

Fundamentals Level – Skills Module

Corporate and Business Law (South Africa)

Monday 9 December 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)

ACCA

ALL TEN questions are compulsory and MUST be attempted

- 1 In relation to the legal system of South Africa and the interpretation of a court judgement, explain and distinguish between the *ratio decidendi* and the *obiter dictum*.**

(10 marks)

- 2 In relation to the law of contract, explain the rules relating to the award of damages for breach of contract.**

(10 marks)

- 3 In relation to company law, distinguish the rights of shareholders from debenture holders.**

(10 marks)

- 4 In relation to the law of delict, explain the delict of 'passing off'.**

(10 marks)

- 5 In relation to employment law, explain and distinguish between an employee and someone who is self-employed.**

(10 marks)

- 6 In relation to company law, discuss when the courts will disregard the separate legal personality of a company.**

(10 marks)

- 7 In relation to agency law, discuss how an agency relationship is established.**

(10 marks)

- 8 Adam is an experienced computer programmer. Two years ago he was approached to serve as a director of Be-Compu-Wise (Pty) Ltd, a small company which deals in the development of accounting and payment software for small companies. Adam agreed to serve as a director on the understanding that he will only contribute his knowledge of programming and software development and that he will not be involved with the day-to-day running of the company.

Adam has made significant contributions to the company in terms of advice concerning the development of various computer applications and programs. Adam has, however, missed a few board meetings during the two year period and trusts the rest of the board with all other decisions.

Adam is informed by the managing director that it was decided at the previous board meeting that they should invest in new software as they have received a contract to develop a substantial program for a much larger company than the ones they have previously worked for. This development is risky as it is new software that they will use, which has not been used in the industry before. However, the managing director insists that they must act swiftly otherwise the opportunity to develop the program for this company may be lost.

Adam agreed that the company should take the risk. After six months, it becomes clear that the development of the program is a failure. The loss incurred by the company is in the region of R1 million.

Adam approaches you for legal advice because some of the shareholders want to take legal action on behalf of the company against the directors for breach of their duty of care and skill.

Required:

Advise Adam on the probability of success of any legal action taken against him for a breach of the duty of care, skill and diligence.

(10 marks)

- 9 The board of directors of Cinema Stores Ltd has to appoint an audit committee as well as a company secretary. With regards to the audit committee, it wants to appoint Dave, a full-time employee of the company who recently completed his law studies, as one of the members of the audit committee and Edwin, the main supplier of the company, as another.

Required:

Advise the board of directors of Cinema Stores Ltd whether it can appoint Dave and Edwin respectively as members of the audit committee, in particular the statutory requirements relating to the composition and appointment of the audit committee and the duties of a company secretary.

(10 marks)

- 10 Fred wants to incorporate a new company with three of his friends. They want to sell handmade wooden furniture to the general public. They agree that Fred will be the director as he has good management experience and they can learn a lot from him. They want a company which will allow them flexibility and they want the administration to be as simple as possible.

Required:

Advise Fred on the different types of profit companies as established in terms of the Companies Act 2008 and which one Fred and his friends should use.

(10 marks)

End of Question Paper