

Examiner's report

F4 MLA Corporate and Business Law June 2015



General Comments

The purpose of this report is to provide feedback on the performance of candidates in the June 2015 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 June examination saw the second session of the new format through which candidates were asked 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 questions 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 scenarios. The overall standard of answers was reasonable, suggesting that the majority of candidates had prepared well for the examination.

From an analysis of the answers given, the majority of candidates adopted sound time management skills, attempting 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 however that a number of candidates failed to provide sufficient detail in their answers to the questions in Section B, many of which providing single line answers. Answers to questions from Section B had to be brief given their mark allocation to each part of the question but clearly meriting a few sentences for each reply. Candidates were expected to not simply give a negative or affirmative answer but to give a reason for their answers. Candidates are awarded marks for giving a reasoned answer even though the answer may not exactly reflect the correct answer expected.

Syllabus topics on which candidates performed very well included money laundering, company and partnership law, employment, and contract law. Syllabus topics on which candidates performed less well related to sources of law, conditions to be met for a company to have private status and conditions for a valid offer.

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 performance.

Some general indications of best 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 carefully understand the requirements of each question, in particular each distractor in the Section A questions;
- 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;
- provide concise and complete answers;
- candidates should indicate the question number in the paper on each page of the respective answer;
- start each question on a new page.

Specific Comments

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

Section A

Question 2

Which of the following contracts does NOT require a public deed?

- A** Deed of donation
- B** Transfer of immovable property
- C** Loan of money

The correct answer is C.

There are those transactions for the valid completion thereof, the law requires a particular form. This may take the form of a public deed, which is the most solemn, to a private writing. In terms of article 1232(2) of the Civil Code a public deed is an instrument drawn up or received, with the requisite formalities, by a notary or other public officer lawfully authorised to attribute public faith thereto. The contracts with regard to which the law imposes the most solemn form, that is, the public deed, are those which relate to the transfer of immovables, whether the title be sale or exchange, and whether the contract constitute an annuity or a donation, or emphyteusis, usufruct, or right of habitation. Moreover, donation must always be done by means of a public deed even if the object thereof be a movable. The loan of money does not require a public deed for its conclusion.



Question 23

Which of the following statements about a partnership is true?

- A** The managing partners are held responsible for the acts of the partnership
- B** Partners are only responsible for their individual actions
- C** Partners can only be held responsible in respect of jobs where their fees have been paid
- D** Partners are jointly and severally responsible for the acts and omissions of each of them

The correct answer is A.

Article 25(1) of the Companies Act 1995 provides that unless the deed of partnership does not provide otherwise, the administration and representation of the partnership shall vest in each of the partners severally. Hence if managing partner is appointed such person would be vested with the management and administration of the partnership and accordingly be held responsible for the acts of the partnership and not the other partners.

Section B

Question One

The first question was a bi-partite question on employment law and precisely on the termination of contracts of employment on the basis of a good and sufficient cause. Part (a), which had a maximum of 2 marks, requested candidates to provide a definition of a good and sufficient cause and state which contracts of employment may be so terminated. The law does not provide for such a definition but instead lists those causes which cannot lead to the termination of employment on the basis of a good and sufficient cause. While a substantial number of candidates did mention that the law does not provide a definition, the vast majority did not list those instances which cannot constitute a good and sufficient cause. Most candidates stated that both definite and indefinite contracts can be terminated for a good and sufficient cause.

Part (b) requested candidates to explain how Elizabeth's contract could be terminated on a good and sufficient cause. Candidates were expected to explain, as most of the candidates did, that Elizabeth had been acting in an improper manner by acting rudely with customers. She had been reprimanded by her employer and had also been reprimanded in writing.

Maltese employment legislation does not stipulate the procedure to be adopted when disciplinary measures are to be taken against employees. Reference can, however, be made to practice adopted by other local entities as reflected in decisions of the Industrial Tribunal. Case law, which although not binding, provides that an employer should observe a number of procedural requirements prior to dismissing an employee, like the giving of written warnings. It was important to mention that the company should be able to prove that Elizabeth's actions leading to her dismissal had nothing to do with her pregnancy but with her general behaviour in respect of which she had already received two written warnings.

Question Two

This question was a tri-partite question with each question having a maximum of 2 marks each. Answers given to each part of the question were satisfactory albeit somewhat lacking in detail to be able to award maximum marks for each part. The question related to the increase in the share capital of a company.

Part (a) requested candidates to explain the law relating to the issue of shares for a consideration other than cash. Candidates had to provide that a capital increase can take place in cash or in kind and make specific reference to Article 73 of the Companies Act, 1995 which deals with an increase in capital for a consideration other than in kind. Part (b) required candidates to explain the procedure to be followed in order for Michael to subscribe to shares in kind. Reference had to be made to the legal provisions and particularly to the requirement for an experts' report and the contents thereof. Answers to this part lacked detail. Part (c) related to the subscription of shares in exchange for the provision of services. This did not require a detailed answer but merely had to provide that assets must be capable of economic assessment and the relative legal provision specifically excludes the supply and provision of services. Hence John would not be able to participate in the subscription by way of provision of services. Most candidates answered this part correctly.

Question Three

This question was divided into two parts with each part being awarded a maximum of 3 marks each. The question related to the offence of money laundering under the Prevention of Money Laundering Act, 1994. Most candidates answered this question well and were able to answer in sufficient detail. It was clear that this was an area, which although sometimes considered a peripheral subject area was covered by the candidates.

The first part of the question required candidates to explain if Matthew could be held liable for the offence of money laundering. This required a detailed analysis of what could constitute the offence under the relative legal provisions. Candidates were awarded marks depending on the level of detail given. The second part of the question related to the responsibility of the auditors to report their findings. While most candidates gave the correct answer not the vast majority substantiated their answers.

Question Four

This question was divided into three parts with each part of the question having a maximum of 2 marks each. The question related to the appointment of directors of limited liability companies and their duties, in particular the duty to disclose. Candidates did well in this question, in particular in parts (a) and (b) of the question.

Part (a) required candidates to indicate whether Patrick could continue to hold the post of director JMBH Limited when he also became director and shareholder of a competing company. While candidates were expected to make reference to the law, this required them to provide reasoned answers and with particular reference to what they could deduce from the given facts. Parts (b) and (c) related to the duty of disclosure and the effects which results from the breach of this duty. As stated above the majority of candidates were able to provide detailed answers when defining the duty but less so when explaining what the consequences are for a director who breaches this duty.

Question Five

This question was again divided into 3 parts with each part having a maximum number of 2 marks each. This question related to a contract and candidates were expected to analyse whether a contract was validly concluded, with a valid offer and acceptance and in the other two parts of the question whether consent was vitiated on the basis of error and fraud. While most candidates satisfactorily answered this question more detailed answers were expected in particular with respect to parts (b) and (c). Candidates were expected to apply their reasoning skills further.