

Examiner's report

F4 (MLA) Corporate & Business Law

For Paper Variant exams December 2016



General Comments

The purpose of this report is to provide feedback on the performance of candidates in the December 2016 examination. It identifies strengths and weaknesses demonstrated by candidates, and also highlights best practices that those presenting themselves for the examination in the future should consider in order to maximise their prospects of success.

The format of the December examination was the same as the previous four sessions, with candidates now used to the revised format where they have to answer 45 questions, worth 1 or 2 marks each, and 5 further questions worth 6 marks each in 2 hours. All questions were compulsory. The questions in Section A were multiple-choice and were objective in that the correct answers had to be selected in order to earn marks. It was not possible to award marks when candidates offered more than one answer. The questions in Section B were divided into bi-partite or tri-partite questions with each part of the question having 2, 3 or 4 marks depending on the scope of the question and the level of detail required from candidates. As opposed to Section A, the questions in Section B were case studies. The overall standard of scripts was sound, suggesting that the majority of candidates had prepared relatively well for the examination.

From an analysis of the answers given, the majority of candidates adopted effective time management skills, attempting practically all the 45 questions in Section A and very few not attempting the 5 questions from Section B or parts thereof. It is to be noted that higher marks could have been awarded in respect of the answers to the questions in Section B as often candidates failed to provide sufficient detail. Answers to questions from Section B had to be brief given their mark allocation to each part of the question but clearly meriting some detail for each answer. Candidates were also expected not simply to give a negative or affirmative answer but to give a reason for their answers and to make reference to the relative legal provisions. It is important to note that candidates are awarded marks for giving a reasoned answer even though this may not exactly reflect the correct answer expected.

Syllabus topics on which candidates performed very well included contract law, company and employment law. Syllabus topics on which candidates performed less well related to jurisdiction of the Maltese courts and aspects of company law.

The report will begin with some general brief comments on the overall performance of candidates in this session before going on to look at the questions in the paper in detail. One notes that both positive and negative aspects of performance are given so as to enable candidates to learn from past performers and performance.

Some general indications of good practice to follow:

- candidates must be well prepared for the exam - on all topics and not on what they consider the 'most important' and this in particular with the increased number of questions which are all compulsory and therefore candidates require knowledge a full overview of the subject areas;
- candidates need to manage their time effectively given that the paper has so many questions which should all be attempted;

- candidates must read each question carefully in order to understand the requirements, in particular each distractor in the Section A questions;
- candidates must keep in mind that the marks that the examiner allocates to each part of the question is indicative of the detail which candidates are required to go into;
- candidates must provide concise but complete answers;
- candidates should indicate the question number in the paper on each page of the respective answer;
- candidates should start each question on a new page.

Specific Comments

The report shall focus on some questions where candidates experienced particular difficulty.

Section A

Question 29

When is a transfer of shares deemed concluded?

- A When the transfer duty is paid
- B When the share transfer agreement is signed by both parties
- C When the transfer is registered with the Registry of Companies
- D When the price consideration is paid

The correct answer is B. Only a relatively small minority of the candidates selected the correct answer.

The provisions of the Companies Act lay down the procedure for the transfer of shares. The law provides that every transfer must be drawn up in writing but may take any written form as may be decided upon by the parties to the agreement. Therefore a transfer of shares in a private company is a private agreement between the parties and is deemed concluded between the parties once the agreement is signed and concluded.

Question 41

In August 2015, Maria completed a two-year fixed-term contract working for XYZ Ltd. XYZ Ltd has just offered her a new contract for the same role to commence in July 2016.

Which of the following is correct in relation to XYZ Ltd's offer of employment to Maria?

- A It must offer her an indefinite contract
- B It may offer her a definite contract of any duration
- C It may offer her a definite contract but it must be of at least two years' duration
- D It cannot re-employ her within a year of the termination of her previous contract

The correct answer is A. Only a minority of the candidates selected the correct answer.

The provisions of the Employment and Industrial Relations Act introduced provisions to remove any form of discrimination between definite and indefinite contracts, that is, contracts of service whereby persons were employed for a fixed period of time as against those regulating employment for an indefinite period of time. The Act achieved this aim principally by providing that: (i) where an employee is retained in employment after the lapse of the definite period or if they are re-employed within one year from the termination of a definite contract, they cannot be employed under conditions less favourable than those which would have been applicable had the contract been one for an indefinite period and the aggregate probationary period cannot be more than that allowed in terms of law; and (ii) in the same way, an employee under a fixed contract cannot have less favourable conditions those applicable had they been employed on an indefinite basis at the same work place unless such different treatment be justified on objective grounds.

Regulations were also introduced under the Act to provide that a person cannot be employed for a fixed period for more than four years. These regulations came into force as the Contracts of Service for a Fixed Term Regulations, 2002 (L.N. 429 of 2002). The purpose of this Legal Notice is to grant employees on a fixed term contract the same benefits and conditions as those enjoyed by persons having indefinite contracts as well as to render employees on a fixed term contract eligible for an indefinite contract after four years of fixed-term contract work.

Section B

In the context of directors' duties, the majority of candidates were able to explain the nature of the relevant fiduciary duties, particularly those involved in a possible conflict of interest. They were also able to explain the consequences of failure to comply with them. Also in the area of company law, most candidates were able to explain the concept of separate personality. However, they had difficulty in explaining those instances where the law enforces penetrating the corporate veil.

In relation to share capital, candidates demonstrated adequate knowledge both of the rights of the holders of preference shares and of the rules applicable to the variation of class rights.

In the context of employment law, candidates were able to demonstrate satisfactory knowledge of the various provisions relating to redundancy, including the importance of industrial practice given the lack of a legal definition of redundancy, as well as the requirement for a genuine redundancy and the provisions relating to collective redundancy. However, answers were generally lacking in detail when it came to explaining and applying the rules relating to non-cash consideration.

The question that candidates found most challenging in this section was one relating to the duties and responsibilities of accountants and auditors and the possibility of claims made by third parties who have relied upon inaccurate financial statements. The majority of answers here were very general in nature, with candidates not applying their knowledge to the facts of the scenario. Far more direct engagement with the scenario was required here.