Examiners' report

F4 Corporate & Business Law (ZWE)
June 2009

General Comments
Generally the June 2009 F4(ZWE) Examination Paper produced some outstanding scripts. By and large the quality of the candidates' performance continues to improve. It is important to reiterate a point that has been made before namely that the F4 Examination Paper comprises of 10 compulsory questions selected from the length and breadth of the Corporate and Business Law (Zimbabwe) syllabus. It is critically important for candidates to study and prepare for all the topics.

Regrettably a few candidates were not in a position to answer all the 10 questions. This was primarily due to two main factors, either lack of adequate preparation on the part of some of the candidates or alternatively inability to distribute time evenly amongst the 10 questions. It is absolutely imperative to be able to read carefully the content and requirement of questions. It is equally important for candidates to clearly label the questions they are attempting and ideally each question must be started on a new page.

The majority of the candidates appreciated the fact that a law examination must necessarily involve citation of cases which underpin the various legal concepts at any stage. In some cases whilst some of the answers in this bracket correctly identified the relevant legal principles that were at stake, they were somewhat undermined by the failure to cite pertinent case law or statutory provisions.

Specific Comments

Question One
This question was essentially about a critical aspect in relation to the topic of the essential elements of the legal system e.g. statutory interpretation. In relation to the rules used by the courts in interpreting statutes, a good answer would have touched on the Literal Rule, the Golden Rule and the Mischief or Purposive Rule. The presumptions that are used by the courts are relatively straightforward namely, against retrospectivity of legislation, against unreasonableness and a presumption against deprivation of rights. A few of the candidates got some of the basic spellings incorrect. For example, it is not the lateral rule rather it is the literal rule. The courts interpret statutes and not interprete. Whilst a few of the answers were of an outstanding quality, the majority were above average. A minority of the candidates who had not read the question properly answered an unasked question and wrote about the structure of the courts in Zimbabwe.

Question Two
The question centered on issues pertaining to the valid acceptance of an offer leading to the conclusion of a contract. The overwhelming majority of the candidates performed adequately. Some of the better answers cited relevant case law on the topic.

Question Three
Both segments of the question 3(a) contributory negligence and 3(b) volenti non fit injuria were inadequately answered by a significant number of candidates.

(a) This is an equitable principle of the law of delict whose essence is that a person cannot recover in full, damages partly caused by his own fault, for example, non-wearing of a seat belt by a passenger in a car or deliberately provoking a ferocious animal like a dog that ends up biting the plaintiff. This is an area where there is a plethora of case law that should have been cited.

(b) The essence of the volenti non fit injuria defence is that a defendant to an action in delict is not liable where the plaintiff has freely consented to a specific harm or injury. For the defence to be sustainable in a court of law, the plaintiff must have been aware of the risk or threat of risk and must have continued with the risky enterprise despite an appreciation and foreknowledge of the risks involved. A significant number of candidates

did not seem to appreciate the fact that there are certain situations when this particular defence does not apply, for example, where the risk that has been assumed involves something that is manifestly illegal such as assault or damages or injury to persons or property. Equally damages pertaining to seduction are not covered by the defence. There is a lot of case law on the subject and citation of relevant case law was mandatory.

Question Four
The overwhelming majority of the candidates answered the question well. The various methods through which agency is established were mentioned and relevant supporting case law was cited.

However a tiny number of candidates kept wrongly referring to the Principal as the Principle.

Question Five
Just like the preceding topic on agency, this question that related to partnership law was by and large very well answered by the majority of the candidates. There was clear evidence of the fact that most of the candidates had a sound grounding and appreciation of the topic and relevant case law was cited.

Question Six
Whilst a few of the answers were relatively satisfactory the majority tended to be either average or below average. Both 6(a) and (b), the appointment and removal of auditors is regulated by s150 of the Companies Act [Chapter 24:03] and an answer that did not specifically allude to the provisions of s150 would be inadequate.

Question Seven
This question was very well answered by the majority of the candidates with a few of the scripts being of an outstanding quality. There was evidence of adequate preparation on a topic, "winding up," which is essential to an appreciation of how the affairs of companies in difficulties or distress are managed. The majority of the candidates were able to cite accurately the provisions of s206 as read with s205 of the Companies Act [Chapter 24:03] in so far as they pertain to the circumstances under which a company may be compulsorily wound up. At the same time, some of the more discerning answers cited relevant case law, to buttress or to augment the statutory provisions. Sections 206 (f) i.e. "if the company is unable to pay its debts" and 206 (g) "if the court is of the opinion that it is just and equitable that the company should be wound up" are replete with case law and it would have been useful to make reference to some of the cases.

Question Eight
This question dealt with the issues of offer and acceptance and circumstances relating to the conclusion of a contract and ultimately what constitutes breach of contract in light of the facts of the case.

The issue of quasi-mutual assent needed to be canvassed as well and the appropriate remedies available to the aggrieved party (Sandra) for breach of contract should have been spelt out clearly. Citation of relevant case law was absolutely essential.

Question Nine
(a) The question required a rudimentary knowledge of the principle of the separateness of companies vis-a-vis the shareholders. This is a cardinal principle of corporate law, otherwise known as the rule in **Salomon v Salomon and Company (1897).** Coming in the wake of that landmark decision, there are so many other cases drawn both from our domestic jurisdiction and abroad which reaffirm the universality of the principle of separateness. The inescapable conclusion is that it was legally incompetent for the plaintiff, Machira (Pvt) Ltd to seize the personal assets of the two shareholders, Dickson and Brenda Moyo, in order to satisfy the debt owed to it by the company, Vanhukwavo (Pvt) Ltd.

(b) One of the few recognised exceptions to the principle, of the separateness of incorporated companies is that the courts will "pierce" the veil of incorporation and disregard the separateness of the company if the

company is deliberately engaged in unlawful and illicit activities as seems to be the case here. Once the courts are convinced that the principle of the separate existence of a company is being abused by the natural persons behind the "artificial person" or company, that principle will be disregarded in order to effect simple justice amongst citizens.

Question Ten

(a) The majority of the candidates answered this question satisfactorily. They were able to correctly identify the major issue at stake i.e fraudulent misrepresentation in a prospectus. Equally the remedies provided for under s58 and s59 of the Companies Act [Chapter 24:03] were correctly articulated by the majority of the candidates.

(b) Candidates were expected to have an accurate knowledge of the provisions of the Companies Act [Chapter 24:03] in relation to the minimum number of directors a company, be it private or public is enjoined by the law to have and their residence status as well. S169(1) says that "....**every company shall have not less than two directors other than alternate directors at least one of whom shall be ordinarily resident in Zimbabwe**". S169(2) says that "...**every company shall have at least one secretary ordinarily resident in Zimbabwe**".

Apart from Mr Brown, there should be another director of the company who ordinarily must be resident in Zimbabwe. Presently Mrs Brown, the company secretary resides outside Zimbabwe and in terms of the Act, the company secretary should also be ordinarily resident in Zimbabwe. In conclusion the provisions of the Act have been violated in the sense that there is one director instead of two and the company secretary has non-resident status in Zimbabwe, again in violation of the Act. Regrettably, a significant number of candidates experienced difficulties in correctly applying the above stated principles to the facts of the case.