



Examiners' report

F4 Corporate and Business Law (ZAF)

December 2008

The examination consisted of ten compulsory questions each carrying 10 marks. It was the third examination on the revised syllabus. 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 carefully read 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.

Although this paper was in a new format, it was sufficiently testing to reveal that some of the candidates had simply not done sufficient preparation for the exam.

Specific Comments

Question 1

This question required the candidates to discuss the impact of human rights law on statutory interpretation. The issue of human rights law is a topic that is now covered by the new syllabus and it is obviously very important in the new dispensation applicable to the South African law. The majority of the candidates did not do well in this question. It is expected that this area of law will feature prominently in future exams and students will be well advised to bear this in mind.

Question 2

This question required candidates to explain the difference between suspensive and resolutive conditions in the law of contract. The new syllabus covers quite a few very important aspects of contract law and candidates are advised to pay special 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 3

This was also a rather basic question requiring candidates to explain the requirement that the business of the company must be carried on for the joint benefit of all the partners. 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 4

This question required candidates to explain how the concept of ratification can validate the acts of an unauthorised agent. It thus deals with the establishment of an agency relationship by means of ratification. Some of the answers were unsatisfactory. One can only conclude that these students were not properly prepared for the exam.

Question 5

This question required candidates to discuss a member's power to bind a close corporation in contract. This was in fact an uncomplicated question aimed at testing the candidates' knowledge of close corporation law. Close corporation law is an important part of the syllabus and candidates can expect questions on this area of the law.

Question 6

This question dealt with company law and the problem of insider trading. Insider dealing concerns the sale and purchase of shares. Insider trading takes place where a person has confidential information about a particular matter or matters, or a set of circumstances or a chain or course of events, which is not known to the members of the company or the public, but which, if known, would affect the price of the shares of the company. This person then uses the information to secure a profit or to prevent a loss to himself. Most of the answers were

unsatisfactory.

Question 7

This question dealt with company law and it was in two parts. In the first part candidates were required to explain the difference between shares and debentures. In the second part candidates were required to explain the procedure for altering class rights. Although these issues are fundamental to company law, the greater majority of the candidates did not answer satisfactorily in this question.

Question 8

This question provided a problem scenario dealing mainly with the law of contract. Stripped to its essentials it deals with the question of the validity of the exemption clause as well as certain aspects of the parol evidence rule. Exemption clauses are enforceable and in terms of the parol evidence rule, one cannot contradict the written terms of a contract. Most of the candidates were able to identify the problem area and quite a few managed to answer the question well.

Question 9

This problem question dealt with company law and candidates were required to discuss the capacity of a company as well as the authority of its agents to bind the company in contract. It also required a discussion of the *Turquand* rule which provides that if a *bona fide* outsider (third party) negotiates with a representative of the company and certain internal formalities or prerequisites regarding the authority of the representative are laid down in the articles of association of that company, the third party is entitled to assume that the requirements have been complied with unless he knows or ought to have suspected that they have not been met. This is a very fundamental aspect of company law. Some of the candidates managed to answer this question quite well. Candidates must pay attention to the basic principles of company law.

Question 10

This question was perhaps the most challenging in the whole exam paper because it tested not only the candidates' knowledge and comprehension but also the application of their knowledge. The problem scenario deals with the potential delictual liability of company auditors towards the client company. It is one of the new important additions to the syllabus. Some of the answers were inadequate. Most of the candidates managed to answer satisfactorily.