



Examiner's Report

F4 SGP Corporate & Business Law

June 2015

Introduction

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 the candidates, and also highlights best practices so that those presenting themselves for the examination in the future should take some points into account in order to maximise their prospects of success.

The June examination requires candidates to answer 45 multiple-choice questions in Section A, worth 1 or 2 marks each, and 5 short questions in Section B worth 6 marks each, in a total of 2 hours. All questions were compulsory. The multiple-choice questions were objective in that the correct answers had to be selected in order to earn marks. The short questions were also objective in the sense that the candidates had to focus on what was asked and answer it exactly to the point. No marks were given for candidates who discussed more issues than what was required in the question. The overall performance in the examinations can be improved through more thorough preparation for the examinations.

Syllabus topics on which candidates performed well included law and the legal system, formation of a contract, content of contracts, discharge of contract and breach of contract.

Syllabus topics on which candidates performed inadequately included sources of law, remedies for breach of contract, law of torts, management and administration of companies and winding up and corporate rescue.

Section A

The following are examples of questions which candidates some experienced difficulty.

Question 23

Fortune Pte Ltd (Fortune), which has three members and three directors, is currently having financial difficulties.

Who may apply to court for a judicial manager to be appointed for Fortune?

- (1) Fortune
- (2) One creditor of Fortune
- (3) One individual member of Fortune
- (4) One director of Fortune

A 1 and 2

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

The candidates are more or less evenly split among the 4 options. Section 227B Companies Act Cap 50 sets out who may apply for judicial management, namely, 'a company or its directors (pursuant to a resolution of its members or the board of directors) or a creditor or creditors'. Since Fortune has three directors and three members and section requires a resolution, it is not for an individual director or individual member to apply for judicial management. The section allows an individual creditor to apply. The correct answer is therefore A.

Question 40

A statute states that "floors, steps, stairs and passageways are to be kept free from obstruction". Given that steps, stairs and passageways are words used to indicate a passage, a judge concluded that a floor, which was used exclusively for storage but not for passage, was not within the meaning of the statute.

Which rule of statutory interpretation did the judge apply?

- A Noscitur a sociis
- B Expressio unius est exclusion alterius
- C Plain meaning
- D Ejusdem generis

The majority of the candidates chose either answers B or D. Answer B is incorrect because 'floor' is already in the list and the issue is not about whether the list is exhaustive and whether 'floor' should be in. Answer D is incorrect because 'floor' is already in the list and the issue is not about whether something that falls into the 'general' descriptor is in the list. For example, if the question states "steps, stairs, passage ways and other means of access" and we are trying to figure out if 'floor' comes within 'other means of access'. Answer C is incorrect because 'floor' used for storage is still a 'floor' within plain meaning of the word and yet the judge concluded the floor in question was not within the meaning of statute so he could not be applying this rule.

Answer A is therefore correct because judge looked at what "steps, stairs and passage ways" are used for and concluded 'floor', by association with these three words, is a floor used for passage just like the other three are used for passage.

Section B

When attempting the short questions in section B, candidates must be aware that their answers have to be clear, unambiguous and to the point.

Where the question required the candidate to state or explain the law, it is observed that a few candidates wasted valuable time by stating all the principles they have learnt on the particular topic, when it was only necessary to state or explain one or two relevant principles as required by the question.

Where the question required the candidate to apply the principles to the facts, it is observed that many candidates regurgitate the principles they learnt without explaining how the principles resolve the issues raised in the hypothetical scenario. It is also observed that a large number of candidates often appeal to some hazy idea of 'common sense' or 'fairness' to answer the question. It is hoped that candidates will note that this is a law examination and they are expected to know relevant legal principles and apply them to a hypothetical scenario. The objective of the examination is not to ask what the candidates think makes good common sense or is fair.

Question 1(a) asked for an explanation as to why Belle's statement may be an actionable misrepresentation. Many of the candidates could state the elements of an actionable misrepresentation and why Belle's statement fulfilled the requirements. The candidates who did not do well merely repeated the facts of the case and declared that since Belle lied it must be an actionable misrepresentation.

Question 1(b) asked about the type of misrepresentation and the remedies for that type of misrepresentation. A majority of the candidates stated correctly that Belle's statement is likely to be a fraudulent misrepresentation. With regards to remedies, there appears to be some confusion between discharge of contract for breach of a term and rescission for misrepresentation. The appropriate remedy here is rescission.

Questions 2(a) and 2(b) asked about Ann's, Bill's and Carl's liability. Most candidates are well-versed in the law and did well for these two parts.

Question 2(c) which asked about Dan's liability was not so well-answered. Very few candidates are aware a person may be liable as a partner for "holding out" pursuant to s. 14 Partnership Act, Cap. 391.

Both parts of question 3 were generally well-answered by most candidates. The few candidates who did not do well tended to repeat the facts of the case without applying the principles to the facts to explain why a particular duty has been breached. A few candidates also failed to realise the question



asked about common law and statutory duties and so focused their discussion on either common law duties and leaving out statutory duties or statutory duties and leaving out common law duties.

Question 4 was generally not well-answered. Many candidates fail to realise Peter was seeking personal relief in question 4(a). Some candidates discussed a derivative action which is to enforce corporate rights rather than obtain personal relief.

With regards question 4(b), most candidates were only able to state the remedy of winding up. Very few are able to state the remedies that can be obtained pursuant to s. 216 Companies Act, Cap. 50.

Question 5(a) was generally well-answered. Many candidates noted the fact that Juniper's board wished to retain control of the company and so a scheme of arrangement was more appropriate.

With regards question 5(b), most candidates observed that Easy Bank was a secured creditor and was therefore different from an unsecured creditor. However, very few candidates could state the dissimilarity principle which is applied to separate out creditors with different interests into different classes.

Question 5(c) was inadequately answered. Many candidates were unsure about the statutory majority required in order for a scheme to be approved by a class of creditors. Many candidates also did not seem to be aware that a statutory majority has to be obtained in each of the two classes of creditors.

Summary

The examination paper is broad-based, requiring a relatively fundamental knowledge of many theories, concepts and practical applications. In order to pass it is not necessary to know any individual topic in great depth but it is necessary to know the basic principles associated with every topic in the syllabus.

Candidates should attempt all questions. While it is recognised that few individuals will be fully prepared to deal with every question, it should be possible to make a reasonable attempt at every question. As mentioned above, distractors can often be eliminated by a process of deduction.

Section B of the paper now includes 5 short questions, usually with 2 or 3 parts carrying 2 or 3 marks each. It is vitally important that candidates read the questions carefully. Too many candidates answered the questions by writing narrative answers that were of no benefit and wasted valuable time by offering detailed responses. Since each sub-part is worth 2 or 3 marks only, it is only necessary to focus specifically on what the question required, which usually involves stating or applying one or two legal relevant principles.



It is hoped the candidates will exercise good time management. Candidates should spend an adequate amount of time reading the multiple choice questions and their options carefully. They should not rush through the multiple choice questions only to spend a large amount of time writing copious answers to the short questions, which do not garner them marks if they are not relevant to the question.