

# Examiner's report

F4 Corporate and Business Law (MYS)

December 2013



## General Comments

The examination consisted of ten compulsory questions. As usual, questions 1 to 7 were knowledge-based questions while questions 8 to 10 were problem-based questions requiring candidates to demonstrate the ability to identify legal issues and apply it to given situations. Candidates were quite well prepared for the examination. On the whole the performance of the candidates was satisfactory.

Candidates displayed adequate understanding of what the questions required. The questions were clear and there was no ambiguity which was likely to cause candidates to misinterpret any question.

The following recurring weaknesses were found:

- **Answers too brief:**

This problem of extremely brief answers still persists although the situation has much improved over the years. A number of candidates failed to give full answers. Giving very brief answers or point form answers will not result in high marks. Candidates are reminded that questions must be answered clearly and in full sentences in order to achieve satisfactory marks. Very brief or point form answers do not give the examiner a sufficient indication as to whether a candidate has a sound understanding of the subject matter.

- **Failure to answer all parts of a question or the required number of questions:**

This point has also been highlighted before. A significant number of candidates did not answer all questions or all parts of a question. This also resulted in lower marks. Candidates are advised once again to attempt all parts of a question. Many candidates did not attempt all the ten compulsory questions indicating that they were not fully prepared for the examination.

- **Spotting:**

The issue of candidates spotting questions still remains an area for concern although there are indications that the instances of spotting are slowly decreasing. Some candidates answered some questions very well while not being able to give adequate answers to other questions. This indicates that these candidates concentrated on certain topics while ignoring other relevant topics. This commonly happens when candidates do not have adequate time to prepare fully for the examination. Invariably such selective studying will not be beneficial to the candidate. As questions can come from across the syllabus, candidates are reminded not to study by spotting topics.

- **Time management**

There has been a gradual improvement in time management by the candidates. Nevertheless, it still remains an area of concern. Candidates are reminded once again of the importance of time management in order to do well in the examination. Some candidates answered the first few questions very well but the later answers were too brief indicating that they were short of time to complete the paper. As a consequence of this, the total marks obtained by the candidate was lower than what could have been achieved if the candidate had spaced out their time and was able to answer each question adequately. Candidates are advised to divide their time properly for each question so as to achieve better results.

- **Reliance on past years questions**

Candidates are reminded (as before) that past year questions and answers provide a very useful guide in their preparation for the examination and they could much improve their results by constantly referring to them.

However, candidates are also cautioned that questions can come from any part of the syllabus and the fact that there have been no questions on particular topics or sub-topics in previous examinations does not mean that there would be no question on that topic or sub-topic in future examinations. Candidates must always study across the syllabus to be fully prepared for the examination.

### **Specific Comments**

#### **Question One**

This question on the Malaysian Legal System contained two parts. Part (a), which carried two marks, tested the candidates' knowledge on the definition of law. Part (b) required the candidates to explain unwritten law as well as to explain three sources of written law.

Although there is no all-encompassing definition of law, the majority of the candidates were able to state something acceptable to define law and managed to obtain at least one mark out of two. As for part (b) of the question it was done quite well. Most of the candidates were able to accurately point out that unwritten law is law that has not been formally made through a legislative process and therefore consists of English common law, equity and judicial decisions. Further, candidates were largely able to explain what constitutes written law by referring to the Federal Constitution, State Constitutions, legislation and delegated legislation. On the whole candidates fared well in this question.

#### **Question Two**

This question, on employment law, tested the candidates' knowledge on the remedies available to an employee who has been unjustifiably dismissed.

Candidates were expected to explain the three remedies, viz, reinstatement and backpay, compensation in lieu of reinstatement and backpay, and re-engagement.

This question was very well answered with many scoring almost full marks. The vast majority of the candidates displayed sound knowledge of the remedies. Similar questions have been asked in the past and candidates showed clear familiarity with the law in this area. Only very few candidates displayed lack of knowledge of the law in this area.

#### **Question Three**

This question tested the candidates' knowledge on the tort of negligence. Candidates were expected to explain the three main elements of negligence, i.e. duty of care, breach of duty of care and resultant damage. This question was not very well answered. Many candidates were able to mention the three elements of negligence and obtain some marks. However, many candidates did not sufficiently explain those elements with relevant examples or other illustrations. This resulted in them obtaining fewer marks than they otherwise would have. Candidates are reminded to read the question carefully. If the question requires explanation of the elements, then it would not suffice if the candidate merely makes a statement enumerating those elements.

#### **Question Four**

This question, on partnership law, tested the candidates' knowledge on dissolution of a partnership by court order. Candidates were required to explain FIVE situations in which the court may order a dissolution of the partnership.

Candidates were expected to explain any five instances under section 37 Partnership Act 1961.

This question was also very well answered. Many candidates were able to refer to the Partnership Act and accurately explain five instances together with relevant examples and/or cases. They obtained very high marks.

However there were a number of candidates who did not do as well as they otherwise could have. These candidates referred to instances such as illegality and death of a partner as a reason for the court to make an order of dissolution of the partnership. These are instances of automatic dissolution which do not require an order of the court. To avoid this candidates are reminded of the need to read the question carefully to determine what it requires.

### **Question Five**

This question on company law contained three parts. Part (a) required the candidates to explain and distinguish between a private company and a public company. Part (b) required the candidates to state two advantages of a private company compared to a public company and part (c) required them to state four documents which are required to be lodged with the Registrar of Companies for the registration of a company.

This question was not answered as well as expected. For part (a) candidates were expected to mention the characteristics of a private company, in particular its limit on the maximum number of members, restriction on transfer of shares and prohibition on issue of securities to the public as compared with the public company, which are not subject to these limitations. Many candidates did not state the restriction on transfer of shares. Some incorrectly stated the maximum number of members. Part (b) was reasonably well answered. Most candidates were able to state one or two of the advantages of a private company over a public company. However, there were some answers which indicated candidates' incorrect knowledge of the law, for example, there were candidates who stated that private companies were free to give loans to directors while only public companies were not. Part (c) was also not answered as well as expected. Most candidates only mentioned two documents correctly, i.e. the memorandum of association and the articles of association and were able to obtain only two out of the four marks available.

### **Question Six**

This question on company law related to insider trading in the context of the Capital Markets and Services Act 2007. Part (a) required the candidates to define the term 'insider' while part (b) tested them on their knowledge of the matters which the insider is prohibited from doing, and the consequences of contravention.

This question was not well answered. Most of the candidates gave unsatisfactory answers and therefore did not gain pass marks. This aspect of the law had not previously been examined and this may be a reason for the candidates' lack of readiness to answer the question. As has been highlighted before, questions may be set on any part of the syllabus. Candidates should not leave out certain areas just because it has not been examined in previous examinations.

On the whole this question was least satisfactorily done.

### **Question Seven**

This question, on company law, tested the candidates' knowledge on class rights and variation of class rights.

Part (a) required candidates to state and explain three rights which may be attached to preference shares while part (b) (i) required them to state and explain how class rights may be varied on the assumption that the company has adopted Table A of the Fourth Schedule to the Companies Act 1965 and the class rights were stated therein. Part (b) (ii) required the candidates to explain the legal position on variation of class rights assuming the class rights were stated in the memorandum of association instead of the articles of association.

Part (a) was quite well answered. Most of the candidates had some knowledge of the rights that could be attached to preference shares, especially the right to fixed dividends and cumulative dividends and were able to obtain satisfactory marks.

Part (b) (i) was not so well answered as part (a). However it was generally quite encouraging. Many candidates were able to state that the variation required a special resolution at a separate meeting of that class of shareholders and gained some marks. Only a few mentioned that it could also be done with the written consent of the holders of three fourths of the issued shares of that class.

Part (b) (ii) was not well answered. Candidates were expected to state that if the class rights were found in the memorandum of association then it would not be alterable because of s 21(1B) Companies Act 1965. Most candidates did not provide the right answer.

On the whole, however, question 7 was satisfactorily answered.

### Question Eight

This problem-based question, on company law, tested the candidates' ability to identify and apply the law relating to the ultra vires doctrine in Malaysia.

Candidates were expected to identify that the purchase of the hotel by the company and the intended renovations were outside its objects clause and therefore ultra vires. They were expected to discuss the legal position in Malaysia under s 20 Companies Act 1965 and apply the law to the problem.

On the whole this question was just only satisfactorily answered. Many candidates did not fully explain the operation of the ultra vires doctrine in Malaysia. Many also stated that an ultra vires transaction is void, relying on the common law position. This was clearly incorrect. A large number of candidates did not distinguish between completed transactions and uncompleted transactions. In the case of the purchase of the hotel it was a completed transaction and would remain valid. On the other hand the intended renovations was an uncompleted transaction which could be prevented by an injunction under s 20(2) (b). Candidates must be reminded once again of the need to read the question carefully and identify the different aspects of the law being tested in the question and to address all the issues fully in order to achieve maximum marks.

### Question Nine

This problem-based question on company law contained two parts. Part (a) tested the candidates' knowledge and ability to apply the law on share qualification of directors. Part (b) tested them on their knowledge and ability to apply the law relating to a director's duty to disclose his interest in contracts with the company.

Part (a) was satisfactorily answered. Most of the candidates were able to identify the issue of share qualification of directors and obtained some marks. Some were able to relate to section 124 Companies Act 1965, which stipulates a maximum period of two months from appointment for a director to obtain his share qualification. Thus Chong, who was appointed three months ago, is not qualified to be a director. Those who arrived at this conclusion obtained high marks. Many candidates however were not able to explain the law clearly and apply it to the given facts accurately resulting in them not gaining very high marks.

Part (b) was not so satisfactorily answered. Candidates were expected to discuss s 131 Companies Act 1965 on the duty of a director to disclose his interest in a contract with his company. In the given problem Suria Bhd entered into a contract with Nila Furniture & Co. Chandran, a director of Suria was also a partner in Nila Furniture & Co. Under s 131 there was a duty on the part of Chandran to disclose the nature of his interest at a meeting of the board of directors but Chandran had failed to do so. Although Chandran was silent at the meeting and did not vote on the matter he was still in breach of his duty to disclose his interest in the contract. Thus Suria Bhd was entitled to avoid the contract with Nila Furniture & Co. Many candidates identified the issue of duty of a director to disclose his interest in a contract with his company and obtained some marks. However many candidates also did not fully discuss the law and failed to obtain higher marks. Some candidates concluded that there was no breach by Chandran as he did not vote on the matter. Here they were clearly wrong. The fact that he did not vote did not affect his duty to disclose.

On the whole this part was not answered as satisfactorily as part (a).

### Question Ten

This problem-based question on contract law contained two parts. Part (a) tested the candidates' ability to identify and apply the law concerning effect of contracts made by minors. Part (b) tested their ability to identify and apply the law relating to consideration, in particular whether acceptance of payment of a lesser sum in satisfaction of a debt of a larger sum operates as a discharge of the whole debt.



This question was generally very well answered. For part (a) most of the candidates identified the issues correctly and applied the law appropriately. Candidates displayed their familiarity with the law on contracts with minors under the Contracts Act 1950 and obtained high marks.

For part (b) the majority of the candidates were able to identify the issue of whether payment of a lesser sum could discharge a debt of a larger sum. Many were also able to relate to the rule in Pinnel's case and distinguish the English position from the Malaysian position under s 64 Contracts Act 1950.

On the whole this question was more than satisfactorily answered. Many candidates scored very high marks.