Answers

1 In Lesotho's legal system, courts are bound by the doctrine of precedent. It means that a decision given by one court has to be followed by other courts which are lower in hierarchy in subsequent cases where facts are more or less similar. In such a case, the case which is being cited as a precedent deals with the same legal principle as the case currently being considered. Decided cases of a higher court are seen as laying down a legal rule authoritatively and, therefore, must be followed.

A distinction is made between the *ratio decidendi*, the part of the decision which deals with the underlying legal principle involved, and *obiter dicta*, which are remarks made by the judge which illustrate or clarify the principle behind the decision but do not form an essential part of it. *Obiter dicta* means literally 'things said by the way'. The *ratio* is the legally binding part of the precedent. *Obiter dicta* are persuasive, but are not strictly binding in subsequent cases. It may be difficult to identify the *ratio* of a case, especially where a judge has followed two or more different lines of reasoning in reaching a decision, or where, for example, different judges of the Court of Appeal adopt different legal reasoning in a case and, as a result, the different opinions of different judges do not suggest the same *ratio*.

Distinguishing between *ratio* and *obiter dicta* may not always be easy since a judgement does not indicate which is which. Subsequent judges have to infer which parts of the original judgement are part of the *ratio* and are binding, and which parts are *obiter dicta* and merely persuasive. Of course, when a judge remarks 'the case would have been different if' or other remarks of the same kind then it is easier to identify *obiter dicta* but in many cases, it is a difficult task for both the lawyers and the judges.

The efficient operation of the doctrine of precedent requires ready access to the decisions of the superior courts. Unfortunately, this is not so at present in Lesotho. Judgements of the High Court and Court of Appeal do not get published on a regular basis. There is a huge backlog and this affects the operation of the doctrine of precedent negatively.

The Court of Appeal stands at the summit of the Lesotho court structure and its decisions are binding on all the courts in Lesotho, though the Court of Appeal itself is not bound by its own decisions. Lastly, it must be recognised that, in the wider context, the decisions of all courts, including the Court of Appeal, must be consistent with the fundamental freedoms and human rights set out in the Constitution.

2 When a plaintiff claims specific performance, he asks the court to order the defendant to do exactly what he has contracted to do. The courts do exercise a discretion as to whether or not an order for specific performance should be made. Each case is judged on its own merits.

Courts are reluctant to order specific performance in any of the following four cases:

(a) Specific performance is not ordered if compliance with the order would be impossible. For example, if Peter agreed to sell his horse to Paul but sold it to someone else, then clearly Peter cannot deliver the horse to Paul as he no longer has it. Peter shall have to pay damages instead.

(b) A contractual obligation may be imprecise in the sense that granting a specific performance may precipitate a lengthy dispute whether it has been obeyed. In *National Butchery Co* v *African Merchants Ltd* (1907), the court ordered African Merchants to perform its contract to erect a cold storage and ice-making plant for National Butchery. However, National Butchery went to the court twice more seeking the court's intervention to ensure the erection of the plant in accordance with the contract. It was too cumbersome. However, it must not be thought that building and engineering contracts are always likely to cause such difficulties. In suitable cases specific performance can be ordered.

(c) An order for specific performance of services of a personal nature is usually not granted. Thus, if an artist broke off an undertaking to paint a portrait, the court may not force him to paint the portrait. The proper remedy is to claim damages. The reason for the refusal is that a contract for the performance of personal services is of a continuing nature and runs the risk of continuing conflict even if the contract was being properly performed. A court is hardly equipped to provide the constant supervision to prevent such disputes or adjudicate on them as they arose.

(d) Where an order of specific performance would work great hardship on the defaulting party or public at large. In *Haynes* v *Kingwilliamstown Municipality* (1951), the defendant agreed to release 250,000 gallons of water per day from its dam on the Buffalo river, onto Miss Haynes land, which was located on the river below the dam. Owing to a severe drought, the water in the dam became very low and since the defendant had to look after the needs of the population of Kingwilliamstown as well, they reduced the plaintiff's flow to 2,000 gallons daily. The court refused to order specific performance for the release of the full 250,000 gallons and observed that to order specific performance would cause very great hardship to the residents of Kingwilliamstown, to whom the municipality owed a public duty to render an adequate supply of water. Moreover, an order of specific performance would cause positive danger to the health of the community, and might disrupt the life of the town.

(e) Lastly, a plaintiff cannot claim specific performance if he is himself in breach of contract. He must be able and willing to perform his outstanding obligations.

3 A general offer is an offer that is made, so to say, to the whole world. An example of a general offer is an advertisement for a reward for information leading to the discovery of the lost property. While a general offer is made to the whole world, that does not mean that the offeror is contracting with the whole world; the offeror contracts with only those who accept his offer.

As a general rule, an offeror is free to withdraw his offer at any time before it has been accepted. However, revocation becomes effective only when it has been communicated to the offeree. Special rules apply in the case of general offers. For example, suppose Thabo advertises that anyone crossing the length of a certain swimming pool in five minutes at a certain time on a certain date shall be awarded R100. John jumps into the pool and starts crossing but when he is about to cross the length of the pool, Thabo revokes his offer. Is the revocation effective?

The answer is no. Once the offeree has commenced the required performance for accepting the offer, it may not be revoked. John must be given his chance to win the reward. There is an implied obligation on Thabo not to prevent John's performance once it has begun. An alternate view is that the real reason is that such withdrawal would amount to a fraud.

This implied obligation is only presumed if the terms of offer, or its surrounding circumstances, indicate that the offer was intended to be irrevocable once the performance began. For example, suppose Thabo asks John to find a purchaser for his house and promises him 5% of the sale price as a commission. John starts looking for purchasers and spends his time and money. However, it is settled in law that Thabo may revoke his offer at any time notwithstanding the fact that John has started on the work. The courts take the view that this is a business risk that John in his business must bear.

Let us take another example. Suppose Thabo announced an award of R50 for his lost cat in an advertisement. Peter read the advertisement and starts looking for the cat. But before the cat is brought to Thabo, Thabo revokes his offer through an advertisement. It is generally accepted that if the offeror has taken reasonable steps, for example, by publishing a similarly prominent advertisement to the first one, to revoke the offer, then the revocation is valid. It would make no difference if at the time of the second advertisement Peter had indeed found the cat and was in the process of bringing it to Thabo. If Thabo did not know that Peter had found the cat, the revocation of the general offer by another similar advertisement is valid.

4 In *Link Estates (Pty) Ltd* v *Rink Estates (Pty) Ltd* (1979), it was pointed out that passing off is a delict and consists in a representation by one person that his business or merchandise is that of another, or that it is associated with that of another. To determine it, the court inquires whether there is a reasonable likelihood that members of the public may be confused into believing that the business of the one is, or is connected with, that of another. In a passing off action, the plaintiff must establish that,

(a) there is a 'reasonable likelihood' that the public may be confused into believing that the defendant's business is, or is connected with, the plaintiff's business, which had gained a reputation, and, if so,

(b) whether such confusion is due to a representation by the passing off trader and if, so,

(c) whether confusion will probably cause damage to the plaintiff.

In the *Link Estates* case, the appellant had carried on their business as an estate agent in Port Elizabeth under the name of 'Link Estates' since 1971. The respondents too were estate agents and in 1974 they changed the name of their company to 'Rink Estates'. The appellant objected, *inter alia*, that the use of the name Rink Estates amounted to passing off and asked for an interdict.

Since passing off gives rise to an *Aquilian* based action, the appellant was not bound to prove *dolus* (actual intention to deceive or actual deception) on the respondent's part in choosing the name Rink Estates. It was enough to prove that they were negligent in selecting such a name and that they should have foreseen that there would be a reasonable likelihood of deception or confusion with consequent impairment of the appellant's goodwill. This has to be answered 'in accordance with the standard of care, intelligence and perception of the ordinary reasonable careful man, that is not the very careful man nor the very careless man'.

The court came to the conclusion that there was no proof that it would probably result in damages to the appellant and, therefore, dismissed the appellant's challenge.

Passing off may take several forms. For example, it may take the form of the passing-off-trader directly misrepresenting that his merchandise or business is that of the plaintiff. Or, the passing-off-trader may be running his business under a deceptively similar trade name as that of the plaintiff. Or, the passing-off-trader may sell his goods under a brand name that belongs to the plaintiff. Thus, if a trader starts selling his soda under the brand name Fanta, which belongs to the Coca Cola company, he would surely be interdicted and may also have to pay compensation to the Coca Cola company.

Passing off entitles the plaintiff to an interdict to stop the defendant from engaging or continuing in any further passing off activities which harms the plaintiff's interests. A trader would typically be ordered to remove the infringing products from the market.

In addition, the plaintiff may also claim damages. He would not be required to prove actual damages, that is, he need not establish the exact loss he suffered as a result of the business lost due to passing off; he only has to show that as a result of the passing off there was a *probability* of harm to his business.

Lastly, the plaintiff may ask for the rendering of an account. It means that whatever the defendant has gained by passing off was otherwise due to the plaintiff and, therefore, must reimburse him.

5 The Labour Code Order, 1992 does not use the word 'constructive dismissal' but provides in s.68(c) that dismissal includes a resignation by an employee 'in circumstances involving such unreasonable conduct by the employer as would entitle the employee to terminate the contract of employment without notice, by reason of the employer's breach of a term of the contract'. This provision relates to what is known as 'constructive dismissal' which covers the situation where an employer has made the situation of the employee such that the employee has no other option than to resign. In other words, the unreasonable actions of the employer force the employee to resign. In such a situation, the employee is entitled to make a claim for unfair dismissal even though they actually resigned.

Constructive dismissal occurs where the employer repudiates the contract by committing a breach which goes to the root of the contract. In a constructive dismissal, the employer is willing to continue the employment but the employee is not. Examples of constructive dismissal are:

(a) Unilateral reduction in pay of the employee [*Industrial Rubber Products* v *Gillon* (1977)];
(b) A complete change in the nature of the job, such as a demotion [*Ford* v *Milthorn Toleman Ltd* (1980)];
(c) Change in the employee's place of work, when the contract of employment does not give the employer the right to make this change e.g. forcing an employee to work on the night shift, when his terms of service expressly require him to work on the day shift.

The employee has to establish that a repudiatory breach occurred, that he left because of it and did not waive the breach, for example, by remaining in the employment for too long. Constructive dismissal requires proof that there indeed has been a repudiatory breach going to the root of the contract. This is not easy to prove. South African courts have held that a constructive dismissal is not 'inherently unfair.' Furthermore, the remedy of reinstatement is usually denied in cases of constructive dismissal unless the employer is a large company which can place the employee in a different position.

In Lesotho, where the incidence of unemployment is very high, resigning a job because of the unreasonable conduct of the employer is far from a practical solution. Employees in such conditions would put up with unreasonable conduct of the employer rather than risk leaving the job and then sue in a labour court for damages on the ground that the resignation was provoked by the unreasonable conduct of the employer. Not every unreasonable conduct attracts s.68(c) of the Labour Code; the nature of the unreasonable conduct must be such as to amount to a repudiatory breach of the employment contract to the satisfaction of the court.

6 This question asks candidates to consider the doctrine of separate personality, which is one of the key concepts of company law.

In relation to the doctrine of separate or corporate personality, *Salomon* v *Salomon & Co* (1897) is usually considered the foundation case. Salomon had a prosperous business of boot and shoe manufacturers. He decided to convert it into a limited company. For this purpose, Salomon & Co Ltd was formed with Salomon, his wife and five children as members, and Salomon as a managing director. The company purchased Salomon's business. Payment was in the form of cash, shares and debentures. Of the 20,007 shares issued, Salomon had 20,001 shares.

The company fell on bad times and had to be wound up. Salomon had been given debentures as part of the purchase price, which he had transferred to Broderip for a loan to the company. Since the company failed to pay the interest due on the debentures on time, it had to be wound up. The liquidator found that if Broderip were to be paid in full, the unsecured creditors would get nothing. He disputed payment on the debentures arguing that the company was a mere sham, and an 'alias', or a nominee for Salomon, who remained the real proprietor of the business. The House of Lords held that under the circumstances, in the absence of fraud, his debentures were valid. The company had been properly constituted and consequently it was, in law, a distinct legal person, completely separate from Salomon.

A number of consequences flow from the fact that companies are treated as having legal personality in their own right:

(i) Limited liability
No one is responsible for anyone else's debts unless they agree to accept such responsibility. However, in limited liability companies formed under the Companies Act, 1967, shareholders agree to accept limited liability for their company's debts. Registered companies must have the abbreviation 'Ltd' as part of their name [s.10 CA]. It means that no shareholder can be made liable for more than the 'nominal value' of the shares he holds. The level of liability is nil if the shares have been paid for in full. For partly paid shares, the liability is limited to the amount remaining unpaid on the nominal value of the shares held.

(ii) Perpetual existence
A company is a creature of the statute and only 'dies' in the manner laid down by the statute. It has perpetual existence in the sense that its existence is independent of its shareholders. It remains unaffected by any changes in its membership. Events like members' death, insolvency, mental incapacity, and transfer of shares, have no effect whatever on the life of a company. In one case all the members of a company were killed by a bomb during a meeting but this was held not to have terminated the existence of their company. The shares of the deceased members passed on to their heirs.

(iii) Business property is owned by the company
Any business assets are owned by the company itself and not the shareholders. Thus company's assets are not subject to claims based on the ownership rights of its members. Members only own shares in a company, which they may sell or dispose of any time they wish. This does not affect the property of the company in any way. The creditors of a company claim only from the property of the company, not from its members.

(iv) Legal capacity
The company has contractual capacity in its own right and can sue and be sued in its own name. The extent of the company's liability, as opposed to the members, is unlimited and all its assets may be used to pay off debts. The company may also be liable in delict for any injuries sustained as a consequence of the negligence of its agents or employees.

(v) *Ultra vires* doctrine
The doctrine of *ultra vires* restricts the companies to what they can or cannot do. A company is formed to carry out certain specified objects and is given certain specific powers and is not allowed to engage in any activity which is outside or beyond them. It may be cumbersome to alter its objects in order it may engage in activities not provided earlier in its objects clause in the memorandum of association.

(vi) The rule in *Foss* v *Harbottle* (1843)
This states that where a company suffers an injury, it is for the company, acting through the majority of the members, to take the appropriate remedial action. More important is the corollary of the rule which states that an individual shareholder cannot raise an action in response to a wrong suffered by the company.

7 This question asks candidates to distinguish between preference shares and debentures.

Holders of preference shares are members of the company. Debenture holders lend money to the company, therefore, they are its creditors, not members. Although holders of preference shares are members of the company, their voting rights are usually restricted to any period when their dividends are in arrears.

Preference shares receive a fixed rate of dividend before any payment is made to other classes of shareholders. Dividend rights in relation to preference shares are usually cumulative, which means that a failure to pay the dividend in one year has to be made good in subsequent years. However, the dividend has to be paid out of distributable profits only; it can never be paid from capital.

As creditors, debenture holders are entitled to receive interest, whether the company is profitable or not. It may even be necessary to use company's capital to pay the debenture interest.

Debentures are usually secured and the company provides security for the amount it borrows by issuing debentures. In Lesotho, debentures are secured by means of a fixed charge, which has to be properly registered as well.

Rules relating to raising and maintenance of capital do not apply to debentures. Thus, debentures can be issued at a discount, preference shares cannot be issued at a discount. Debentures can be redeemed, that is a company may purchase its own debentures. Fully-paid redeemable preference shares can be redeemed either out of the distributable profits or out of the proceeds of a fresh issue.

Preference shareholders usually enjoy priority over ordinary shareholders with regard to the repayment of capital. Debenture holders, on the other hand, being creditors enjoy priority over preference shareholders with regard to the repayment of capital.

8 The question is in two parts and marks for each have been indicated.

(a) Nick should be advised that while he cannot enforce the contract, Sam can.

Mere silence of Sam cannot be construed as acceptance of Nick's offer. If the law were otherwise, then anyone who received an unsolicited offer would be compelled to reject that offer wasting his time and money. It is for this reason that an offeror cannot compel an offeree to communicate rejection of the offer, failing which the offer would stand converted into a binding contract. *Felthouse* v *Bindley* (1862) is an authority for this. In that case, an uncle could not enforce his contract though he had stated that if no reply to the contrary to his offer was received, he would consider the horse his.

However, from the point of view of offeree (Sam), there could be a contract under these circumstances. The reason is that an offeror is entitled to prescribe the mode of communication of acceptance. 'Keeping silent' could be one such mode. In such a case, the offeror is said to have waived the requirement that the acceptance be communicated to him. Since the communication requirement is for offeror's benefit, he can waive it if he so wished. Nick, thus, in the problem scenario waived the requirement that Sam should communicate the acceptance of offer to him. Once Sam acts as directed, a binding contract comes into existence. Therefore, in the given problem, by keeping silent Sam could force Nick to abide by his contract.

(b) In order to constitute a binding contract, the offer of the reward has to be accepted. It would mean that in order to claim the reward, Edward has to provide the relevant information to the police leading to the arrest of the thieves and the recovery of the stolen jewellery in terms of the offer. In the problem scenario, Edward was not aware of the offer at the time he gave the information to the police. Therefore, in law it can be concluded that he had no intention to accept the offer or enter into a contract with Glitter Jewellers. He could not accept the offer of reward because he was not even aware of it. Edward could argue that his claim to the reward might be regarded as the acceptance of the offer which he now knew and was still open. However, this argument is weak because Edward parted with the relevant information without being aware of the offer of reward and, so, without intending to claim it. As soon as the police became in possession of the relevant information, the offer ceased to be open for acceptance.

On more or less similar facts, in *Bloom* v *American Swiss Watch Company* (1915), the court reached a similar conclusion.

9 Salomon may be advised that the remedy of judicial management is most appropriate under the circumstances.

Salomon can have his company placed under judicial management by making a petition to the court that on account of the sudden loss of orders from their principal customer, economic recession and their inability to find another customer, it is desirable that the company be placed under judicial management. Salomon & Co would have to satisfy the court that there is a reasonable probability that judicial management will avoid liquidation of Salomon & Co (Lesotho) Ltd and allow it to meet its obligations.

The purpose of judicial management is to enable companies suffering a temporary setback due to mismanagement or other special circumstances to once more become successful entities. The existing management of the company is altered: the court replaces the directors with a judicial manager who continues, under the supervision of the Master of the High Court, to run the company's business. The judicial manager would be appointed by the Master of the High Court in consultation with the creditors and members. On such appointment, Salomon would cease to be a managing director and indeed, the entire board of directors would have to go.

The aim of the judicial manager is to restore the company's financial health. He is, therefore, allowed to run the company as normally as possible with the difference that the interests of the creditors are given more attention. This is achieved by combining the principles of company law regarding the management of a normal company with those that apply to the liquidation of a company.

The court also restrains any proceedings that may have been brought against Salomon & Co (Lesotho) Ltd by the suppliers and creditors. So long as judicial management order remains in force, all actions and the execution of all writs, summonses and other processes against the company are stayed and cannot be proceeded with without the prior leave of the court.

Salomon should be advised that the judicial manager would manage Salomon & Co (Lesotho) Ltd in a manner which is most economical and most conducive to the interests of the members and creditors. He would submit three-monthly reports to the Master and to a meeting of creditors and members of the Salomon & Co (Lesotho) Ltd. This report would show the assets and liabilities of the company, its debts and obligations as verified by the auditors and any other information which is necessary to provide a fair picture of the affairs of the company. Appointment or reappointment of auditors is not affected by the judicial management order and Salomon & Co (Lesotho) Ltd may continue to be audited by the same auditors. The remuneration of the judicial manager is fixed by the court. It may also give such other directions concerning the management of the company it deems fit. These may include power to raise money on debentures or otherwise without the authorisation of members but subject to the rights of creditors.

The court can cancel the order of judicial management in the following circumstances:

(a) If the judicial manager reports he has succeeded in turning around Salomon & Co (Lesotho) Ltd; or
(b) If the judicial manager reports he would not be able to turn around the company and remove the need for judicial management or liquidation; or
(c) When for any reason it is 'undesirable' that the judicial management order should remain in force.

On cancellation, the court would give necessary directions for the resumption of management and control of Salomon & Co (Lesotho) Ltd by its directors [s.271 CA].

Salomon should also note that a serious practical disadvantage of judicial management is that its publicity affects the creditworthiness of a company adversely even if it succeeds and is cancelled.

10 This question requires candidates to consider and apply rules governing partnership to the problem scenario.

Thabo
The first thing to establish is the status of Thabo. A sleeping partner is a person who merely invests money in a partnership enterprise but, apart from receiving a share of profit, does not take active part in the day-to-day running of the business.

Under the Partnership Proclamation, 1957 a limited partnership can be established. The registered deed of such a partnership must identify the special partner, whose liability is limited to the amount of his contribution, and he merely shares the profit of the partnership business and does not participate in its management.

The partnership in the question seems to have been registered as a general partnership and not a limited partnership. Although the question states that all partners agreed that Thabo would be a sleeping partner, that alone, in law, does not make him a sleeping partner. In law, mere agreement of the partners cannot alter the status of Thabo from general to that of special partner.

It has to be emphasised that Thabo has placed himself at great risk. The law will consider him in the same way as it does a general partner in the enterprise and consequently he will be held personally and fully liable for the debts of the partnership to the extent of his ability to pay. By remaining outside the day-to-day operation of the business, Thabo has merely surrendered his personal unlimited liability into the control of the active partners in the partnership, namely Monty and Simon.

Monty and Simon
They are active partners in the business and have full responsibility for any of the partnerships' debts. Monty has entered into the contracts with Kramer and Tsiu Hu on behalf of the partnership. In Lesotho law, the partners have joint and several liability for the debts of the firm. If the firm is unable to pay its debts through the sale of its assets then each partner becomes personally liable. Each partner can be sued by a third party for any of the debts owed by the firm. If a partner is made liable for such debts, he may seek relief from the other partners.

Consequently, Thabo, Monty and Simon are jointly and severally liable for the partnership debts. Tsiu Hu can recover whatever compensation is awarded to him by the court firstly out of the partnership assets, which are merely R5,000, and the balance from the private assets of any of the partners, including Thabo, severally or jointly. It is stated in the problem that nothing can be recovered from the Kramer's business as it has gone bankrupt and there are no prospects of either getting the advance back, or the promised furniture.

If a partner – Thabo, Monty or Simon – has paid the whole debt, he may recover a proportionate sum from other partner or partners.

Fundamentals Level – Skills Module, Paper F4 (LSO)
Corporate and Business Law (Lesotho) **December 2010 Marking Scheme**

This marking scheme is given only as a guide to markers in the context of suggested answers. Scope is given to markers to award marks for alternative approaches to a question, including relevant comment, and where well reasoned answers are provided. This is particularly the case for essay type questions where there may often be more than one way to write an answer.

1 This question requires candidates to explain and distinguish between *ratio* and *obiter dicta* in the context of Lesotho's legal system.

6–10 Thorough explanation of the distinction between *ratio* and *obiter dicta* in the context of Lesotho's legal system. Lower band answers will show some understanding of the distinction but will lack the detailed knowledge. Alternately, they may be missing out important issues.

0–5 A less than complete answer, probably unbalanced, focusing only on one of the terms. Lower band answers would be poor and would show either no or very little knowledge of the area.

2 This question examines the candidate's knowledge and understanding of the law regarding the remedy of specific performance in the law of contract.

6–10 Thorough explanation of the remedy of specific performance including the circumstances when the order may not be granted. Relevant examples and cases would earn extra credit. Lower band answers will show some understanding but will lack the detailed knowledge.

0–5 Answers will show little understanding of the remedy. Lower band answers would be poor and would show either no or very little knowledge of the remedy.

3 This question tests the understanding of the candidates regarding the revocation of a general offer.

6–10 Thorough discussion of the principles underlying revocation of a general offer including relevant examples to explain its working.

0–5 Reasonable treatment of the concept generally. Lower band answers will show little or no understanding of the concept.

4 This question invites the candidates to explain the delict of passing off and indicate one remedy available to the plaintiff.

6–10 Thorough explanation of the delict of passing off and one remedy available to the plaintiff in a passing off action.

0–5 Reasonable treatment of the topic generally. Lower band answers will show little or no understanding of the topic or subject matter of the question.

5 This question requires candidates to explain what is meant by constructive dismissal.

6–10 A clear concise explanation with some examples.

0–5 Higher band answers would show a clear understanding, but lacking examples. Lower band answers would show very little understanding of what is actually meant by constructive dismissal.

6 This question asks candidates to consider the doctrine of separate personality, one of the key concepts of company law.

6–10 A thorough to complete answer explaining the meaning and effect of separate personality. It is likely that *Salomon's* case will be referred to and discussed.

0–5 Some but limited knowledge of the topic. Perhaps uncertain as to meaning or lacking in detailed explanation or authority. Lower band answers will show very little or no understanding whatsoever.

7 This question asks candidates to explain and distinguish between preference shares and debentures.

6–10 A comprehensive explanation of the distinction between preference shares and debentures.

0–5 Reasonable treatment of the topic generally. Lower band answers will show little or no understanding of the subject matter of the question.

8 The question is in two parts and marks for each have been indicated.

(a) This question requires candidates to advise Nick about the enforceability of the contract.

3–5 A thorough analysis of the scenario focusing on the appropriate rules of law and applying them accurately. Reference to *Felthouse* case is expected.

0-2 Very weak answer showing no, or very little, understanding of the question.

(b) This question requires candidates to advise Edward if he is entitle to claim the reward.

3–5 A thorough analysis of the scenario focusing on the appropriate rules of law and applying them accurately.

0–2 Very weak answer showing no, or very little, understanding of the question.

9 This question requires the candidates to advise Salomon regarding the operation of the rules concerning judicial management in Lesotho.

8–10 Accurate analysis of the principles involved in judicial management and a clear and accurate attempt to apply them to the problem scenario.

5–7 Correct identification of the principles and a fairly accurate attempt to apply them.

2–4 Identification of at least some of the principles and an attempt to apply them to the problem scenario. Towards the bottom of this range of marks, there will be major shortcomings in identification or application of relevant legal rules.

0–1 Very weak answers, which might recognise the concept but show no ability to identify the correct principles and their application to the problem as set out.

10 This question requires candidates to analyse a problem scenario that raises issues relating to partnership.

8–10 Clear analysis of the problem scenario – recognition of the issues raised and a convincing application of the legal principles to the facts.

5–7 Sound analysis of the problem – recognition of the major principles involved and a fair attempt at applying them. Perhaps sound in knowledge but lacking in analysis and application.

3–4 Unbalanced answer perhaps showing some appropriate knowledge but weak in analysis or application.

0–2 Very weak answer showing little analysis, appropriate knowledge or application.