

# Examiner's report

## F4 (MYS) 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 and to serve as a guide for the candidates sitting for future exams. It identifies areas of weakness and considers ways to avoid pitfalls and enhance performance in the future.

The paper was divided into two parts. Section A consisted of multiple choice questions (MCQs). There were 45 questions carrying a total of 70 marks. Of these, 25 questions carried 2 marks each and 20 questions carried 1 mark each. Section B consisted of 5 short scenario based questions carrying 6 marks each which tested candidates' ability to identify and apply the law to the given scenarios. Both sections were compulsory.

Candidates performed reasonably well in the paper. However, there was a minority who were clearly unprepared for the examination. Examination technique was not an issue for Section A as it was MCQ based. Section B only required simple direct answers. Hence examination technique was also not really a significant issue. Candidates were able to achieve satisfactory marks so long as they could identify the relevant issue and state the law correctly. The majority satisfied this basic requirement.

### *Comments about Section A performance*

Section A was very satisfactorily answered. Candidates were quite well prepared for this part. As the questions come from all parts of the syllabus, candidates could only do well in this part if they had studied across the syllabus and not selectively. The performance of the candidates showed that they had studied appropriately. Questions on employment law and some on contract law were very well answered. Of course, as usual there were some questions which were inadequately answered. One example is a question which related to the topic of consideration in relation to the law of contract, an area which is usually well answered. The question read as follows:

**Which of the following are exceptions to the rule that contracts without consideration are void?**

- (1) Contracts to pay statute-barred debts
- (2) Contracts of scholarship with an appropriate authority
- (3) Contracts of insurance

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

The correct answer is B. However the great majority gave D as the answer. Only a very small minority gave the correct answer, B. Some may have merely made a lucky guess. It appears that most candidates were not aware that contracts of scholarships with an appropriate authority come within the exceptions to the rule that contracts without consideration are void. This exception is found in s.4 Contracts (Amendment) Act 1976. It may not have been tested or highlighted in previous Section A questions. Candidates are reminded of the need to be fully prepared for the exams and to read very carefully the options given before choosing the answer. Sometimes the options may be a little tricky. Guessing the answer is very risky as it is often wrong.

Candidates are also advised to equip themselves with adequate knowledge of the law in the various topics of the syllabus in order to stand a higher chance of doing well. Studying selected topics only in detail, or studying superficially over a broader range of topics, may result in weaker overall results.

### ***Comments about Section B performance***

Section B consisted of 5 short scenario-based questions carrying 6 marks each. Each question was further divided into two or three parts. Questions came from across the syllabus. The questions were designed to test the candidates' ability to identify the legal issue, explain the law on that issue and to apply the law to the given scenario and to give a sound conclusion.

Candidates' performance in this part was satisfactory. A number of candidates answered well and obtained satisfactory marks. Generally they were able to identify the legal issues, correctly explain and apply the law and come to a sound conclusion.

However, there were also a sizeable number of candidates who did not do well as they had not prepared well for some topics. Question 5 is an example of this. The question related to the offence of money laundering under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

Candidates were required to explain two situations in which a person will commit the offence of money laundering and whether in the given scenario, Rajan would likely have committed the offence of money laundering. Candidates were not able to state clearly what would amount to money laundering within the ambit of the Act. Most had a vague idea of what it means and did not give sharp answers. Candidates were expected to state that money laundering involves engaging in a transaction which involves the proceeds of an unlawful activity or the acquiring, receiving or possession of proceeds of an unlawful activity or removing from or bringing into Malaysia the proceeds of an unlawful activity. It has everything to do with being involved in some way with the proceeds of an unlawful activity. There were some who thought that any unlawful transaction would amount to money laundering. That is not correct.

The second part required the candidates to apply the law to determine whether Rajan had committed the offence of money laundering. Many candidates only answered that he has committed the offence without relating to the facts given and stating the reasons for their answer.

Candidates are reminded that they can only get satisfactory marks if they explain the law clearly and apply it to the given facts to arrive at a reasonable conclusion. Merely making a statement that on the given facts Rajan has committed the offence of money laundering will not be sufficient to achieve satisfactory marks.

Another example of a question where a very large number of candidates did not perform as well as expected was question 4 on the issue of the need for disclosure to the board of directors by directors who are interested in contracts with the company. The facts showed that Tina, a director of Janati Sdn Bhd was also a major shareholder of another company, Goodlands Bhd. Janati Sdn Bhd entered into a contract with Goodlands Bhd. Such being the case, clearly Tina had an interest in that contract. Part (a) of the question required candidates to explain whether Tina had breached any disclosure requirement in respect of that contract. Under the Companies Act 1965, where a director is in any way, whether directly or indirectly interested in a contract with the company, they must as soon as practicable after the facts have come to their knowledge, declare the nature of their interest at a meeting of the directors of the company. Many candidates merely stated that Tina was a director and that she had a fiduciary duty to the company and because of that she should have made a disclosure. This is not accurate. Only some candidates recognised the issue of director having an interest in a

contract with the company. Some candidates incorrectly identified the problem as a contract in which the company is disposing to or acquiring from a director a property of requisite value, falling under s132E Companies Act 1965, and which requires approval from the general meeting of the company. Part (b) required the candidates to explain the consequences of breach of the disclosure requirement. The main consequence is that the contract is voidable except in favour of a person dealing with the company for valuable consideration and without actual notice of the breach.

Candidates must bear in mind the importance of reading the question carefully to determine accurately the issue in the question and to apply the law to the problem to arrive at the appropriate conclusion.

### **Conclusion**

Candidates are reminded of the need to be well prepared for the examination. It would be too risky to study selected topics only. They should read the questions carefully to avoid making the mistakes referred to above. Issues must be accurately identified and the law must be correctly applied to be able to give sound advice. Candidates are not expected to write lengthy answers. So long as they are able to identify and explain the issue briefly and apply it to the given problem accurately they will obtain satisfactory marks.