

Fundamentals Level – Skills Module

Corporate and Business Law (South Africa)

Monday 10 June 2013



Time allowed

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

Do NOT open this paper until instructed by the supervisor.

During reading and planning time only the question paper may be annotated. You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (ZAF)

The ACCA logo, consisting of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black rectangular background.

ALL TEN questions are compulsory and MUST be attempted

- 1 In relation to the legal system of South Africa:
 - (a) define the term 'law'; and (4 marks)
 - (b) explain and distinguish between public and private law. (6 marks)

(10 marks)

- 2 In relation to the law of contract, explain the concept of the intention to be bound by a contract.

(10 marks)

- 3 In relation to employment law, define a contract of employment and state the issues that will typically be dealt with in such a contract.

(10 marks)

- 4 In relation to company officers, explain the appointment, and the duties, of a company secretary.

(10 marks)

- 5 In relation to company formations, explain how the memorandum of incorporation can be amended.

(10 marks)

- 6 In relation to governance and ethical issues:
 - (a) explain what is meant by the triple-bottom line approach; (5 marks)
 - (b) explain the role of board committees. (5 marks)

(10 marks)

- 7 In relation to close corporations, explain the requirements for membership.

(10 marks)

- 8 Adam is the company secretary but not a director of Nature First Ltd, a listed public company. Nature First Ltd manufactures and sells natural fertilisers. The board of directors of the company has been informed about allegations that one of their fertilisers may contain elements which are harmful for human consumption and that the possibility of instituting an action for damages against the company is being investigated by a large vegetable farm to which Nature First Ltd distributes its fertilisers.

The board is extremely concerned about this matter. At a board meeting, which Adam attends to keep the minutes, the directors discuss the future of the company. They discuss whether they should commence business rescue proceedings to protect the company against potential claims and before the allegations become widely known. They decide to meet again in two weeks' time to make a decision.

After the meeting, Adam phones his stockbroker, Chris, and instructs him to sell 50% of the shares held by Adam in Nature First Ltd. Adam does not give any reasons for this decision to Chris, but Chris knows that Adam is the company secretary and thus assumes that he has information which will negatively affect the value of the shares in Nature First Ltd. He therefore phones some clients and advises them to sell their shares in the company.

Adam also tells his brother, Chipo, about the situation with the fertilisers and advises him to sell some of his Nature First shares. However, his brother does not act on this information and does not sell his shares. Five days later, an action by the vegetable farm is instituted against Nature First Ltd for damages.

Required:

Explain whether the information was inside information and whether Adam, Chris and Chipo were insiders at any time before the action being instituted by the vegetable farm.

(10 marks)

- 9 Daniel undertook to build a railing for Edwin for R200,000 according to the specifications as set out in the approved building plans. Due to the building restrictions of the local authority, the railing is not allowed to be more than 3 metres high. Edwin has also stipulated in the contract that the railing must be made of glass with stainless steel panels. Daniel has now completed the building of the railing but it turns out that Daniel did not use stainless steel for the panels, but aluminium, which is much cheaper.

Required:

Advise Edwin whether he will succeed in a claim for specific performance against Daniel for the rebuilding of the railing with the correct material.

(10 marks)

- 10 GoodHealth (Pty) Ltd is a company manufacturing and selling natural remedies and supplements. The board has been informed about allegations that one of their new multi-vitamins, which have just come onto the market, has serious side-effects on people using certain chronic medication. A support group of people, who have suffered these side-effects, has been formed and the possibility of instituting an action for damages against the company is being investigated by the organisers of the group. The board is extremely concerned about this matter because the company's financial situation is not strong enough to withstand such a claim. Some directors believe that they should immediately begin business rescue proceedings to protect the company against potential claims and before the company's problems become widely known, while others believe that it is premature to do so now.

Required:

Advise the directors on the prescribed procedure they will have to follow to commence business rescue proceedings, and whether the company meets the requirements for the commencement of such proceedings.

(10 marks)

End of Question Paper