



Examiner's report

F4 (MYS) 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 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 to enhance performance in the future.

The paper was divided into two sections. 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 satisfactorily 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. This section was also generally satisfactorily answered.

Comments about Section A performance

Section A was quite well answered. Candidates were quite well prepared for this section. As the questions come from all parts of the syllabus, candidates could only do well in this section if they had studied across the syllabus and not selectively. The performance of the candidates indicated that they had prepared adequately for this section. Questions on employment law, Malaysian legal system and some on contract law were very well answered. Of course, as usual there were some questions which were inadequately answered. However, one or two questions were exceptionally inadequately answered. One example is question 16 which touched on schemes of arrangement under the topic of corporate restructuring. This is not a very popular topic and candidates generally seem to be less prepared for it. The question read as follows:

A scheme of arrangement under the Companies Act 1965 can be used to achieve which of the following purposes?

- (1) To alter the rights of members
 - (2) To achieve a compromise with creditors to avoid the liquidation of a company
 - (3) To alter the rights of creditors
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- A 1, 2 and 3
 - B 1 and 3 only
 - C 2 and 3 only
 - D 1 and 2 only

The correct answer is A. However, only a very small minority gave the correct answer, A. Some may have merely made a lucky guess. It appears that many candidates were not aware that a scheme of arrangement could be used to alter the rights of members. Although candidates tend to shy away from this topic and this would explain the inadequate performance for this question, 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 though this was not the case for this question.

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 is likely to result in less satisfactory 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 just 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 adequately for some topics. Some could not even identify the legal issues. Question 2 is an example of this. This question had two parts. Part (a) related to a scenario where Nana, a director of a company, issued to Tan, a creditor, a cheque on behalf of the company wherein its name was not stated. The bank refused to honour the cheque and the company had gone into insolvent liquidation. The question was whether Tan could sue anyone to recover the amount stated on the cheque. The legal issue centred around the topic of lifting the veil of incorporation under s. 121 Companies Act 1965 by which the officer who signed the cheque on behalf of the company could be held personally liable to the holder of that cheque for the amount stated thereon. Lifting the veil of incorporation is a topic that most candidates will be very familiar with. Surprisingly a very large number of candidates did not identify the issue. Many merely stated that Nana will be personally liable as he is a director, or because he was the agent for the company. Thus they lost valuable marks. Candidates must be reminded that it is not enough to merely remember the instances in which the veil of incorporation may be lifted. They should be able to recognise the issue in given scenarios and to apply the law appropriately.

Part (b) examined the candidates' ability to identify and apply the law on the effect of the articles of association of the company. The question stated that the articles of a company stipulated that Ah Kong (the brother of Nana referred to in part (a)) shall be the company secretary of the company. Instead they had appointed someone else as the company secretary. The question was whether Ah Kong had any legal grounds to enforce the articles of association and have himself appointed as the company secretary.

Candidates were expected to make reference to the Companies Act 1965 by which the terms of the articles of association are regarded as the terms of a contract between the company and its members. Further, case law has held that the articles do not bind the company and outsiders. Thus, Ah Kong being an outsider, could not enforce the articles to demand that the company appoint him as the company secretary. Many candidates did not identify this point. Instead, they stated that since Ah Kong's name was stated in the articles, therefore the company must appoint him as the company secretary. Thus they did not gain the marks they could have easily gained.

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 the person is likely to be successful or unsuccessful, 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 5 on the issue of fraudulent and/or wrongful trading. The question related to a scenario and candidates

were expected to be able to identify the type of offence committed. This required candidates to distinguish between fraudulent trading and wrongful trading. The major distinction between the two is that in fraudulent trading, there must be the intention to defraud whereas for wrongful trading no such intention is required. The facts in the given scenario clearly showed no fraudulent intention and thus the offence of fraudulent trading was not committed. Many candidates were not able to make this distinction thus not achieving as much marks as they otherwise would have been able to. Further, the question also required candidates to explain whether the liquidator could institute an action against two named persons to make them personally liable for the debts and liabilities of the company in the light of the wrongful trading offence. Candidates were expected to refer to the possibility of lifting the veil of incorporation to make them personally liable under the provisions of the Companies Act 1965. Here too many candidates missed the point on lifting the veil of incorporation. Many merely stated that the two persons can be made personally liable without sufficient reference to the Companies Act 1965.

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 citing relevant authority for their 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.