Answers

1 This question requires candidates to discuss the protection of human rights under Botswana's Constitution.

Botswana has a written Constitution. The Constitution contains a bill of rights, which sets out a range of fundamental rights and freedoms of every person. Government, the legislature and the courts must have regard to the bill of rights in determining what laws to enact and enforce and in determining the interpretation of existing laws.

The Botswana Constitution recognises and protects a range of specific human rights. These are the right to life, the right to personal liberty and security of the person, the right to privacy, protection from slavery and forced labour, protection from inhuman and degrading treatment, protection from deprivation of property, the right to a fair hearing, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement and freedom from discrimination. These rights are civil and political rights, otherwise known as first generation rights and freedoms.

Significantly missing from Botswana's bill of rights are second generation rights being economic, social and cultural rights such as the right to health, the right to protection of the family and the right to a clean environment. Also absent are third generation or solidarity rights. This is because Botswana's Constitution was adopted at her independence in 1966, and is still in force. The Constitution has never seen any amendments to reflect international developments in so far as human rights are concerned.

The protection of human rights under Botswana's constitution was tested in the landmark decision *Attorney General* v *Unity Dow* (1992). In this case, the Court of Appeal declared sections of the Citizenship Act, 2004 unconstitutional on the grounds that they discriminated against women on the basis of their sex.

Despite the aged Constitution and the absence of second and third generation rights in Botswana's Constitution, on balance, Botswana's human rights record has been good.

Tutorial note: *Credit will be awarded for discussing any of the following cases:* Good *v* The Attorney General (2) *(2005),* Sesana and others *v* The Attorney General *(2006) or* Matsipane Mosetlhanyane and Others *v* The Attorney General *(2010) all of which are leading cases on the protection of human rights in Botswana.*

2 This question requires candidates to explain and distinguish between an offer and an invitation to treat.

(a) An offer is a proposal made by a person with the intention that by its mere acceptance, and without anything more, a contract should be formed. An offer is distinguishable from any other proposal by the express or implied intention of the offeror to be bound by the offeree's acceptance of the proposal (*Wasmuth* v *Jacobs* (1987)). Where the intention to be bound by mere acceptance is lacking, the offeror is said to lack *animus contrahendi*, or the intention to contract. Examples of the lack of *animus contrahendi* can be found in cases where the surrounding circumstances or the manner in which the 'offer' was made clearly indicate that the 'offer' was not intended to be taken seriously. For example, offers made in jest or in anger or offers made in family circumstances where there is no intention to be legally bound do not amount to a valid offers in law. Thus, each case depends upon its own facts. The nature of the offer, the relationship between the parties and the circumstances surrounding the making of the offer should be examined in order to determine if the offer was made with the requisite intention to contract. An offer must be unequivocal. An ambiguous proposal cannot be classified as an offer.

(b) An invitation to treat falls short of an offer. It is a statement intended to induce another to enter into negotiations with a view to arriving at a contract. An invitation to treat may take the form of a direct request to submit an offer as was the case in *Biloden Properties (Pty) Ltd* v *Wilson* (1946). It may also take the form of one party stating his views with respect to a proposed transaction, together with an invitation to the other party to discuss them (*Ferguson* v *Merensky* (1903)). An invitation to treat is not a true offer because it does not form a binding agreement by mere acceptance. It is intended to start negotiations with a view to concluding a contract.

3 **(a)** This question requires candidates to describe the two types of partnerships in Roman-Dutch law.

There are two types of partnerships recognised in Roman-Dutch law. These are the universal or ordinary partnership, and the extraordinary partnership. In the universal or ordinary partnership, parties agree that all the property they acquire during the subsistence of the partnership shall be the property of the partnership. In the case of the extraordinary partnership, the liability of certain partners is expressly limited. There are two types of extraordinary partnership. These are the anonymous partnership and the commanditarian partnership or partnership *en commandite*. In the anonymous partnership, two or more persons agree to share in some business that will be conducted by one partner solely in his own name. The name of the anonymous partner is not disclosed to the public. He may or may not participate in the partnership business. On insolvency, the anonymous partner will rank after creditors for payment. The anonymous partner is not liable to a third party for the debts of the partnership. He is, however, liable to his co partners for his *pro rata* share of the debts of the partnership. In the commanditarian partnership, the business is carried on in the name of one partner only but the undisclosed partner contributes some specific amount of money. The undisclosed partner will have a share of profits and participate in losses, if any, but his liability will not exceed his specific contribution. The commanditarian partner may not participate in the business activities and is not liable to third parties, but only to the disclosed partner.

(b) This question requires candidates to explain the authority of partners in relation to partnership activities.

Partners have a common interest in carrying on the business of the partnership. By virtue of their common interest, each partner is an agent of the other. Each has implied authority to carry on the business and incur liability on behalf of all the partners. This implied authority extends only to transactions falling within the scope of partnership activity. Partners relate to each other on principles similar to those that govern the relationship between principal and agent.

In *Barker & Company* v *Deiner* (1934) the judge stated that each partner becomes an agent of the others and of the partnership for the purpose of carrying out the partnership business. Each partner therefore has authority to do all acts incidental to the proper conduct of the partnership business and such acts bind his partners and the firm.

A partner is required to perform partnership duties honestly and carefully in accordance with his authority, whether express or implied. A partner also has the duty to account to other partners as they stand in a fiduciary position to one another (*De Jager* v *Olifants Tin 'B' Syndicate* (1912)). Partners are obliged to observe a higher degree of good faith – *uberrimae fides*. They must not do anything prejudicial to the partnership. Partners may not make a secret profit and must avoid a conflict of interest.

4 (a) This question requires candidates to describe the procedure for registering a private company.

The promoter of the company must reserve a name for the company as required by s.29 and 32 Companies Act 2003. This is in order to ensure that the company's proposed name complies with the law and is unique to the company. The Registrar of Companies must, within 10 working days of receiving the application for reservation of the name, inform the applicant whether or not the name is available for registration of a company. The Registrar will also state the length of time that name will be reserved for the applicant's use, which is 30 days. Once he has secured the name for the proposed company, the applicant should then make an application for registration of the company. In terms of s.21 (a) and (b) Companies Act 2003, this application must be made on the prescribed form and must be signed by each applicant. The application must be accompanied by a form signed by every person named as director or secretary containing his consent to be a director or secretary along with a certificate stating that he is not disqualified from being appointed to such office. In terms of s.21 (1) (d) (i) Companies Act 2003, the application must also be accompanied by a document in the prescribed form signed by every person named as a shareholder containing that person's consent to be a shareholder and stating the number and class of shares to be issued as well as the consideration to be paid for such shares. Where any of the above documents have been signed by an agent, a power of attorney authorising the agent to sign the document must accompany the application (s.21 (1) (d) (iv) Companies Act 2003). Where the proposed company is to have a constitution, s.21 (f) Companies Act 2003 provides that the application must be accompanied by a document certified by at least one applicant as the company's constitution. Section 21 (2) Companies Act 2003 requires that the applicants provide the following information in their application:

(i) the full name and address of the proposed company,
(ii) the full name and address of every director, shareholder and secretary of the proposed company,
(iii) the registered office of the proposed company,
(iv) the physical address or principle place of business or other activity of the proposed company.

The application must be accompanied by a declaration, called the solemn declaration, made by the person engaged in the formation of the company stating that the application complies with the provisions of the Act. Finally the application for registration will require payment of the prescribed fees. Upon receipt of a properly completed application, the Registrar will register the company, assign a unique number to it and assign a certificate of incorporation in terms of s.23 Companies Act 2003. Upon incorporation, the company may commence business.

(b) This question requires candidates to explain how the company's constitution can be altered.

Section 43 (2) Companies Act 2003 provides that a company has the power to change or alter its constitution. This alteration is done by way of a special resolution. A special resolution is described in s.2 Companies Act 2003 as a resolution taken by a majority of 75% of the votes of shareholders entitled to vote in the general meeting. Any provision in the constitution, or in any other document, that prohibits the alteration of the companies constriction is invalid – *Andrews* v *Gas Meter Company* (1897). In terms of s.42 (1), the alternation may not conflict with any provision of the Companies Act 2003. As an overriding principle, the alteration must be in good faith and for the benefit of the company as a whole – *Allen* v *Gold Reefs of West Africa* (1900).

5 (a) This question requires candidates to discuss the rules governing the maintenance of capital in Botswana.

Maintenance of capital is one of the major tenets of company law. The rules governing the maintenance of capital are as follows: First, that a company may not purchase its own shares. Second, a subsidiary company must not be a member of the holding company. Third, it is unlawful for the company to give financial assistance for the purchase of its own shares. Fourth, dividends must not be paid to the shareholders except as allowed by the Companies Act 2003. These are general rules and there are exceptions to these rules.

The common law rule that a company may not purchase its own shares was laid down in *Trevor* v *Whitworth* (1887). The House of Lords held that a company had no power to purchase its own shares. The rationale for this rule is to avoid the reduction of capital to the prejudice of creditors.

The second rule provides that a subsidiary company cannot be a member of its holding company. This strengthens the rule against corporate share repurchases. This rule is intended to ensure that a company does not purchase its own shares and that it does not become a member of itself. In terms of s.78 Companies Act 2003, any allotment or transfer of shares by a company to its subsidiary is void.

Section 76 Companies Act 2003 prohibits a company from giving financial assistance directly or indirectly to any person for the purpose of acquisition of its own shares, save in the circumstances provided for by the Act. The statutory exceptions to this rule are that a company may give financial assistance for the acquisition of its own shares if the board has resolved that giving assistance is in the interests of the company, if the terms and condition on which the assistance is given are fair and reasonable to the company and to any shareholders not receiving assistance, and if immediately after giving assistance, the company will satisfy the solvency test.

The last rule governing the maintenance of capital provides that dividends must not be paid to shareholders except as allowed by the Companies Act 2003. Section 58(1) Companies Act 2003 provides that before a distribution can be made by the company to any shareholder that distribution must be authorised by the board, and unless the constitution provides otherwise, be approved by the shareholders by ordinary resolution. The board may approve a distribution at any time and of such amount as it sees fit where it is satisfied that immediately after the distribution, the company will satisfy the solvency test. These rules are intended to ensure that the company's capital is maintained for the benefit of creditors and shareholders.

(b) This question requires candidates to examine the effect of issuing shares at a discount.

The approach adopted by the courts regarding the maintenance of share capital of a company limited by shares is that the share capital constitutes the fund to which the creditors of the company must look for the satisfaction of their claims. Creditors are entitled to rely on the fact that this fund will not be diminished by being diverted from the business of the company. The fund may be diminished or lost in the course of the company's business, but not in any other way. This is called the capital fund theory. The effect of issuing shares at a discount is that it diminishes the capital fund in an unlawful manner. This reduction prejudices the creditor of the company who has a right to rely on the fact that the paid-up share capital of the company may not be intentionally reduced by the company in any other manner than that authorised by the Companies Act 2003.

Tutorial note: *Credit will be awarded for citing* Ooregum Gold Mining Company of India *v* Roper *(1892) on this point.*

6 (a) This question requires candidates to distinguish between annual general meetings and special general meetings.

The annual general meeting is the most important meeting of the company. In terms of s.105 Companies Act 2003, every company must hold an annual general meeting once each year no later than six months after the balance sheet date of the company and no later than 15 months after the previous general meeting.

The first annual general meeting may be held up to 18 months after incorporation. The rationale for this exception is to give the company a chance to commence its business. An annual general meeting will usually be called by the directors of the company. The business to be transacted at the annual general meeting includes:

(i) Consideration and approval of financial statements;
(ii) Receiving the auditor's report;
(iii) Consideration of the annual report;
(iv) Appointment of directors as required by the constitution of the company;
(v) Appointment of an auditor; and
(vi) Opportunity for shareholders to question, discuss or comment on the management of the company in terms of s.97(1) Companies Act 2003.

In contrast, the special general meeting is a term used to define any general meeting of a company other than the annual general meeting. A special general meeting may be called by the directors and any other person authorised by the constitution to call such a meeting. Businesses conducted at special general meetings could include, for example, the removal of directors, the flotation of the company or approval of a change of the company's name.

Written notice for the holding of an annual and special general meeting would have to be given to shareholders 10 days before the meeting. The notice period may be shortened if all parties agree to waive the irregularity.

(b) This question requires candidates to distinguish between ordinary resolutions and special resolutions.

Resolutions are documents that embody the formal decisions of the general meeting. There are two types of resolutions: special and ordinary resolutions. A special resolution is one passed by a majority of not less than 75% of members entitled to vote at meetings. Sometimes, a higher majority will be required by the constitution in order to carry decisions by special resolutions. Business requiring a special resolution would include the removal of directors, or alteration of the constitution. Special resolutions are public documents. They must be kept at the company's registered office and be available for inspection. All other resolutions at special and general meetings are ordinary resolutions. The meaning of special resolution can be found in s.2 Companies Act 2003. Ordinary resolutions require a simple majority of votes and ten days notice. The meaning of ordinary resolution is found in s.95(2) Companies Act 2003.

7 **(a)** This question requires candidates to define corporate governance.

Corporate governance can be defined as the processes, customs, policies, laws and institutions that affect the manner in which a corporation is directed, administered or controlled. Corporate governance involves several stakeholders being government as the legal regulator, the stock exchange, the board of directors, senior executives, employees, creditors and debtors of the company.

Corporate governance is achieved through mandatory and voluntary rules, policies and customs affecting a company. Legal rules concerning governance that would be binding on a company are found in the Companies Act 2003 and in the constitution adopted by the company.

(b) This question requires candidates to identify and discuss various extra-legal codes of corporate governance recognised in Botswana.

Voluntary governance codes have also become increasingly important as a measure of ethical corporate behaviour. In Botswana, the King Code has been voluntarily adopted by some businesses as a governance standard. The Botswana Stock Exchange (BSE) also has a governance code called the BSE Code of Best Practice on Corporate Governance which is a listing requirement of the stock exchange. The Botswana Institute of Directors has also issued a draft code on corporate governance.

The influence of the King Report on Corporate Governance for South Africa (the King Code) on the management of companies in Botswana cannot be understated. The King Code was first developed in South Africa in 1994 by the King Committee led by Mervyn King. The Report contained a code on corporate practices and conduct on good governance. The code was revised in 2002 and dubbed King II. The current code, referred to as King III, was issued in 2009 and is the latest revision of the code.

Implementation of the King Code is voluntary and non-legislated. Its purpose is to achieve the four cornerstones of corporate governance in every enterprise. These principles are: fairness, accountability, responsibility and transparency. The King Code, where adopted by companies, is implemented on an 'apply or explain' basis as opposed to a 'comply or explain' basis. 'Apply or explain' means that a board of directors has the latitude to conclude that to follow a particular recommendation in the Code would not be in the company's best interests. The board could then decide to apply the recommendation differently or adopt an entirely different practice and still achieve the over arching principles of corporate governance, explaining how these principles are applied and the reasons for their non application would result in compliance. The 'comply or explain' model has been criticised for being too legalistic and forcing boards to focus on compliance at the expense of growth and enterprise. The King Code has been voluntarily applied by some boards of directors in Botswana.

The King Code, in particular King II, was adopted as a guide to the drafting of the Botswana Stock Exchange Code of Best Practice on Corporate Governance. In terms of principle D.4 of the Botswana Stock Exchange Code, directors must report the extent to which the company has 'adhered to the code of Best Practice on Corporate Governance and where there has been no compliance with the code, to give reasons'. This suggests that the Botswana Stock Exchange Code adopts the 'comply or explain' model and has yet to be updated to the 'apply or explain' model preferred in King III.

The Botswana Institute of Directors has issued a Draft Code of Corporate Governance, the first of its kind for the institute. Modelled on King III, the draft code is intended to strengthen corporate governance in Botswana when it comes into force. It also proposes to adopt the 'apply or explain model' for companies' choosing to adopt the code.

8 This question requires candidates to discuss the duty of care and skill of auditors.

An auditor must execute his duties with reasonable care and skill. He must certify to shareholders only what he believes to be true. Where he fails to discharge this duty, he is liable to reimburse the company for any losses it suffers.

A case in point is *Re London & General Bank (No. 2)* (1895). The appellant was an auditor of the London & General Bank. The Bank made out certain loans that were unrealisable. When preparing the Bank balance sheet, the appellant entered the loans as assets of the company when he knew that the amounts were unrealisable. He then certified the balance sheet as correct. Relying on the balance sheet, the shareholders declared a dividend. In reality, the dividends were paid out of capital. The company went into liquidation. The liquidator sued the appellant for reimbursement of losses.

The court noted the auditor's duty to be honest. The court stated 'His business [the auditor's] is to ascertain and state the true financial position of the company at the time of the audit, and his duty is confined to that. But then comes the question, how is he to ascertain that position? The answer is, by examining the works of the company. But he does not discharge this duty by doing this without inquiry and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this, his audit would be worse than an idle farce… He must be honest, i.e. he must not certify what he does not believe to be true and he must take reasonable care and skill before he believes what he certifies is true. What is reasonable care in any particular case must depend on the circumstances of that case…'

Returning to the facts of the question, it is apparent that Tshepo & Ross have certified financial statements that are misleading. They have certified what is untrue and reported that to the shareholders. Tshepo & Ross has failed to exercise honesty as well as reasonable care and skill in the exercise of its audit duties. The Bank relied on the audit to its detriment. Tshepo & Ross can be held liable to Khumo Bank for losses suffered as a result of its failure to act honestly and with reasonable care and skill. Tshepo & Ross would be in breach of the company law principle that auditors must use care and skill and certify to shareholders only what they believe to be true. Tshepo & Ross may also find itself facing liability under the law of contract for failure to execute its duties as an auditor with due care and skill. It is implied in its contract that it must exercise reasonable care and skill in the exercise of its duties. Tshepo & Ross may also be sued for breach of its duty of care under delict. In order to succeed the company will have to prove that the auditor was negligent. That is that he did not bring to bear the degree of care and skill which a reasonable auditor would have used in the performance of his work. Khumo Bank will be entitled to claim damages on the basis that it should be restored to the position in which it was before the delict was committed.

9 This question required candidates to discuss the legal requirements for a redundancy.

Redundancy is defined as the employer's decision to lay off or reduce the size of his workforce in an attempt to sustain efficiency or ensure economic survival, particularly during times of economic hardship and unprofitability. The employer's right to regulate the size of his workforce is limited by law where it involves the termination of contracts of employment. Section 25 Employment Act 2010 regulates the termination of contracts of employment on the grounds of redundancy. Along with statute, there is a large body of case law regulating redundancy.

In terms of s.25 (1) Employment Act 2010 recognises the employer's right to terminate contracts of employment in order to reduce the size of his workforce. The employer is expected by law to abide by the first-in-last-out (FILO) principle which requires him to observe the length of service of each employee to be affected by the reduction and ensure that the longest serving employees are the last to face termination. Maipelo's failure to apply the FILO principle will render the redundancy procedurally unfair and entitle Kgotso to compensation.

In terms of s.25 (2) Employment Act 2010, the employer must give written notice of his intention to reduce the size of his workforce by redundancy to the Commissioner of Labour and to every employee likely to be affected by such redundancy. Maipelo's failure to prepare a notice of her intention to reduce the workforce and furnish the same to the Commissioner of Labour and to each affected employee as required by s.25(2) is procedurally unfair.

In *Kesebonye Mbenga and Another* v *Trans Hardware (Pty) Ltd t/a Agrivet Supplies* (2000) the court stated that the notice under s.25 (2) Employment Act 2010 is not a definitive notice of termination but a warning by the employer that prevailing business conditions make termination of contracts probable. The purpose of this notice is to invite employer and employees to start consultations into possible means of avoiding redundancy or mitigating its effects. In *Johnson and Johnson (Pty) Ltd* v *Chemical Workers Industrial Union and others* (1999) the court held that the consultation between the parties to the employment contract will require the employer to disclose all relevant information and the employee to be given an opportunity to make representations. Only after consultation can the employer decide to adopt other measures to proceed with the redundancy. Maipelo's failure to consult will make the redundancy procedurally unfair.

The law also provides that the s.25 (2) notice does not take the place of a s.18(5) notice of intention to terminate the contract which is a mandatory written notice that must be given by employer to employee when after consultation, the employer decides to proceed with retrenchment. The s.18 (5) notice is definitive notice of the intention to terminate the contract of employment. The failure to give Kgotso the mandatory written notice of intention to terminate her employment under s.18(5) is also unprocedural. Kgotso may successfully challenge the redundancy as procedurally unfair and seek compensation from Maipelo on that basis.

10 **(a)** This question requires candidates to discuss the director's duty not to use corporate property, information and opportunity to make a secret profit.

As a fiduciary, a director may not use corporate property, information or opportunity to make a secret profit. If he does, he will be required to account to the company for it. This common law rule is codified in s.130 (1) (f), (g), (j) and (k) Companies Act 2003.

In *Robinson* v *Randfontein Estates Gold Mining Company* (1921), Robinson was the chairman of the board of directors in Randfontein Estates. The company mandated him to negotiate the purchase of a piece of land as its agent. Robinson purchased the piece of land in his personal capacity for £60,000. He then sold it to a wholly owned subsidiary company of Randfontein Estates for £275,000, thus making a secret profit. He never disclosed his interest in the transaction to the company. When the company discovered what Robinson had done, it sued him to recover the secret profit. The court held that the director should not have placed himself in a position where his interest conflicted with his duty. It was held that the company could recover the secret profit from the defendant because he had a fiduciary duty to disclose his interest in the contract and to disclose the profit made by virtue of his position in the company. He would not have known about the land if he were not a director of the company. The company was entitled to keep the land as the director obtained it for the company as its agent.

ODI Limited can sue Oratile to account for the secret profit he made on the sale of the building to the company. Oratile is in breach of his common law and statutory law duty not to place himself in a position where his interests conflict with his duty towards the company. He made a secret profit on the sale using knowledge that he had obtained from his role as director in the company that the company needed new premises. He is therefore liable for breach of his fiduciary duty to the company.

(b) This question requires candidates to explain whether a resolution by the general meeting ratifying a director's secret profit would be valid at law.

Oratile as majority shareholder can use his shareholding to ratify the transaction. ODI Investments (Pty) Limited may, in general meeting, consent to Oratile making the secret profit in the transaction. In *Northwest Transportation* v *Beatty* (1887) the company in a general meeting approved the director making a profit from the sale of his steamer to the company. The court found this ratification to be perfectly valid. Oratile's use of his shareholder majority to ratify the sale and the secret profit he has made is valid at law.

1 This question requires candidates to discuss the protection of human rights under Botswana's Constitution.

6–10 Excellent grasp of bill of rights and its protections and its shortcomings.
0–5 Absent to inadequate understanding of the bill of rights and its protections.

2 This question requires candidates to explain and distinguish between an offer and an invitation to treat.

(a) 3–6 A complete answer showing a clear understanding of an offer.
0–2 A shallow answer with inadequate grasp of the meaning of the term.

(b) 3–4 A complete answer showing a clear understanding of an invitation to treat.
0–2 An inadequate answer with no grasp of the meaning of the term.

3 **(a)** This question requires candidates to describe the two types of partnerships under Roman-Dutch law.

3–4 A good to complete knowledge of types of partnerships.
0–2 Absent to inadequate understanding of types of partnerships.

(b) This question requires candidates to explain the authority of partners in relation to partnership activities.

4–6 A fair to excellent grasp of the authority of partners.
0–3 Absent to inadequate understanding of the authority of partners.

4 **(a)** This question requires candidates to describe the procedure for registering a private company.

3–6 A succinct and detailed discussion of procedure.
0–2 An incomplete discussion with inaccuracies.

(b) This question requires candidates to explain how the company's constitution can be altered.

3–4 a clear answer showing grasp of company law provision governing alteration of the constitution.
0–2 An answer showing inadequate understanding of the procedure.

5 **(a)** This question requires candidates to discuss the rules governing the maintenance of capital.

3–6 Fair to excellent grasp of doctrine and its rationale.
0–2 An inadequate grasp of the doctrine.

(b) This question requires candidates to examine the effect of issuing shares at a discount.

3–4 An excellent grasp of the rationale for the rule.
0–2 Insufficient understanding of the rationale for the rule.

6 **(a)** This question requires candidates to explain and distinguish between annual general meetings and special general meetings.

4–6 A complete answer properly detailing distinctions.
0–3 An incomplete answer showing insufficient knowledge.

(b) This question requires candidates to explain and distinguish between ordinary resolutions and special resolutions.

3–4 A good to clear grasp of the distinction.
0–2 An inadequate understanding of the distinction.

7 **(a)** This question requires candidates to define corporate governance.

2–3 A complete answer showing sufficient knowledge of the term.

0–1 An incomplete answer with inadequate understanding.

(b) This question requires candidates to identify and discuss various codes of corporate governance recognised in Botswana.

4–7 Fair to excellent grasp of extra-legal codes.

0–3 Incomplete answer showing little understanding.

8 This question requires candidates to discuss the duty of care and skill of auditors.

6–10 Good to excellent knowledge of the material.

0–5 A shallow discussion with absence of knowledge.

9 This question requires candidates to discuss the legal requirements for a redundancy.

6–10 A detailed discussion of redundancy.

0–5 A shallow discussion showing inadequate grasp of material.

10 **(a)** This question requires candidates to discuss a director's duty not to use corporate property, information and opportunity to make a secret profit.

4–7 Fair to excellent treatment of the material.

0–3 An inadequate discussion with little depth of knowledge.

(b) This question requires candidates to explain whether a resolution of the general meeting ratifying a director's secret profit would be valid at law.

2–3 Good grasp of the material required.

0–1 Absent to inadequate understanding of the material.