

Examiner's report

F4 Corporate and Business Law (ZAF)

June 2010



General Comments

The examination consisted of ten compulsory questions each carrying 10 marks. Candidates are expected to be acquainted with the whole of the syllabus.

The unsatisfactory performance of many candidates was once again exacerbated by a clear failure to be careful in their reading of the content and requirements of questions. Although the examination technique appeared in some instances to be up to standard, it is obvious that insufficient time was allocated to the answering of some of the questions. It was also apparent that quite a few of the candidates were very ill-prepared for the exam and they tried to answer it on general knowledge.

This paper was sufficiently testing to reveal that some of the candidates had simply not done sufficient preparation for the exam. It was also clear that some of the candidates were not acquainted with the whole syllabus.

Specific Comments

Question One

This question required the candidates to discuss what is meant by the 'Bill of Rights' in the South African Constitution. The majority of the candidates did not do well in this question. The only explanation can be that the majority of the candidates were not acquainted with the whole of the syllabus.

Question Two

This question required candidates to discuss how the agency relationship is established. A person who wishes to conclude a contract does not have to do so personally. Such person may prefer, whether for the sake of convenience, or for other purposes, to authorise someone else to enter into the contract on his behalf or in his name. The new syllabus covers quite a few very important aspects of agency law and candidates are advised to pay attention to the section. On the whole this was fairly well-answered, demonstrating that it is a matter of being well-prepared for the exam.

Question Three

This was also a rather basic question requiring candidates to explain the the concept of the intention to be bound by a contract. Contract law is a very important part of the syllabus and candidates should pay particular attention to this branch of the law. Although there were some fair answers the majority of the candidates were not properly prepared to answer a question on this area of the law.

Question Four

This question required candidates to analyse the protection of employees against unfair discrimination. Unfair discrimination constitutes an unfair labour practice. The majority of the answers were unsatisfactory. Very few candidates did well in this question and it is perhaps due to the fact that not so much emphasis was placed on this area of law in the past. Candidates should perhaps pay more attention to this area of law in the future.

Question Five

This question dealt with the law of delict and candidates were required to explain the concept of 'fault' in delictual actions. An unlawful act does not necessarily entail liability for the wrongdoer; the wrongdoer must also be at fault. A wrongdoer is at fault if he has acted intentionally or negligently. The law of dealing with delict and professional negligence is an important part of the syllabus. Candidates can expect questions on this area of the law. Unfortunately this question was the least well answered of all the questions.

Question Six

This question dealt with the role of company secretaries in company law. The Companies Act 1973 provides that the directors of a public company must appoint a secretary who is a permanent resident of the Republic of South Africa and who, in the opinion of the directors, has the requisite knowledge and experience to carry out the duties of a secretary of a public company. This is a fairly recent requirement of the Companies Act. Some of the answers were sound but the majority were unsatisfactory.

Question Seven

This question was in two parts. The first part asked candidates to explain what they understand by insider trading, and the second part, by fraudulent trading. The second part of the question was inadequately answered. Fraudulent trading occurs where business of the company was carried on recklessly, or with intent to defraud creditors. In such event the directors may be held personally liable for the debts of the company.

Question Eight

This question dealt with partnership law. Candidates had to consider whether a valid partnership came into existence and how the partners should divide the profits. Most of the candidates were able to identify the problem area and quite a few managed to answer the question well.

Question Nine

This question required candidates to analyse the problem scenario and to advise the members of a close corporation. The question also requires candidates to discuss the fiduciary duties and duties of care and skill that members of close corporations owe their corporations. The majority of the candidates managed to do fairly well in this question.

Question Ten

This question was also fairly challenging and required candidates to analyse the problem scenario and discuss the provisions of company law that apply. It also required candidates to discuss the situations in which the courts have seen fit to grant winding-up orders on the ground that it was just and equitable to do so. Some of the answers were inadequate. Most of the candidates performed satisfactorily.