

Examiner's report

F4 Corporate and Business Law (MLA)

June 2012



General Comments

The examination paper consisted of ten compulsory questions, all of which had 10 marks each. There were a small number of candidates who did not attempt all the questions. In some cases candidates left one or a part of one question out while there were some others who left more than one question out. This does not appear to have been due to time pressure but due to lack of knowledge of the subject-matter posed in the relative questions. From the answers given the majority of candidates allocated the same amount of time to answering each question as in the majority of cases appropriate detail was given and the length of the answers given were commensurate to the mark allocation of each part of the question.

While with respect to most questions, one concludes from the answers given that candidates did read the questions and did identify the requirements of each part of the question given especially with respect to those questions which were divided into more than one part. There were some questions, namely questions 2 and 4, where candidates could have given more direct answers.

The report will begin with some general brief comments on the overall performance of candidates in this session before going on to look at the questions in the paper in detail. One notes that both positive and negative aspects of performance are given so as to enable candidates to learn from past performers and performance.

In this session there were some high performers while in the majority candidates obtained average marks close to the pass mark. As stated in previous sessions, this is evidence that with a little more effort better marks can be achieved. The principal reason for the under performance of candidates is lack of adequate preparation for the examination with many answers not having sufficient detail to be afforded higher marks.

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';
- candidates need to manage their time effectively;
- candidates must read carefully and understand the requirements of each question;
- keep in mind that the marks that the examiner allocates to each part of the question is indicative of the detail which candidates are required to go into;
- provide concise and complete answers;
- candidates should indicate the question number in the paper on each page of the respective reply;
- start each question on a new page;
- general essay answer format should not be used for problem questions as these will contain little information relating to the specific issues raised in the problem question.

Specific Comments

Question One

The question dealt with the doctrine of precedent and candidates are required to explain the scope of the doctrine and explain its applicability locally. This was a one part question with all candidates attempting the question. Candidates should have started answers to this question by making reference to the definition of jurisprudence and its relevance. In order to assist candidates in their explanation of the doctrine reference could have been made to the UK system which adheres to the doctrine. In relation to the doctrine of precedent, it is interesting to note that in the UK, a distinction is drawn between the *ratio decidendi*, which is binding also for future cases, and *obiter dicta*, which are not binding. In civil law systems, as is the Maltese legal system, the doctrine of precedent is not adhered to. Jurisprudence is however an important source of Maltese law. In order to better interpret local laws, the courts and lawyers also refer to court judgements and to the teachings of eminent jurists/writers.

The great majority of candidates gave satisfactory answers. More marks could have been earned had greater detail been given in answers in particular in relation to the relevance given by the local courts to jurisprudence.

Question Two

This question dealt with contract law. The question dealt specifically with a valid offer and acceptance for a valid contract. The focal part of the question should be what is required for a contract to be validly deemed concluded, namely by explaining what is required for a valid offer and acceptance.

A number of candidates dwelt unnecessarily on the internal and external requisites for a valid contract, which were clearly not required in this question. Candidates had to explain that other than being unilateral, an offer is also indivisible, in that it must be considered as a whole and therefore based on the terms and conditions on which it is made. Furthermore, in order for an offer to produce juridical effects it must also be (i) externally manifested; (ii) made with the intention of binding the offeror; (iii) complete; and (iv) made to a particular individual, his agent or to the public. Most candidates attempted this question and gave satisfactory answers. More marks could have been earned by many had candidates focused on the offer and acceptance of a contract.

Question Three

This question is divided into two parts, both dealing with employment law, with the first part dealing with probation and the second part dealing with the notice periods required in the case of the termination of an indefinite contract of employment. With regards to the first part of the question, candidates were expected to refer to the fact that probation was a mandatory period and which applies in respect of every period of employment. Reference was to be made to what is statutorily applicable in respect of the period of probation and how the period may vary depending on the nature of the employment. All candidates who attempted this question gave very satisfactory answers and made reference to the relevant points.

With respect to the second part of the question, candidates were simply expected to indicate the notice periods which are to apply in the case of the termination of an indefinite contract of employment. These notice periods are stipulated at law and apply to all such contracts. Only a marginal number of candidates who attempted the question did not make specific reference to such periods.



Question Four

This question dealt with company law and the articles of association of a limited liability company. The first point which candidates were expected to mention was that while the memorandum of association has to be filed in order for a company to be validly registered, the same is not the case for the articles of association. In the event that articles of association are not filed, the second schedule to the Companies Act shall apply.

Candidates were then expected to make reference to typical clauses found in the articles. The articles of association normally contain provisions dealing with the mode of transfer and transmission of shares in the company; the convening of general meetings and the voting thereat, including the number of votes required in order to pass ordinary and extraordinary resolutions and to form a quorum; the powers of the directors and any limitations thereon; the convening and holding of directors' meetings including the votes required to form a quorum and to take decisions; provisions relating to the status of a company depending on whether it is a private company, a private exempt company or a public company; matters relating to the issue of shares; the pledge of share; the rights appertaining to the different classes of shareholders; the duties of the company secretary; and the vesting of legal and judicial representation.

While all candidates attempted this question, a good majority gave satisfactory answers while there were many candidates who made reference to the memorandum of association, which did not feature in this question.

Question Five

This question was a one part question dealing with partnerships en nom collectif and en commandite. Clearly, the existence of a partnership creates a juridical relationship between the partnership and the partners composing it. Such relationship gives rise to various rights and duties of the partners against and towards the partnership and of the latter against and towards the former. Candidates were expected to explain the different manner in which such partnerships are composed and hence bring out the differences between the partners and their rights and obligations, which varied depending on whether they are general or limited partners.

Most answers given in respect of the question were very satisfactory with the majority of candidates explaining and discussing the various rights and obligations of the partners in a partnership.

Question Six

The question referred to provisions of the Companies Act. The question was divided into two parts dealing with the share capital of the company, namely how the capital is divided into two classes of shares, ordinary shares and preference shares. The law provides that a company must have ordinary shares. As the name implies, ordinary shares confer on their holder the residue of rights of the company which have not been conferred on other classes. One of the most important characteristics granted to ordinary shares is that they cannot be redeemed. Ordinary shares can be sub-divided into different classes, with each class having certain rights which are not enjoyed by the other classes.

Preference shares, as the name implies, grant the holder thereof to preferential rights vis-a-vis the holders of ordinary shares. Candidates were expected to refer to both classes of shares and to the rights enjoyed by both holders of shares. The question was attempted by most candidates and answers given were satisfactory and detailed.

Question Seven

This question dealt with corporate governance. It allowed candidates to put forward their ideas on the subject and to stipulate that which is understood as being recommendable principles of corporate governance to be adopted by public companies. Few candidates made reference to the Cadbury report, which is important to gain an understanding of the subject given that the report defines the subject area. It was also expected that candidates would make reference to the 'Code of Principles of Good Corporate Governance' (the Code) in 2001 approved by the Malta Stock Exchange. This Code lays down 13 principles on corporate governance. Few candidates made specific reference to these principles. Nonetheless, candidates who attempted this question clearly showed that they know the fundamentals of the subject area and how its principles are applied in practice.

Question Eight

This question was divided into two parts which dealt with the lifting of the corporate veil. Most candidates, as expected, first made reference to the concept of the separate legal personality of a company from its shareholders. The question cannot be adequately answered to without reference to this concept. Lifting the corporate veil is the action taken rendering the shareholders of a limited liability company liable for their actions despite the fact that their liability is normally deemed to be limited to the unpaid part of the issued capital of the company. Such action is taken when the acts of the shareholders are serious enough to warrant personal action being taken against them. On the other hand, it is held that the most extreme form of lifting the veil is when the courts ignore it completely. 'Ignoring the veil' is seen as a sanction which the courts turn to when they think that the company was not founded for commercial or other sound grounds, but only as a means to defraud or defeat creditors or to circumvent laws.

Candidates answered both parts of the question in a satisfactory manner by giving a clear explanation of the lifting of the corporate veil in the first part and by applying their knowledge of the subject area to the given facts in the second part of the question.

Question Nine

This question dealt with employment law and more particularly with the termination of a contract of employment for a good and sufficient cause. The law does not provide for a definition of a good and sufficient cause for termination but lays down a list of cases which cannot be considered as a good and sufficient cause for the termination of employment. Candidates were expected to apply their knowledge on the termination of employment to the given facts and to Jane's termination of employment.

Candidates attempting this question gave detailed answers and ably applied their knowledge to the facts.

Question Ten

This last question was a two part question which dealt with company law and more specifically on the liquidation and striking off of a company. In terms of law, the shareholders and not the directors may place a company into voluntary liquidation. It is therefore important for the directors to minute that they have recommended to the shareholders to liquidate the company. In terms of law, directors may be held liable for certain offences committed during the winding up period. Reference must be made to the offences of wrongful and fraudulent trading in this context and who may be held liable of the same. Candidates were expected to explain



the responsibilities of directors and how they may be held responsible in the event that a company suffer financial difficulty. The second part of the question dealt with the appointment of a liquidator and candidates were expected to apply their knowledge on the disqualifications provided at law for the holders of such posts to the given facts.

The question was attempted by all candidates and most answers given were detailed and satisfactory.