Examiner's report

F4 Corporate and Business law (MYS)
June 2014

General Comments

The examination consisted of ten compulsory questions. As usual, questions 1 to 7 were knowledge-based questions while questions 8 to 10 were problem-based questions requiring candidates to demonstrate the ability to identify legal issues and apply it to given situations. Candidates appeared only moderately well prepared for the examination. On the whole the performance of the candidates was satisfactory.

Candidates displayed a reasonable understanding of what the questions required. The questions were clear and there was no ambiguity which was likely to cause candidates to misinterpret any question.

The following recurring weaknesses were found:

- **Point form answers/answers too brief:**

Despite a steady improvement over the years, this problem continues. A number of candidates failed to give full answers. Giving very brief answers or point form answers will not result in high marks. Candidates are reminded that questions must be answered clearly and in full sentences in order to achieve good marks. Point form answers are not a good indication as to whether a candidate has a sound understanding of the subject matter. Thus candidates are advised to answer the questions fully and in complete sentences.

- **Failure to answer all parts of a question or the required number of questions:**

This point has also been highlighted regularly. A good number of candidates did not answer all questions or all parts of a question. This also resulted in lower marks. Candidates are advised once again to attempt all parts of a question. Many candidates did not attempt all the ten compulsory questions indicating that they were not fully prepared for the examination.

- **Spotting:**

The issue of candidates spotting questions still remains an area for concern. Some candidates answered some questions very well while not being able to give adequate answers to other questions. This indicates that these candidates concentrated on certain topics while ignoring other relevant topics. This commonly happens when candidates do not have adequate time to prepare fully for the examination. Invariably such selective studying will not be beneficial to the candidate. As candidates are well aware, questions can come from across the syllabus. Thus, candidates are reminded not to study by spotting topics as this will be more likely to affect them negatively.

- **Time management**

There has been a gradual improvement in time management by the candidates. Nevertheless, it still remains an area of concern. Candidates are reminded once again of the importance of time management in order to do well in the examination. Some candidates answered the first few questions very well but the later answers were too brief indicating that they were short of time to complete the paper. As a consequence of this, the total marks obtained by the candidate was lower than what could have been achieved if the candidate had spaced out their time and was able to answer each question adequately. Candidates are advised to divide their time properly for each question so as to achieve better results.

- **Reliance on past years questions**

Candidates are reminded (as before) that past year questions and answers provide a very useful guide in their preparation for the examination and they could much improve their results by constantly referring to them. However, candidates are also reminded that questions can come from any part of the syllabus and the fact that there have been no questions on particular topics or sub-topics in previous examinations does not mean that there would be no question on that topic or sub-topic in future examinations. Candidates must always study across the syllabus to be fully prepared for the examination.

Specific Comments

Question One

This question on the Malaysian legal system tested the candidates' knowledge on the operation of the doctrine of binding judicial precedent.

Candidates were expected to state what is meant by the doctrine of binding precedent and explain how it operates in Malaysia in the context of the hierarchy of the Malaysian courts.

Most candidates were very prepared for this question. They displayed sound knowledge of the Malaysian court hierarchy as well as the operation of the doctrine. Many were also able to highlight the importance of the concept of *ratio decidendi* as opposed to *obiter dicta*. Some also discussed the advantages and disadvantages of the doctrine. It was very well answered.

Question Two

This question, on employment law, contained two parts. Part (a) required the candidates to explain what is meant by redundancy and the situations in which redundancy may occur, while part (b) required them to state the ways in which a contract of service may be terminated under the Employment Act 1955.

This question was also very well answered with many scoring almost full marks. For part (a), the majority of the candidates indicated sound knowledge of the meaning of redundancy in the context of employment law as well as the situations in which redundancy may occur. Likewise for part (b) most of the candidates were able to state accurately the ways in which a contract of service may be terminated under the Employment Act 1955. Thus they were able to achieve high marks. Similar questions have been asked in the past and candidates showed clear familiarity with the law in this area. Only a small number of candidates displayed lack of knowledge of the law in this area.

Question Three

This question was on the law of agency. It contained two parts. Part (a) which carried 5 marks required the candidates to explain what is meant by "actual authority" of the agent while part (b), which also carried 5 marks, required the candidates to explain "ostensible authority"

This question was satisfactorily answered. For part (a) most candidates were able to explain that actual authority refers to authority that is expressly given either orally or in writing. Many candidates were also able to state that actual authority could be expressed or implied and proceeded to illustrate it with examples. For part (b), however, most of the candidates did not perform very well. Candidates were expected to explain that "ostensible authority" refers to a situation where there was a representation that a person was an agent when in fact he was not and the third party had relied on that representation. Some candidates explained this point well and obtained high marks. However, the larger number of candidates did not explain it accurately. Many confused ostensible authority with implied authority. On the whole the majority managed to obtain satisfactory marks as a result of their better performance in part (a).

Question Four

This question, on contract law, contained three parts which tested the candidates' knowledge on the equitable remedy of specific performance.

Part (a) which carried two marks required candidates to explain what is meant by specific performance. Part (b) which carried three marks required the candidates to describe three circumstances in which the courts would grant specific performance and part (c) which carried five marks required them to state five circumstances in which the court would not grant specific performance.

This question was quite well answered and many obtained high marks. Candidates seemed quite familiar with the remedy of specific performance and were able to state accurately the circumstances in which the courts would or would not grant specific performance, with reference to the Specific Relief Act 1950.

A minority of candidates was clearly not knowledgeable on this remedy and failed to obtain satisfactory marks. However, on the whole this question was answered well.

Question Five

This question on company law contained two parts. Part (a) which carried two marks required candidates to explain the meaning of 'veil of incorporation' while part (b) required them to explain four situations in which the veil of incorporation may be lifted.

Candidates were expected to explain that the veil of incorporation refers to the concept of the company as a separate legal person separate and distinct from the members and others. They were also expected to discuss four circumstances in which the courts would ignore this concept and treat the company and its members as one.

Many candidates gave sound answers and obtained high marks. They showed familiarity with the concept of the veil of incorporation and the lifting of the veil. Unfortunately, there were also a small number of candidates who were ill prepared for this question and were not able to give accurate answers.

However, on the whole this question was satisfactorily answered.

Question Six

This question on company law relating to schemes of arrangement contained two parts. Part (a) tested the candidates' knowledge on the meaning of a scheme of arrangement while part (b) tested them on their knowledge on the matters under the Companies Act 1965 in respect of which provisions may be made by the court to facilitate the amalgamation of two or more companies.

For part (a) candidates were expected to state that under the Companies Act 1965, a scheme of arrangement includes a reorganisation of the share capital of a company by the consolidation of shares or by the division of shares into shares of different classes. For part (b) candidates were expected to state four of the matters under s 178 Companies Act 1965.

This question was not answered well at all. While there were a few sound answers, the larger majority was clearly not prepared for this question. Most answers were either inaccurate or incomplete. It appeared that many candidates had not studied this topic. Candidates are reminded that they should be prepared for any question within the syllabus. Studying selected topics is likely to put them in this predicament causing them to lose valuable marks.

Question Seven

This question, on company law, contained two parts. Part (a) tested the candidates' knowledge on the circumstances in which a person may be disqualified from acting as an auditor while part (b) tested their knowledge on removal of auditors from office.

For part (a) candidates were expected to refer to circumstances stated in the Companies Act 1965 under which persons will be disqualified from acting as company auditors. For part (b) they were expected to discuss the

procedure under the Companies Act for removal of auditors, in particular, the need for an ordinary resolution and special notice and the protection afforded to the director concerned.

Many candidates answered both parts quite well and obtained reasonable marks. Some candidates, however, answered only one part well and lost marks for the other part. A minority of candidates was clearly not prepared for a question on this topic and was not able to give accurate answers. For example, there were some candidates who simply stated that bankrupts and convicted persons are disqualified from acting as auditors. As I have mentioned earlier in the general comments, candidates should answer all parts of a question. Valuable marks will be lost if they fail to do so.

On the whole, the question was satisfactorily answered.

Question Eight

This problem-based question, on company law, contained two parts in relation to company charges. Part (a) tested the candidates' knowledge on the civil and criminal consequences of failure to register a registrable charge. Part (b) tested them on their ability to apply the law on priority of charges.

For part (a) candidates were expected to state that failure to register a registrable charge will result in the charge becoming void against the liquidator and any creditor of the company. However, the money secured thereby becomes immediately repayable. Further the company and any officer in default will be guilty of an offence. For part (b), candidates were expected to identify the issues of consequence of non-registration of a registrable charge, the existence of a negative pledge and the effect of a clause giving a floating charge priority over an earlier floating charge. They were then expected to apply the rules to the given problem and advise on the order of priority of those charges.

The question was not answered as well as expected. For part (a) many candidates merely mentioned that non-registration would make a charge void and that the lender would lose his security. The criminal consequences were not mentioned causing candidates to miss out on some valuable marks.

For part (b) most candidates identified the issue of non-registration of the registrable charge and that the fixed chargee would lose its priority and become an unsecured creditor. This earned them some marks. As for the priority between the other two charges, many candidates did not discuss the issue of the effect of the negative pledge, i.e. that it would only bind a subsequent charge who has knowledge of the restriction. This resulted in them not gaining more marks.

On the whole the performance of the candidates for this question was mediocre.

Question Nine

This problem-based question on company law contained three parts.

Part (a) required the candidates to identify and apply the law relating to alteration of a company's name. Parts (b) and (c) required the candidates to identify and apply the law relating to the effect of the articles of association.

Parts (a) and (b) were generally not answered accurately.

In part (a) the issue was whether the company could alter its name by special resolution when the memorandum expressly stated that the name is unalterable. The answer is that it could do so because the power to alter the name clause is expressly given under s 23 Companies Act 1965. This power is not subject to any condition in the memorandum of association. Many candidates missed this point and merely stated that the name was unalterable because of the clause in the memorandum. Thus they lost valuable marks.

In part (b) the issue was whether a clause in the articles of association which stated that ABC Bhd shall purchase equipment from Lam is enforceable by Lam against ABC Bhd. Most of the candidates simply stated that it was enforceable because the articles stated so. This was inaccurate. The legal position is that the articles only bind the company and the members if it affects them in their position as members. In the given problem,

Lam is affected only in an outsider capacity. Thus he cannot enforce the articles. The majority of the candidates missed the right answer.
Part (c) related to a situation where the articles stated that any member who wishes to sell his shares must first offer them to any other member who wishes to buy the shares. Under the law, the articles form the basis of a contract among members. Thus one member may enforce the articles against another member. In the given problem Ben wishes to sell his shares to Al Jadi, a non-member. The issue was whether Ben could do so without first offering to sell to other members. The answer is that he could not do so as he was bound by the articles. Most candidates gave the right answer stating that Ben has to offer the shares to other members first because the articles stated so. However they failed to explain the contractual effect of the articles among members. Although they managed to obtain some marks, they could have obtained more if they had explained the law to justify their answer.

Question Ten

This problem-based question on contract law, which contained two parts, tested the candidates' knowledge and ability to apply the law relating to undue influence and coercion as matters affecting free consent and thus the validity of contracts.

This question was inadequately answered. Candidates were largely unable to identify the issues of undue influence as well as coercion.

In part (a), which raised the issue of undue influence, many candidates misunderstood the question and identified it as one relating to the issue of consideration. Thus they did not achieve satisfactory marks though they were given token marks for the discussion on consideration.

In part (b), the candidates were expected to identify the problem as one relating to the issue of coercion as the neighbor detained the dog belonging to Ramu and refused to return it to Ramu if he did not pay RM15,000. Thus Ramu could challenge the validity of the contract. However, the majority of the candidates discussed the question as if it related merely to offer and acceptance and concluded that it was a valid contract.

Specific Comments

Question One

This was a straightforward question asking candidates to explain the significance of the Southern African Customs Union (SACU) for the businesses in Lesotho. The objectives of the SACU Agreement include, (a) free and largely unrestricted movement of goods throughout the (Common Customs Area) CCA. Lesotho has a small market of about 1 million people but because of this objective, Lesotho businesses can take advantage of the entire market of CCA of more than 47 million people. Neither customs duties nor quantitative restrictions are imposed by any of the members of SACU on goods grown, produced or manufactured in the CCA. There are no rules of origin requirements either. Once goods have been imported into any one member country, they can move freely throughout the customs union area without the imposition of any tariff or restrictions. (b) The large CCA significantly increases investment opportunities in Lesotho because of the availability of relatively large skilled and educated manpower at relatively lower wage levels than South Africa. Indeed, several South African businesses have been relocated to Lesotho. (c) Increasing globalization requires the gradual integration of businesses in Lesotho into the global economy. SACU promotes this through enhanced trade and investment. Indeed, Lesotho is Africa' s largest exporter of ready-made garments into the market of the United States. This has created both investment and employment opportunities. (d) Equitable sharing of revenue that is generated by the operation of customs and excise laws. The share of SACU revenue that Lesotho gets every year constitutes a significant part of the budget of Lesotho and is responsible for the business-friendly tax regime in Lesotho.

It is a common sight to see traders purchasing merchandise in South Africa for sale in Lesotho. The merchandise may be of South African origin or imported from another country. South African Rand is freely used throughout the CCA including Lesotho. Payment for the goods purchased in South Africa, therefore, is not a problem. Traders in Lesotho are permitted by the SACU Agreement to import into Lesotho any quantity of merchandise from South Africa without paying any customs duty. This was confirmed by the Court of Appeal decision in the case of *Don Min Hua* (2004).

A large number of candidates answered this question fairly well. However, many wasted their time writing about the history of SACU. Some candidates chose, instead, to discuss the hierarchy of the system of courts in Lesotho, which gained no marks.

Question Two

This question tested candidates' knowledge and understanding of the law relating to offer and an invitation to treat.

A large majority of the candidates correctly pointed that an offer, if accepted, brings into being a contract which imposes obligations on the parties to it which can be legally enforced. This is not the case in respect of an invitation to treat. Few also discussed that an offer made without *animus contrahendi* cannot give rise to a contract.

Many candidates wasted their time by writing very long answers. However, many candidates chose to discuss quasi-mutual assent and related cases, general offers and their acceptance, counter-offers and *Crawley* and Mrs Carlill's cases. This did not get them extra marks.

On the whole, most candidates scored high marks in this question.

Question Three

This question tested the understanding of the candidates regarding the duty to mitigate loss in relation to the remedies for breach of contract.

A plaintiff is not awarded the full amount of their loss if they did not mitigate their damage by taking reasonable steps to limit their loss. In *Forrester's* case (1978), between the time of his dismissal and the hearing of his case, Forrester had earned R300 from doing odd jobs. This amount was deducted when measuring his damages for breach of contract. In the *Victoria Falls case* (1915), the Mining Company reduced their loss of profit by keeping their old machinery working until the power arrived for the new machinery.

A fairly large number of candidates discussed *Hadley's* case and general and special damages and that if a loss was too remote, special damages could not be awarded, that no one should benefit from own wrong or that losses incurred in contract means mitigation. Many candidates discussed Hadley's case to explain mitigation. All this was irrelevant to the question.

It is sometimes necessary to decide whether the plaintiff has incurred a particular item of expenditure to remedy the defendant's breach or to mitigate his damages. Where, for example, the defendant has failed to complete the

work he has contracted to perform, the plaintiff may call in an outside contractor to complete the work. He will have to prove that the outside contractor's charges are reasonable if he relies on those charges as proof of the damages he has suffered. But if he has called in the outside contractor to mitigate the damages he would suffer if the work remained incomplete, it is for the defendant to prove that the plaintiff's action in paying those charges was unreasonable. This is not always an easy distinction to draw. Only a few candidates discussed this correctly.

Question Four

This question tested the understanding of candidates as regards the notion of fault in the law of delict. Most candidates did point out that a wrongful act is not enough to impose liability on the wrongdoer; he must also be at fault. A wrongdoer is at fault if he acted intentionally or negligently. Liability can be based either on intention (*dolus*) or on negligence (*culpa*).

Dolus is present if the defendant intended to cause harm and was aware of his wrongful conduct. It has two elements: intention to cause harm and knowledge of wrongfulness. Intention in the law of delict is not identical to the desire to cause harm. The wrongdoer will be found to have the necessary intention even if he did not wish the harm to be caused, provided he foresaw the possibility of harm, but nevertheless proceeded with his actions. *Wilkinson v. Downton* (1897) is an example. While many candidates did discuss *Wilkinson's case*, they did not relate the *ratio* of this case to the legal principle the notion of *dolus* embodies.

Intention also has a second element. The wrongdoer must have the knowledge that, under the circumstances it is, or might be, unlawful to cause the harm. This knowledge of unlawfulness is approached the same way as the intention to cause the harm. Only a few candidates discussed this.

In the absence of intention, the defendant's conduct may still be wrongful if he did not observe the standard of care which the law required of him. In such a case there is *culpa*. The foreseeability test is employed to determine this. *Cambridge Water Company v Eastern Leather Plc*, an unreported case, is an example. Several candidates did point out to this case but did not relate the *ratio* of the case to the underlying principle.

Several candidates discussed contributory fault in some detail. The question did not ask for it. Some others discussed vicarious liability and some even the concept of omission and how it might give rise to liability in delict.

Question Five

This was a straightforward question asking candidates to explain the circumstances under which a partnership can be dissolved by the operation of law. The circumstances are (a) insolvency, (b) supervening impossibility or illegality, (c) death of a partner, (d) partner becoming an alien enemy and (e) mental illness. A large number of candidates discussed some or all of these quite well. Alien enemy was often left out of their discussion. Some candidates prefaced their answers with detailed explanation of what a partnership is, the number of partners it should be limited to and the requirement of sharing of profits. Many also discussed the process of dissolution of a partnership and distribution of assets on liquidation. A few candidates discussed *Salomon's case* as well.

Question Six

This was the best answered question in the exam and almost all candidates answered this question well and scored reasonable marks. The significance of name was not brought out clearly in a few cases because

candidates mixed up their answers with what cannot be put in a company name. No candidates pointed out the significance of name as an identity of a company is a little less so now that the Registrar has to allot each company a company number as well.

A large number of candidates correctly discussed that the words (Pty) Ltd refer to a private company and Ltd to a public company and they were very well rewarded with good marks. A minority of candidates however thought the opposite was true.

Question Seven

This question required candidates to explain judicial management as an alternative to winding up under the Companies Act of 2011.

The focus of judicial management is to safeguard the continued existence of business enterprises in financial difficulties, rather than merely ensuring the payment of creditors. The aim of the judicial management order is to save the company, or at least the business, as a going concern, by taking control of the company out of the hands of its directors and placing it in the hands of a judicial manager. No candidate referred to this.

A company may be placed under judicial management by the court when a company is in difficulty, (a) because of mismanagement or any other issue, or (b) because the directors or other officers of the company have acted in a way that is contrary to the provisions of this Act, or (c) the assets of the company are being misapplied or misused and the viability of the company is threatened. No candidate discussed all three, instead most candidates discussed that a company is placed in judicial management when it is not able to pay its debts. Many candidates discussed in some length compulsory and voluntary winding up. A few candidates even brought into their discussion holding and subsidiary companies and their relationship.

An associated objective of judicial management is possibly to achieve a better result for the company's creditors as a whole than would be likely if the company were to be wound up. It is for this reason that a judicial manager is required to have experience in administering, or advising on the administration, of insolvent estates of companies. [s. 126 CA 2011]. It is the unsecured creditors that stand to benefit by the judicial management. Secured creditors hardly need protection because they enjoy a preferential right over the property of the company. [s.128(2) CA 2011] No candidate referred to this.

Question Eight

This question required candidates to analyse the problem scenario from the perspective of company law. For part (a) since the entire authorised capital of Sanderson Foods Ltd has been used up to issue fully-paid ordinary shares, the first step was to increase the authorised share capital so that new shares could be issued to Peter. Model article 27 authorises the shareholders to increase the share capital by passing a special resolution. Accordingly a special resolution would have to be passed by calling an extraordinary meeting to increase the authorised capital, say by R5 million divided into 5 million shares of R1 each. Once the authorised capital was increased, directors will be able to issue new 1.5 million ordinary shares of R1 each at a premium of R1 to Peter. The Registrar has to be notified within 15 days of such issue in the Form 7 format.

Most of the candidates discussed the procedure for calling a meeting and voting. Only a few candidates pointed out that authorised share capital needed to be increased. But then they brought in extraneous matters like

directors should consider issuing preference shares and the proposal to purchase a chain of fast food outlets from Peter, a shareholder, for R3 million, needed to be discussed with the shareholders first. This could be a result of not reading the question properly.

Section 19 Companies Act 2011 requires that if the consideration for the new shares consists of property then the board has to determine the consideration for which the shares are to be issued and, further, resolve that in their opinion, the consideration for the issue is fair and reasonable to the company, as well as, to the all existing shareholders. Making such a certificate knowing it to be false or misleading in a material way is an offence punishable, on conviction, with a fine of R500,000 or imprisonment for 20 years, or both. [s. 175 CA 2011].

The board of directors of Sanderson Ltd, thus, would have to make sure that R3 million is fair and reasonable for the food outlets not only to the company but also to all the existing shareholders. Section 63 of the Companies Act provides that it is a 'fundamental duty' of the directors to exercise their powers and perform their duties in good faith using such care, diligence and skill that a reasonable director would exercise in similar circumstances. Failure to do so makes the directors liable to the company and the shareholders individually and severally. The duties of directors were discussed generally without relating them to the problem scenario. No candidate discussed the importance of s. 63.

Candidates did not score well in this part of the question.

As regards (b) no candidate pointed out that neither the Companies Act nor the model articles have any specific provision on the rights issue. Companies are free to make provision for rights issue in their articles. It is assumed that the articles of Sanderson Ltd provide for it; if not articles would have to be amended. Section 20 of the Companies Act entitles a company to issue shares at any time and in any number it thinks fit so long as the total number of issued shares does not exceed the number of authorised shares. It is assumed that the authorised capital had been increased appropriately to take care of new shares for Peter and the rights issue. After the rights issue has been subscribed, the Registrar needs to be notified within 15 working days about the details of the rights issue and the contact details of the persons who have subscribed to the rights issue. The share premium has to be transferred to a share premium account.

No candidate answered this part of the question satisfactorily. As a result, candidates did not score well in this part of the question either.

Question Nine

This question tests candidates, understanding about redundancy and termination of a fixed term contract before the expiry of its fixed term.

The phrase 'redundancy' has not been used in the Labour Code Order, 1992, and for that matter in any other legislation in Lesotho. Section 66 Labour Code provides, in effect, that if an employee has been dismissed for a reason 'based on the operational requirements of the undertaking, establishment or service', then such dismissal shall not be regarded as unfair dismissal. The words 'operational requirements' of an undertaking or establishment have been interpreted to cover both redundancy and retrenchment. Dismissal has been defined to mean termination of employment at the initiative of employer. Redundancy occurs when an employer has

ceased, or intends to cease, the business for which the employee was hired. It may also occur when the job for which a person was employed disappears for one reason or the other.

Many candidates did discuss this part of the question relatively well though only a few candidates discussed about the operational requirement provision of the Labour Code. The problem scenario specifically dealt with the application of this principle.

The work of the particular kind for which Joanthan was employed, namely, the preparation of teaching materials on taxation for South African students enrolled at Bloemfontein Technikon, had ceased and was no longer required. Accordingly, there is a *prima facie* case that that the operational requirements of the Institute no longer required Joanthan's services. So long as an employer fairly selects the employee for redundancy, the dismissal is not regarded unfair. The employee is also not entitled to hearing if the dismissal is on the ground of redundancy. From the facts, there was no indication that Joanthan was selected unfairly for dismissal on the ground of redundancy. This part of the question was dealt with by most candidates inadequately.

As regards (b) part of the question, Joanthan may not be able to claim compensation for termination of his contract before the completion of its term, if it was on the ground of 'operational requirements' of the undertaking. However, Joanthan was entitled to a severance payment under Section 79 Labour Code because he had completed more than 'one year of continuous service' with the same employer, even if the dismissal was fair. Severance payment is equal to two weeks wages for each completed year of continuous service. Joanthan has been in continuous service for 17 months and so the formula would entitle him to receive 23 days of wages. Few candidates indicated that Joanthan was entitled to 23 days of wages as severance pay. Most candidates indicated that he could sue for compensation for the remainder part of his contract.

Question Ten

This question asked candidates to explain and apply to the problem scenario the principles underlying formation of a contract and the doctrine of fictional fulfilment.

As regards (a)(i), Thabo and Susan are relatives. They can enter into a binding contract only if they have the requisite intention (*animus contrahendi*) to create legal relations. If the agreement between relatives is of a business nature, *animus contrahendi* is implied. The agreement between Susan and Thabo is of a business character; it involves benefits and detriments to both parties. Therefore, Thabo's offer and Susan's acceptance of that offer are valid and resulted in a binding contract.

While many candidates discussed it correctly, a large number of candidates discussed this part in terms of suspensive condition or that it could not result in a binding contract because parties to the contract were relatives. Discussion of suspensive condition was relevant to (b) not so much in (i).

For part (a) (ii), since the agreement was legally enforceable, Thabo was legally obliged to pay Susan R2,000 per month for so long as she remained at the Centre for Accounting Studies for the Registered Accountant programme. Of course, the payment cannot be for an indefinite period but only for a reasonable period. What was a reasonable period would depend on the facts and circumstances prevailing at the Centre. Apart from a few candidates, no one discussed this part of the question adequately. Many candidates stated that the agreement

suffered from uncertainty because the period was not clearly stated and this made it void or voidable. Some others denied payment to Susan because the agreement between relatives could not result in legal obligations.

As regards (b), in Roman-Dutch Law, a contract with a suspensive condition is valid and binding from the moment it is made and neither party can resile from it. Thabo, therefore, cannot withdraw his promise to pay Susan R5,000 unilaterally. Moreover, if the conditional debtor – Thabo, in the question — prevents the fulfilment of the condition, then the doctrine of fictional fulfilment applies and the condition is deemed fulfilled as against the conditional debtor who prevented its fulfilment in order to avoid his contractual obligation: see Scott v. Poupard (1971). Thabo, therefore, is bound to pay Susan a bonus of R5,000, because she has passed the examination by December 2013.

No candidate discussed this part of the question well and except for a few, no one even mentioned fictional fulfilment. Consequently, candidates did not score well in this part of the question.

Conclusion

The format of examination requires a thorough preparation for the examination as all questions are compulsory. If a candidates stumbles in answering inadequately in 2-3 questions, the chances of their passing the examination gets slimmer. This time a fairly large number of candidates chose not to answer all 10 questions, affecting their chances of passing.