



Examiner's report

F4 Corporate and Business Law (SGP)

September 2016

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the September 2016 examination. It identifies strengths and weaknesses demonstrated by the 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 September 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 are compulsory. The multiple-choice questions are objective in that the correct answers had to be selected in order to earn marks. The short questions are 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 examination can be improved through more thorough preparation for the examination.

Syllabus topics on which candidates performed well included essentials of the legal system, the law of obligations and the formation and constitution of business organisations.

Syllabus topics on which candidates performed inadequately included minority protection, winding up and corporate rescue and corporate fraudulent and criminal behaviour.

It is observed that the majority of the candidates tended to be better prepared for topics listed in the earlier part of the syllabus. It could be that the earlier topics are revised first and the candidates can relate better to them as being relevant to their everyday lives and work. With respect to the later topics, since they are likely to be revised last, the candidates probably did not have sufficient time to revise them. In addition, knowledge and understanding probably do not come quickly for topics like minority protection and winding up and corporate rescue, being topics that may be further removed from the candidates' everyday lives and work. It is hoped the candidates will plan a revision time-table that leaves them with sufficient time for the topics towards the end of the syllabus and with sufficient time for topics that are 'dry'.

While there is little evidence to suggest that the examination is actually time pressured, it is significant that some candidates did not attempt all of the questions, and in some cases this may have been the difference between success and failure.

Section A

The candidates should be better prepared for Section A. Section A constitutes 70% of the marks for the paper and if the candidates score inadequately in this section, they are likely to do inadequately in the examinations. It is unsure if it is because the format is multi-choice format that candidates forgo thorough preparation, hoping that through sheer luck, they may be able to spot the correct option. Section A rewards candidates who know the rules rather than those who guess the answers.

It should be pointed out that in this examination, there are several Section A questions which deal with new subject-matter introduced by the Companies (Amendment) Act 2014. Most candidates appear to be unaware of the changes brought about by the Companies (Amendment) Act. If the reason is because they are relying on outdated books or notes that do not incorporate the amendments, then they should take care to ensure that their study materials are up-to-date.

The following is an example of a question which a large majority of candidates experienced difficulty and illustrates how, with careful reading of the question and understanding of the topic, they should have been able to answer the question.

Which of the following statements about the registration of a charge under the Companies Act Cap 50 is NOT correct?

- A** All charges are registrable
- B** Failure to register may mean the charge is void against the liquidator
- C** Failure to register may mean the charge is void against another creditor

The question is a straight-forward knowledge question of what is NOT correct. It would be important to note the word 'NOT' and 'all charges' in the question.

Section 131 Companies Act Cap 50 states that an unregistered charge is void against the liquidator and any creditor of the company. Options B and C are definitely correct in that s. 131 states that an unregistered charge is void against liquidator and any creditor of the company. From the large numbers of candidates who chose either options B and C, it would appear that the candidates are not familiar with what s. 131 states and so they resorted to guessing that it is either the liquidator or the creditor of the company. The candidates are also not familiar with s. 131 in that it states the charges specifically listed under that section are registrable whereas option A states that all charges are registrable.

It is observed that for a question like this, even if the candidate is not familiar with s. 131, they may still arrive at the correct answer A if they understand the purpose of registration, what a liquidator does and the competition for priority between creditors over a particular asset.

The purpose of registration of a charge is to give notice to other creditors of the debtor company that a particular asset has been used as security for a loan. Where a creditor fails to ensure that their charge is registered, other creditors will be prejudiced because they will not know that an earlier charge has been created over that particular asset. As such, it would be logical for the law to take a serious view of creditors who do not register their charges by rendering unregistered charges void against other creditors. That would mean that options B and C are logical consequences of failure to register, namely, to make the charge void against the liquidator (who represents the unsecured creditors) and void against another creditor (who could be another secured creditor having a charge over the same property). If options B and C are correct, that leaves option A to be the incorrect statement and therefore the answer to the question.

Section B

Section B questions are hypothetical questions which raise real corporate and business law issues. These questions of necessity do require a certain amount of technical knowledge but candidates are required to apply that knowledge to resolve issues raised in the question rather than merely to regurgitate the knowledge.

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 some 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. There is no merit or marks given for stating irrelevant principles.

On the other hand, other candidates did not state any legal principles at all in their answers. It is hoped that candidates remember this is a law examination, not an examination of common sense or one where regurgitating the facts from the question without stating any legal principles will garner marks.

For instance, when required to explain which duty a director breached, it will not do to state X in the question should have done this or X should have checked that or it is fair to make X liable. A question of this nature simply requires the candidate to simply state the director's duty concerned and why, based on the facts, the ingredients of that duty are fulfilled and so the director breached that duty. A full-page answer that does not state the correct legal principle will not gain the candidate any marks. A full-page answer that regurgitates all the directors' duties without understanding or explaining how the principles can be applied to the facts in the question also does not gain the candidate any marks.

It is hoped that candidates will note that 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.

Conclusion

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. Sometimes, distractors can often be eliminated by a process of deduction however this process of deduction would require some basic knowledge of legal principles.

It is vitally important that candidates read the questions in Section B carefully. Too many candidates answered the questions by writing narrative answers that were of no benefit and

wasted valuable time by offering detailed answers that are irrelevant. 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 either stating or applying one or two legal relevant principles.

It is hoped the candidates will exercise sound 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 the copious answers are not relevant to the question.

It is hoped that candidates note the importance of reviewing the study materials before the examinations. For many candidates, whether they pass or fail the examination depends very much on their score for Section A. The only way to obtain a high score for Section A is to study the legal principles carefully and thoroughly.