



Examiners' report

F4 Corporate and Business Law (BWA)

December 2007

General Comments

This was the first sitting of candidates examined under the new F4 (BWA) Corporate and Business Law Syllabus. The paper consisted of 10 compulsory questions and the candidates were expected to answer all of them. Seven were knowledge-based questions and three were problem-type. The number of candidates was quite large compared to earlier sittings. The performance was on the whole satisfactory.

Specific Comments

Question One

The question required the candidates to explain the sources of Botswana law. The candidate's answers were on the whole satisfactory. They showed awareness of the three main sources from which Botswana law is derived, namely, judicial precedent, legislation and customary law.

Question Two

This was question required candidates to explain the rules relating to the implication of terms in a contract. The question was not satisfactorily answered. The candidates could not clearly articulate the specific rules that govern the implication of terms in Roman-Dutch law.

Question Three

The question invited candidates to discuss the remedies directed at the fulfillment of a contract in the case of a possible breach of contract. Although these remedies can be classified into a number of categories, only two of them needed to be discussed, namely, the *interdict* and a claim for *specific performance*. Candidates were expected to articulate the conditions which must be satisfied before any of these remedies is available to a plaintiff in Roman-Dutch Law. The question was well answered.

Question Four

This question required the candidates to explain the difference between a contract of service and a contract for services. Many candidates were able to explain the difference; the tests available for the ascertainment of such a difference; and the specific test applicable in Roman-Dutch law. They also quite ably explained why the distinction is important in employment law.

Overall candidates performed well in this question.

Question Five

The question required the candidates to distinguish between the agency relationship and contract for the benefit of a third party. The candidates were expected to explain the legal relationships between the parties in the case of agency and in the case of a contract for the benefit of a third party – the *stipulatio alteri*. Additionally, the candidates were expected to articulate the most important differences between the two relationships.

The candidates' answers were on the whole satisfactory.

Question Six

This question required the candidates to discuss the directors' duty of care and skill. The three facets of this duty were laid down by Romer J in *Re City Equitable Fire Insurance* (1925) and were amplified in *Fisheries Development Corporation of SA Ltd v Jorgensen* (1980). Candidates were expected to show knowledge of the three facets as they relate to *degree of care and skill*; *attention* to the company's business; and *delegation* of some duties of directors.

The overall performance was on the whole satisfactory.

Question Seven

This question invited the candidates to discuss the rule in *Turquand's* case; its rationale; and the exceptions thereto.

The question was well done. Several candidates were able to articulate all three aspects of the question and to refer to relevant case law.

Question Eight

The question invited candidates to examine the way in which contractual relations can come into existence. It further required a treatment of the rules relating to offer and acceptance and the possibility of revoking offers in relation to unilateral contracts. The candidates exhibited a satisfactory knowledge of the general rules that govern offer, acceptance, revocation and intention to create legal relations. The principles were satisfactorily applied to the facts in order to decide whether Modisa could claim the award from Kabelo.

Question Nine

The question required candidates to explain and apply the law relating to redundancy and unfair dismissal and the appropriate remedies in the particular problem scenario. The question was not well answered. Candidates were on the whole unable to refer and apply the relevant legislation.

Question Ten

The central issue of this question revolved around Sethunya's authority to bind the partnership in contract and her possible breach of her fiduciary duties. The question was fairly well answered.