Answers

1 Southern African Customs Union Agreement (SACU Agreement) is an agreement between Botswana, Lesotho, Namibia, Swaziland (BLSN countries) and South Africa. In terms of its ancestry and continued operation, it is the oldest customs union agreement in the world. Botswana, Lesotho, Namibia, Swaziland and South Africa constitute a 'common customs area' (CCA). Industrially, economically and in terms of population size, South Africa is the most important member of the CCA and bulk of the imports of the BLSN countries come from South Africa alone. It is indeed very common for businesses in Lesotho to import goods from South Africa.

The objectives of the SACU Agreement are significant for businesses in Lesotho. They include:

(a) Free and largely unrestricted movement of goods throughout the CCA. Lesotho has a small market of about 1 million people but because of this objective, Lesotho businesses can take advantage of the entire market of CCA of more than 47 million people. Neither customs duties nor quantitative restrictions may be imposed by any of the members of SACU on goods grown, produced or manufactured in the CCA. There are no rules of origin requirements either. Once goods have been imported into any one member country, they can move freely throughout the customs union area without the imposition of any tariff or restriction.

(b) The large CCA significantly increases investment opportunities in Lesotho because of the availability of a relatively large skilled and educated manpower at relatively lower wage levels than South Africa. Indeed, several South African businesses have been relocated into Lesotho.

(c) Increasing globalisation requires the gradual integration of businesses in Lesotho into the global economy. SACU promotes this through enhanced trade and investment. Indeed, Lesotho is Africa's largest exporter of ready-made garments into the market of the United States. This has created both investment and employment opportunities.

(d) Another objective is to promote conditions of fair competition in the CCA. However, the progress to achieve this objective has been painfully slow. It requires development of competition law and policies and to harmonise them across CCA. This has not yet been done.

(e) One of the highlights of the SACU Agreement is the equitable sharing of revenue that is generated by the operation of customs and excise laws. The burden of sharing is borne relatively more by South Africa. The share of SACU revenue that Lesotho gets every year constitutes a significant part of the budget of Lesotho and is responsible for the business-friendly tax regime in Lesotho.

It is a common sight to see traders purchasing merchandise in South Africa for sale in Lesotho. The merchandise may be of South African origin or imported from another country. South African Rand is freely used throughout the CCA including Lesotho. Payment for the goods purchased in South Africa, therefore, is not a problem. Traders in Lesotho are permitted by the SACU Agreement to import into Lesotho any quantity of merchandise from South Africa without paying any customs duty. This was confirmed by the Court of Appeal decision in the case of *Don Min Hua* (2004).

2 This question tests the candidate's knowledge and understanding of the law relating to offer and an invitation to treat.

An offer is to be distinguished from an invitation to treat. An invitation to treat is intended to elicit offers. It may be described as an invitation to others to begin negotiations. An invitation to treat, unlike an offer, has no legal force and any offer it elicits can be accepted or rejected without obligation. It is not always easy to determine whether a statement constitutes an offer or an invitation to treat but the legal distinction between them is of vital importance. An offer, if accepted, brings into being a contract which imposes obligations on the parties to it which can be legally enforced. This is not so in respect of an invitation to treat.

The intention to be legally bound by the offeree's acceptance is necessary because otherwise the agreement will not be enforceable at law. Roman-Dutch lawyers call it *animus contrahendi*. An offer made without *animus contrahendi* cannot give rise to a contract. For example Thabo may offer to take Lerato out for dinner, and Lerato may accept the offer. However, if either fails to keep the promise, he or she cannot be successfully sued for breach of contract. The agreement is not binding because there is no intention to create a legally enforceable contract.

Whether the parties did or did not intend to enter into a legally binding agreement depends on the facts and circumstances of each particular case. In some cases the lack of *animus contrahendi* may appear from the express wording of the agreement, typically in the form of 'honour clauses' to the effect that the agreement only binds in honour and not in law (so called gentlemen's agreement). But in most cases there is no such express stipulation, consequently the English courts use the following guidelines to assist them to determine whether there was an intention to contract or not:

(a) Where an agreement is of a business character the courts presume that the parties intended to create a legally binding agreement. This may however, be rebutted.

(b) Where an agreement is of a social or family character the courts presume the parties did not intend to create a legally binding agreement. For example a promise by a husband to give his wife R1,000 per month will be presumed as not intended to be legally binding. In such cases, lack of *animus contrahendi* appears from the nature of the agreement and surrounding circumstances.

South African courts have not expressly approved these presumptions and they prefer to examine each case on its facts taking into account factors such as the nature of the offer, the words in which it is expressed, the relationship between the parties and the circumstances surrounding the making of the offer to determine if the offer was made with or without *animus contrahendi*.

In *Bird* v *Sumerville* (1960), the court held that the 'publication of an advertisement offering goods for sale at a stated price is not an offer to all who may read it but merely an invitation to treat.' Advertisements for the sale of goods are generally regarded as an invitation to treat. The courts imply an intention to invite offers from the words of the advertisement. An advertisement, therefore, is not an offer but merely an invitation to treat.

3 A plaintiff is not awarded the full amount of their loss if they did not mitigate their damage by taking reasonable steps to limit their loss. Thus if an employer wrongfully dismisses an employee, the latter cannot sit back and claim as damages all the money they would have earned during the period they should have been in employment. They must try to find another job and thus make up some of what they had lost. However, they only have to take reasonable steps – thus the managing director of a big company would not have to take a job mending the roads. In *Forrester's case* (1978), between the time of his dismissal and the hearing of his case, Forrester had earned R300 from doing odd jobs. This amount was deducted when measuring his damages for breach of contract. In the *Victoria Falls case* (1915), the Mining Company reduced their loss of profit by keeping their old machinery working until the power arrived for the new machinery.

It is sometimes necessary to decide whether the plaintiff has incurred a particular item of expenditure to remedy the defendant's breach or to mitigate his damages. Where, for example, the defendant has failed to complete the work he has contracted to perform, the plaintiff may call in an outside contractor to complete the work. He will have to prove that the outside contractor's charges are reasonable if he relies on those charges as proof of the damages he has suffered. However, if he has called in the outside contractor to mitigate the damages he would suffer if the work remained incomplete, it is for the defendant to prove that the plaintiff's action in paying those charges was unreasonable. This is not always an easy distinction to draw.

In *Hazis* v *Transvaal and Delagoa Bay Investment Co Ltd* (1939), the court pointed out that the rule about mitigating damages relates not to what the claimant in fact did, but to what he should have done. It is in essence a claim based on negligence – neglect to do what a reasonable man would do if placed in the position of the person claiming damages. The defendant in such claim says 'admitting that in fact you suffered those damages, you have only yourself to blame for having suffered so much, or at all, because you did not take reasonable steps to protect yourself and, therefore, me.' Both on principle and on precedent the burden of proving that the claimant for damages did not take reasonable steps to mitigate the damage which he actually suffered is upon the one who asserts that those reasonable steps were not taken.

4 This question tests the understanding of candidates as regards the notion of fault in the law of delict.

A wrongful act is not enough to impose liability on the wrongdoer; he must also be at fault. A wrongdoer is at fault if he acted intentionally or negligently. Liability can be based either on intention *(dolus)* or on negligence *(culpa)*.

Intention *(Dolus)*

Dolus is present if the defendant intended to cause harm and was aware of his wrongful conduct. It has two elements: intention to cause harm and knowledge of wrongfulness. Intention in the law of delict is not identical to the desire to cause harm. The wrongdoer will be found to have the necessary intention even if he did not wish the harm to be caused, provided he foresaw the possibility of harm, but nevertheless proceeded with his actions. In *Wilkinson* v *Downton* (1897), Downton never desired to harm Mrs Wilkinson; he was only playing a practical joke on her. Nevertheless, he was deemed to have intended harm to Mrs Wilkinson and was held liable to compensate her.

Intention also has a second element. The wrongdoer must have the knowledge that, under the circumstances it is, or might be, unlawful to cause the harm. This knowledge of unlawfulness is approached the same way as the intention to cause the harm. No intention is found by the court if the wrongdoer did not, at the time of his relevant action, at least subjectively, foresee the possibility that he was causing harm unlawfully. For example, suppose Thabo takes away Peter's car to meet someone at the airport in the erroneous belief that Peter has given his consent. In law, Thabo does not intend to take away Peter's car because he honestly, though mistakenly, believes that he is acting lawfully.

Negligence *(Culpa)*

In the absence of intention, the defendant's conduct may still be wrongful if he did not observe the standard of care which the law required of him. In such a case there is *culpa*. The foreseeability test is employed to determine this. The test is that of a reasonable person. Would a reasonable person in the position of the defendant have foreseen the harm to the plaintiff with such a degree of probability that, under the circumstances, he would either refrain from doing the act or take further precautions to prevent harm? Whenever a wrongdoer has caused harm unlawfully, he will be found to be negligent if he did not comply with the standard of the reasonable man.

In *Cambridge Water Company v Eastern Leather Plc*, an unreported case, the defendant used a chlorinated solvent to degrease pelts in its leather tanning operations. The effluent seeped into the ground below the defendant's premises and was conveyed by percolating water in the direction of the plaintiff's borehole over a period of many years. The plaintiff, a public water company, was unable to use the underground water because it did not meet certain standards. It was held that water company cannot claim damages since at the time the solvent was brought on to the defendant's premises and used, nobody could have reasonably foreseen the resultant damage.

English law uses the duty of care principle to establish negligence. In Roman-Dutch Law, the duty of care test is used to determine wrongfulness and not the fault.

5 The circumstances under which a partnership can be dissolved by the operation of law are as under:

(a) Insolvency: A partnership is dissolved by the sequestration of the estate of the partnership or by the sequestration of the private assets of a partner. When the estate of a partnership is sequestrated, the estate of each of the partners – other than a sleeping or limited partner – has to be simultaneously sequestrated. However, if a partner undertakes to pay the debts of the partnership in full within a period determined by the court and offers adequate security for the payment, then the estate of such a partner will not be sequestrated [s.7(1) Partnerships Procl. 1957].

(b) Supervening impossibility or illegality: If the purpose of the partnership becomes illegal or impossible to achieve, the partnership is dissolved. For example, if X and Y, each owning a cow enter into a partnership agreement to sell the milk and one of the cow dies or, if the two agree to make furniture and the partner with the skill to make the furniture is incapacitated or, if the business of the partnership is destroyed by fire or, the trading licence has been withdrawn by the government for good, the partnership is dissolved.

(c) Death of a partner: Unless there is an agreement to the contrary, the death of any of the partners has the effect of dissolving the partnership. A partnership agreement may validly provide for its continuance for the benefit of the estate of the deceased. If the deceased partner by his will has authorised such a continuance, then it will not be dissolved. If there is no such authorisation in the will, the courts cannot order a continuance.

It is also possible to provide in the partnership agreement that the business shall be carried on by the surviving partners. They will purchase the interest of the deceased partner upon his death. Partners can enter into a so-called buy-and-sell agreement involving an undertaking among the partners each to sell his interest to the survivors and an undertaking by the survivors to buy the deceased's interest. For this purpose, the partners may take out a joint life policy or, each partner may take out a policy on his own life and cede it to the other partners, the survivors being obliged to pay the proceeds to the deceased's estate in part or full payment of the deceased's interest. Under the Partnership Proclamation, the partnership deed must specify the procedure that would be followed on the death of any of the partners [s.5(q) PP 1957].

(d) Partner becoming an alien enemy: It may be treated as a supervening event which makes it impossible for the partnership relationship to continue. However, such a partner does not forfeit his rights after the dissolution either to his partner or to the State; only his ability to enforce them is suspended so long as he is an alien enemy.

(e) Mental illness: When a partner is declared mentally ill under the law by the court, the court may also order dissolution of the partnership or make such order as it deems just.

6 **(a)** When a company is first established, it is usually the promoters who choose a suitable name. This is of some importance in identifying an artificial person, though a little less so now that the Registrar has to allot each company a Company Number as well. The Companies Act 2011 provides that an application for incorporation must state the company's proposed name. Companies are obliged to ensure that its full name and address are clearly stated on all documents issued or signed by or on behalf of the company. For this reason, companies usually keep their name short. Once the company has been incorporated, it is unable to change its name informally and has to follow a detailed cumbersome procedure.

(b) (i) (Pty)(Ltd)

(Pty)(Ltd) stands for 'proprietary limited'. Private limited companies are incorporated companies limited by shares. They have an existence completely separate from that of their shareholder members. Section 15 Companies Act 2011 requires all private limited companies include at the end of its name, the words 'Proprietary' or its abbreviation 'Pty' and 'Limited or its abbreviation 'Ltd'. Non-profit private limited companies of an essentially charitable nature are exempted from using the suffix Limited or Ltd as part of their name.

The suffix (Pty)(Ltd) indicates that one is dealing with a private limited company. The reason for requiring the suffix 'limited' is to publicise the fact that they are indeed limited companies, the liability of their members being limited to any amount remaining unpaid on the value of the shares held. Hence if shares are fully paid up the shareholders have no further responsibility for the debts of the company.

(ii) Ltd

Section 15 Companies Act 2011 requires all companies include at the end of its name, the word 'Limited or its abbreviation 'Ltd'. The use of the abbreviation 'Ltd' indicates that one is dealing with a public company. Like the private companies, public companies are also a separate legal entity from its members with its own name. Shareholders in a public limited company, like the private company, enjoy limited liability determined by any amount remaining outstanding in relation to the shares they hold.

The major difference between the public limited company and the private limited company is that only the public companies are allowed to issue shares to the general public. Public limited companies tend to be large and act as a mechanism for investment from outsiders. Lesotho does not have a stock exchange as yet. However, the stock exchange at Johannesburg in South Africa may be used to list a Lesotho public company. Public companies are subject to much stricter controls, both at common law and under the companies legislation than are private companies.

7 Winding up is the process whereby the life of the company is terminated. It is the formal and strictly regulated procedure whereby the business is brought to an end and the company's assets are realised and distributed to its creditors and shareholders.

Judicial management, on the other hand, is a means of safeguarding the continued existence of business enterprises in financial difficulties, rather than merely ensuring the payment of creditors. The aim of the judicial management order is to save the company, or at least the business, as a going concern, by taking control of the company out of the hands of its directors and placing it in the hands of a judicial manager.

A company may be placed under judicial management by the court when a company is in difficulty,

(a) because of mismanagement or any other issue, or

(b) because the directors or other officers of the company have acted in a way that is contrary to the provisions of the CA 2011, or

(c) the assets of the company are being misapplied or misused and the viability of the company is threatened.

The first objective of the judicial management is to revive the company as a going concern. The judicial manager takes custody and control of the company's assets and is required to manage the company in the most economic and most conducive manner in the interest of the shareholders. In practice, the judicial manager, in consultation with the directors and shareholders, is likely to develop a set of strategies to revive the company. Indeed, s.160(1)(e) CA 2011 requires the judicial manager to 'advise the court' within six months of their appointment, whether the company can be revived. Directors remain in office. However, the powers, functions and duties of the directors and the shareholders are circumscribed by the management strategies of the judicial manager. Once a company has been put in judicial management, it is no longer possible to commence or continue legal proceedings against the company or its property, without the consent of the judicial manager or the order of the court.

An associated objective of judicial management is possibly to achieve a better result for the company's creditors as a whole than would be likely if the company were to be wound up. It is for this reason that a judicial manager is required to have experience in administering, or advising on the administration, of insolvent estates of companies. [s.126 CA 2011]. It is the unsecured creditors that stand to benefit by the judicial management. Secured creditors hardly need protection because they enjoy a preferential right over the property of the company. [s.128(2) CA 2011]

If the judicial manager is of the opinion that the judicial management would not be able to revive the company or help the company to meet its obligations, presumably towards its secured and unsecured creditors, they would apply to court for cancellation of the judicial management order and issue a liquidation order.

8 This question requires the candidates to advise the directors how to implement their proposals and the existing shareholders their rights if the proposals are implemented.

(a) Since the entire authorised capital of Sanderson Foods Ltd has been used up to issue fully-paid ordinary shares, the first step would be to increase the authorised share capital so that new shares could be issued to Peter. Model article 27 authorises the shareholders to increase the share capital by passing a special resolution. Accordingly a special resolution would have to be passed by calling an extraordinary meeting to increase the authorised capital, say by R5 million divided into 5 million shares of R1 each. Once the authorised capital has been increased, directors will be able to issue new 1·5 million ordinary shares of R1 each at a premium of R1 to Peter. The Registrar has to be notified within 15 days of such issue in the Form 7 format. Form 7 requires that the Registrar be notified of the name of the shareholder to whom new shares have been issued, the date they were issued, the number of shares issued and their nominal value, the occupation of the new shareholder and his contact address. [s.20 CA 2011]

Section 19 Companies Act 2011 requires that if the consideration for the new shares consists of property then the board has to determine the consideration for which the shares are to be issued and, further, resolve that in their opinion, the consideration for the issue is fair and reasonable to the company, as well as, to the all existing shareholders. Directors must sign a certificate to that effect and lodge that certificate with the Registrar within 15 working days of the resolution. Making such a certificate knowing it to be false or misleading in a material way is an offence punishable, on conviction, with a fine of R500,000 or imprisonment for 20 years, or both. [s.175 CA 2011]

The board of directors of Sanderson Ltd, thus, would have to make sure that R3 million is fair and reasonable for the food outlets not only to the company but also to all the existing shareholders. Section 63 Companies Act 2011 provides that it is a 'fundamental duty' of the directors to exercise their powers and perform their duties in good faith using such care, diligence and skill that a reasonable director would exercise in similar circumstances. Failure to do so makes the directors liable to the company and the shareholders individually and severally.

(b) Neither the Companies Act 2011 nor the model articles have any specific provision on the rights issue. Companies are free to make provision for rights issue in their articles. It is assumed that the articles of Sanderson Ltd provide for it; if not articles would have to be amended. Section 20 Companies Act 2011 entitles a company to issue shares at any time and in any number it thinks fit so long as the total number of issued shares does not exceed the number of authorised shares. The authorised capital must be increased appropriately to take care of new shares for Peter and the rights issue. After the rights issue has been subscribed, the Registrar needs to be notified within 15 working days about the details of the rights issue and the contact details of the persons who have subscribed to the rights issue. The share premium has to be transferred to a share premium account.

9 This question tests candidates' understanding about redundancy and termination of a fixed term contract before the expiry of its fixed term.

The concept of unfair dismissal is a creature of statute and the relevant statutory provisions are contained in the Labour Code Order 1992, as amended.

(a) Redundancy

The phrase 'redundancy' has not been used in the Labour Code Order, 1992, and for that matter in any other legislation in Lesotho. Section 66 Labour Code provides, in effect, that if an employee has been dismissed for a reason 'based on the operational requirements of the undertaking, establishment or service', then such dismissal shall not be regarded as unfair dismissal. The words 'operational requirements' of an undertaking or establishment have been interpreted to cover both redundancy and retrenchment. Dismissal has been defined to mean termination of employment at the initiative of the employer.

Redundancy occurs when an employer has ceased, or intends to cease, the business for which the employee was hired. It may also occur when the job for which a person was employed disappears for one reason or another.

On the facts of the problem, there is no indication that Surepass Teaching Ltd or the Surepass Accounting Coaching Institute have ceased to carry on their business. However, the facts do reveal that the work of the particular kind for which Joanthan was employed, namely, the preparation of teaching materials on taxation for South African students enrolled at Bloemfontein Technikon, has ceased and is no longer required. Accordingly, there is a *prima facie* case that the operational requirements of the Institute no longer require Joanthan's services.

So long as an employer fairly selects the employee for redundancy, the dismissal is not regarded as unfair. The employee is also not entitled to a hearing if the dismissal is on the ground of redundancy. From the facts, there is no indication that Joanthan was selected unfairly for dismissal on the ground of redundancy.

(b) Compensation

Section 61 Labour Code clarifies that all contracts of employment, unless the Code indicates otherwise, are governed by the provisions of the Labour Code. A contract of fixed duration, as Joanthan has, is, in terms of s.62, subject to s.66 of the Code. As pointed out above, the dismissal on the ground of redundancy is regarded as a fair dismissal under s.66. Therefore, Joanthan may not be able to claim compensation for termination of his contract before the completion of its term, if it was on the ground of 'operational requirements' of the undertaking.

However, Joanthan is entitled to severance payment. Section 79 Labour Code provides that an employee who has completed more than 'one year of continuous service' with the same employer is entitled to severance payment, even if the dismissal was fair. Severance payment is equal to two weeks wages for each completed year of continuous service. Joanthan has been in continuous service for 17 months and so the formula would entitle him to receive some 23 days of wages.

If the Institute denies him severance payment as provided in the Labour Code, Joanthan can make use of the newly established Directorate of Dispute Prevention and Resolution (DDPR). It is a cost-effective way to settle disputes with an employer in a short time. DDPR uses conciliation and arbitration and has an excellent record of settling disputes in a fair manner. In the alternative, Joanthan may approach the Labour Court but the resolution of dispute is likely to take more time and cost more money.

10 This question tests the candidates' knowledge regarding formation of a contract and the doctrine of fictional fulfilment.

(a) (i) Thabo's offer and Susan's acceptance of that offer.

One of the requirements of a legally binding agreement is that parties must intend to create legal relations. The general rule is that both parties to a contract must understand that the agreement will create legal obligations which, if breached, would result in an action for damages.

In the problem scenario, Thabo and Susan are relatives. They can enter into a binding contract only if they have the requisite intention *(animus contrahendi)* to create legal relations. If the agreement between relatives is of a business nature, *animus contrahendi* is implied. The agreement between Susan and Thabo is of a business character; it involves benefits and detriments on both the parties. Accordingly, Thabo's offer to pay Susan R2,000 per month if she gave up her job as a typist and study to be a Registered Accountant was accepted by Susan by resigning from her job and enrolling as a student at the Centre for Accounting Studies for the Registered Accountant programme.

(ii) Susan's legal position with regard to the payment of R2,000 per month while she continues to study.

Since the agreement is legally enforceable, Thabo has a legal obligation to pay Susan R2,000 per month for so long as she remained at the Centre for Accounting Studies for the Registered Accounting programme. Of course, it did not mean that the payment should be for an indefinite period; it has to be for a reasonable period only. What is a reasonable period is a question of fact depending on the facts and circumstances of each case. This is known to everyone preparing for ACCA exams. It is not unusual for a student to take six years instead of four to pass the registered accountant's examinations; this fact should have been in the contemplation of Thabo that such an eventuality may arise. Of course, if Susan took more than six years, then Thabo may escape liability on the ground that he never intended to support Susan for an unreasonably long period. Since that is not the case, Thabo is obliged to continue paying Susan R2,000 per month. This is an implied obligation that Thabo assumed.

(b) Award of R5,000 bonus

In Roman-Dutch Law, a contract with a suspensive condition is valid and binding from the moment it is made and neither party can resile from it. Thabo, therefore, cannot withdraw his promise to pay Susan a bonus of R5,000 unilaterally.

Of course, Susan has to fulfil the condition before she can claim R5,000. However, if the conditional debtor – Thabo, in the problem – prevents the fulfilment of the condition, then the doctrine of fictional fulfilment applies and the condition is deemed fulfilled as against the conditional debtor who prevented its fulfilment in order to avoid his contractual obligation: see *Scott* v *Poupard* (1971). Thabo, therefore, is bound to pay Susan a bonus of R5,000, more so because she has passed the examination by December 2013.

Fundamentals Level – Skills Module, Paper F4 (LSO)
Corporate and Business Law (Lesotho) **June 2014 Marking Scheme**

This marking scheme is given only as a guide to markers in the context of suggested answers. Scope is given to markers to award marks for alternative approaches to a question, including relevant comment, and where well-reasoned answers are provided. This is particularly the case for essay type questions where there may often be more than one way to write an answer.

1 This question tests candidates' understanding regarding the Southern African Customs Union (SACU).

8–10 marks	Answers will demonstrate a clear knowledge and understanding of the nature and significance of SACU and accurate application of legal principles to the problem scenario.
5–7 marks	Answers will be generally sound in relation to the law but may be lacking in analysis or application.
0–4 marks	Answers will demonstrate some knowledge of the law relating to the question but not to the degree expected of a reasonably satisfactory answer. They may be weak in analysis and/or application. Lower band answers would show little or no understanding of the law relating to the question.

2 This question examines the candidate's knowledge and understanding of the law relating to offer and an invitation to treat.

8–10 marks	A clear understanding of the difference between an offer and invitation to treat. Examples or cases will be provided and credited.
5–7 marks	Shows awareness of the topic of invitation to treat but perhaps lacking in legal knowledge or perhaps only a limited understanding of the law.
0–4 marks	A very basic answer showing little knowledge or explanation of the topic.

3

8–10 marks	A thorough explanation of the duty to mitigate losses with some examples or cases.
5–7 marks	Shows some knowledge of the duty to mitigate losses but perhaps lacking in details. Cases/example not provided.
0–4 marks	A limited understanding of the duty to mitigate losses.

4 This question asks candidates to explain the notion of 'fault' in delict.

8–10 marks	Full explanation of the notion of 'fault' in delict.
5–7 marks	Reasonable treatment or a less complete treatment of the topic.
0–4 marks	Very weak answer, focussing only on some aspects of the topic.

5 This question requires candidates to explain the various circumstances in which partnerships may be dissolved by the operation of law.

8–10 marks	Thorough understanding and discussion of the circumstances in which dissolution of a partnerships may take place because of the operation of law.
5–7 marks	Reasonable treatment or a less complete treatment of the topic. Fair to good knowledge of the rules.
0–4 marks	Weak answer, focussing only on some aspects of the topic. Lower band answers will be very unbalanced demonstrating no real understanding of the topic.

6 This question invites candidates to explain the significance of a name for a company limited by shares and explain the terms that are used as a suffix to the name of a company.

8–10 marks	Good to complete answer which shows the significance of a name for a company and a knowledge of the meaning and effect of the term Ltd and Pty.
5–7 marks	Some knowledge of the topic but lacking in detail.
0–4 marks	Very little, if any, understanding of the topic.

7 This question requires the candidates to explain judicial management as an alternative to winding up under the Companies Act 2011.

8–10 marks	Complete explanation of the circumstances when a company may be put under judicial management and its objectives.
5–7 marks	Reasonable, but less than full, explanation of the topic.
0–4 marks	Unbalanced answer merely dealing with partial explanation or demonstrating no real understanding of the nature of the question.

8 This question tests candidates' understanding of the legal rules regarding raising of the capital.

8–10 marks	Answers will demonstrate a clear knowledge and understanding of the rules regarding the issue of capital by a company limited by shares. Sound application.
5–7 marks	Answers will be generally sound in relation to the law but may be lacking in analysis or application.
2–4 marks	Answers will demonstrate some knowledge of the law relating to the question but not to the degree expected of a reasonably satisfactory answer. They may be weak in analysis and/or application.
0–1 mark	Little or no understanding of the law relating to the question. Extremely weak in terms of analysis and application.

9 This question tests candidates' understanding about redundancy and termination of a fixed term contract before the expiry of its fixed term. It has two parts; both parts carry equal marks.

(a)	4–5 marks	The best answers will provide a comprehensive understanding of the concept of redundancy as provided in the Labour Code and apply it accurately to the facts of the problem in a clear manner.
	2–3 marks	Good answers will provide a reasonable explanation of the concept of redundancy and apply it reasonably well to the facts of the problem.
	0–1 mark	Weak answers might recognise some elements of the concept of redundancy but will show no ability to analyse or answer the problem as set out.
(b)	4–5 marks	The best answers will provide a comprehensive understanding of the concept of severance payment and ways to obtain it as provided in the Labour Code. Correct application of rules to the facts in the problem.
	2–3 marks	Good answers will provide a reasonable explanation of the concept of severance payment and ways to obtain it and a fair application of the rules to the facts.
	0–1 mark	Weak answers might recognise the elements of severance payment and ways to enforce payment but will discuss them in a sketchy or unsatisfactory manner or not answer the problem as set out.

10 This question tests the candidates' knowledge regarding formation of a contract and the doctrine of fictional fulfilment.

8–10 marks	Good explanation of both the formation of the contract and the doctrine of fictional fulfilment. Good analysis of the scenario and consistent application of the relevant legal principles.
5–7 marks	Fair explanation of the general concepts but lacking in detail. Lower band answers would show only some understanding of the situation.
3–4 marks	Unbalanced answer, perhaps lacking detail, or application.
0–2 mark	Weak answer lacking in knowledge, with little or no reference to the legal regime.