

Examiner's report

F4 Corporate and Business Law (BWA)
June 2011



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 satisfactory. Some candidates struggled with questions in the area of contract and close corporations, which shall be highlighted below. Overall however, candidates showed preparedness and sufficient knowledge of the syllabus.

In relation to examination technique, some candidates did not attempt all ten questions and therefore did not gain as many marks as they could have. Candidates are encouraged to study for, and attempt all questions in the examination paper.

Specific Comments

Question One

This question required candidates to discuss rules used by the Botswana courts in the interpretation of statutes. This question was well answered by most candidates who were able to identify all three relevant rules and to discuss presumptions as well.

Question Two

Part a) required candidates to discuss the nature of specific performance as a remedy for breach of contract and instances when the court would refrain from making an order for specific performance. Candidates had some difficulty with this question, which was probably caused by lack of thorough understanding of this remedy in the law of contracts.

Part b) required candidates to describe various methods of enforcement of specific performance orders. Again, this question presented a challenge to most candidates. Candidates are encouraged to cover the syllabus with care as all areas are examinable.

Question Three

This question required candidates to discuss the various ways in which a partnership may be terminated and the formalities of such dissolution. Candidates answered this question satisfactorily presenting complete answers citing various methods for termination of partnerships.

Question Four

Part a) required candidates to explain the doctrine of *ultra vires*. This question covers a basic tenet of company law. It was well answered. Candidates were familiar with the doctrine and discussed it thoroughly even citing some relevant case law.

Part b) required candidates to demonstrate knowledge of the reforms to the *ultra vires* doctrine ushered in under the Companies Act 2003. The manner in which the doctrine of *ultra vires* has been amended under the new act is of vital importance in Botswana's new company law. Candidates should be familiar with this material.

Question Five

This question required candidates to illustrate the difference between ordinary shares and preference shares. This question was satisfactorily handled by most candidates who were able to outline and discuss the differences between these two classes of shares.

Question Six

This question required the candidate to discuss the main duties placed on the employer in the employment contract. Many candidates were prepared in the area of employment law and answered this question well. They discussed all three duties- the duty to receive into employment, the duty to remunerate and the duty to provide a safe working environment, thoroughly.

Question Seven

This question required candidates to discuss the role, the duties and the powers of the company secretary. This question was well answered by prepared candidates. The section on powers of the company secretary did present a bit of a challenge. Overall however candidates were able to provide a satisfactory answer.

Question Eight

This question required candidates to discuss whether silence could mean acquiescence in the law of contract. Candidates answered this question with difficulty. Very few candidates were able to pick up that in the facts presented in the question, a contract was in fact concluded despite the silence of the offeree, solely based on the offeree's conduct. The question examined a fine point which some well prepared candidates' were able to pick up with ease.

Question Nine

This question required candidates to discuss the duty of a director where there exists a conflict between his duties as a director and his financial interests. This question examined a traditional area of corporate law – directors' duties. Most candidates tackled this question well and were able to find that the director involved had a conflict of interest and was in breach of his fiduciary duties to the company.

Question Ten

Part a) required candidates to discuss the distinctive characteristics of a close company. Most candidates did not pick up the characteristics of a close company as outlined in the question. This is due to inadequate preparation. Candidates who were able to identify the close company as the correct entity had studied this area.

Part b) required candidates to discuss the advantages and disadvantages of close corporations in comparison to other business entities. Candidates who correctly identified a close company in part (a) were able to gain full marks in part (b).

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 study all areas of the syllabus in order to be able to attempt all questions and achieve satisfactory marks in every question.