

Examiner's report

F4 Corporate and Business Law (ZWE) December 2014



General Comments

The aim behind this report is to provide feedback on the performance of candidates in the December 2014 F4 (ZWE) examination. The December 2014 examination introduced a new format through which candidates were asked to answer 45 questions on Section A and 5 questions from Section B.

Section A was further divided into 20 questions worth 1 mark each and 25 questions worth 2 marks each to make an aggregate of 70 marks. All the 5 Section B questions were worth 6 marks each to make an aggregate of 30 marks. All questions were compulsory. The overall standard of scripts was acceptable and the pass rate satisfactory, suggesting that the majority of the candidates had adequately prepared for the examination.

Section A

Whilst this section was by and large well answered by the majority of the candidates as evidenced by the high pass rate, a few questions however posed a challenge to some candidates.

The following multiple choice questions from Section A were unsatisfactorily answered by a large number of candidates. Questions 7, 14, 21, 25, 30, 34, 35 and 36. A brief commentary on the questions now follows:-

- (1) Question 7 was testing knowledge of the ultra vires doctrine and the fact that it relates to both primary legislation (Acts of Parliament) and delegated legislation like Municipal by-laws and Statutory Instruments.
- (2) Question 21 related to common law grounds of terminating a contract of employment through mutual agreement either orally or in writing.
- (3) Question 25 related to the conclusion of contracts telephonically.
- (4) Question 34 related to the fact that the standard of proof in a civil case is on a balance of probabilities. Candidates might have confused this question with the fact that the standard of proof in criminal cases is proof beyond a reasonable doubt and this was one of the suggested answers.
- (5) Question 36 related to the fact that the damages that may be claimed for breach of contract are predicated on the fact that they constitute a foreseeable loss.

Which of the following represents the damages that may be claimed for breach of contract?

- A Any loss suffered
- B Any loss suffered where the plaintiff has mitigated their loss
- C Any foreseeable loss suffered
- D Any loss suffered where there is no contributory negligence

The correct answer was C. This question related to the fact that the damages that may be claimed for breach of contract are predicated on the fact that they constitute a foreseeable loss.



On the other hand the following questions were answered extremely well and had a very high percentage of candidates who got the answers correct. Questions 1, 3, 6, 10, 11, 15, 16, 19, 20, 22, 23, 26, 28, 29, 32, 33, 38, 39, 40 and 44.

All in all this section was well answered by the majority of the candidates.

Section B

Specific question reports

Question One (a)

In the main the majority of the candidates answered this question satisfactorily. Since Cathy does not want visibility or to be known by the general public and business associates as one of the partners a partnership en commandite (sleeping partner) would be ideal and appropriate for her situation.

As with an anonymous partnership the sleeping partner is not liable to third parties but only to the disclosed partner and the sleeping partner is only liable to the extent of their contribution.

Since this particular question was worth 4 marks reference to at least one relevant case would have enhanced the quality of the answer.

Part1 (b) The question was correctly answered by the overwhelming majority of the candidates. The correct answer is that the death of a partner automatically terminates the partnership and if they so wish the surviving partners can reconstitute a new partnership.

Question Two (a)

The majority of the candidates correctly came to the conclusion that specific performance was not available as a remedy for breach of contract in the circumstances of the scenario case.

Part2(b)The majority of the candidates correctly concluded that the consequential damages of \$40, 000 and \$10, 000 respectively constituting loss of profits were recoverable and this was very well answered by the majority of the candidates.

Question Three (a)

The overwhelming majority of the candidates correctly concluded that the two2 minority shareholders Nelion and Limukani cannot force the company, Ploughmead Ltdimited to declare a dividend.

Part3(b)The overwhelming majority of the candidates correctly observed that since Limukani holds preference shares he has a right to a cumulative dividend. On the other hand, Nelion who only has ordinary shares enjoys no such right.

Part3(c)The majority of the candidates also correctly concluded that Tino as a debenture holder was entitled to both capital and interest whether or not the company was making a profit.

Question Four (a)

The special resolutions were (i) to increase the authorized share capital of the company and (iii) to change the name of the company. The other two² were ordinary resolutions. However an appreciable number of candidates incorrectly wrongly thought that a special resolution requires 28 days' notice. Rather, it requires 21 days' notice.

Part4(b)The overwhelming majority of the candidates were correct right in saying that this was not an aAnnual gGeneral mMeeting. Rather it was an eExtraordinary gGeneral mMeeting.

Question Five (a), (b) and (c).

The 3 sub-questions on insider dealing were correctly answered by most of the candidates. Each question was worth only 2 marks and necessarily the answers were expected to be concise and to the point.