



Examiners' report

F4 Corporate and Business Law (LSO)

December 2007

This is the first time that the paper was set in the new format. All 10 questions were compulsory and there were several new topics. As usual, the examination was sufficiently testing to reveal those candidates who did not prepare well for the examination.

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

Candidates did not prepare for the new format. The new format requires candidates to answer all 10 questions. It means that all candidates must master the whole of the syllabus and 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, excepting two, 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. 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 learning the skills in regard to answering questions. Candidates would do well 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, which used to be in Section B of the past examination papers.

The key to good marks lies in the breadth of knowledge of the leading cases. They are not many in any case. Candidates must 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 1

This question required the candidates to explain the significance of the Southern African Customs Union (SACU) for businesses in Lesotho. Goods grown, produced or manufactured in Lesotho, or for that matter in any of the other member countries, or goods imported by any member country, move freely throughout the customs union area without the imposition of any tariff or restrictions. There are no rules of origin requirements. More than 95% of all imports into Lesotho and, if we exclude AGOA exports of clothing and apparel to the United States, then nearly 98% of all exports from Lesotho benefit by the SACU agreement. Traders and individuals do not need any import or export licence to buy and sell goods within the CCA. Lesotho's domestic market is small. The SACU agreement ensures access to the large market of South Africa and, thus, provides an incentive to businesses to invest in Lesotho, take advantage of its relatively low cost but highly skilled labour, and then sell their output in the mature market of South Africa. Unfortunately, it has happened only to a limited extent. The share of revenue that Lesotho obtains under the Agreement is substantial and constitute a very significant source of government revenue. However, the thrust of the Uruguay Round agreements and the increasing number of free trade areas agreements is to push the customs tariffs down. A free trade agreement with the EU is an example. SACU is negotiating free trade agreements with NAFTA (USA, Canada and Mexico) and others. They have the potential to reduce Lesotho's share of customs union revenue significantly.

Most candidates ignored or paid very little attention to the topic.

Question 2

This question examined the candidates' knowledge and understanding of the rules relating to the acceptance and revocation of offers in the law of contract. This question was answered rather well. Those who did not do well were those who did not do well in any of the questions. Part (b) of the question that dealt with the rules regarding revocation of an offer was generally not done well. There are very few simple rules that candidates should have stated.

Question 3

This question required candidates to explain the provisions of the Labour Code Order, 1992 relating to the statutory grounds covering fair dismissal.

Under section 66 of the Code a dismissal is fair if the reason for dismissal is connected with one or more of the following: (i) lack of capacity, (ii) misconduct, (iii) operational requirements of the undertaking, establishment or service, and (iv) any other ground where the employer "having regard to all the circumstances", can establish that he "acted reasonably in treating the reason for dismissal as sufficient grounds for terminating employment". There are decided cases to illustrate these grounds. Nobody explained all these four grounds. Only two candidates explained one or two cases.

All candidates should have been able to answer this question well. Lack of preparation could be the only reason why it was not.

Question 4

The first part of the question asked candidates to state the advantages of the registration of a partnership in terms of the Partnership Proclamation, 1957. The second part required them to explain when could a partnership be dissolved by the operation of law.

The first part of the question was generally not done well. This was based on the bare provisions of the legislation. The second part was answered much better.

Question 5

The first part of this question required candidates to discuss that a company has a separate legal *persona*. The second part of the question asked candidates to state the exceptions to the principle that a company has a separate *persona*.

In general, the answers showed lack of preparation.

Question 6

This question asked candidates to explain the clauses that are required to be contained in a company's memorandum of association.

The memorandum must contain clauses dealing with the following five matters: name clause, objects clause, limited liability clause, authorised share capital clause and the association clause.. Except one or two, no candidate was able to identify these five clauses.

Question 7

This question asked candidates to explain when the members may wind up their company voluntarily and state the legal consequences of such a winding-up. In terms of performance, this was the worst.

The Companies Act, 1967, provides for two kinds of voluntary winding up: members' voluntary winding up and creditors' voluntary winding up. Candidates were expected to identify them and explain the simple rules that are

applicable to each of the two. Part (b) required candidates to state the legal consequences of voluntary winding-up was not done well. Most candidates used guess work and that explained the inadequate performance.

Question 8

This problem type question required candidates to analyse the problem scenario from the perspective of the law of delict paying particular attention to the requirement of wrongfulness, fault and causation. Problem type questions not only require an understanding of the basic principles but their application to the scenario in the examination question.

Delict is a new topic and is being examined for the first time. Perhaps, that may explain the calibre of performance. There would be questions in future on delicts. The law of delict is based on judicial decisions and the candidates, therefore, must learn to master the basic principles that underlie delict and the way they are applied by the courts. Candidates should have a look at the judicial decisions in delicts in the sub-region. They are not too many in any case. Question 8 itself was based on *Tsogo Sun Holdings (Pty) Ltd v. Qing-he Shan* (2006), of the the SA Appellate Court.

Question 9

This question dealt with a number of inter-related issues like the authority and duties of an agent and consequences for their breach.

Mr. Smith had implied authority to order butter for the Hypervama Supermarket without a signed purchase order but he failed to exercise the requisite care, skill and diligence his mandate required when accepting delivery of butter and for this he is liable to his principal, that is the Hypervama Supermarket. The Butter Company, on the other hand, could argue that it was indeed within the scope of the ostensible authority of Mr. Smith to order butter from a supplier like the Butter Company and that this authority flowed from the fact that Mr. Smith was employed as a buying manger and the fact that buying managers usually have authority to purchase goods for the business of which they are the buying managers. The fact that Mr. Smith was prohibited to purchase the goods without a signed purchase order was irrelevant because the Butter Company was not aware of it. The result will be that Hypervama Supermarket will be prevented from denying the authority of Mr. Smith to order butter on its behalf.

Nobody answered this question well.

Question 10

This was a problem type question on the *ultra vires* rule. The task of the candidates was to decide which, if any, of the given transactions were *ultra vires*.

This was a familiar question from a familiar topic, which has been examined many times in the past. The performance of the candidates would go up enormously if they learn to invest more time and effort in writing out the answers to the problems, that can be found in the past ACCA examination papers, as well as, in their text books.