

Examiner's report

F4 MYS Corporate and Business Law

June 2012



The examination consisted of ten compulsory questions. 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. The overall performance of the candidates was satisfactory.

The majority of candidates attempted all ten questions. Where questions were left unanswered by candidates, this appeared to be due to a lack of preparedness for the topic involved.

Questions 1(b) and (c), 2, 6 and 10 were answered well by the candidates. Their most challenging questions were 1(a), 3, 5, and 8. This is most likely due to candidates' lack of preparedness for the less frequently tested topics.

On the whole candidates showed 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. Nevertheless, the quality of the answers indicated room for improvement. Candidates would have been able to perform better with improved answering techniques.

The following common weaknesses continue to prevent candidates achieving higher marks.

- **Answers too brief:**

This problem has been highlighted many times before. Many candidates did not answer in full sentences. Some merely answered in point form without any accompanying explanation. As a result, the candidates were not able to achieve higher marks.

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

As usual, there were some candidates who did not answer 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.

- **Time management**

Time management continues to be a serious factor contributing to weaker performance in the examination. Candidates are reminded 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 were not as high as 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.

Candidates are also 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.

- **Poor handwriting**

Poor handwriting sometimes causes candidates to lose valuable marks. When the writing cannot be read, the candidate will not gain any marks. Therefore candidates are advised to ensure that their writing is legible.

Specific Comments

Question One

This question, on the Malaysian legal system, contained three parts. Part (a) required the candidates to explain and distinguish between private law and public law. Part (b) required them to explain and distinguish between legislation and delegated legislation while part (c) required them to state two reasons for the increase in popularity of delegated legislation.

Part (a) was not answered well. The answers indicated that the candidates were not familiar with the classification of law into public law and private law. This is a basic aspect of understanding law but had not been tested previously. Candidates and tuition providers alike probably did not pay attention to this aspect of the syllabus.

Parts (b) and (c) which dealt with delegated legislation were answered very well and compensated for the unsatisfactory performance in part (a). Candidates were clearly very knowledgeable on the distinction between legislation and delegated legislation as well as the reasons for the increase in popularity of delegated legislation. Many candidates obtained full marks for parts (b) and (c).

Question Two

This question on employment law contained two parts. Part (a) required candidates to state four guiding principles which ought to be followed to constitute a due inquiry before an employer could dismiss an employee for misconduct. Part (b) required the candidates to explain the remedies for an employee who had been unjustifiably dismissed.

For part (a) candidates were expected to refer to the guidelines laid down in the case of *KJJ Cleetus and Unipamol (M) Sdn Bhd*. For part (b) they were expected to have knowledge of the remedies of reinstatement, compensation in lieu of reinstatement and re-employment.

This question was very well answered. Both these aspects of employment have been frequently tested before and many of the answers indicated that candidates were familiar with past year questions and answers. The candidates were clearly knowledgeable in this area of the law and achieved very high marks.

Question Three

This question on the law of contract which contained two parts tested the candidates' knowledge on two types of remedies for breach of contract, namely, injunction and damages.

This question was not well answered. Remedies for breach of contract are an often tested area as a problem-based question and candidates should not have had any difficulty explaining the various remedies. However, this time it was tested as a knowledge-based question. The majority of the candidates appeared unprepared for this question. Part (a) required candidates to explain the remedy of injunction. Candidates were expected to state that this remedy is an order of the court which stops a defendant from doing, or continuing to do, something in breach of a contract. They were further expected to mention briefly the different types of injunctions, especially temporary and perpetual injunctions. Most of the candidates did not know what an injunction is and gave inaccurate answers.

Part (b) required the candidates to explain the remedy of damages. Candidates were expected to state that this remedy is an order of the court requiring the party who is in breach of contract to pay the other party some monetary compensation for the loss or other inconvenience suffered by the other party. Candidates were further

expected to state the rule which is applied to determine the quantum of damages which could possibly be claimed. Although this part was slightly better answered than part (a), the clear majority of candidates did not display sufficient knowledge to obtain satisfactory marks. Candidates are reminded that questions can come either in knowledge based form or in problem based form. They should be prepared for both.

Question Four

This question on company law contained two parts. It tested the candidates on their knowledge of the operation and rationale of the doctrine of *ultra vires* at common law as well as the position under the Companies Act 1965.

In part (a) candidates were expected to state what is meant by the term, '*ultra vires*' in the context of company law and to mention that at common law *ultra vires* transactions were void. Most candidates were able to state this and obtained some marks. But the question also required them to state the rationale for the doctrine. Many candidates were unable to mention the rationale and did not gain higher marks.

Part (b) was better answered than part (a). This part required candidates to explain the law relating to *ultra vires* under the Companies Act 1965. They were expected to make reference to section 20 Companies Act 1965 and explain its operation. The majority of the candidates were able to do this and obtained satisfactory marks.

On the whole this question was satisfactorily answered.

Question Five

This question on company law tested the candidates' knowledge on the main duties of a company auditor in relation to reports on accounts under the Companies Act 1965.

This question was not well answered. Candidates were expected to mention the auditors' duties under the Companies Act 1965. Although there were some sound answers, the majority of the candidates only mentioned one or two duties, including the duties of skill and care under common law, which was not what the question required. Candidates appeared not familiar with auditor's duties in relation to accounts under the Companies Act. Perhaps this was also because this question has not been frequently asked.

On the whole the answers were less than satisfactory.

Question 6

This question on the law of agency contained two parts. Part (a) required the candidates to explain three duties of an agent to the principal while part (b) required them to explain two duties of a principal to an agent.

This question was very well answered with many candidates scoring close to full marks.

For part (a), candidates clearly displayed their familiarity with the law and many were able to state the duties of an agent to the principal with reference to relevant sections of the Contracts Act 1950, earning them very high marks.

Part (b), although not as well answered as part (a), was nevertheless answered satisfactorily. Most candidates were able to state two duties of a principal to an agent and gain satisfactory marks, even though a lesser number of candidates referred to relevant provisions of the Contracts Act 1950.

On the whole this question was more than satisfactorily answered.

Question 7

This question on company law contained two parts. Part (a) tested the candidates' knowledge on the rights which may be attached to preference shares while part (b) tested their knowledge on the procedure for variation of class rights under Table A of the Fourth Schedule to the Companies Act 1965 and the protection afforded to those who are dissatisfied with the variation.

This question was reasonably well answered.

Part (a) only required the candidates to state five rights which may be attached to preference shares. Most of the candidates were aware of at least some of the rights that may be attached to preference shares, such as a right to a fixed dividend, a right to cumulative dividends and rights to participate in surplus profits and surplus assets. They were able to obtain satisfactory marks. There were some candidates who stated more than five rights. This did not earn them more marks. Candidates are reminded that mentioning more than what is required is unlikely to result in more marks being awarded. It is likely to result in less time for other questions. They are therefore advised to state only the required number of rights.

Part (b) was not as well answered as part (a). However, many candidates were able to mention that a special resolution from that class of shareholders was required in order to effect a valid variation of class rights. Not many mentioned that an alternative was to obtain the written consent of the holders of three fourths of the issued shares of that class. Again, not many candidates displayed knowledge on the protection afforded to those who were dissatisfied with the variation. Candidates were expected to know that holders of at least 10 % of the issued shares of that class could apply to the court to have the variation cancelled. This resulted in failure to obtain higher marks.

On the whole this question was satisfactorily answered.

Question 8

This problem-based question on company law contained three parts which tested the candidates' knowledge and ability to identify and apply, the law relating to appointment of directors.

Part (a) related to the issue of appointment of over aged directors. Under s 129 Companies Act 1965 a person of, or over the age of, 70 years may not be appointed as director of a public company or a subsidiary of a public company. However, under s 129(6) such persons may be appointed or reappointed by a special procedure, i.e. by a resolution approved by a three fourths majority of the members. The length of notice of meeting for this resolution must not be shorter than that required for an annual general meeting of the company (which, in the case of Subco Sdn Bhd is 14 days as it is a private company).

Many candidates were able to recognise the issue of over aged directors and gained some marks. However many candidates were not aware of the procedure for appointment of over aged directors and did not mention it at all. Some others, who did identify the possibility of reappointment mentioned inaccurately that a special resolution was required, thus not gaining higher marks.

Part (b) related to the issue of appointment as directors of persons convicted of certain offences. Most candidates were able to identify this point and stated that Bakri was disqualified from being appointed as a director due to his conviction for theft. This earned them some marks. However, many candidates did not mention the fact that

such a convicted person may still be appointed as a director after five years from date of conviction or date of release from prison (if sentenced to imprisonment) or with the leave of the court. This resulted in them not achieving higher marks.

Part (c) touched on the issue of appointment of directors who are not resident in Malaysia. Under s 122 Companies Act 1965, a company must have at least two directors who each have their only or principal residence in Malaysia. Many candidates identified this point and obtained some marks. However, many candidates were not aware that so long as a company had two directors who satisfied the residence requirement, additional directors could be appointed even though they are not resident in Malaysia. Thus, they failed to recognise the possibility that Chandru could possibly be appointed as a director if the company already had two directors who satisfied the residence requirement. This resulted in lower marks.

On the whole the performance for this question was unsatisfactory.

Candidates are reminded that especially in problem based questions they should read the question very carefully so that they will be able to give full answers.

Question 9

This problem-based question on company law, which contained two parts, tested the candidates' knowledge and application skills in relation to two aspects of maintenance of capital.

Part (a) of this question touched on the topic of reduction of capital. In the question, the board of directors of Uphill Bhd had resolved to reduce the capital of the company by returning excess capital to its members. Candidates were expected to identify the issue as one relating to the doctrine of maintenance of capital which as a general rule does not allow a company to reduce its capital. However, section 64 Companies Act 1965 does allow the reduction of capital subject to certain conditions, among which are the requirement of a special resolution and a confirmation by the court which could only be obtained subject to legitimate claims of creditors being taken care of. The section also specifically states that one of the ways by which a company could reduce its capital was by returning capital in excess of its needs. The obvious conclusion that candidates should have arrived at was that the proposed reduction of capital by the board of directors was not valid as it had not complied with the requirements of the section.

Most of the candidates were able to identify the issue of reduction of capital and state that a special resolution was required. Many also stated that a confirmation of the court was necessary. This gained them some marks. However, when it came to application to the problem, a large number of candidates concluded that the reduction was valid and that EZ Bank's objection was not valid. This resulted in their not gaining more marks.

Part (b) touched on the issue of the prohibition on companies giving financial assistance for the purchase of their own shares. In the given problem, the issue was whether Cetak Bhd could give a loan to its employee, Kira, for the purpose of facilitating a purchase of Cetak Bhd's shares. The shares were intended to be registered in Kira's son's name as she wanted to give him those shares as a wedding gift.

Most of the candidates were able to identify the issue of prohibition on the giving of financial assistance and discussed section 67(1) Companies Act 1965. They were also largely able to mention the exceptions in s 67(2) which, among others, permitted a company to give financial assistance to employees. This earned them some marks. However, the vast majority of the candidates did not recognise the importance of the fact that the shares were to be registered not in Kira's name, but her son's name. This made a big difference to the accuracy of the

answer because under the section the financial assistance could only be given to an employee if the shares were to be held by the employee himself/herself by way of beneficial ownership. As such the company would be in contravention of the section if the loan sought by Kira was granted to her.

This resulted in the vast majority of the candidates not being able to attain higher marks.

Question 10

This problem-based question on contract law contained two parts. Part (a) tested the candidates' knowledge and application skills in relation to the issue of sufficiency of consideration while part (b) concerned the issue of love and affection as an exception to the rule that a contract without consideration is void.

This question was very well answered by the candidates. A number obtained full marks.

In part (a) most candidates were able to identify the issue that consideration needs only to be sufficient and need not be adequate. In the given problem, Chong had agreed to sell his violin to Danny for RM2,000 but later did not wish to sell it as its true market value was RM20,000. As a result Chong claimed that the contract was not valid. However, section 26 Contracts Act 1950 states that a contract is not void merely because the consideration is inadequate. Thus the contract was, on the given facts, valid. Most of the candidates correctly applied the law to the problem and obtained very high marks.

Part (b) was also very well answered. The issue was whether the contract between Thatha and Appoo (who were in a grandfather and grandson relationship) was invalid due to lack of consideration as it was based on love and affection which is not valid consideration at common law. However, one of the exceptions to the rule that contracts without consideration is void is found in section 26(a). This section states that a contract without consideration will still be valid if it was made on account of natural love and affection between persons standing in near relation to each other and the agreement is in writing and duly registered if so required by law. Thus on the facts, as the agreement between Thatha and Appoo was in writing, and they were parties standing in near relation to each other, the agreement was valid and binding. Most of the candidates were able to identify the issue correctly and apply the law accurately to the given problem, giving them high marks.