Examiner's report

F4 Corporate and Business Law (ZWE)
June 2012

General Comments
The examination consisted of 10 compulsory questions and each question was worth 10 marks. Questions one to seven (1 – 7) are narrative, essay type questions whilst questions 8 – 10 are analysis or problem type questions. The overwhelming majority of candidates attempted all the 10 questions and there was no evidence of inability to complete the examination due to time constraints.

Questions 1, 3, 6 and 7 had (a) and (b) subsections and invariably both subsections are cognates and they bear close affinity to each other in terms of content and the demands of the question.

As has been noted in previous reports, candidates are strongly encouraged to study the syllabus in its entirety when preparing for the examinations. There is always an even coverage of the major topics covered by the syllabus and since all the 10 questions are mandatory, attempting to predict, "cherry-pick" or second-guess the Examiner can prove to be prejudicial and rather unhelpful.

A number of standard issues and concerns arose in candidate\s answers and some of them are as follows:

(a) Terseness of answers. Some of the answers tended to be too brief and superficial, just scratching at the surface.
(b) Citation of wrong cases. It is imperative that cases should be cited accurately.

Specific Comments

Question One
Part (a) -This 5 mark question was based on the rules that are used by the courts in interpreting statutes. The literal, golden and mischief rules were appropriately discussed by the majority of the candidates and relevant cases were cited.

Part (b) -was also worth 5 marks and was a logical follow up to part (a). The topic of presumptions that are used by the courts in interpreting statutes was reasonably well covered.

Question Two
This 10 mark question required candidates to clearly spell out the basic differences between an offer and an invitation to treat. Once an offer is unconditionally accepted, it usually results in a contract, on the other hand an invitation to treat (e.g advertisements, flighting of tenders etc) are intermediate and preliminary processes towards concluding a contract. This question was satisfactorily answered by the majority of the candidates and relevant cases were cited.

Question Three
Part (a) - In the law of delict the concept of causation states that the conduct of the defendant must be both the factual and legal cause of the harm to the plaintiff before liability can be attributed to the defendant. The test of factual causation concentrates on whether harm would have occurred in the absence of the defendant's negligence. Most actions in delict or tort are based on culpa (negligence). This is an allegation that a person acted carelessly, was thought less or imprudent because by giving insufficient attention to his actions he failed to adhere to the standard of care legally required of him. In *Kruger v Coetzee (1966)* the court observed that liability based on negligence arises if a reasonable person in the position of the defendant would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss and would take reasonable steps to guard against such occurrences and that the defendant failed to take such steps.

The overall performance of the candidates in relation to this question was above average.

Part (b) -The defence of *volenti non fit injuria* is a total defence in delict. The concept embodies the principle that a defendant is not liable where the injured person has consented to injury or the risk thereof. The volenti defence is justified on the grounds of public policy and since the purpose of the law of delict is to protect people from harm negligently caused it then makes no sense to extend the protection to those who voluntarily and knowingly assume certain risks.

Question Four
Overall, this question was very well answered. It was a question that required candidates to give a detailed outline of the various ways through which a partnership may come to an end. This is an area of the law that is replete with cases and citation of relevant case law was of importance and the majority of the candidates managed to do that.

Question Five
The majority of the candidates were able to give very satisfactory answers to this question. This question required candidates to have an appreciation of employment law, in particular, the contractual duties of an employee. Citation of relevant case law would add value to the quality of the answer.

Question Six
Part (a) -The objects clause is one of the most important organs of the memorandum of association. It defines the parameters within which the company may engage in business and anyone dealing with the company can easily verify the legality or otherwise of a particular transaction by looking at the company's objects clause.

A significant number of candidates lost sight of the fact that in 1993 the law was amended. S10 of the amended Companies Act introduced a number of far reaching and fundamental changes. However the major change is to severely restrict the operation and effect of the ultra vires doctrine. Although the doctrine is still applicable, it has been severely watered down. A significant proportion of the answers were unsatisfactory in this respect.

Part (b) -The majority of the candidates appreciated the legal requirement that, for a company's articles of association to be altered, a special resolution is required. The requirements that must be met in passing a special resolution are clearly spelt out under s133 Companies Act [Chapter 24.03]. The answers to this part of the question were satisfactory.

Question Seven
Part (a) - The overwhelming majority of the candidates were able to give a detailed answer which outlines the various differences between shares and debentures. In all, the question was well answered.

Part (b) -Whilst the majority of the candidates were able to define what issuing shares at a premium entails, a significant number did not quite appreciate the need to open up a share premium account. Equally s74 Companies Act [Chapter 24:03] is very specific about the restrictive uses of the share premium account, for example, in paying off preliminary expenses that involve the formation of the company or in paying up unissued shares to be allotted to members, directors or employees or trustees for such persons as fully paid bonus shares.

Question Eight
The question dealt with broad principles of the law of agency and it was quite clear that Kudzi, the agent, had fallen far short of the expectations of the law. Accordingly, Ngoni, as the principal, had an array of remedies available to him against his agent for breach of contract.

Most of the answers were satisfactory and the case law that was cited in the majority of the cases was impressive.

Question Nine
The majority of the candidates were fully conversant with the issues at stake, particularly the various differences involving such incorporated associations like a private business corporation, a co-operative society and a private limited liability company. Whilst the common law position was clearly articulated (particularly in relation to private limited liability companies) the relevant statutory provisions were not readily cited. This deficit notwithstanding, the answers were generally satisfactory.

Question Ten
In terms of corporate governance and ethical issues the three directors in the question committed a very serious offence of insider dealing/trading. Simply put this involves the misuse or abuse of sensitive confidential corporate or business information for personal gain by someone who by virtue of their close relationship to the company has access to critical information which is not yet in the public domain. Such information is mainly used for market manipulation. Both statutory and common law sources were adequately cited by the majority of the candidates. The answers in the main were satisfactory.