Examiner's report

F4 Corporate & Business Law (LSO)
December 2009

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.

Many answers did not begin on a fresh page; candidates must learn to avoid this.

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 explain the advantages and disadvantages of delegated legislation. A majority of the candidates did answer the question very well and were rewarded for it. Some candidates, however, did not answer the question and relied on guess work. 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.

Question Two
This question required candidates to discuss the rule in *Hadley v. Baxendale* (1854). It is a leading case in the law of contract and questions based on it have been asked in past examination papers.

It laid down two rules. The first one states that the defaulter is liable for the loss which arises in the normal course of things i.e. flows naturally from the breach. The second rule states that the defaulter is also liable for loss which, though it does not flow naturally, nevertheless was reasonably within the contemplation of the parties at the time the contract was made. It was expected that the candidates would discuss the facts of the case briefly, state the two rules and then apply them to the facts of the case.

A large number of candidates correctly identified the two rules. But again there was a significant number which did not. Very few tried to apply the two rules to the facts of the case correctly.

Question Three
This question tests candidates' understanding of the distinction between an offer and an invitation to offer. The difference between an offer and an invitation to treat is that the former is a definite promise, which if accepted will immediately result in a contract, whereas the latter will not. Whether the other person's statement or conduct constitutes an offer or is a mere invitation to treat depends on the intention of the person, which is deduced from the facts and circumstances of each case. It is this declaration of *intent* that distinguishes an offer from an invitation to offer. This was emphasised by just one or two candidates. The marker expected candidates to provide an example like the case of *Crawley v Rex* (1909). Again, very few did.

This it has been asked many times in one form or the other in the past.

Question Four
This question asked candidates to discuss if agency can be created, or its scope extended, retrospectively. Most candidates took the question to mean the various ways in which an agency can be created. They discussed expressed and implied creation of agency in detail wasting their time and devoted just a few lines on when an agency can be created, or its scope extended, retrospectively. As a result, most candidates performed unsatisfactorily. Some candidates did not understand the question and, hence did not answer it either.

Question Five
This question asked candidates to discuss the legal requirements for forming a partnership under the Partnership Proclamation 1957. Again, a large number of candidates did not read the question properly. The question asked them to state the requirements for setting up a partnership *under* the *Partnership Proclamation 1957*. The most important requirement, in this context is that the terms of every partnership agreement must be in writing, recorded in a deed, signed by all the partners before a notary who must attest (witness) their signature. The partnership deed must then be registered in the office of the Registrar of Deeds within 60 days. Only a very small minority of candidates stated that.

Then unlike the United Kingdom, the definition in Section 1 of the Partnership Proclamation, 1957 does *not* require that the partnership deed partners to be agent of each other. Scholars argue that this is a consequence of a partnership. Most candidates stated that as an essential requirement under the 1957 Proclamation.

On the whole, candidates could have scored a lot more marks in this question had they read the question properly and framed their answers accordingly.

Question Six

This question asked candidates to explain the doctrine of separate personality, which is one of the key concepts of company law, and its consequences in company law. In Lesotho's company law, a company has its own corporate personality, which is separate from its shareholders. It was in 1897 that the House of Lords in *Salomon v Salomon & Co.* (1897) firmly laid down the principle that a company is a distinct legal entity separate from its members. The marker expected the candidates to refer to *Salomon's case.* Many did.

Most candidates did discuss most of the consequences that follow because of the separate personality of the company. However quite a few brought in the notion of lifting the corporate veil needlessly.

On the whole, candidates performed satisfactorily in this question.

Question Seven

This question required candidates to discuss the circumstances in which a company in difficulty in Lesotho can take recourse to judicial management. 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. A company may be placed under judicial management on petition of shareholders or creditors to the court that on account of mismanagement or any other cause, it is desirable that the company should be placed under judicial management. A company may also be placed under judicial management when an application has been made to the court for the winding-up of a company on the ground that it is unable to pay its debts, or on the ground that it is just and equitable to do so because of its mismanagement or probable inability to meet its obligations, or become a successful concern, or for some other cause [s 265 Companies Act]. In either case the court must be satisfied there is a reasonable probability that judicial management will avoid liquidation of the company and allow it to meet its obligations.

Only one candidate answered this question properly. Most candidates did not even answer the question. "Legal Implications Relating to Companies in Difficulty or Crisis" is one of the topics in the syllabus. It is mistake to ignore this topic. In fact, candidates must look at the syllabus carefully and prepare each and every topic equally well.

Question Eight

This was a problem scenario question which asked candidates to discuss the legal significance of John's offer and consequences of a voidable contract.

John made a valid offer to purchase the car and Edmund purported to accept the offer. However, since John obtained the car by fraud, he has only a voidable title to the car. A voidable title is a good title until avoided. No candidate stated that.

Sandy purchased the car from John. However his title to the car depends on whether John's title had been avoided at the time he sold the car to Sandy. When Edmund asked the police to recover his car, he demonstrated his intention to avoid the voidable contract with John. Therefore, though Sandy bought the car in good faith and without notice, he would have to give it back to Edmund.

Not one candidate answered this question well. All candidates scored inadequately in this question.

Question Nine
This question tested the understanding of the candidates regarding the doctrine of *ultra vires* as it operates in Lesotho. This was the best answered question and virtually every candidate performed extremely well.

Question Ten
This question required candidates to analyse a problem scenario from the perspective of the employment law focussing on the period of notice required to terminate a contract of employment.

The statutory period of notice, in the problem scenario, is just one month. However, Wessels, A in *Conradie v. Rossouw* (1919) held that a 'good cause of action can be founded on a promise made seriously and deliberately and with the intention that a lawful obligation should be established.' The promise by the company, on 15 February 2008, to give Napo and Ramono two months notice of termination was such a promise and the company is bound thereby on the basis of the doctrine of estoppel.
Most candidates did not focus on notice, which was the core of the question. However a small minority did identify the issues correctly and answered well.