

Examiner's report

F4 Corporate and Business Law (ZAF)

June 2013



General Comments

The examination consisted of ten compulsory questions. The first seven questions were of a theoretical nature 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 poor 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(a), 2, 3 and 9. Candidates mostly provided incomplete answers relating to questions 1(b), 5, 6, 7, 8 and 10. Candidates often simply did not provide enough material to obtain marks; their answers were incomplete and incoherent.

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 mentioned above.

Specific Comments

Question One

In this theory type question candidates were asked to define the term 'law' and explain and distinguish between public and private law. Most candidates did well in part (a) of this question. However, a substantial number of candidates were not able to distinguish between private and public law. In essence they had to explain that public law consists of those rules which control the relationships between the state and its citizens. Private law, in turn, consists of those legal rules which govern the relationships between citizens in their dealings with one another.

Question Two

This question asked candidates to explain the concept of the intention to be bound by a contract. Consensus or true agreement is the basis for every contract. Apart from the other requirements that must be met for a contract to be legally valid and enforceable, a contract will only come into existence if the parties reach consensus on the rights and duties as created in the agreement. Consensus can only be reached if every party has the serious intention to be contractually bound, the parties have the common intention (in other words they must have in mind the same commitment) and every party must make his or her intention known by means of declaring it. Most candidates performed well in this question. They discussed the 'consensus' element of a valid contract in sufficient detail.

Question Three

Candidates had to define a contract of employment and state the issues that will typically be dealt with in such a contract. A number of candidates provided detailed feedback to this question. It seems most candidates understand this part well.

Question Four

This question dealt with the appointment and duties of the company secretary. The role of the company secretary is dealt with in ss.86–89 Companies Act 2008. Candidates explained the duties well, but a substantial number of candidates did not explain the appointment procedure sufficiently.

Question Five

In this question candidates had to explain how the memorandum of incorporation of a company can be amended. The memorandum of incorporation is the document that sets out rights, duties and responsibilities of shareholders, directors and others within and in relation to a company and other matters. Provisions in the memorandum of incorporation may be amended from time to time. Changes may be made to the memorandum of incorporation, unless the amendment of a provision is prohibited by the memorandum itself in terms of s.15(2)(c) Companies Act 2008. Such amendments may be in the form of a new memorandum of incorporation or by way of amendments to the existing provision of the memorandum of incorporation. If changes are in the form of a new memorandum of incorporation, the new memorandum of incorporation will replace the existing memorandum of incorporation.

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. 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 Six

In this question candidates had to discuss the triple-bottom line approach and board committees, in the context of corporate governance. This question consisted of two parts and most candidates did better in the second part. It seems that candidates did not read the first part properly and sometimes just explained corporate governance issues in general.

Question Seven

This question required candidates to discuss membership of a close corporation. Some candidates were able to answer this question to some extent. However, candidates often did not write enough to obtain the full ten marks. Although the new Companies Act of 2008 had a significant impact on the future of close corporations, it is still important to know how close corporations operate as existing close corporations will continue to exist. It is merely new ones that can no longer be formed.

Question Eight

This question required candidates to analyse the problem scenario by discussing the law relating to insider trading. Insider dealing/trading concerns the whole area of the sale and purchase of shares, whether listed or not. It is not a malpractice confined to directors alone; it as much concerns other insiders such as managers and staff of the company and others. The insider has information about a particular matter or matters, or a set of circumstances or a chain or course of events, which is not known to the members of the company or the public, but which, if known, would affect the price of the shares of the company; and knowing that the price of the shares will be so affected if or when the information is made public, either sells or purchases shares in the company before the information is made known. He therefore uses confidential information to secure a profit or to prevent a loss to himself.

Inside information is defined in the Securities Services Act 2004 as being:

– specific or precise information – which has not been made public – is obtained or learned as an insider and – if it were made public would be likely to have a material effect on the price or value of any securities listed on a regulated market.

An insider is defined as a person who has inside information:

– through being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates, or – by having access to such information by virtue of his or her

employment, office or profession, or – who knows that the direct or indirect source of the information was a person falling into one of the first two categories.

Some of the answers were inadequate, especially with regards to the application of the law to the facts in question. 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 the perspective of the law of contract. In particular, it requires candidates to explain the remedy of specific performance and apply it to the facts provided. 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 new business rescue procedure. Business rescue proceedings are defined in the Companies Act 2008 as ‘proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for: (i) the temporary supervision of the company, and the management of its affairs, business and property; (ii) a temporary moratorium on the rights of the claimants against the company or in respect of property in its possession; and (iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company’s creditors or shareholders than would result from the immediate liquidation of the company.’ Candidates had to discuss the procedure and then indicate whether it is possible to make use of business rescue proceedings based on the facts provided. A few candidates did not attempt this question.