



Examiner's report

F4 (MLA) Corporate & Business Law

For Paper Variant exams June 2017

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the June 2017 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 five sessions, with candidates now accustomed to the format where they have to answer 45 questions, worth 1 or 2 marks each, and 5 further questions worth 6 marks each. The time allotted is 2 hours and 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 good, suggesting that the majority of candidates had prepared relatively well for the examination. Nonetheless, it is to be noted that candidates earned better scores in Section A as opposed to Section B.

From an analysis of the answers given, the majority of candidates adopted good 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. Most often answers to the questions in Section B were too brief, . Although relatively concise answers are required given the mark allocation, a certain level of detail is still necessary in order to gain the marks available. Candidates were also expected to not simply give a negative or affirmative reply but to give a reason for their replies and to make reference to the relevant legal provisions. It is important to note that candidates are awarded marks for giving a reasoned reply even though the answer 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.

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 and complete 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 its 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 level of detail required for that part;
- candidates must provide concise but 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.

Comments on Section A performance

Two questions which caused candidates particular difficulty are discussed below.

Question 34

The directors of a limited liability company may be authorised to increase the share capital.

Which of the following is NOT a valid condition for such authorisation?

- A That any increase must be up to the maximum share capital stipulated
- B That any increase only has a five-year validity
- C That any increase is limited to the authorised share capital
- D That any increase is renewable by ordinary resolution

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

The Companies Act provides that the memorandum or articles may permit the general meeting to authorise by ordinary resolution the board of directors to issue shares up to a maximum amount as may be specified in the same memorandum and articles, which authorisation shall before a maximum period of five years, renewable for further periods of five years each. Furthermore, if such permission is not contained in the company's memorandum or articles, the same authority may be given to the board of directors by an extraordinary resolution. The Registrar must also be notified of the increase by means of a Form H.

Question 4

John, a pensioner, is illiterate. He is about to purchase a plot of land for his daughter.

What conditions must be met for John to validly contract the purchase?

- (1) He must set his mark
- (2) The mark must be attested by a notary
- (3) The contract must take the form of a public deed
- (4) A declaration must be drawn up by a notary and two witnesses

- A 1, 2 and 3
- B 1, 2 and 4
- C 2, 3 and 4
- D 1, 3 and 4

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

The law makes provision for cases where one of the parties to a contract is illiterate and unable to sign on a contract to be entered into. The law lays down conditions to be observed in these cases, namely that every contracting party must set their mark even if unable to write or sign their name. The party must also have their mark attested by a notary public who would verify its authenticity, namely that it is a mark done by the said contracting party and finally the relative declaration must be drawn up by a notary and witnessed by two persons. The contract need not necessarily be a public deed as these conditions must be met in all cases where a contract is entered into by a person who is illiterate.

Comments on Section B performance

In a question relating to offer and acceptance, candidates showed awareness of the requirements for a valid offer and of the need for acceptance to be communicated. The vast majority of candidates attempted both parts of the question. Although some candidates did not give legally correct answers, they still referred to the relevant legal provisions and gave reasoned answers, so they still earned some marks.

In a question on employment law, candidates were expected to draw the distinction between contracts having a definite term and those having an indefinite term and that once a definite term contract has lasted more than four years, this is automatically converted into an indefinite contract of employment without the need for a new contract to be drawn up. They had to also identify the grounds upon which indefinite contracts may be terminated and to relate this to a redundancy situation.

A question on the increase in a company's share capital required candidates to explain the relevant procedure, before considering the possibility of payment in kind and the requirement for an expert's report in such a situation. In the particular scenario, candidates had to identify that both the issued and unissued share capital had to be increased by different amounts and to explain that the shareholders must resolve and approve the increase by means of an extraordinary resolution given that this also involves a change in the capital clause in the memorandum of association. In relation to contributions in kind, they needed to apply Articles 73 and 74 of the Companies Act. While most candidates confirmed the possibility of issues in kind many candidates failed to give any detail on the relative provisions. Answers to the question on the requirement for an expert's report were similarly lacking in detail, with candidates appearing to have most difficulty with this part of the question.

A question on the duties of directors required candidates to consider the duty to avoid a conflict of interest and to identify that the law provides for measures of disclosure in order to avoid such conflicts. Candidates were also expected to refer to action which may be taken against defaulting directors. They needed to identify and apply the penalties provided for in law for such default. More generally, however, they needed to identify that directors are held personally, jointly and severally liable for damages for any breaches of duty unless a particular duty is entrusted to one or more directors, in which case only such director or directors shall be held so liable.

The final question dealt with the offences of lawful and wrongful trading, with candidates being required to consider possible liability for both offences together with possible defences. The answers explaining the offences and applying the law to the scenario were generally satisfactory with the vast majority of candidates including sufficient detail. However, application of the relevant defences was generally weaker. The particular defence relevant here was in relation to dissenting directors, who could argue that they took every step to minimise the potential loss of the creditors. This has been interpreted to mean that a director is to take every reasonable step appropriate in the circumstances.