

Examiner's report

F4 Corporate and Business Law (ZAF)

December 2012



General Comments

The examination consisted of ten compulsory questions. The first seven questions were knowledge based and the last three were problem-type questions. Each question was worth ten marks. Candidates are expected to be acquainted with the whole of the syllabus.

The vast majority of candidates attempted all ten questions, and there was little evidence of time pressure. Where questions were left unanswered by candidates, this appeared to be due to a lack of knowledge or inadequate exam technique, as opposed to time pressure.

Candidates tend not to answer questions in the order they are asked, but rather to attempt the questions they are more comfortable with first.

Most candidates performed well on questions 1, 2, 6 and 7. Candidates mostly provided incomplete answers relating to questions 3, 5 and 8. Candidates often simply did not provide enough material to obtain marks; their answers were incomplete and incoherent.

A number of common issues arose in candidates' 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 answering all of the questions, this might be due to inadequate time management mentioned above.

Specific Comments

Question One

This question required candidates to explain the importance of the Constitution of South Africa as a source of law.

Most candidates did quite well in this question. Candidates who performed well discussed the Constitution as a source of law in detail, showing an adequate understanding of this specific source of law.

Question Two

This question invited candidates to examine the various remedies that may be available to innocent parties when they suffer as a consequence of a breach of contract. The legal remedies at the disposal of the innocent party are execution of the contract, cancellation of the contract and damages. The availability of the respective remedies is determined by the nature and seriousness of the breach of contract that has been committed, and also by the terms of the contract.

Most candidates answered this question adequately. Many did, however, not discuss all the remedies but merely one or two. Most discussed the remedy of damages.

Question Three

This question required candidates to define and explain the authority of an agent. A person who wishes to conclude a contract does not have to do so personally. He or she may authorise someone to enter into a contract on their behalf, or in his or her name. In other words, the concept of agency will arise if an agent concludes a juristic act on behalf of a principal with a result that a legal tie arises between the third party and the principal.

Candidates did not perform well in this question. Most of the candidates discussed the duties of an agent instead of the authority of an agent. It seems if candidates did not read the question properly.

Question Four

This question was in two parts. The first part asked candidates to explain what is meant by the 'no work, no pay' rule and, the second part, by dismissal based on incapacity. Although there were some fair answers the majority of the candidates were not properly prepared to answer a question on this area of the law, especially on the second part.

Question Five

In this question candidates were required to explain the personal liability of members of a close corporation. The Close Corporations Act, 1984 creates personal liability on members and certain other persons for the debts of the corporation in the event of a contravention of certain provisions of the Act. Most candidates did not discuss the personal liability of members, but rather discussed the characteristics of a close corporation. It seems that candidates did not read the question properly.

Question Six

This question required candidates to explain and distinguish between shares and debentures. The activities of a company are financed through the issue by the company of securities in the company (normally shares) or by borrowings by the company.

Most candidates did well in this question.

Question Seven

This question required candidates to explain the regulation of corporate governance in South Africa. Companies exist within a framework which is set by the law, regulations, codes of best practice and the company's own constitutional structures. The governance of companies can be on a statutory basis, or as a code of principles and practices or even a combination of the two.

Most candidates did well in this question.

Question Eight

This question required candidates to consider the liability of auditors based on a breach of the duty of care. In carrying out his statutory duties an auditor must not act negligently. They must perform their work with a reasonable degree of care and skill.

Candidates did not answer this question sufficiently. They did not refer to relevant legislation or case law. They rather attempted this question, it seemed, based on general knowledge. It is also important that candidates apply the relevant theory to the actual problem-based question. This was not always the case.

Question Nine

This question required candidates to discuss whether a valid contract has been established between Irene and Jan. The law prescribes certain requirements for the conclusion of a valid contract. There must be consensus between the parties. Each party must have the serious intention to create rights and duties to which each party



will be legally bound. Each party must have the capacity to act. The agreement must be legally possible. It must also be physically possible. If formalities are prescribed, they must be observed.

Most of the candidates were able to identify the problem area and quite a few managed to answer the question well.

Question Ten

This question required candidates to discuss the existence of close corporations now that the Companies Act 2008 is in operation. Candidates should further explain the position with regards to converting a close corporation to a company. In terms of the Companies Act close corporations are permitted to continue to exist, but no new close corporations may be formed since the Act came into force (see Schedule 3, item 2(1)). One of the purposes of the Act is to create an effective and simplified regime for forming small companies. This will be based on the characteristics of the Close Corporations Act 1984, which renders it unnecessary to allow for new close corporations to be formed.

Some of the answers were satisfactory and candidates were able to identify the problem.