

Examiner's report

F4 Corporate and Business Law (ZAF)
June 2014



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.

A substantial number of candidates did not attempt all ten 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 tend not to answer questions in the order they are asked, but rather to attempt the questions they are more comfortable with first.

Questions 2(a), 2(b), 4, 5, 6, 8 were, generally, dealt with more adequately compared to the other questions asked. 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 as well as a lack of knowledge mentioned above.
- Not learning lessons from earlier examiner's reports and hence making the same mistakes.
- Inadequate layout of answers.

Specific Comments

Question One

This question required candidates to discuss the rules and presumptions used by the courts in interpreting statutes. Many candidates did not answer what was asked by the question. Many candidates discussed sources of law, the *ratio decidendi* and the various courts here instead of discussing the relevant rules and presumptions used by South African courts when interpreting statutes.

Question Two

This 10-mark question asked candidates to explain different classes of shares. Most candidates were able to briefly explain preference and ordinary shares, but many had problems to indicate the meaning of deferred shares. Deferred shares are issued to founders of a company which entitle them to dividends only if the dividend amount exceeds a certain threshold and after the ordinary shareholders have been paid.

Question Three

In this question candidates had to explain the meaning of "causality" and "remoteness of damages" in the context of the law of delict. Some candidates were able to indicate the five elements of a delict and to discuss the element of causation in some detail. More candidates had difficulty to discuss remoteness of damages.

The question of remoteness of damage is essentially one of limiting the boundaries of legal liability. Although the factual link exists between the conduct and the harmful consequences, courts must strike a proper and equitable

balance between the interests of the wrongdoer and of the innocent victim, even if it does on occasion result in anomalies. In essence, therefore, the question of legal causation is not a logical concept concerned with causation but a moral reaction involving a value judgment and applying common sense, aimed at assessing whether the result can fairly be said to be imputable to the defendant. In reaching that conclusion, constitutional imperatives also play a part. The question of whether the harm is too remote is thus one that is asked when all the other elements of the delict have been established as a last check on the limits of the defendant's liability.

Question Four

In this question candidates had to explain the meaning of "offer" and "acceptance". This question was mostly answered satisfactory. Many candidates did indicate that consensus or true agreement is the basis for every contract and that each party must have the serious intention to be contractually bound. Each party must thus declare their intention to create enforceable rights and duties. This is usually done through offer and acceptance.

Question Five

In this question candidates were required to explain business rescue proceedings as an alternative to winding up. The majority of candidates were able to answer this question to a certain extent.

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.' Most candidates were able to explain the basic meaning of business rescue proceedings, but only a few referred to the actual procedure in more detail.

Question Six

This question required candidates to briefly explain the "stakeholder inclusive" approach and how this is dealt with in the *King III Report on Corporate Governance* (2009). A substantial number of candidates were not able to answer this question. Candidates had to indicate, at least, that it is generally accepted that modern companies cannot ignore their social responsibility. Social responsibility is based upon the concept of good citizenship. A company has a duty to society beyond that of an ordinary citizen due to its power and size and the benefits associated with its status as a separate legal entity, and should therefore recognise its social role. The unique South African context, including the best interests of its citizens and the mandates of the Constitution, cannot be ignored.

Question Seven

This question asked candidates to distinguish between ordinary and special resolutions. Many candidates did not answer this question sufficiently. It is an important part of the work, especially based on the new rules brought about by the Companies Act 2008, and candidates must make sure that they understand how these resolutions are dealt with in practice.

Question Eight

This question required candidates to analyse the problem scenario by discussing the law relating to partnerships. Most candidates were able to answer this question and to realise that the contribution made by Ann is sufficient as only a part will be paid back to her. Some of the answers were thus sound and candidates were able to identify the problem. Most of the candidates performed satisfactorily.



Question Nine

This question required candidates to analyse the problem scenario from a perspective of company law and specifically pre-incorporation contracts. Candidates did not answer this question satisfactory. Most candidates answered this question based on general knowledge; they did not apply the legal principles to the facts given. Candidates also did not discuss the relevant legislative provisions and case law satisfactory.

Question Ten

In this question candidates had to indicate, based on a set of facts given, whether Mandy will be bound by a contract or not. This question was not answered satisfactory. This question required candidates to consider the validity of the exclusion clause as well as certain aspects of the parol evidence rule. Most candidates did not discuss this sufficiently or at all.