



Examiner's report

F4 Corporate & Business Law (ZAF)

December 2009

General Comments

The examination consisted of ten compulsory questions each carrying 10 marks. This exam was written by the highest number of candidates to date.

The unsatisfactory performance of many candidates was once again exacerbated by a clear failure to read the content and requirements of questions carefully. 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. It was also clear that students tried to spot the exam questions and that they did not cover the whole of the syllabus. Candidates are expected to be acquainted with the whole of the syllabus.

This paper was sufficiently testing to reveal that some of the candidates had simply not done sufficient preparation for the exam.

Specific Comments

Question One

This question required the candidates to discuss the rules and presumptions used by the courts in interpreting legislation. Quite a number of candidates expected a question on human rights law and proceeded to answer the question on that basis even though the question had very little to do with that subject. This was a clear instance of trying to spot the question. Although the issue of human rights law is a very important topic, students are well advised to prepare for other questions as well. The majority of the candidates did not do well in this question. Only one candidate managed to obtain almost full marks.

Question Two

This question required candidates to discuss the potential personal liability of an agent and a purported agent. A purported agent is someone who acts as an agent on behalf of someone else without having authority to do so. Such person is personally liability on the basis of a breach of a warranty of authority. An agent who exceeds the limits of his authority may also incur personal liability for any loss the principal may suffer. On the whole the answers to this question were fairly disappointing and only a handful of the candidates managed to obtain high marks.

Question Three

This was also a rather basic question requiring candidates to analyse the nature of a contract. A contract is an agreement between two or more persons which gives rise to personal rights and corresponding obligations. In other words, it is an agreement which is legally binding to the parties. There were some very good answers and a number of candidates managed to obtain full marks. In the end it boiled down to simply putting down the basic principles of what constitutes a contract.

Question Four

This question required candidates to explain when the default of a debtor will constitute a breach of contract. A debtor commits breach of contract in the form of default of the debtor if he does not perform at the agreed time and the delay is due to the debtor's fault. There are, however, certain requirements that have to be met before a debtor will be liable for the breach of contract. Although this

was in fact an uncomplicated question, most of the answers were not very good. One can only conclude that these students were not properly prepared for the exam.

Question Five

This question required candidates to discuss the potential liability of company auditors for professional negligence. The issue of professional negligence features very prominently in the syllabus and candidates are required to be well acquainted with this area of the law. Only one candidate managed to obtain full marks and most of the remaining candidates attempted to answer this question on general knowledge. On the whole the answers were most disappointing.

Question Six

This question dealt with company law and candidates were required to explain the rules governing the distribution of dividends. The Companies Act of 1973 was amended in 1999 and the common law rules relating to dividends have been amended. Very few of the candidates were aware of the changes in the law with the result that most of the answers were rather poor. Most of the answers were thus quite disappointing and there were too many candidates who were ill prepared for the exam.

Question Seven

This question dealt with company law and it was in three parts. Candidates were required to explain the meaning of ordinary shares, preference shares and debentures. These are rather basic aspects of company law. Although these issues are fundamental to company law, the greater majority of the candidates did not do well in this question. Only two candidates managed to obtain full marks.

Question Eight

This question provided a problem scenario dealing mainly with the law of partnership. Stripped to its essentials it deals with the fiduciary duties between partners. Most of the candidates were able to identify the problem area and quite a few managed to do rather well. The main problem was that candidates did not refer to any case law and most of the answers simply repeated the problem scenario itself without a proper analysis of the legal principles.

Question Nine

This problem question dealt with close corporation law and candidates were required to discuss the management of a close corporation. When there is no association agreement between the members of a close corporation, a 75% approval is needed for the disposal of the greater part of the principal business of the close corporation. Not a single candidate identified this very important principle. Candidates must pay attention to the basic principles of close corporation law.

Question Ten

This question was really not as difficult as it may appear on first sight and it deals with the legal effect of a company's articles of association as well as the fiduciary duties of directors. The fiduciary duties of company directors are a very important issue and candidates must study this area of the law as well as the cases that deal with the principles of law. Some of the answers were very disappointing. Most of the candidates managed to pick up points, but there was not a single outstanding or exceptional answer.