Examiner's report

F4 Corporate and Business Law (LSO)
June 2010

General Comments
The performance of candidates overall continued to be unsatisfactory with a large number appearing to be unprepared for the examination. However, there is clear evidence of a growing number of candidates performing satisfactorily.

As usual, the examination was sufficiently testing to reveal those candidates who did not prepare well for the examination. However it did provide considerable opportunity to candidates to score high marks.

Candidates did not prepare for the format. The format does not help candidates who do topic spotting or question spotting. It demands that all candidates have to look at the syllabus, keeping in mind that all topics in syllabus have to be mastered. The old practice of selecting few topics and ignoring others simply cannot work. It also requires them to practise time management. The questions were clear in their demands and in line with the familiar pattern of the past examination papers. Many answers showed very superficial familiarity with the content of the course and the prescribed textbook.

The law examination is a technical examination and requires a good knowledge and understanding of the technical rules at the very least; problem scenario questions also require skills to analyse facts and then to apply the rules to the facts. Candidates and teachers should note that the problem scenario questions require much more in the way of analysis and application.

The overall result would have been considerably higher had candidates paid sufficient attention to read suggested answers to the past examination questions to get a feel of what is expected of them. The answers are available on the ACCA website; your course lecturer too could acquire them for you. Pay special attention to problem scenario questions. Candidates would do considerably better if they are asked to do mock examinations based on past question papers. Two or three such mock examinations would reveal where they have to improve upon and go a long way to improve their marks in the examination.

The key to good marks lies in the breadth of knowledge of the leading cases. They are not many in any case. Candidates must also practise writing out the answers to questions; their prescribed textbook has many to choose from. This would give them the confidence and the ability to organise their thoughts. It was clear to the marker that the candidates on the whole did not prepare for the examination well, did not revise the syllabus and chose to ignore leading cases, as well as, key statutory provisions of the Companies Act. Too much guesswork and commonsense were used to answer the questions. There is no substitute for hard work and thorough preparation.

Specific Comments

Question One
This was a straightforward question asking candidates to discuss the meaning of common law in Lesotho and its place in corporate and business law matters. The candidates, at the very least, were required to explain that by the phrase 'common Law of Lesotho' is meant the law that has been 'received' in Lesotho by virtue of s.2 General Law Proclamation 2B of 1884 and that it was adopted by the Constitution of Lesotho after its independence in 1966 and also by the present 1993 Constitution [s.156(1)]. However, most of the candidates did not refer to the Proclamation at all or explained why the common law continues to operate validly in Lesotho. Not a single candidate stated that much of the business law (contracts, sales, agency, property and delicts) is based on the 'received' common law or that in corporate law, the doctrine of ultra vires, indoor management, duties of directors, the liability of promoters, some of the duties of the auditors, etc are based on the common law. It was surprising that a large number of candidates chose to discuss customary law at some length and some even the other sources like statutory law and judicial precedents and waste their limited time on something that the question did not require. This was surprising because this question has been asked in one form or the other in the past and it was expected that candidates would know what was expected in the answer. It was felt that the

candidates had not bothered to access past examination papers and their answers, which are available on ACCA's website.

Question Two
This question tested candidates' knowledge and understanding of the law regarding an advertisement. Advertisements for the sale of goods, as in the problem scenario, are generally regarded as indicating an intention of the advertiser to seek offers from the readers. In short, as an invitation to treat.

A large number of candidates correctly stated so however again there was a significant number who. Many discussed *Carlill's case*, which was not needed. Candidates, on the whole, performed well in this question.

Question Three
This question tested the understanding of the candidates regarding the concept of contributory fault. Contributory fault refers to the conduct of the plaintiff. It limits the extent of the defendant's liability in an action for damages. In Lesotho, it is governed by the Apportionment of Damages Order, 1970. Not a single candidate referred to the 1970 Order and only a handful of candidate discussed apportionment. Many did provide correct examples. Many discussed all the essential requirements of delictual liability needlessly. Some confused contributory fault with contributories in company law. Some others thought alcohol contributes to an accident when a drunken driver drives a vehicle at a high speed! One even discussed it in terms of hire-purchase. On the whole, this question was not done well and indicated lack of preparation of candidates for the examination.

Question Four
(a) Under the Labour Code Order, 1992, 'operational requirements' of the business are a valid reason for a fair dismissal [s.66(1)(c)] and that dismissal as a result of the operational requirements is a no-fault dismissal. Very few candidates used the expression 'operational requirements' in their answers. Many candidates chose to discuss the difference between contract of and contract for services, or all the essentials of an employment contract, which were not required and wasted their valuable time which could have been spent more profitably in discussing other questions. No candidate discussed that when a business is being closed down, it is usually assumed that this is being done for good reasons and in good faith.

(b) The Labour Code provides for procedural fairness. An employer is obliged by s.69 Labour Code Order 1992, to provide his employees reasons for their retrenchment in writing. He must do so either before dismissing the employee, at the time of his dismissal, or within four weeks of the dismissal. Failure to do so attracts a fine. Furthermore, if reasons for dismissal have not been given in writing, or if the reasons given are incorrect, the employee has a right to ask the Labour Court to 'declare the reasons for the dismissal', and award him, in addition to any other relief, two weeks' wages. Furthermore, an employee could ask the Labour Court or the arbitrator to regard his dismissal 'unfair' and award him 'just and equitable compensation' under s.73(2) of the Labour Code Order, 1992. Some candidates did discuss that reasons for the retrenchment must be given in writing but the rest was not discussed by any candidate. Instead, candidate focussed on severance pay and the requirement of notice.

Question Five
This question asked candidates to explain the process of appointment of auditors in a company and their qualifications. The process of appointment, on the whole, was done satisfactorily. However the part dealing with qualifications and, particularly disqualifications, of the auditors was inadequately done by most of the candidates. A large number of candidates did not even discuss that the Companies Act, 1967, disqualifies certain categories of persons from being auditors of any company. Still fewer discussed that auditors may have recognised alternative qualifications, or be one with adequate knowledge and experience they acquired during the course of their employment.

On the whole, candidates could have scored a lot more marks in this question had they framed their answers fully as required by the question.

Question Six
This question asked candidates to explain the doctrine of *ultra vires* as it applies in Lesotho. Many clearly stated that companies can pursue only those objects which are set out in its memorandum of association and possess only those powers which are expressly or impliedly conferred on it. *Ashbury Carriage Co v Riche* (1875) too was mentioned as an example of the operation of the doctrine by many candidates. Very few candidates discussed that as from 1 March 1985, the memorandum of a company must divide the objects into main objects and other objects and its implications. What troubled the marker was that a large number of candidates confused the doctrine of *ultra vires* with the doctrine of indoor management. They discussed *Royal British Bank case* as an example of the operation of the doctrine of *ultra vires* and associated the doctrine with the articles of association of a company. They also confused powers of a company with the objects of a company. All this was obviously a result of not investing adequate time in the preparation for the examination.

Question Seven
This was a straightforward question. When winding up of a company is on the orders of a court, it is known as compulsory winding up. In a compulsory winding up, the company, or any creditor or any member may petition the court to wind up the company on any of the seven grounds stated in the Act. However, a large number of candidates mentioned grounds such as being an alien enemy, supervening impossibility and insolvency of a company. Many brought in judicial management. Save for a very few, candidates performed inadequately in this question.

Question Eight
This question was based on the well known case of *Harris v Pieters* (1920). Suzy paid by a cheque an amount of R770 and claimed that such payment was 'in full settlement' of Evergreen Supermarket's invoice. This was more indicative of a compromise or conditional offer as she offered to pay a lesser sum 'in full settlement of the invoice.' By banking Suzy's cheque, Evergreen Supermarket could be said to have accepted Suzy's conditional offer, or the offer of a compromise, and could not claim the balance of R30.

A large number of candidates treated the question as if it was on manufacturer's liability in delict. Many wrote that Suzy should have used due care while buying and that, in any case, she had thrown away the evidence and, therefore, had to pay the balance. Some others wrote that once goods go out of a shop, the shopkeeper's liability is nil. Candidates did not answer this question well.

Question Nine
This question was on corporate governance. It required the candidates to answer if the control over the management of the company included control over the corporate litigation. Molefi had undoubtedly been in breach of his fiduciary duty by putting himself in a position where his personal interest conflicted with his loyalty to his company. However that was not what the question asked but was precisely what almost all the candidates focussed on discussing fiduciary duties of directors.

No more than two or three candidates did discuss very superficially whether shareholders in a general meeting can direct the directors not to take legal action against Molefi for breach of his fiduciary duty. This required them to analyse Table A Art.79 and some relevant cases. No one did that. As a result, candidates performed inadequately in this question as well.

Question Ten
This question was based on the well known case of *Mattson v Yiannakis (1976),* where it was held that in order that a gain may become a partnership asset, the profit-making transaction must be within the scope of partnership business. Many of the candidates answered this question satisfactorily. However, a great many did

not. Apparently, they did not read the case because they thought it was a breach of fiduciary duty or a duty of loyalty and honesty and that, in any case, Sam should not have competed with the business of the partnership. As a result, many did not perform well in this question.

Conclusion

The examination requires a thorough preparation for the examination as all questions are compulsory. If a candidates stumbles in answering inadequately in two-three questions, the chances of his passing the examination are reduced. A thorough preparation also requires looking at the syllabus and the past examination papers and their answers. It might be a good idea for candidates to ask themselves after reading a question as to what really is the thrust of the question and then focus answering only that. By digressing into related or unrelated territory, candidates not only waste their effort and time but also diminish their chances of passing the examination. Candidates have to practise writing out the answers, again and again, to cultivate the technique of answering questions in a limited time and in a focussed manner.