and Samuel would not be able to benefit from the provisions of s.10 CA 2011. No candidates discussed this.

Section 10 allows the company to ratify a pre-incorporation contract within a reasonable time after the incorporation. Section 10 also takes care of a situation where a promoter enters into a pre-incorporation contract on behalf of the company, but the company chooses not to ratify.

Unless a contrary intention is expressed in the contract, a promoter who enters into a pre-incorporation contract impliedly warrants, that
(a) the company will be incorporated within the period specified in the contract, or if no period is specified, within a reasonable time after the making of the contract; and
(b) the company will ratify the contract within such period. The promoters in the problem scenario did not express a contrary intention.
No candidates discussed this either.

For breach of this implied warranty, Royal Hotel Company Ltd is liable to pay damages to Samuel. The court would proceed on the basis as if the pre-incorporation contract were ratified by Royal Hotel Company Ltd and then cancelled by it unilaterally. The court would award damages to Samuel on the ground that the company failed to perform its obligations under the pre-incorporation contract made by the promoters on its behalf. None of the candidates discussed it.

Section 10 also entitles Samuel, if Royal Hotel Company Ltd does not ratify a pre-incorporation contract after its incorporation, to approach the court for an order:
(a) that the furniture acquired by Royal Hotel Company Ltd under the contract be returned to Samuel (the seller); and

(b) for any other relief in relation to that furniture, for example, compensation for use or damage to the furniture; or
(c) specific performance of the contract.

Section 10 CA also covers a situation when a company after ratifying a pre-incorporation contract breaches it. In that case, Samuel can approach the court, which may make such order for the payment of damages or other relief as the court considers just and equitable.

No candidates attempted to answer this question with reference to CA 2011. Almost all the candidates assumed that CA 2011 does not apply and proceeded to discuss it in terms of the old CA 1967. *Stipulatio* alteri was used by many candidates to solve the problem; others focussed on whether Samuel had signed as an agent or a principal. CA 2011 has changed the situation as regards pre-incorporation contract dramatically and has provided solutions which are far superior to those offered in common law.

No candidates scored well in this question. It is likely that the candidates did not prepare the topic of promoters and pre-incorporation contracts well.

Question Nine
This problem tested the understanding of the candidates as regards the principle that a company has legal personality separate from the shareholders.

Section 5 CA 2011 allows the registration of a one-man company. In the problem scenario, Thabo Boots & Shoes (Pty) Ltd was registered after the enactment of the CA 2011. Therefore, the company is legally established. No candidates discussed this part of the question.

The question demanded that candidates should examine validity of Thabo's contract with the company. In *Lee v Lee's Air Farming Ltd* (1961), it was held that a person could be the controlling shareholder and the managing director and could also be an employee of the company under a contract of employment. Later cases indicated that in the following three circumstances, an alleged contract of employment could be ignored:

(i) where the company itself was a sham;
(ii) where it was entered into for an ulterior purpose; and
(iii) where the parties did not conduct their relationship in accordance with the contract of employment.

In the problem scenario, there was no indication that Thabo Boots & Shoes (Pty) Ltd was a sham, or Thabo entered into the employment contract for an ulterior purpose or that Thabo and Thabo Boots & Shoes (Pty) Ltd did not conduct their relationship as employee and employer. Therefore, Thabo was a validly employed employee of the company: see *Clark v Clark Construction Initiatives Ltd* (2008). Only some candidates attempted to discuss this component of the question. They correctly referred to *Lee*'s case but did not apply it to the facts of the problem correctly. Most of the candidates ignored this part of the question altogether.

The problem scenario question also required that the candidates should examine Thabo's claim under the insurance policy for the fire damage. Any business assets are owned by the company itself and not the shareholders: *Macaura v Northern Assurance* (1925). In the problem scenario, though Thabo was the sole shareholder of the company, he did not have any ownership rights over the company's property. Thabo took out the insurance policy in his own name in 2010 prior to the incorporation of Thabo Boots & Shoes (Pty) Ltd. He should have assigned the policy to the company and made the company pay the policy premia from then on. That way the company would have an insurable interest and would be able to recover for the fire damage. Since this was not done, neither the company nor Thabo would be able to claim from the insurance company. Except one or two candidates, all candidates chose to ignore this component of the question.

The problem scenario question also required candidates to examine Thabo's claim as a secured creditor of the company. Since the company had assets that exceeded its liabilities, Thabo as a secured creditor of the company was entitled to be paid back the loan of R30,000 together with the interest, if not already paid, in full. Almost all candidates discussed this problem scenario question solely as a question on voluntary dissolution and chose to ignore all other aspects of the question.

Last, the question required candidates to discuss that Thabo, as a shareholder, has a right to a return of capital once all the debts were paid off.

No candidates scored well in this question. It is likely that the candidates did not read this question carefully.

Question Ten

This question was on money laundering. Money laundering usually involves three basic steps:
(a) Placement: The launderer disposes of the proceeds of criminal activity into apparently legitimate business activity or property.
(b) Layering: It involves the transfer of money from business to business, or place to place, in order to conceal its initial source.
(c) Integration: This is the final phase when the money takes on the appearance of coming from a legitimate source.

In the problem scenario, Sam, with the help of his accountant Harry, disposed of the proceeds of illicit diamond sales by using them in building the apartment complex. Ostensibly, the building of the apartment complex had been funded by the bank loans and savings from Sam's legitimate contracting business. The real cost of building the apartment complex had been concealed with the help of Harry, the accountant. Once the apartment complex was ready, Sam rented out some of the individual apartments at a good rent and disposed of some others at huge profit. The rents and the sale proceeds from the apartments took on the appearance of coming from a legitimate source. The whole scheme was nothing but a money laundering activity and was prohibited by s.25 Money Laundering and Proceeds of Crime Act (MLPCA) 2008. Barring a handful of candidates, most seemed unaware of the provisions of the MLPCA and chose to answer the question using guesswork and common sense.

MLPCA 2008 seeks to control money laundering by making it an offence. Sam would, therefore, be guilty of the primary offence of money laundering under s.25 MLPCA 2008. Harry is also guilty of an offence under the same section as he is actively involved in concealing and disguising Sam's illicit gains. This was correctly pointed out by most of the candidates, though only a few made reference to the MPLPCA.

On the whole, performance of the candidates in this question was unsatisfactory. Only a few candidates scored reasonable marks in this question.

Conclusion

As usual, this paper was made up of 10 compulsory questions, each worth 10 marks, although many were subdivided into distinct parts. It is a matter of concern that a significant number of candidates are not completing, or even attempting all 10 questions. This does not appear to be a question of time management, but of lack of knowledge, which might reflect an effort to question spot. This point has been made in the past, but it clearly has to be repeated for every session: if you do not attempt all the questions you greatly reduce your chances of passing the examination. The syllabus is wide, but you have to cover it all: question/topic spotting is a dangerous game to play. All the questions were done well by some candidates; although the reverse is equally true that all questions were done inadequately by a large number of candidates. Almost all the candidates scored inadequately as regards questions 6, 8 and 9. Questions 2, 4 and 10 were another where candidates scored unsatisfactory marks. Questions 1 and 5 were the only questions where the performance was satisfactory.

Overall the standard of answers was inadequate. Candidates need to consider carefully the time positioning of the question and not go back and repeat what they had already written before. Many candidates struggled to gain more than a few marks because they lacked the skills, knowledge, and understanding that comes from studying the syllabus thoroughly. The paper examines the whole syllabus and candidates cannot expect to pass if they study only a small number of selected areas. Generally, the candidates who performed inadequately displayed very sparse and disjointed knowledge of the subject matter and wrote very little. The range and frequency of incorrect answers submitted seemed to imply that a relatively large number of candidates were simply ill-prepared for a test of this nature.