

Examiner's report

F4 Corporate and Business Law (BWA)

December 2010



General Comments

The examination paper consisted of ten compulsory questions. Three of these questions were application questions and seven were knowledge based. Most candidates attempted all ten questions.

Performance was overall unsatisfactory. Many candidates were unprepared for the examination. Questions in the area of corporate law and the Botswana legal system generally produced better answers. Candidates struggled somewhat in delict and contract and agency.

In relation to examination technique, some candidates failed to identify the specific issue that the question required them to tackle. As a result, answers were in some cases irrelevant, focusing on general legal principles and missing the examinable matter. Planning of answers in application type questions was lacking in some candidates. An approach that identifies the issues, and then cites relevant legal principles and/or cases followed by a conclusion is to be preferred over a simple narration of legal principles with little or no reference to the facts at hand.

Specific Comments

Question One

Part (a) of this question required students to explain the meaning scope and effectiveness of delegated legislation. Part b required a discussion of the powers of the courts to control such delegated legislation. Part (a) of this question was tackled reasonably by most candidates. Part b presented some difficulty with many students being unable to explain the role of the courts in the control of delegated legislation through the process of judicial review. This difficulty is attributable to lack of familiarity with this area of the syllabus.

Question Two

This question required candidates to discuss the meaning of intention to create legal relations in the law of contract. This question required students to distinguish between legally enforceable agreements like commercial contracts and unenforceable agreements like social or domestic agreement. Many candidates chose to discuss the legal principles governing offer and acceptance and invitation to treat as opposed to the examinable issue, failing to produce a satisfactory answer. This area should be the subject of some focus in preparation for the examination.

Question Three

This question required candidates to discuss the meaning of anticipatory breach and remedies available where such breach occurs. A fair number of students had prepared in this area and answered the question well. Students who were ill prepared were generally unable to explain the concept of anticipatory breach thus giving unsatisfactory answers.

Question Four

This question required candidates to explain how a close company can be bound in contract. This question was inadequately answered. Many candidates showed a lack of familiarity with close companies, which are a new form of company in terms of the Companies Act, 2003. Candidates are encouraged to familiarise themselves with this type of company.

Question Five

This question required candidates to discuss the essentials of a partnership. This question was well answered with most candidates being able to identify at least three out of the five essentials of a partnership.

Question Six

This question required candidates to discuss the director's duty of care and skill in relation to company law. This question seemed to confuse a good number of students who focused their discussion on a director's duty of honesty and good faith (*bona fides*). The importance of this area of the law cannot be overemphasised. Candidates should be able to clearly distinguish between the different duties of directors and be able to articulate them with some reference to relevant case law.

Question Seven

This question required candidates to discuss the concept of remoteness of damage in the law of delict. The question was the most inadequately answered with candidates showing little grasp of this area of the law. Candidates are advised to carefully read around the areas of delictual law covered in the syllabus.

Question Eight

This question required candidates to resolve issues arising by applying principles governing director's fiduciary duty not to use corporate information property of opportunity to make a secret profit. Save for concerns in technique which have already been mentioned in the general comments, many students were able to identify the issue and give a fair answer.

Question Nine

This question tested candidates' knowledge of partnership and agency law in a problem type question. The question was fairly answered with many students doing well in the partnership aspects of the question. Some candidates struggled with the issues of agency arising in the question. Candidates are encouraged to pay attention to agency in the syllabus.

Question Ten

This question required candidates to explain the difference between a contract for service and a contract of service in employment law. The question was well answered with most candidates being able to distinguish between the two types of contracts. Some candidates had difficulty identifying and distinguishing between the control test, the integration test and the economic reality or dominant impression test. Candidates are encouraged to familiarise themselves with this material.

Conclusion

Coverage of the whole syllabus is required in order to attain a pass mark in this paper. All questions are compulsory and so preparedness in all areas is essential. Candidates are encouraged to endeavour cover all areas of the syllabus. Examination technique can only be honed through practice. Candidates are therefore encouraged to practice often using past papers.