



# Examiner's report

## F4 Corporate and Business Law (ZAF) December 2014

### Introduction

The examination consisted of two sections. Section A consisted of 45 compulsory multiple choice questions. Section B consisted of 5 compulsory, longer type questions (with sub-divisions). Section A was 70 marks and Section B 30 marks. Candidates had two hours to complete the examination paper. This introduced a new format and it seems if candidates are capable of answering questions based on this new format.

Candidates are expected to be acquainted with the whole of the syllabus.

In Section A the majority of candidates performed satisfactory. Candidates should have a sound knowledge of the syllabus to be able to answer these types of questions. It seems if most were able to do that.

In Section B a substantial number of candidates did not attempt all of the questions. 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 tended not to answer questions in the order they are asked, but rather to attempt the questions they are more comfortable with first.

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 answering all of the questions, this might be due to inadequate time management as well as a lack of knowledge mentioned above.
- Not learning lessons from earlier examiner's reports and hence making the same mistakes.

Syllabus topics on which candidates performed well included remedies for a breach of contract (especially to identify relevant remedies, based on a set of facts), to list the *essentialia* of a partnership agreement and insider trading. Syllabus topics on which candidates performed inadequately included the duties of directors, financial assistance and whether or not a valid partnership has been formed. The overall standard was satisfactory.

### Comments about Section A performance

Candidates generally performed well in this Section. It is important that candidates read these questions very carefully. Candidates need to make sure whether they should indicate the correct option or the incorrect option. They also need to pay attention to combination answers, where one or more of the options given might be correct (or incorrect).

Candidates did not perform satisfactory in the following question:

It is unclear why candidates did not answer this question satisfactory. It deals with the Law of Contract and specifically with the requirement of capacity.



**32 Which of the following statements regarding the capacity to perform juristic acts is/are correct?**

- (1) The assistance of the guardian of a minor is insufficient for the conclusion of a contract for the alienation of immovable property belonging to the minor
- (2) An emancipated minor can conclude all contracts without the assistance of their guardian
- (3) If a minor concludes a contract without the necessary assistance, the contract will always be void

- A (1) and (2)
- B (1) and (3)
- C (3) only
- D (1) only

The correct answer is **D** because Option (1) is correct, but Options (2) and (3) are incorrect.

**On Option (1):** The guardian of the minor as well as the Master of the High Court must consent to the alienation of immovable property belonging to the minor if the value is less than R100, 000. If it is more than R100, 000 the consent of the guardian as well as a judge of the High Court is necessary.

**On Option (2):** It is a question of fact whether an emancipated minor has full capacity or whether the capacity is restricted to the conclusion of contracts relating to the business of the minor with the consent of the guardian.

**On Option (3):** A contract can be binding on the minor if the guardian ratifies the contract before the minor reaches the age of majority and also if the minor ratifies it subsequent to acquiring the capacity to act.

*Comments about Section B performance*

Most of the candidates answered the questions asked in Section B in a satisfactory manner. Those candidates that did not perform well mostly did not answer all the questions. A majority of the candidates answered the questions in a clear and precise manner, only stipulating what was asked. This is best practice as candidates then do not waste time to explain correct, but often unnecessary, issues.

Question 4 tested the candidates' knowledge on directors' duties and specifically the duties of non-executive directors. It was disappointing that a substantial number of candidates were not able to answer this question satisfactorily. It is an important part of the work, especially based on the new rules brought about by the Companies Act of 2008, and candidates must make sure that they understand directors' duties, the partial codification thereof and the contents of the duties of executive as well as non-executive directors. This is one part of the syllabus where case law plays a really important role. Candidates should be aware of the relevant cases on directors' duties.

Another topic that candidates struggled to answer satisfactorily is that of financial assistance. The Companies Act 2008 (s. 44) regulates the situation where a company provides financial assistance for the acquisition of the company's securities. Candidates should ensure that they are familiar with the legislative provisions stating under which circumstances the provision of financial assistance is allowed. Candidates must always read questions very carefully, especially in the context of financial assistance. Candidates can be asked to explain the meaning of financial assistance; they can also be tested on whether or not a specific set of facts contributes financial assistance and if it qualifies as financial assistance. Candidates should be able to explain whether it is allowed based on the requirements in the Companies Act 2008.



## **Conclusion**

Generally, candidates performed well in this paper. They answered the questions in Section B to the point. It seems if they read the questions carefully and made sure that they answered what was actually asked. However, some candidates did not perform well on very important topics like directors' duties, the validity of a partnership agreement and financial assistance.

Candidates should attempt all questions. While it is recognised that few individuals will be fully prepared to deal with every question, it should be possible to make a reasonable attempt at every requirement. In Section A distractors can often be eliminated by a process of deduction.