

Examiner's report

F4 (MLA) Corporate and Business Law

For Paper Variant exams June 2016

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the June 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 June examination was the same as the previous three, 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 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 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 to not simply give a negative or affirmative answer but to support these with reasons 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 interpretation of legislation and the court structure.

Some general indications of sound 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 and complete answers;
- candidates should indicate the question number in the paper on each page of the respective reply;

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 7

Which of the following must be filed with the Registry of Companies in order to register a transfer of shares in a company by the shareholders?

- (1) Revised memorandum of association
- (2) Revised articles of association
- (3) Share transfer agreement
- (4) Form T
- A** 1, 2 and 3
- B** 4 only
- C** 3 and 4
- D** 1, 2 and 4

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

The provisions of the Companies Act 1995 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. In addition, there is a prescribed form which must be drawn up, namely the Form T. This is the form which must be drawn up by a company officer and its purpose is to notify the Registry of Companies of the transfer. Hence the form is not necessarily drawn up by a party to the share transfer agreement, unless either is also a company officer. Therefore, while the share transfer agreement lays down the terms and conditions of the share transfer, the Form T is the notification to all third parties of such transfer. Although provisions of the memorandum of association, namely the subscribers clause, may change, there is no need to amend, nor file an amended version of the said memorandum of association nor of the articles of association, with any transfer of shares. It is therefore only the Form T which needs to be filed with the Registry of Companies whenever there is a transfer of shares.

Question 31

Which of the following is NOT a theory on the interpretation of laws?

- A** Doctrinal interpretation
- B** Authentic interpretation
- C** Judicial interpretation

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

Interpretation is said to be either doctrinal or authentic. Authentic interpretation is made in the law itself while doctrinal interpretation is that which is made by the judiciary, lawyers, text book writers

and the like. Doctrinal interpretation refers to the search for the spirit of the law through its provisions and hence through an in-depth understanding of the provisions. Doctrinal interpretation may be either grammatical or logical. Grammatical interpretation merely indicates the direct meaning of the words used. Therefore, words are to be understood according to their normal meaning, unless they are technical, in which case the technical meaning would prevail. Logical interpretation aims at discovering the legislator's will through the logical nexus of the ideas contained in the law and through its political and juridical reasons as well as through the examination of all the circumstances connected with the law. Judicial interpretation was merely a reference to the fact that laws are principally interpreted by the judiciary in deciding cases which are brought before them but is not a theory on the basis of which laws are interpreted.

Section B

Candidates were able to explain the requirements of a valid offer. In applying this knowledge to a scenario, though, they did not always distinguish between the validity of an offer and the existence of acceptance, concluding that the offer in the scenario was invalid because it was not accepted. Such candidates nevertheless gained marks for their explanations of the requirements. In the same question, the majority of candidates were able to apply their knowledge of the communication of acceptance and the consequent conclusion of a contract.

Candidates gave adequate responses to the question on employment law, showing knowledge of the prohibition of discrimination between definite and indefinite contracts under the Employment and Industrial Relations Act, 2002. They also showed a satisfactory knowledge of the law relating to probationary periods, although many needed to distinguish more clearly between the notice periods applicable under definite and indefinite contracts.

In a question relating to share capital and its increase, most candidates were aware of the provision that, in the case of a serious loss of capital in a public company, the directors should convene a general meeting of the company for the purposes of considering what if any steps should be taken to address the situation. However, many failed to provide details of the procedure to be followed. The second part of the question related to an increase in capital in kind. In general, this was not answered adequately, with most candidates missing the point and so not providing the detail required as to the procedure to be followed here, including the production of a report.

Most candidates produced satisfactory answers to a question on the fiduciary duties statutorily imposed on directors, in particular the duty of disclosure. They were able to identify that sole directors were still subject to such duties and could detail the action that could be taken against a director who was in breach of the duty to disclose.

In a question on money laundering, the vast majority of candidates were able to identify that a bank manager fell within the definition of a subject person within the Prevention of Money Laundering and Funding of Terrorism Regulations. However, answers lacked detail in relation to the obligation of identification. In relation to the distinction between the offence of money laundering and any underlying criminal activity, relatively few candidates were able to identify that the offence of money laundering could subsist even in the absence of a juridical finding of guilt for the criminal activity from which the proceeds were derived.