

Examiner's report

F4 Corporate and Business Law (MYS)

December 2011



General Comments

The examination consisted of ten compulsory questions. As usual, questions 1 to 7 were knowledge-based questions while questions 8 to 10 were problem-based questions requiring candidates to demonstrate the ability to identify legal issues and apply it to given situations. Candidates were reasonably well prepared for the examination. On the whole the performance of the candidates was satisfactory.

Candidates displayed a fair understanding of what the questions required. The questions were clear and there was no ambiguity which was likely to cause candidates to misinterpret any question.

The following recurring weaknesses were found:

- **Answers too brief:**

As usual there were a number of candidates who failed to give full answers. Very brief answers and point form answers will result in candidates losing valuable marks. Candidates are reminded that questions must be answered clearly and in full sentences in order to achieve satisfactory marks.

- **Failure to answer all parts of a question or the required number of questions:**

This point has also been highlighted before. A number of candidates did not answer all parts of a question. This also resulted in lower marks. Candidates are advised once again to attempt all parts of a question. Many candidates did not attempt all the ten compulsory questions indicating that they were not fully prepared for the examination.

- **Spotting:**

Spotting questions still remains an area for concern. Some candidates answered some questions very well while not being able to give adequate answers to other questions. This indicates that these candidates concentrated on certain topics while ignoring other relevant topics. This commonly happens when candidates do not have adequate time to prepare fully for the examination. Invariably such selective studying will not be beneficial to the candidate. As questions can come from across the syllabus, candidates are reminded not to study by spotting topics.

- **Time management**

Candidates must be reminded once again of the importance of time management in order to do well in the examination. Some candidates answered the first few questions very well but the later answers were too brief indicating that they were short of time to complete the paper. As a consequence of this, the total mark obtained by the candidate was lower than what could have been achieved if the candidate had spaced out their time and was able to answer each question adequately. Candidates are advised to divide their time properly for each question so as to achieve better results.

- **Reliance on past years questions**

Candidates are reminded (as before) that past year questions and answers provide a very useful guide in their preparation for the examination and they could much improve their results by constantly referring to them. However, candidates are also reminded that questions can come from any part of the syllabus and the fact that there have been no questions on particular topics or sub-topics in previous examinations does not mean that there would be no question on that topic or sub-topic in future examinations. Candidates must always study across the syllabus to be fully prepared for the examination.



Specific Comments

Question One

This question, on the Malaysian Legal system contained three parts. Part (a) required the candidates to define human rights. Part (b) required candidates to state two functions of the Human Rights Commission and part (c) required them to explain three provisions relating to human rights as found in the Federal Constitution.

Parts (a) and (c) were reasonably well answered. Candidates indicated sufficient knowledge of the meaning of human rights and were also able to explain three provisions relating to human rights under the Federal Constitution.

However, candidates did not answer part (b) well. Many candidates gave general statements on the functions of the Human Rights Commission, without knowledge of or reference to the Human Rights Commission of Malaysia Act. Fortunately, this part only carried two marks. On the whole, most of the candidates were able to obtain satisfactory marks.

Question Two

This question, on contract law, contained two parts which carried equal marks. Part (a) required the candidates to explain and distinguish a proposal from an invitation to treat while part (b) required them to explain and distinguish an acceptance from a counter-proposal.

This question was very well answered. Candidates indicated sound knowledge of the difference between a proposal and an invitation to treat as well as the difference between an acceptance and a counter-proposal and were able to obtain satisfactory marks. Similar questions have been asked in the past and candidates showed clear familiarity with the law in this area. Only very few candidates displayed lack of knowledge of the law in this area.

Question Three

This question was on employment law. It contained two parts. Part (a) which carried 4 marks required the candidates to explain and distinguish between a contract of service and a contract for services. Part (b), which carried 6 marks, required the candidates to discuss the tests applied by the courts to determine the existence of a contract of service.

This question was also very well answered. This area has been tested in the past and candidates were well prepared. Many managed to obtain high marks.

Question Four

This question on company law, which contained two parts, tested the candidates' knowledge on insolvency. Part (a) required the candidates to list any four persons who may petition for the winding up of a company by the court. Part (b) required them to explain when a company may be deemed to be unable to pay its debts.

This question was not well answered. For part (a) most candidates were able to mention shareholders and creditors as persons who may petition for the winding up and were able to obtain a couple of marks. Part (b) seemed to take candidates by surprise. The vast majority were not knowledgeable as to when a company is deemed to be unable to pay its debts under the Companies Act. This aspect had not been tested in previous examinations. Possibly, candidates may not have paid attention to this aspect of company law. Candidates are once again reminded that questions may be set on any part of the syllabus and they should be prepared for it.

Question Five



This question on company law, which contained two parts, tested the candidates on the meaning of 'veil of incorporation' as well four situations in which the veil of incorporation may be disregarded.

This question was very well answered. This again was an area which is frequently tested and candidates clearly displayed their familiarity and knowledge. Most gave full answers together with relevant case law and statutory provisions and obtained high marks. This helped them to make up for the unsatisfactory performance in some other questions.

Question Six

This question on partnership law tested the candidates' knowledge on the liability of retired partners for partnership debts incurred both before, and after, their retirement.

This question was not very well answered though a similar question had been set in a previous examination. Candidates were expected to make reference to the Partnership Act 1961 and state that retirement does not automatically absolve a partner from partnership debts existing before his retirement and neither does it automatically release him from partnership debts incurred subsequent to his retirement. They were then expected to explain how a retiring partner could avoid liability for such debts.

Most of the candidates had some idea of the law in this area and were able to get some marks. However the majority did not give full answers resulting in them obtaining lower marks than they otherwise could have.

On the whole this question was less than satisfactorily answered.

Question Seven

This question on corporate governance contained two parts. Part (a) tested the candidates' knowledge on the composition of the audit committee as recommended under the Malaysian Code on Corporate Governance, while part (b) tested their knowledge on the duties of the audit committee, as recommended under the Code.

This question was not very well answered. Many candidates displayed familiarity with the concept of the audit committee but the answers were not promising. Most of the candidates mentioned that the audit committee should have independent directors but were not sure whether all had to be independent or only the majority. Many were also not sure whether all members should be non-executive directors. Not many gave full answers. Some candidates went totally off the mark by stating that the members of the audit committee should be made up of auditors.

In relation to duties of the audit committee, again many candidates did not display sufficient or accurate knowledge. It would appear that candidates had not placed much importance on this topic, resulting in them failing to obtain more marks.

Question Eight

This problem-based question on company law contained two parts relating to two different aspects of duties of company directors. Part (a) tested the candidates' ability to identify and apply the issue of substantial property transactions by directors and the need to obtain shareholder approval. Part (b) tested them on their ability to identify and apply the law on prohibition on loans by a company to its directors.

Part (a) was satisfactorily answered. A number of candidates were able to identify s 132E and apply it correctly to the given problem. Given that the value of the property in question (RM2.5 million) was well above the limit of RM250,000 (the requisite value) it was easy to conclude that the transaction needed to be approved by a resolution of the company in a general meeting. However there were a number of candidates who were not able to identify the issue and simply discussed the issue as a breach of directors' fiduciary duties. Thus they lost valuable marks.



Part (b) was quite well answered. Most of the candidates were able to identify the issue of prohibition on loans to directors and were able to explain the law and its exceptions and obtained satisfactory marks. However a number of candidates did not properly apply the law to the given problem. This prevented them from getting higher marks. Candidates are reminded that problem-based questions usually require candidates to give advice. Thus candidates must give a conclusion advising the relevant party of his legal position in the light of the given facts.

Question Nine

This problem-based question on company law contained three parts which tested the candidates' knowledge and ability to apply the law relating to alteration of a company's constitution.

The candidates' performance was unsatisfactory.

Part (a) concerned the issue of alteration of the objects clause and the right of the minority under s 28 to object to the alteration. Candidates were expected to identify the point that only the minority who constitute at least 10% of the company's issued capital were eligible to apply to the court to cancel the alteration. As Dol and Sah together only held 9% of the issued share capital, they would not be able to do so. While a few candidates succeeded, many candidates missed this point and failed to achieve satisfactory marks.

Part (b) concerned the issue of alteration of the articles of association of the company and the right of the minority to challenge the validity of such alteration. Candidates were expected to identify the issue that any alteration of the articles of association must be done bona fide for the benefit of the company as a whole. Many candidates were not able to identify this. Candidates were expected to conclude that as the alteration was intended to allow directors to compulsorily acquire the shares of members who are in competition with the company, the alteration would be considered for the benefit of the company and thus valid. Many candidates were also not able to pick up this point. Thus the performance for this part of the question was also inadequate.

Part(c) touched the issue of alteration of the name of the company in the light of a clause in the memorandum of association that the name of the company was unalterable. Most of the candidates were able to identify the need for a special resolution for the alteration of the name clause and obtained some marks. However, not many were able to identify the point that the statutory right in s 23 Companies Act to alter the name of the company by special resolution cannot be taken away by a clause in the memorandum. Thus, Manis would not be able to successfully challenge the validity of the alteration. The vast majority of the candidates could not identify this point and were unable to get satisfactory marks.

Question Ten

This problem-based question on contract law contained two parts relating to remedies for breach of contract.

Part (a) concerned a contract for the sale and purchase of land while part (b) related to the sale and purchase of a motorcar.

For part (a) candidates were expected to identify that the most appropriate remedy for breach of contract for the sale of land was specific performance while for part (b) they were expected to state that the most appropriate remedy for breach of the contract for the sale of the motorcar was damages.

Although there were many satisfactory answers, there were also a sizeable number of candidates who were not able to identify the correct remedy for each situation. Further, even where they were able to identify the most appropriate remedy, many candidates did not give a reasonable explanation of why the remedy was most appropriate in the given circumstances. Thus many candidates did not obtain as many marks as they otherwise could have.

On the whole, the performance for this question was satisfactory.