Examiner's report

F4 Corporate and Business Law (ZAF)
June 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, 4, 5, 8, 9 and 10. Candidates mostly provided incomplete answers relating to questions 2, 3, 6 and 7. 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
In this ten mark, theory type question candidates were asked to discuss the various sources of law from which South African law is derived. Most candidates did quite well in this question. Candidates who performed well mentioned most of the relevant sources and explained each source in a sentence or two.

Question Two
This question asked candidates to explain and distinguish between *essentialia*, *naturalia* and *incidentalia* as contractual terms. This question was worth ten marks. Some of the answers were sound but the majority were unsatisfactory. It seems if candidates are not clear on the meaning of these terms. They provided answers of a general nature, and were not specific enough. Examples given by candidates were often wrong and irrelevant. Candidates had to indicate, at least, that *essentialia* are those terms which are essential for the classification of a contract as belonging to a particular type of contract. *Naturalia* are terms which the law attaches to every contract of a particular class. *Naturalia* help to determine the rights and duties of the contracting parties as well as the effects and consequences of the obligations. The operation of the *naturalia* may be excluded by the parties by way of an agreement. Once parties have agreed on the type of contract they want to conclude, further details are usually necessary. The *essentialia* therefore only provide a bare outline for the contract. The *naturalia* may provide sufficient additional requirements, but parties might want to add special requirements to the contract; these additional terms are referred to as the *incidentalia*.

Question Three
A number of candidates provided detailed answers to this question, but by explaining the general nature of a partnership instead of the different types of partnerships. Candidates had to indicate that different types of partnerships exist. Partnerships can be categorised as: universal and particular partnerships and ordinary and

extraordinary partnerships. They then had to discuss each type in detail. 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. It seems if candidates did not read the question properly.

Question Four
This was a ten mark question that consisted of two parts. The first part asked candidates to explain what is meant by constructive dismissal and, the second part, by unfair dismissal. The first part was worth three marks and the second part seven marks. Most candidates were able to answer this question, especially the second part.

In the first part candidates had to indicate that the Labour Relations Act 1995 provides for six forms of dismissal. One such dismissal is constructive dismissal. A constructive dismissal takes place when the employee terminates the employment relationship, but only because the employer continued to make employment intolerable. A number of candidates did not indicate the crux of "constructive dismissal" namely that the employee claims that employment was made intolerable by the employer.

Most candidates were able to answer the second part and to provide examples of circumstances that will result in unfair dismissal. Most candidates therefore indicated that the Labour Relations Act lists nine types of dismissals that will be considered to be automatically unfair.

Question Five
This question was worth ten marks and had two parts. Part a) dealt with the meaning of corporate governance and was worth six marks and part b) dealing with codes of best practice was worth four marks. Most candidates did better in the first part. A few candidates repeated feedback given under part a) when they answered part b) or they did not distinguish clearly between the two parts of the question. Candidates did quite well in this question and it seems if they have a general understanding of the nature and meaning of corporate governance.
Candidates indicated that corporate governance relates to a system of management and control, some also referred to the *King III Report on Corporate Governance*. This is an important question and candidates should ensure that they are able to explain 'corporate governance' in future examinations.

Part b) of the question is clearly different from part a) and candidates had to indicate that companies exist within a framework which is set by the law, regulations, codes of best practice and the company's own constitutional structures. The *South African King Report on Corporate Governance* is an example of a code of best practice. This Code (King III, 2009) is currently applicable to all South African companies.

Question Six
It seems that candidates found this ten mark question challenging. This question tested some provisions of the Companies Act 2008 and it might be that candidates are not yet familiar with this Act. Also, this question consisted of two parts and most candidates only answered the first part. It seems that candidates did not read carefully what was asked and they merely discussed ways in which directors can be appointed. Candidates had to explain, in the first part of the question, how directors can lose their office and in the second part candidates had to discuss the ways in which directors may be appointed. Candidates need to make sure that they understand the prescribed provisions of the Companies Act 2008 as they will be tested on it again due to its practical importance in the business world.

Question Seven
This question required candidates to discuss the pre-incorporation contract as provided for in s.21 Companies Act 2008. A pre-incorporation contract is a contract which promoters enter into, naming the company as a party prior to its existence as a separate legal person. The legal difficulty, of course, is that a company cannot enter into a binding contract until it has become incorporated, and it is not bound by any contract made on its behalf prior to incorporation. Similar to question six, a number of candidates did not answer this question sufficiently.

They either only answered part a) of the question, or the answer was incomplete. Part a) of the question was worth six marks and part b) was worth four marks.

Question Eight
This question required candidates to analyse the problem scenario by discussing the law relating to capacity and representation, in the context of company law. Section 19(1)(b) Companies Act 2008 considerably widens the capacity of a company. It provides that a company has all the legal capacity and the powers of a natural person except to the extent that a juristic person is incapable of performing any such power, or the memorandum of incorporation provides otherwise. Second, s.20(7) Companies Act 2008 provides that a person dealing with a company in good faith is entitled to presume that the company has complied with all the formal and procedural requirements in terms of the Companies Act, the memorandum of incorporation and any rules of the company, unless the person knew or reasonably ought to have known of any failure by the company to comply with its formal and procedural requirements. Some of the answers were inadequate. This part of company law is an important part of the syllabus. Candidates can expect questions on this area of the law.

Question Nine
This question required candidates to analyse the problem scenario from a perspective of partnership law. In particular, it requires candidates to explain whether a valid partnership has been established. Candidates therefore have to discuss the essential elements of a partnership. Some of the answers were satisfactory and candidates were able to identify the problem. Most of the candidates performed satisfactorily.

Question Ten
This question dealt with the law of contract. Candidates should discuss the rules relating to offer and acceptance and the possibility of revoking offers in relation to unilateral contracts. Most of the candidates were able to identify the problem area and quite a few managed to answer the question well.