

# Examiner's report

F4 Corporate and Business Law (ZAF)

December 2010

The ACCA logo consists of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black square.

## 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 the constitutional control of legislation is. The majority of the candidates did not do well in this question. Quite a few candidates prepared certain set answers on human rights and they insisted in writing it down irrespective of what was asked. The only explanation can be that the majority of the candidates were not acquainted with the whole of the syllabus, or that they did not read the exam paper properly.

### Question Two

This question required candidates to discuss how the doctrine of the undisclosed principal operates in law. 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. Where the third party does not know that he is dealing with an agent, the doctrine of the undisclosed principal comes into play. The 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 for students it is a matter of being well-prepared for the exam.

### Question Three

This question required candidates to explain the concept of a time clause. The time clause must be distinguished from the condition. Unlike a condition, where a contract comes into operation or is dissolved upon the occurrence of non-occurrence of a specified uncertain future event, the time clause is brought into operation by reaching of a certain and determined or ascertainable time which has been agreed upon. 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 deals with partnership law and required candidates to discuss the extent of the partnership fund in the law of partnership. Each of the partners must bring something into the partnership, or bind himself to bring something into it, whether it be money, or his labour or skill. These contributions form part of the partnership fund and the creditors of the partnership look to this fund for satisfaction of their debts. Most of the candidates did well in this question.

**Question Five**

This question dealt with the law of delict and candidates were required to explain the meaning of causality and remoteness of damage. A few candidates explained these concepts with examples and they did adequately. 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 ways in which the directors of a company are appointed to their office. This is indeed a very basic issue in company law and quite a number of candidates failed to grasp that it is the shareholders who appoint company directors. Creditors may also appoint directors if the articles of the company provides so. Some of the answers were sound but the majority were unsatisfactory.

**Question Seven**

This question dealt with the issue of corporate governance. The system of corporate governance exists for the purpose of effectively restricting and monitoring the powers vested in decision-makers. In South Africa, the need for good corporate governance was linked to the dismantling of the apartheid system and the developments in this field in the United Kingdom and elsewhere. Quite a few candidates did very well in this question and it underlines the importance of the topic.

**Question Eight**

This question dealt with the law of contract. It turned on the issue of whether a party to a contract is entitled to enforce the terms of the contract by means of a court order for specific performance. In this problem it should have been quite clear that the terms of the contract could be so enforced. 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 on the procedure that should be followed when converting a close corporation into a company. Many of the candidates read this to mean that a close corporation had to be compared with a company. This was not the case and candidates were required to deal with the procedure of converting a close corporation. Some of the candidates managed to do fairly well in this question.

**Question Ten**

This question dealt with the basic principles of company law and was based on the decision in *Salomon v Salomon & Co Ltd* (1897). Candidates should be familiar with this decision since it is really one of the universally well known cases dealing with corporate personality. Some of the answers were sound and candidates were able to identify the problem. Most of the candidates performed satisfactorily.