Answers

1 This question requires candidates to define the term 'law' and explain and distinguish between public and private law.

(a) Any society has a need for rules to govern relationships between people. In modern times, this need has become greater and the application of legal rules more extensive.

Various relationships are affected by the law. This includes family relationships, relationships between citizen and the state, consumer and trader and employer and employee. The purpose of the legal science is the study and evaluation of these relationships. This is done by the classification and delimitation of rules relating to a particular aspect. The law therefore refers to a system of rules which apply in a community. A right is any right which a legal subject has regarding a specific legal object and which is protected by the law. Such a legal right is referred to as a subjective right.

(b) Traditionally, the most important division of law is between public law and private law. A certain amount of overlap will, however, occur in this division. Public law consists of those rules which control the relationships between the state and its citizens. Private law, in turn, consists of those legal rules which govern the relationships between citizens in their dealings with one another.

Public law can be sub-divided into international law, constitutional law, administrative law, criminal law and the law of procedure. Private law, on the other hand, can be sub-divided into the law of persons, family law, the law of personality and patrimonial law. A further category apart from public and private law is commercial law or mercantile law. The following subjects may be classified under commercial law: contracts of sale, lease and credit agreements, agency, insurance, companies, insolvency, labour, close corporations, etc.

2 This question requires candidates to explain the concept of the intention to be bound by a contract.

Consensus or true agreement is the basis for every contract. Apart from the other requirements that must be met for a contract to be legally valid and enforceable, a contract will only come into existence if the parties reach consensus on the rights and duties as created in the agreement.

Consensus can only be reached if every party has the serious intention to be contractually bound, the parties have the common intention (in other words they must have in mind the same commitment) and every party must make his or her intention known by means of declaring it.

This question focuses on the first one, namely the intention to be contractually bound. Every party must have the serious intention to be contractually bound. Each party must therefore have the intention to create particular rights and duties which will bind them legally. Where parties merely have the intention to reach an understanding or to make an arrangement based on good faith, their arrangements will only give rise to a 'gentleman's agreement' and not to a binding contract. For example, if friends make an arrangement to meet at a restaurant there is normally no intention to be legally bound to each other. At most, they are morally obliged to attend. The situation is obviously different if two people agree that the one will sell his or her car to the other for a specified sum of money. In this case, the parties do intend to create a legal obligation, which entitles them to performance and obliges them to perform.

A statement made jokingly or merely to highlight the good qualities of the object of the agreement (puffing) is generally not made with the intention to create legally enforceable rights.

3 This question requires candidates to provide a definition of a contract of employment and state the issues that will typically be dealt with in such a contract.

The contract of employment is the basis of the relationship between an employee and his or her employer. Its origins are in the Roman Law contract of *locatio conductio operarum*, or the letting and hiring of personal services for remuneration. The contract of employment today could be defined as:

'The contract of employment is an agreement between two parties in terms of which one party (the employee) places his or her labour potential at the disposal and under the control of another party (the employer), in exchange for some remuneration.'

The *essentialia* of a contract of employment are therefore work and remuneration. A distinguishing feature is the element of subordination and control. The employer generally has the right to control the employee. The employer generally has greater bargaining power, unless the employees increase their powers by forming and joining trade unions and bargaining collectively with the employer.

A contract of employment must also comply with the general requirements for the conclusion of a valid contract.

Typically, an employment contract will provide for a number of issues. These include the job description of the employee, the hours of work (including overtime, work on Sundays and public holidays, if applicable), the amount of remuneration, how and when remuneration will be paid, the amount of leave (sick, vacation, maternity and family responsibility), whether the employer will pay for relocation expenses, if any. A restraint of trade can also be included in an employment contract. The duties of the employee in relation to the employer will also be dealt with in the contract.

Certain principles of the common law are automatically part of the contract, unless specifically excluded. For example: the 'no work, no pay' rule. In terms of this rule, if the employee has not performed in terms of the contract, the employer does not have to pay the employee. In other words, the common law does not make provision for any form of paid leave. The Basic Conditions of Employment Act, 1997 does, however, provide for minimum conditions with regard to various forms of leave and does provide for payment during these periods.

4 This question requires candidates to explain the appointment, and the duties, of a company secretary.

The role of the company secretary is dealt with in ss.86–89 Companies Act 2008. Section 85 deals with the registration of a company secretary (and auditor). A company must maintain a record of its company secretaries (including the name and former name of the person and the date of appointment).

In the Companies Act 2008 'prescribed officer' is defined in s.1 as 'a person who, within a company, performs any function that has been designated by the minister in terms of s.66(10)'. It is presumed that a company secretary will fall under this definition (see also Regulation 38 on 'prescribed officer'). This definition does not really tell us much about a company secretary, but the role and the function of a company secretary is really apparent from a review of the duties that must be performed by the secretary. The company secretary is, in essence, the chief administrative officer of the company and, as such, performs a vital role in the day-to-day business affairs of a company.

The Companies Act 2008 does not specifically prohibit a director from simultaneously being the company secretary. However, it should be noted that the person appointed must have the 'requisite knowledge of, or experience in, relevant laws' specified in terms of s.86(2)(a). Moreover, if the comprehensive duties of a company secretary are taken into account together with the secretary's duties to advise and give guidance to the directors, it is suggested that there is a strong implication that the company secretary should be an independent person distinct and separate from the directors. It would be preferable if the company secretary were not also a director of the company. If it is necessary for a person to be both a director and company secretary, it is suggested that the specific approval of share owners/members in a general meeting should be obtained for the appointment of any director to serve simultaneously as company secretary. This would constitute good corporate governance. It is also recommended in the King III Code (Recommended Practice 2.21.4) that the company secretary should not be a director.

The Companies Act 2008 does not stipulate that the holder of the office of company secretary must hold specific qualifications or be a member of a professional body. In practice, a company secretary is well qualified if a chartered secretary (FCIS or ACIS), chartered accountant or lawyer.

Sections 86–89 Companies Act 2008 deal with the role of a company secretary. The appointment of a company secretary is mandatory in public companies and state-owned companies, in terms of s.86(1). Irrespective of whether the appointment is required as per s.86(1) or in terms of a requirement in the company's memorandum of incorporation, the company secretary must have the requisite knowledge of or experience in relevant laws and must be a permanent resident of the Republic and remain so while serving as a company secretary.

A juristic person or partnership may be appointed to hold the office of company secretary if every employee of the juristic person or partner and employee of the partnership satisfies the requirements of s.84(5). At least one employee of the juristic person or partner and employee of the partnership must satisfy the requirements of s.86, discussed above. A change in membership of the juristic person or partnership will not result in a casual vacancy, if the juristic person or partnership still complies with these requirements.

In terms of s.88 Companies Act 2008, the company secretary is accountable to the board. The company secretary should provide the board with guidance regarding the proper fulfilment of their duties. The company secretary should also make them aware of the relevant law, report any failure on the part of a company director to comply with the memorandum of incorporation or rules of the company, ensure the proper recording of minutes of the board, shareholders' and company audit committee meetings, certify in the company's annual financial statements that the company has filed the required returns and notices and ensure that all entitled persons receive a copy of the annual financial statements. Paragraph 16.19(e) of the Listings Requirements of the JSE Limited, South Africa requires a listed company to notify the Listings Division of any change in the company secretary. This also needs to be published on SENS. A company secretary must also carry out the functions of a person designated in terms of s.33(3). The King III Code (Recommended Practice 2.21.2 and Principle 2.21 in the Report) also refers to the duties that ought to be performed by the company secretary.

In addition to the above, additional duties are often specified by different companies, depending on such factors as the size of the company, number of employees, and the nature of the company's business. These additional duties would include getting the company secretary to act as the Public Officer of the company. Other usual additional duties would arise as a result of the company secretary being appointed as the principal officer of the company's pension or provident fund or as a trustee of such.

Principle 2.21 of the King III Report states that the board should be assisted by a qualified and competent company secretary; this is discussed in par 1.9. The King III Code specifically provides that the board should empower the company secretary so as to ensure that the secretary can properly fulfil the duties imposed upon company secretaries (see Recommended Practice 2.21.2).

5 This question requires candidates to explain how the memorandum of incorporation can be amended.

The memorandum of incorporation is the document that sets out rights, duties and responsibilities of shareholders, directors and others within and in relation to a company and other matters. Provisions in the memorandum of incorporation may be amended from time to time. Changes may be made to the memorandum of incorporation, unless the amendment of a provision is prohibited by the memorandum itself in terms of s.15(2)(c) Companies Act 2008. Such amendments may be in the form of a new memorandum of incorporation or by way of amendments to the existing provision of the memorandum of incorporation. If changes are in the form of a new memorandum of incorporation, the new memorandum of incorporation will replace the existing memorandum of incorporation.

A company's memorandum of incorporation may be amended in compliance with a court order. An amendment in terms of a court order is given effect via a board resolution and there is no need for a shareholders' special resolution. It can also be by the board in terms of ss.36(3) and (4) which allow the board to amend the authorised share capital of the company unless the memorandum of incorporation provides otherwise. It is also possible by means of a special resolution of the shareholders proposed by the board of directors, or shareholders who collectively exercise not less than 10% of the voting rights. There is no need to convene a shareholders' meeting to adopt this special resolution. As it is sometimes difficult for some shareholders to attend meetings, the proposal to amend the memorandum of incorporation may be submitted to shareholders who are entitled to vote. The proposal will be adopted if approved by the required majority who voted in writing within 20 days after the resolution was submitted to them (s.60).

To effect the amendment, a form CoR 15.2 must be filed. Unless the amendment is made by a company which existed before the Companies Act 2008 came into operation and the amendment is pursuant to compliance of this Act, a filing fee must be paid. A copy of the special resolution (if such is required in terms of a company's memorandum of incorporation) or a copy of the amended memorandum must accompany the Notice.

An amendment may result in a profit company not meeting the criteria for that category of profit companies. When this happens, the name and the ending expression must also be amended in such a way that it reflects the new category that the profit company falls under.

If an amendment to the memorandum of incorporation of a personal liability company has the effect that the company falls into another category of company, the company must give at least 10 days prior notice of the filing of the notice of amendment to any professional or industry regulatory authority that has jurisdiction over the business of the company, and to any person who may have relied on the personal liability of the directors in dealings with the company and could suffer prejudice if that liability is terminated.

6 This question is in two parts. The first part asks candidates to explain what is meant by the triple-bottom line approach and, the second part, the role of board committees.

(a) The triple-bottom line approach

It is generally accepted that modern companies cannot ignore their social responsibility. Social responsibility is based upon the concept of good citizenship. A company has a duty to society beyond that of an ordinary citizen due to its power and size and the benefits associated with its status as a separate legal entity, and should therefore recognise its social role. The unique South African context, including the best interests of its citizens and the mandates of the Constitution, cannot be ignored.

The so-called triple-bottom line approach embraces not only financial performance, but also imposes social responsibility on companies. This approach or line of thinking embraces various factors when applied in respect of the management of a company. Social, economic and environmental concerns shape the triple-bottom line approach. The social aspect embraces relationships with stakeholders, other than the company's shareholders. The economic aspect of this approach concerns financial and non-financial aspects of the business of the company. The environmental aspect relates to the effect on the environment caused by the products or services of the specific company.

The King II Report on Good Corporate Governance referred to the acknowledgment of the interests of various stakeholders or the 'triple-bottom line' approach. The current King III Report emphasises the inclusive approach to governance, meaning that the board should consider the legitimate expectations of all stakeholders. The shareholders (collectively) are still the most important beneficiary of directors' fiduciary duties, but social, economic and environmental concerns should also be considered. By considering these factors, the shareholders will usually benefit in any event. The best interests of the company are therefore paramount and determined on a case-by-case basis. This should be determined with the company as a responsible corporate citizen in mind.

(b) Board committees

Although the board remains the focal point of the corporate governance system and is ultimately accountable and responsible for the performance and affairs of a company, it is, for practical purposes, sometimes necessary to delegate some of its responsibilities and functions to one or more committees. Board committees are seen as a mechanism to assist the board in giving detailed attention to specific key areas of its duties and responsibilities. One of the biggest advantages of board committees, pointed out by the King Committee 2002, is that being smaller, they can go into greater detail and deal with complex issues which the full board might have less time for.

Section 72 Companies Act 2008 deals with board committees. Section 72 states that a member of a board committee does not have to be a director, but a board committee member should not be disqualified to act as a director as provided for in

s.69 and non-director board committee members will not have voting rights. Board committee members may also consult any person for advice. The King III Report also deals with board committees. It is stated in Principle 2.23 that the board should delegate certain functions to well-structured committees but without abdicating its own responsibilities. The Companies Act 2008 also recognises the right of a board to establish board committees, but by doing so the board is not exonerated from complying with its legal responsibilities. It is then stated in the King III Report that the terms of reference of a committee have to be reviewed every year and approved by the board.

It is also recommended in King III, Principle 2.23.7 that board committees, except for the risk committee, should comprise a majority of non-executive directors. The majority of these directors should be independent. An independent non-executive director should also chair these committees, except for the executive committee which is normally chaired by the chief executive officer. External parties may be present at these committee meetings, by invitation, but will have no vote. Non-directors serving on the committees will, however, have the same standard of conduct and liability as if they were directors (see s.76 Companies Act 2008).

The terms of reference for each committee must cover, at least:

(1) Composition;
(2) Objectives, purpose and functions;
(3) Delegated authorities (including the extent of power to make decisions or recommendations or both);
(4) Tenure; and
(5) Reporting mechanism to the board.

7 In this question candidates are required to discuss the requirements set for membership of a close corporation.

A close corporation may be formed with one or more members. At no time may there be more than ten members. Members are also not entitled to be joint members of the same member's interest in the corporation. Only natural persons may be members of a close corporation. No juristic person may directly or indirectly or through a nominee hold a member's interest in a close corporation. However, in certain exceptional circumstances juristic persons will qualify for membership. These circumstances include: a trustee of a testamentary trust in an official capacity, provided that such juristic person is not directly or indirectly controlled by a beneficiary of a trust and that no juristic person is a beneficiary of such trust (s.29(2)(b) Close Corporations Act (CCA) 1984). Also, a trustee, administrator, executor or curator of the estates of an insolvent, deceased or mentally disordered person or of a person otherwise incapable of managing his or her own affairs, in an official capacity (s.29(2)(c) CCA 1984). A natural person will qualify for membership in the following circumstances.

(a) First, if the natural person is entitled to a member's interest (s.29(2)(a) CCA 1984).

(b) Second, in the official capacity as a trustee of a testamentary trust (a trust created in terms of a will), provided that no juristic person is a beneficiary of the trust (s.29(2)(b) CCA 1984).

(c) Third, in the official capacity as a trustee, administrator, executor or curator of an insolvent, deceased or mentally disordered member's estate or the duly appointed or authorised legal representative (s.29(2)(c) CCA 1984).

(d) Lastly, in the official capacity as trustee for a trust *inter vivos* (a trust created between people who are still alive), provided that no juristic person shall directly or indirectly be a beneficiary of the trust and the member concerned must also have between himself and the corporation all the obligations and rights of a member (s.29(1A)(a) and (b) CCA 1984).

'The corporation shall also not be obliged to observe or have any obligation in respect of any provision of or affecting the trust or any agreement between the trust and the member concerned of the corporation; and if at any time the number of natural persons at that time entitled to receive any benefit from the trust shall, when added to the number of members of the corporation at that time, exceed 10, the provisions of, and exemption under, this subsection shall cease to apply and shall not again become applicable notwithstanding any diminution in the number of members or beneficiaries' (s.29(1A)(c) and (d) CCA 1984).

No other qualifications are set for membership. It therefore appears that minors, insolvents or other legally disabled persons may become members of a close corporation, if they are qualified to hold a member's interest. In contracting to become members, they have to be assisted by their guardians, trustees or legal representatives. They are also disqualified from taking part in the management of the close corporation.

Membership commences on the date of registration of the founding statement reflecting particulars of the membership.

8 In this question candidates are expected to explain the terms 'inside information' and 'insider' and then determine whether the information given in the set of facts qualifies as 'inside information' and the people as 'insiders'.

Insider dealing/trading concerns the whole area of the sale and purchase of shares, whether listed or not. It is not a malpractice confined to directors alone; it as much concerns other insiders such as managers and staff of the company and others. The insider has information about a particular matter or matters, or a set of circumstances or a chain or course of events, which is not known to the members of the company or the public, but which, if known, would affect the price of the shares of the company; and knowing that the price of the shares will be so affected if or when the information is made public, either sells or purchases shares in the company before the information is made known. He therefore uses confidential information to secure a profit or to prevent a loss to himself.

Inside information is defined in the Securities Services Act 2004 as being:

- specific or precise information
- which has not been made public
- is obtained or learned as an insider and
- if it were made public would be likely to have a material effect on the price or value of any securities listed on a regulated market.

An insider is defined as a person who has inside information:

- through being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates, or
- by having access to such information by virtue of his or her employment, office or profession, or
- who knows that the direct or indirect source of the information was a person falling into one of the first two categories.

The information which Adam obtained at the board meeting was specific, had not been made public and would obviously have a material affect on the share price of Nature First Ltd, a listed company, once it was made public. It was thus inside information.

Adam was an insider because he is employed by the company and Chipo was an insider because he knew that Adam, an employee, was the direct source of the information.

However, Chris was not an insider because he had no inside information.

Tutorial note: *Candidates should also be credited if they expressly consider whether Chris's knowledge of the mere fact that an insider is selling his shares (whatever the reason) could amount to inside information as defined (with reference to the elements of the definition).*

9 This question requires candidates to advise Edwin whether he will succeed with a claim for specific performance against Daniel for the rebuilding of the railing with the correct material.

Daniel and Edwin entered into a contract and it is clear that Daniel has failed to comply with the terms of the contract. Although Daniel built the railing, his performance in fulfilling the contract has been defective in that he has failed to use the correct material as all the panels of the railing must be made of stainless steel. Daniel is therefore in breach of contract. The only question relates to the remedies that are available, and damages likely to be awarded, to Edwin.

Specific performance

The issue asked in the question relates to specific performance. The aim of a claim for specific performance is to force the defaulting party, by an order of court, to render performance in the very terms agreed upon by the parties. In terms of such an order, the party who commits the breach of contract is forced to deliver or manufacture an object of a specific quality or to pay damages as surrogate for performance. However, after the decision in *Isep Structural Engineering and Plating (Pty) Ltd* v *Inland Exploration Co (Pty) Ltd* (1981), there is a great amount of uncertainty whether damages can always be claimed as surrogate for performance as an alternative to a claim for specific performance.

In the past, the courts in certain instances refused an order for specific performance. After the decision in *Benson* v *SA Life Assurance Society* (1986), the position seems to be that the courts will only use their discretion not to make such an order if the order would cause an unjust result or would be contrary to public policy. Each individual case will have to be adjudicated on its own merit and own set of circumstances. Where the obligation is to perform a relatively simple act, such as to sign a particular contract, the courts will readily grant an order for specific performance.

As a general rule, however, the courts will not grant an order where it could cause great hardship on the defaulting party or the public at large. A local authority who refuses to supply a farmer with more than a certain quantity of water during a severe drought will, for example, not be forced to deliver more water to this farmer when to do so would cause hardship to the other members of the farming community (*Hayes* v *Kingwilliamstown Municipality* (1951)). Considerable uncertainty surrounds orders of specific performance of obligations arising from contracts which involve the rendering of services. There is earlier authority for the view that an employee was not entitled to claim specific performance against his or her employer. Ordering an employer to pay his employee wages, it was felt, would indirectly compel the employer to reinstate his erstwhile employee. It might be that the employer would then be compelled to employ someone he no longer trusts in a position involving a close relationship. In *National Union of Textile Workers* v *Stag Packings (Pty) Ltd* (1982), however, it was held that in principle an employee is entitled to specific performance.

The courts in the past have also been reluctant to grant specific performance in respect of obligations arising from *locatio conductio operis* (the putting out of work on contract), such as where a builder has undertaken to do alterations to a house or where a lessor is bound to repair the leased property. This approach stemmed from the consideration that it would be difficult for a court to supervise the execution of its order for specific performance. It has, however, been suggested that this approach will have to be reconsidered in the light of the decision in *Benson* v *SA Life Assurance Society*. Under the principle that a court will not grant a decree which it cannot enforce, a decree has in the past been refused for the incorporation of a company (*Lucerne Asbestos Co Ltd* v *Becker* (1928)) and the appointment of someone as director of a company (*Dey* v *Goldfields Building Finance and Trust Corporation Ltd* (1927)).

It would thus seem that there is an outside chance that the court will grant an order for specific performance in the circumstances of the question.

The Consumer Protection Act 2008 is also of relevance. In terms of s.5, the Act applies to every transaction occurring within the Republic of South Africa, unless exempted, for the promotion or supply of any goods or services. In terms of s.20, the consumer (in this case Edwin) has the right to return defective goods. In s.55(2)(a), (b) and (c) it is specifically stated that the goods must be reasonably suitable for the purposes for which they are generally intended, must be of a good quality and usable and durable for a reasonable period. The remedies are listed in s.56 and include that the consumer may return the goods, within six months, to the supplier (in this case Daniel) at the supplier's risk or expense if the goods do not comply with the standards discussed above.

10 This question requires candidates to 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.

Business rescue proceedings are defined in the Companies Act 2008 as 'proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for: (i) the temporary supervision of the company, and the management of its affairs, business and property; (ii) a temporary moratorium on the rights of the claimants against the company or in respect of property in its possession; and (iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company.'

Business rescue proceedings can be initiated in two ways: namely, by a resolution of the board of directors to voluntary begin the proceedings, if the board has reasonable grounds to believe that the company is financially distressed and there appears to be a reasonable prospect of rescuing the company; and an affected person may apply to a court at any time placing the company under supervision and commencing the business rescue proceedings.

This question deals with the first one. The board will have to follow the outlined procedure: the board may take a resolution (by majority vote) to put the company in business rescue. The resolution must be filed with the Commission to become effective within five business days of filing the notification; they must notify every affected person (i.e. every shareholder, creditor, registered trade union representing employees and unrepresented employee). A business rescue practitioner must be appointed within five days of filing the resolution and notify all affected persons within two days after such filing.

The following requirements must be met: the board must have reasonable grounds to believe that company is financially distressed and there appears to be a reasonable prospect of rescuing the company. In terms of s.128(1)(f), a company is financially distressed if it is reasonably unlikely to be able to pay all its debts as they become due in the next six months or reasonably likely to become insolvent.

One has to apply this to the facts in question to determine whether the company meets the requirements to commence business rescue proceedings. It is not clear from the facts whether there are reasonable grounds to believe that the company is financially distressed and whether there is a prospect to rescue the company.

Tutorial note: *Candidates will be credited for their arguments. For example, candidates could argue that the company will meet the requirements to commence business rescue proceedings because of pending litigation, or that it does not, because it could be more than six months before action is instituted. It is also uncertain whether they will do so or the matter could be settled.*

1 This question requires candidates to define the term 'law' and explain and distinguish between public and private law.

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.

2 In this question candidates are expected to explain the concept of the intention to be bound by a contract.

8–10 Comprehensive discussion of the intention to be contractually bound.

5–7 Reasonable treatment or a less comprehensive treatment of this intention.

0–4 Very weak answer, with a limited explanation.

3 This question deals with employment law. Candidates are required to provide a definition of a contract of employment and state the issues that will typically be dealt with in such a contract.

8–10 A thorough explanation and discussion of the definition of an employment contract as well as a list of issues dealt with in a contract of employment.

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

2–4 Some, but limited, discussion.

0–1 Little or no discussion of the contract of employment.

4 This question requires candidates to explain the appointment, and the duties, of a company secretary.

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 requires candidates to explain how the memorandum of incorporation can be amended.

6–10 A good explanation of the amendment procedure.

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. Each part contributing 5 marks. The first part asks candidates to explain what is meant by the triple-bottom line approach and the second part, the role of board committees.

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 requires candidates to discuss the requirements set for membership of a close corporation.

6–10 Clear understanding and explanation the membership requirements.

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

8 In this question candidates are expected to explain the terms 'inside information' and 'insider' and then determine whether the information given in the set of facts qualifies as 'inside information' and the people as 'insiders'.

8–10 Comprehensive discussion of these terms and sufficient application to the set of facts provided.

5–7 Reasonable treatment or a less comprehensive treatment of the terms.

0–4 Very weak answer, with a limited explanation.

9 This question requires candidates to analyse a problem scenario with regards to the law of contract. Candidates have to advise Edwin whether he will succeed with a claim for specific performance against Daniel for the rebuilding of the railing with the correct material.

8–10 Thorough to complete answers, showing detailed understanding of all, or certainly most, of the principles involved. Application of the principles to the facts in question is necessary. Reference to the Consumer Protection Act 2008 shows insight on the part of the candidate and should be accredited accordingly. Candidates who do not refer to it should, however, not be penalised as it is not part of the prescribed work.

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 topic.

0–1 Little or no knowledge of the topic.

10 This question requires candidates to 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.

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.