



Examiner's report

F4 Corporate & Business Law (BWA)

December 2009

General Comments

There was a clearly marked deterioration in the overall performance. Unfortunately, many of the problems identified in previous reports keep recurring. In this particular sitting, there was an alarming number of candidates who answered less than the required ten questions (9 in most cases) and who provided answers that were too brief and/or totally inaccurate.

Specific Comments

Question One

This question required the candidates to discuss the various ways of classifying law (the division of law) in the Botswana legal system. The answers were unsatisfactory and exhibited a clear lack of knowledge. Very few candidates were able to articulate some of the divisions of the law.

Question Two

This question required the candidates to establish the difference between express and implied terms in contracts and to explain the circumstances under which terms may be implied in contracts. Many answers were brief and on the whole inaccurate.

Question Three

This question required the candidates to explain the meaning of 'wrongfulness' in the law of delict. An act or conduct is wrongful if it either infringes a legally recognised right of the plaintiff or constitutes a breach of a legal duty owed by the defendant to the plaintiff. Not a single candidate answered this question satisfactorily.

Question Four

The question required the candidates to explain the various ways in which a contract of employment may be terminated. Most answers provided by the candidates were brief and inadequate.

Question Five

The question required the candidates to explain one of the grounds for the termination of a partnership, namely, just cause or *justa causa*. Answers were tentative and general. The candidates were unable to articulate the three grounds that amount to *justa causa*: fulfillment of a condition; breach of an essential term of the agreement; conduct causing loss of confidence. There was little or no reference to authority or use of examples.

Question Six

The question required the candidates to explain those situations where a principal may be bound by a contract entered into by an agent on his behalf or without actual authority. Candidates' answers were on the whole unsatisfactory.

Question Seven

This question required candidates to explain what is meant by the term fiduciary duties as it applies to company directors and to set out the various heads under which such duties can be considered. The candidates' answers were unsatisfactory. Some candidates confused partners' duties with directors' fiduciary duties.

Question Eight

This question invited the candidates to examine the way in which contractual relations can come into existence. It required a treatment of the rules relating to offer and acceptance and the possibility of revoking offers to unilateral contracts. Candidates were expected to set out the general law applicable before applying it to the circumstances of the problem scenario. Several candidates answered this question quite satisfactorily.

Question Nine

The question required candidates to consider the authority of company directors and other company officers to enter into binding contracts on behalf of their companies. The candidates' answers exhibited a general lack of knowledge and lack of adequate preparation.

Question Ten

This question tested the candidates' understanding of the concept of corporate personality in company law and the rules that govern the lifting of the corporate veil. The majority of candidates were unable to define the corporate personality and to refer to relevant authorities such as *Salomon v Salomon* (1897); *Silverstone (Pty) Ltd & Anor v Lobatse Clay Works (Pty) Ltd* (1996); and *Adams v Cape Industries plc* (1990). They were also unable to articulate the concept of lifting the veil and how it applied to the scenario in the question.