Answers

1 This question requires candidates to discuss the various sources of law that South African law is derived from.

The South African law is derived from a number of sources. Some are authoritative while others have only persuasive authority. Courts are bound by authoritative sources, whereas persuasive sources may lead a court to come to a specific conclusion.

The first important source is legislation. Legislation relates to the making of law by a competent authority. The law is found in statutes enacted by Parliament and provincial legislatures, and by-laws. It also relates to proclamations and regulations made by subsidiary bodies like the President and ministers. Some Dutch legislation (pre-1652, but not after 1806) still applies in South Africa, but only if ratified and accepted by the South African law.

The Constitution of 1996 is the most important source of law in South Africa. The Constitution is the supreme law of South Africa and law, passed by Parliament, which offends the Constitution, is invalid.

Secondly, custom is also recognised as a primary source of law. Certain rules of conduct are observed because they have become customary among a specific group of people. Customs played a dominant role in primitive communities, but are less important in modern societies. However, the application of a custom can be so forceful that an unwritten rule is thereby created. In *Van Breda* v *Jacobs* (1921) it was held that a customary rule will only be recognised as a legal rule if it is reasonable, has existed for a long time, is generally recognised and observed by the community and its contents are certain and clear.

Thirdly, judgements of the courts, after 1910, are also an authoritative source of law. This is known as case law. The South African courts are divided into superior and lower courts. Superior courts are the Constitutional Court, the Supreme Court of Appeal and the High Courts. Examples of lower courts include the magistrates' courts and the small claims court. The doctrine of *stare decisis* also applies to case law and a court's decision creates a precedent that must be followed by the judges of the same division and courts of a lower order that are subordinate to that court. A court is only bound by the *ratio decidendi* of a decision, which is the legal principle laid down by a court in a previous decision, and which was necessary for the decision or order.

Fourthly, Roman law and Roman-Dutch law also played an important role in the development of South African law. Roman law and Roman-Dutch law are still direct sources of South African law. The body of law provided by the old authorities is known as the common law.

Lastly, if nothing can be found in South African law a judge will turn to foreign law for guidance on a matter. Foreign law is, however, only a persuasive source of law. Customary law, like indigenous law, is also recognised as a persuasive source of law.

Textbooks and journal articles can also be a persuasive source of law, if they are methodical and convincing. They do not have inherent authority on their own. These works are written by academics, lawyers, judges, etc.

2 This question asks candidates to explain and distinguish between *essentialia*, *naturalia* and *incidentalia* as contractual terms.

A term in a contract is a provision which imposes, on the contracting parties, one or more contractual obligations to act in a specific manner or to refrain from performing a certain act. It defines the contractual obligations to which parties bind themselves and which they can enforce against each other.

Terms are then classified as *essentialia*, *naturalia* or *incidentalia* for the purpose of providing a guideline for the analysis of different types of contracts.

Essentialia are those terms which are essential for the classification of a contract as belonging to a particular type of contract. For example, to qualify as a contract of sale two of the essential elements that should be present are that the seller binds himself to deliver something to the buyer and the buyer binds himself to pay a sum of money in exchange for the asset received from the seller. If the buyer will not pay a price for the asset, but will deliver some object in exchange for the asset, then it is not a contract of sale (as the essential element of payment is absent) but rather a contract of exchange. If certain essential elements of a contract of sale are present then certain results or *naturalia* will follow automatically by operation of law.

Naturalia are terms which the law attaches to every contract of a particular class. *Naturalia* help to determine the rights and duties of the contracting parties as well as the effects and consequences of the obligations. The operation of the *naturalia* may be excluded by the parties by way of an agreement.

Once parties have agreed on the type of contract they want to conclude, further details are usually necessary. The *essentialia* therefore only provide a bare outline for the contract. The *naturalia* may provide sufficient additional requirements, but parties might want to add special requirements to the contract; these additional terms are referred to as the *incidentalia*. For example, parties can agree that money due will be paid in instalments.

3 In this question candidates have to discuss the different types of partnerships.

Different types of partnerships exist. Partnerships can be categorised as: universal and particular partnerships and ordinary and extraordinary partnerships.

A universal partnership involves partners contributing all their property or profits to the partnership. This is usually for an open-ended period and for a wide range of purposes.

The first type of universal partnership, the partnership of all property (*societas universorum bonorum*), is a partnership where the partners agree to contribute to the partnership all the property they own as well as all the property which they may own in future. This partnership is usually used to procure an equitable patrimonial dispensation in a cohabitive relationship or in those cases where the laws of marriage do not provide the marriage partners with the desired patrimonial results.

The second type of universal partnership is a partnership of all profits (*societas universorum quae ex quastu veniunt*). This is a partnership of all profits derived from all business conducted by the partners during the existence of the partnership. Contrary to the partnership for property, this partnership is limited to profits only. The partnership activities are not limited to one type of business. This type of partnership is therefore simply a commercial partnership which is not limited to a specific trade or enterprise.

A particular partnership is a more temporary partnership where partners contribute their resources for a particular purpose and the partners will only share in the profits derived from that particular project.

An ordinary partnership is aimed at the acquisition of material or patrimonial benefit. The partners will work together on equal footing in order to attain a mutual benefit. In an ordinary partnership, partners share in the net losses of the partnership and are jointly liable to creditors of the partnership. Ordinary partners become jointly and severally liable for the debts of the partnership after dissolution of the partnership. This type of partnership must be distinguished from an extraordinary partnership where the liability of certain partners is limited. There are two types of extraordinary partnerships, namely, an anonymous (or silent) partnership and a partnership *en commandite* (or commanditarian partnership).

An anonymous partnership is formed when people agree to trade as a partnership in the name of some of the partners. The silent partner does not act as a partner towards the outside world. This will provide the silent partner with some form of protection against personal liability as creditors of the partnership cannot hold the silent partner liable. However, the silent partner shares the full risk of the partnership and remains liable towards the co-partners for his or her proportional share of the partnership losses.

A partnership *en commandite* is similar to a silent partnership, but should be distinguished from it. The partner *en commandite*'s liability to the co-partners is limited to the losses of the partnership to an agreed amount, on condition that a fixed share of the profits is received. If the partnership incurs losses the liability of the partner *en commandite* will not exceed the fixed amount.

4 This question is in two parts. The first part asks candidates to explain what is meant by constructive dismissal and, the second part, by unfair dismissal.

(a) constructive dismissal

The Labour Relation Act 1995 provides for six forms of dismissal. One such dismissal is constructive dismissal. A constructive dismissal takes place when the employee terminates the employment relationship, but only because the employer continued to make employment intolerable. The resignation or termination of the employment by the employee is therefore a dismissal by the employer.

(b) unfair dismissal

The Labour Relations Act distinguishes between dismissals that are automatically unfair and those where the employer must prove that the dismissal was in fact fair. The basic principle inherent in an automatically unfair dismissal is that there must have been an infringement of a basic human right. If a dismissal is deemed to be invalid or automatically unfair, then the court is usually given no discretion in deciding the fairness of such dismissal – it is automatically unfair.

An employee is entitled to a higher level of compensation for an automatically unfair dismissal than for other types of dismissal, i.e. up to 24 months' remuneration (as opposed to 12 months' remuneration for other types of dismissal).

The Labour Relations Act lists nine types of dismissals that will be considered to be automatically unfair. They are: if the employer acts in contravention of freedom of association in dismissing an employee, if the employee is dismissed for participating in a protected strike or protest action, if the employee is dismissed for refusing to provide replacement labour where other employees are striking, if the employee is dismissed for exercising a right granted in terms of the Labour Relations Act, if the employee is dismissed to compel the employee to accept a demand made by the employer, if the employee is dismissed for any reason related to pregnancy; if the dismissal constitutes unfair discrimination against an employee, if the employee is dismissed because of a transfer of a business as a going concern or if an employee is dismissed because the employee has 'blown the whistle' or has made a protected disclosure to certain people or an institution in terms of the Protected Disclosures Act 2000.

With regards to a dismissal based on unfair discrimination, a certain measure of discretion is allowed. A dismissal based on unfair discrimination will be fair if the discrimination is based on 'inherent requirements of the particular job' or if the 'employee has reached the normal or agreed retirement age for persons employed in that capacity'.

5 This question is in two parts. The first part asks candidates to explain what is meant by corporate governance and, the second part, by codes of best practice.

(a) The term 'corporate governance' does not have a universally accepted definition. The system of corporate governance exists for the purpose of effectively restricting and monitoring the powers vested in decision-makers. Some experts define corporate governance as the systems by which companies are directed and controlled. According to these experts, the primary concern of corporate governance is with those who supply finance to companies, and more narrowly, shareholders. However, corporate

governance is concerned with the enhancement or protection of the rules and principles of company direction for the purpose of accommodating the modern environment within which companies operate and the imposition of stricter checks and balances to curb or alleviate malpractices or wrongdoings by those engaged in corporate decision making. Corporate governance for purposes of company law, in actual fact, covers the whole area described in company law terminology as 'the internal company law'. It also covers other areas, for example, the debate on the role and function of stakeholders like employees, creditors, consumers and the community at large. In this wide sense, corporate governance could perhaps be defined as the process of controlling management and of balancing the interests of all internal stakeholders and other parties who can be affected by the corporation's conduct in order to ensure responsible behaviour by corporations and to achieve the maximum level of efficiency and profitability for a corporation.

In South Africa, the need for good corporate governance was linked to the dismantling of the apartheid system and the developments in this field in the United Kingdom and elsewhere. In 1994 the first draft of the *King Report on Corporate Governance* was released. The second report was released in 2002 and the third in 2009 and it formed the blueprint for *The Code of Corporate Practices and Conduct.* This Code originally applied to all companies listed on the Johannesburg Stock Exchange. The King III Report, however, has a wider application and applies to all companies.

(b) Companies exist within a framework which is set by the law, regulations, codes of best practice and the company's own constitutional structures. The South African *King Report on Corporate Governance* is an example of a code of best practice. This Code (*King III*, 2009) is currently applicable to all South African companies. The Code operates on an 'apply or explain' basis. Companies should apply the principles or recommendations of best practice as provided for in the Report and if they do not, then they need to explain why they did not comply. It is the duty of the board to override a recommended good governance principle if the board is of the opinion that it is in the best interest of the company to do so. It is, however, important to distinguish between these self-regulatory principles and mandatory legislative requirements.

6 This question is in two parts. The first part asks candidates to explain how directors can lose their office and in the second part candidates must discuss the ways in which directors may be appointed.

(a) A director may be removed from office by the shareholders or the board of directors. This right to remove a director is in addition to the right to place a director under probation or to have him declared delinquent in terms of s.162 Companies Act (CA) 2008.

A director can be removed by the shareholders at a general meeting by way of an ordinary resolution. This is possible despite any agreement between the shareholders and a director not to remove that director.

The board of directors may also remove a director if the company has more than two directors and a shareholder or director alleges that a director has become ineligible or disqualified in terms of s.68 CA 2008, or a shareholder or director alleges that the director is incapacitated to the extent that he is unable to perform his duties or a shareholder or director alleges that a director has neglected the performance of his duties and functions.

Before the resolution is put to vote by the shareholders or the directors, the director in question must be given notice of the meeting and a copy of the proposed resolution. He must also be given a reasonable opportunity to present his case at the shareholders' meeting or to the board of directors.

(b) The first directors of a company are the incorporators of the company and such persons serve as the directors of the company until the minimum number has been appointed or elected. See s.67(1) CA 2008 in this regard.

A director may be appointed by a person named in, or determined in terms of, the Memorandum of Incorporation (MOI). Each director, other than the first directors, a director appointed in terms of the MOI and an *ex officio* director, must be elected by the shareholders. Unless the MOI provides otherwise, the election is to be conducted by a series of votes and each director is appointed in terms of a separate resolution.

In the case of a profit company, the MOI must provide for the election by shareholders of at least 50% of the directors. This means that a company could require 50% or less of its directors to be appointed by parties other than the shareholders, such as the board of directors, other stakeholders or outsiders.

Provision is also made in the Act for *ex officio*, alternate, temporary and nominee directors.

7 This question requires candidates to discuss the pre-incorporation contract as provided for in s.21 Companies Act (CA) 2008.

(a) A pre-incorporation contract is a contract which promoters enter into, naming the company as a party prior to its existence as a separate legal person. The legal difficulty, of course, is that a company cannot enter into a binding contract until it has become incorporated, and it is not bound by any contract made on its behalf prior to incorporation. The legal consequences of the above propositions are that the company, when formed, is not bound by the contract even if the third party had conferred some benefit under the contract. In *Kelner* v *Baxter* (1866) a contract was entered into supposedly on behalf of a company, but before it was actually registered. Although goods were supplied by the third party under the contract, it was held that the company could not be held liable under the contract, as it had not been in existence at the time the contract was entered into. The parties who had purported to act as its agents were liable on the contract but the company itself was not held responsible. Furthermore, the company cannot ratify the agreement at common law even after it has become incorporated.

To overcome the aforesaid problem, s.35 CA 1973 was adopted. Section 21 CA 2008 now regulates the position concerning pre-incorporation contracts. In terms of this section a person may enter into a written agreement in the name of, or purport to act in the name of, or on behalf of an entity that is yet to be incorporated. A pre-incorporation agreement is defined in s.1 as 'an agreement entered into before the incorporation of a company by a person who purports to act in the name, or on behalf of, the company, with the intention or understanding that the company will be incorporated, and will therefore be bound by the agreement'. There are no formal requirements to conclude a s.21 contract, except that it has to be in writing.

Within three months after the date on which the company was incorporated, the board of directors may completely, partially or conditionally ratify or reject the pre-incorporation contract (s.21(4)). If the board does not ratify or reject the pre-incorporation contract within three months after the date on which the company was incorporated, the company will be regarded as having ratified the agreement or action (s.21(5)). If the pre-incorporation contract has been ratified, actually or deemed, the agreement is enforceable against the company as if the company had been a party to the agreement at the time when it was made. The liability of the person who purported to act on behalf of the company is discharged to the extent that it is so ratified (s.21(6)). The promoter may also be discharged from liability where the company, once incorporated, enters into an agreement on the same terms as the pre-incorporation contract or in substitution for it. If the company is not incorporated then the promoter is jointly and severally liable with any other such person for liabilities in the pre-incorporation contract if the company is not incorporated, or if after incorporation the company rejects any part of the agreement. If the promoter is liable for total or partial rejection of the contract, the promoter may claim against the company for any benefit it has received or is entitled to receive in terms of the agreement (s.21(7)).

(b) It is important to note that the common law is not excluded by s.21. The alternative options, namely the contract for the benefit of a third party, trust, delegation or cession are still possible. Since there are no formal requirements for a s.21 pre-incorporation contract (except that it has to be in writing) it can be difficult to determine which construction was used. This is important because personal liability does not follow automatically in terms of the common law, as in s.21.

8 This question requires candidates to analyse the problem scenario by discussing the law relating to capacity and representation, in the context of company law.

Firstly, candidates have to indicate that the contract that Benjamin concluded falls within the scope of the business of Amazing Leather (Pty) Ltd. It is reasonable to assume that to buy equipment to cut leather belts with falls within the ambit of a company that sells leather. In terms of the common law, a contract is *ultra vires* the company when the conclusion of the transaction is beyond its legal capacity. Section 19(1)(b) Companies Act (CA) 2008 considerably widens the capacity of a company. It provides that a company has all the legal capacity and the powers of a natural person except to the extent that a juristic person is incapable of performing any such power, or the memorandum of incorporation provides otherwise (s.19(1)(b)(ii)). A company's capacity is therefore no longer limited by its main or ancillary object or business. Although the memorandum of incorporation may limit, restrict or qualify the purposes, powers and activities of the company (in other words, impose restrictions on its capacity), no such restriction would render any contract that conflicts with the restrictions invalid (s.20(1)(a)). In this question the contract falls within the main business of the company, but even if it did not it would still be a valid contract based on s.20(1)(a).

Secondly, s.20(7) CA provides that a person dealing with a company in good faith is entitled to presume that the company has complied with all the formal and procedural requirements in terms of the CA, the memorandum of incorporation and any rules of the company, unless the person knew or reasonably ought to have known of any failure by the company to comply with its formal and procedural requirements.

There is no indication that Chris knew or should have known about this requirement (to obtain the authorisation of the shareholders by way of an ordinary resolution for contracts exceeding R200,000). There is also no indication that Chris was aware of the fact that Benjamin did not comply with the requirement and therefore acted in bad faith.

The company is therefore bound by the contract concluded by Benjamin.

9 This question requires candidates to analyse the problem scenario from a perspective of partnership law. In particular, it requires candidates to explain whether a valid partnership has been established. Candidates therefore have to discuss the essential elements of a partnership.

Although a partnership is a special type of contract, it is still a contract and compliance with the general requirements for a valid contract is therefore necessary. The parties to the contract must have contractual capacity. The parties must reach an agreement. The contract must be lawful. It must be possible to reach performance. Contractual formalities, if any, must be met. There is no general requirement that the agreement must be in writing, but it is advisable.

The three essential elements of a partnership are that each partner must contribute towards the partnership, the partnership must have the making of profit as its object, and the business of the partnership must be carried on for the joint benefit of the partners. Some argue that a fourth requirement should also be mentioned, namely that that contract between the parties should be a legitimate contract. This is, however, a general requirement for all contracts and not innate to partnership agreements (see *Bester* v *van Niekerk* (1960)).

When a court has to judge whether a particular contract is a partnership agreement, attention will be given to the presence of the *essentialia* and the intention of the parties. The agreement must be entered into with a clear intention of creating a partnership

(see *Pezutto* v *Dreyer* (1992)). If the parties intended to establish a partnership and the *essentialia* are present, the contract is clearly a partnership agreement.

Each partner must make a contribution, or give a binding undertaking to make a contribution. The contribution may be in the form of money, corporeal or incorporeal things, expertise or labour. A contribution may also consist of a combination of different types of contributions. In general, any contribution is valid as long as it has commercial value although a contribution does have to be capable of 'pecuniary assessment' as labour or skill will also qualify as valid contributions (see *Pezutto* v *Dreyer* (1992)). The nature of the contributions may also differ from partner to partner. The contribution must, however, be exposed to the risks of the partnership business. One cannot make a contribution on condition that it is returned if the partnership fails. This is the problematic area in this specific set of facts. The contributions made by Evan and Fred are valid contributions. Evan and Fred's contributions are not in the form of money, but labour. It is acceptable that a contribution is in the form of labour. The contribution made by Daniel is, however, not valid. As indicated before, the contribution must be exposed to the risks of the partnership business, if a person makes a contribution on condition that it will be returned to him if the partnership fails, then that contribution will not meet the essential contribution requirement.

The main object of the partnership must be to make a profit. If the partners have another object like the advancement of culture or sport, no partnership is formed. It seems if the object of the partnership in question is to make a profit.

The business of the partnership must be carried for the joint benefit of the partners. 'Business' relates to anything which occupies the time, attention or labour of a person for the purpose of making a profit. (See *Standard General Insurance Co* v *Hennop* (1954).) Each partner must be entitled to share in the net profits (the amount by which the gross income exceeds the expenses and losses) of the partnership. The proportion in which this will be shared can be freely arranged by the partners. Parties can also agree that a partner will only share in the profits if the net profit exceeds a stipulated profit margin. If a partnership agreement, however, states that the profits will only accrue to some of the parties or some of the parties are wholly excluded, then a partnership did not come into existence. Daniel, Evan and Fred will share in the profits and losses equally. This requirement has therefore been met.

Although two of the three essential elements were met, a valid partnership was still not established between Daniel, Evan and Fred. All the essential elements must be present before a valid partnership can be created. Therefore, based on the facts, a valid partnership was not created between Daniel, Evan and Fred as the essential contribution requirement was not met.

However, a valid partnership may well have been established between Evan and Fred as all three essential elements were met with regards to Evan and Fred.

10 This question deals with the law of obligations and specifically the law of contract. Candidates should discuss the rules relating to offer and acceptance and the possibility of revoking offers in relation to unilateral contracts.

The general principles are first explained followed by an application of the facts *in casu* to the relevant principles.

A unilateral contract arises where one party promises something in return for some action on the part of another party. Reward cases are typical examples of such cases. There is no compulsion placed on the party undertaking the action, but if they carry out the task requested they would receive the reward offered.

An offer is an undertaking, capable of acceptance, to be bound on particular terms. The person who makes the offer is the offeror; the person who receives the offer is the offeree. An offer sets out the terms upon which the offeror is willing to enter into contractual relations with the offeree. An offer may, through acceptance by the offeree, result in a legally enforceable contract. It is important, therefore, to distinguish what the law will treat as an offer from other statements that will not form the basis of an enforceable contract. For example, the offer must be capable of acceptance. Thus it must not be too vague and the intended obligations must be stated unequivocally and unconditionally, so that the rights and duties intended by the offer are determined or ascertainable. It is also essential to distinguish genuine offers from the following: a mere statement of intention; a mere supply of information or an invitation to do business (*Crawley* v *Rex* (1909)). An offer may be made to a particular person or to a particular group of persons, in which case it is only open for those persons to whom the offer has been made, to accept it. Alternatively, an offer may be made to the world at large, in which circumstances it can be accepted by anyone (*Bloom* v *The American Swiss Watch Company* (1915)). Offers to the world at large are usually made in the form of advertisements.

Acceptance is necessary for the formation of a contract. Once the offeree has assented to the terms offered, a contract comes into effect. Both parties are bound: the offeror can no longer withdraw their offer, nor can the offeree withdraw their acceptance. Acceptance does not have to be in the form of express words, as it can be implied from conduct. Although a person cannot accept an offer they do not know about, their motive for accepting it is not important as long as they know about the offer. Generally, acceptance must be communicated to the offeror. As a consequence of this rule, silence cannot amount to acceptance. However, acceptance need not be communicated where the offeror waived the right to receive communication.

An offer may be revoked at any time before acceptance and once revoked it is no longer open to the offeree to accept the original offer (*The Fern Gold Mining Company* v *Tobias* (1890)). In relation to unilateral contracts revocation is probably not possible once the offeree has started performing the task requested.

The quintessence of reaching consensus is that every party to the contract must have the serious intention to be contractually bound. This means that each of the parties must have the serious intention to create particular rights and duties. It also means that each party must intend to be legally bound to perform his duties and to hold the other party legally liable for rendering performance as promised in the agreement.

If two friends make an arrangement to meet at a rugby match to enjoy the game in each other's company, there is normally no intention on their part to be legally bound to each other. The position is quite different if two persons agree that the one will give the other a sum of money to procure the ownership of the other's table. In this case, the intention to create a legal obligation is indeed present.

Applying the foregoing to the facts of the scenario, it would appear that Michelle made a unilateral offer to the world at large. Thomas was thus able to accept the offer by performing the required act. He did not have to inform Michelle that he was accepting the offer; he simply had to perform the act. On the above analysis, it would appear that Thomas can claim the R1,000 from Michelle. As for Michelle's decision to revoke her offer, it is ineffective seeing that Thomas did find the bracelet. She also did not make her decision to revoke the offer known to the world at large.

1 This question asks candidates to discuss the various sources of law that South African law is derived from.

6–10 A thorough answer will explain the various sources of South African law. For full marks, reference should be made to legislation, custom, case law and common law. A brief discussion of the Constitution as most important source of law in South Africa is also necessary.

0–5 A less complete answer, perhaps lacking in detail or unbalanced in that it does not deal with some of the aspects of the question.

2 In this question candidates are expected to explain and distinguish between *essentialia*, *naturalia* and *incidentalia* as contractual terms.

8–10 Comprehensive discussion of the *essentialia*, *naturalia* and *incidentalia* as contractual terms. Reference to examples to illustrate its operation should result in full marks.

5–7 Reasonable treatment or a less comprehensive treatment of the *essentialia*, *naturalia* and *incidentalia* as contractual terms, lacking in examples.

0–4 Very weak answer, with a limited explanation of the contractual terms.

3 This question deals with partnership law. Candidates have to discuss the different types of partnerships.

8–10 A thorough explanation and discussion of the different types of partnerships.

5–7 Some awareness of the area but lacking in detailed knowledge.

2–4 Some, but limited, discussion of the different types of partnerships.

0–1 Little or no discussion of the different types of partnerships.

4 This question has two parts. The first part contributing 3 marks and the second 7 marks. This question deals with employment law. It requires candidates to explain what is meant by constructive dismissal as well as unfair dismissal.

8–10 Thorough to complete answers, showing detailed understanding of all or certainly most of the principles involved.

5–7 A clear understanding of the topic, perhaps lacking in detail. Alternatively an unbalanced answer showing good understanding of one part but less in the others.

2–4 Some knowledge, although not clearly expressed, or very limited in its knowledge and understanding of the two concepts.

0–1 Little or no knowledge of the topic.

5 This question has two parts. The first part contributing 6 marks and the second 4 marks. This question tests the understanding of candidates as regards to corporate governance principles.

6–10 A good explanation of the meaning of corporate governance as well as what a code of best practice entails.

3–5 Some awareness of the area but lacking in detailed knowledge.

0–2 Little or no knowledge of the topic.

6 This question has two parts. Both parts contributing 5 marks. In the first part candidates must explain how directors can lose thier office; and in the second part candidates must discuss the ways in which directors may be appointed.

8–10 Thorough treatment of all the aspects of the question.

5–7 Thorough treatment of the majority of the aspects.

2–4 Some, but limited, knowledge of the topic.

0–1 Little or no knowledge of the topic.

7 This question has two parts. Part (a) contributing 6 marks and part (b) contributing 4 marks. In part (a) candidates must explain a pre-incorporation contract as provided for in s.21 Companies Act 2008; and in part (b) candidates must explain whether common law methods are still applicable in view of the new statutory pre-incorporation contract.

8–10 Clear understanding and explanation of the pre-incorporation contract as provided for in s.21 as well as an explanation whether the common law methods are still applicable.

6–7 Clear understanding of the pre-incorporation contract as provided in s.21, but lacking detail especially regarding the common law methods.

0–5 Some understanding of the concepts. Lower band answers will show little or no knowledge of the area.

8 This question requires candidates to analyse a problem scenario that raises issues relating to the capacity and representation of a company.

8–10 Clear analysis of the problem scenario – recognition of the issues raised and a convincing application of the legal principles to the facts.

5–7 Sound analysis of the problem – recognition of the major principles involved and a fair attempt at applying them. Perhaps sound in knowledge but lacking in analysis and application.

2–4 Unbalanced answer perhaps showing some appropriate knowledge but weak in analysis or application.

0–1 Very weak answer showing little analysis, appropriate knowledge or application.

9 This question deals with the essential requirements of a partnership. This question has a differing correct answer. Candidates should indicate that a valid partnership agreement was not formed as between the three parties. However, candidates who state that a valid partnership was formed as between Evan and Fred should receive additional credit.

8–10 Thorough to complete answers, showing detailed understanding of all, or certainly most, of the principles involved. Good answers will also refer to relevant case law. Application of the principles to the facts in question is necessary. Excellent answers will indicate that a valid partnership was established between Evan and Fred.

5–7 A clear understanding of the topic, perhaps lacking in detail. Limited application of the principles involved to the facts in question.

2–4 Some knowledge, although not clearly expressed, or very limited in its knowledge and understanding of the essential elements necessary to form a valid partnership.

0–1 Little or no knowledge of the topic.

10 This question deals with the law of obligations and specifically the law of contract. Candidates should discuss the rules relating to offer and acceptance and the possibility of revoking offers in relation to unilateral contracts and apply it to the relevant facts.

8–10 Thorough treatment of all the aspects of the question. A good discussion of the relevant legal principles and application of it to the facts.

5–7 An average discussion of the legal principles, but not a proper application to the facts.

2–4 Some, but limited, discussion of the relevant legal principles.

0–1 Little or no knowledge of the topic.