

Examiner's report

F4 Corporate and Business Law (MYS)

June 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 reasonably 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:

- **Point form answers/answers too brief:**

This problem still persists although there has been a steady improvement 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. Point form answers are not a good 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. 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 were 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 reminded 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 tested the candidates' knowledge on human rights provisions under the Federal Constitution. Candidates were required to state and explain FIVE such provisions.

The vast majority of the candidates were able to recognise that human rights in the Malaysian context refer to the fundamental liberties which are enshrined in the Federal Constitution. Candidates were expected to state and also explain the provisions. Many candidates were able to mention some of the provisions and were able to obtain some marks. However, many did not sufficiently explain the provisions and therefore did not obtain as much marks as they otherwise could have. Candidates must bear in mind that if a question requires an explanation then they should give some explanation and not merely state the provision.

Question Two

This question, on employment law, contained two parts. Part (a) required the candidates to explain and distinguish between a contract of service and a contract for services while part (b) required them to explain the concept of constructive dismissal.

This question was very well answered with many scoring almost full marks. For part (a), the majority of the candidates indicated sound knowledge of the difference between a contract of service and a contract for services. Some even explained the tests that are applied by the courts to determine whether a contract of service exists. Likewise for part (b) most of the candidates were able to explain what constructive dismissal is, with examples and/or decided cases. 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 was on the law of agency. It contained two parts. Part (a) which carried 3 marks required the candidates to explain what is meant by agency by ratification. Part (b), which carried 7 marks, required the candidates to state the requirements which must be satisfied for an agency by ratification to arise.

This question was quite well answered. For part (a) most candidates were able to give acceptable answers to explain an agency by ratification and gain at least two out of the three marks allotted to this part. For part (b) most of the candidates were familiar with at least some of the requirements for a valid agency by ratification and were able to achieve satisfactory marks. There were quite a number of candidates who gave full answers thus scoring very high marks.

Question Four

This question, on contract law, tested the candidates' knowledge on discharge of contracts by impossibility of performance (frustration).

This question was not well answered. Candidates were expected to refer to the Contracts Act 1950 as well as principles established by case law and discuss the circumstances in which a contract would become void by reason of impossibility of performance (frustration).

Many candidates were not familiar with the law in this area. Although there some candidates gave satisfactory answers, the majority gave inaccurate and incomplete answers. It was quite evident that candidates did not pay attention to this area as it had not been previously tested. Candidates are reminded that they should prepare fully



for the examination and not take the risk of leaving out certain parts of the syllabus just because the topic has not been the subject of previous examinations.

Question Five

This question on company law contained two parts. Part (a) tested the candidates' knowledge on the rule in *Royal British Bank v Turquand* while part (b) tested them on the exceptions to the rule. They were required to explain three such exceptions.

Candidates were expected to explain that the rule is basically one that attempts to protect third parties dealing with the company in situations where the officers of the company had exceeded their authority by reason of non-compliance with the internal regulations of the company. In such situations the third party is allowed to presume that the internal regulations had been complied with even if it had not been complied with.

This question was also not well answered. While there were some sound answers, most of the candidates did not display sufficient knowledge of the rule and its exceptions as they had not prepared themselves for this topic. Again this was a topic that was tested for the first time under the F4MYS syllabus. Candidates likely presumed that this topic would not be examined.

On the whole this question was not satisfactorily answered

Question Six

This question on company law relating to winding up contained two parts. Part (a) tested the candidates' knowledge on the circumstances in which a company may be voluntarily wound up while part (b) tested them on their knowledge on three specific aspects of winding up by the court.

It was expected that candidates would answer this question well as it only touched on basic aspects of winding-up. However the answers were, for the most part, not satisfactory.

In part (a) candidates were expected to state that voluntary winding up would occur in the situations stated in s 254 Companies Act 1965. Most of the candidates were not able to give accurate answers.

For part (b) which contained three sub-parts, candidates were required to state, (i) three circumstances in which a company could be wound up by the court; (ii) when winding up is deemed to have commenced and (iii) the effects of the commencement of a winding up.

Most of the candidates had some knowledge of the circumstances in which a company could be wound up by the court. This earned them some marks. However, in respect of the other two aspects, the vast majority of the candidates were not knowledgeable at all. Thus the overall performance for this question was less than satisfactory.

Question Seven

This question, on company law required candidates to state and explain FIVE characteristics of a company as opposed to other forms of business organisation.

This question was reasonably well answered. Most of the candidates had some knowledge of the characteristics of a company as compared with a partnership or sole proprietorship and were able to obtain satisfactory marks. However many candidates did not go further to explain the characteristics, for example, separate legal personality which a company has but other business organisations don't. Thus they did not earn higher marks.

On the whole, this question was satisfactorily answered.

Question Eight

This problem-based question, on company law, contained two parts. Part (a) tested the candidates' ability to identify and apply the law relating to the power of directors to issue shares as well as their duty to act for a



proper purpose. Candidates were expected to discuss the need for an ordinary resolution to be passed under s 132D Companies Act 1965. They were also expected to mention that the proposed issue would be in breach of the directors' duty to act for a proper purpose. Part (b) related to the prohibition on companies providing financial assistance for the purchase of their own shares. Candidates were expected to discuss and apply s 67 Companies Act 1965.

Part (a) was reasonably well answered. Most of the candidates were able to identify the issue of the requirement of a resolution for the issue of shares and obtained some marks. However many candidates did not specifically mention that the resolution must be an ordinary resolution passed at a general meeting of the members of the company and not by a resolution of the directors. Further some candidates identified the question only as a breach of the directors' fiduciary duty to act for a proper purpose as the issue of shares was for the purpose of reducing Chan's shareholding from 28 % to 15%. This duty is also found in s 132(1). Some candidates were able to identify both aspects and obtained high marks.

Part (b) was also reasonably well answered. Most of the candidates were able to identify the issue of the prohibition on companies giving financial assistance for the purchase of its own shares and obtained some marks. However, a large number of candidates did not mention anything about the exceptions found in s 67(2). Although none of the exceptions applied in the given scenario, the candidates were expected to consider and dismiss the possibility. Many candidates failed to achieve higher marks because of this.

Question Nine

This problem-based question on company law contained three parts all relating to different aspects of company meetings.

Part (a) required the candidates to determine whether the company which had been incorporated on 1 November 2011 had contravened the Companies Act 1965 when it held its first annual general meeting (AGM) on 15 April 2013 and not in 2011 or 2012. Candidates were expected to discuss s 143 Companies Act which allows a company to hold its first AGM within 18 months of incorporation, even if it results in the AGM not being held in the year of its incorporation or the following year. Thus, on the facts there had not been any contravention of the section. Although many candidates identified this correctly and obtained satisfactory marks, a large number of candidates did not identify the issue correctly. Some simply understood the law as requiring an AGM to be held every calendar year and therefore concluded that the company had contravened the Companies Act by not holding its first AGM in 2012.

Part (b) required the candidates to identify the issue of the effect of failure on the part of the company to give notice of meeting to a member. Candidates were expected to discuss and apply s 143 Companies Act which states that the accidental omission to give notice or the non-receipt by a member of notice of meeting sent by the company will not invalidate the meeting. This part was also reasonably well answered. Some gave full answers and obtained satisfactory marks. Many of the candidates were able to state that the failure to give notice of meeting would not invalidate the meeting. This gained them some marks. However there were some who simply stated that the meeting was invalid because Ella was not given notice of the meeting. This was not accurate and would have given them little or no marks at all.

Part (c) touched on the issue of appointment of a proxy. Candidates were expected to refer to s 149 Companies Act 1965 which states that unless the articles provide otherwise, a non-member cannot be appointed as a proxy unless they are an advocate and solicitor, an approved company auditor or a person approved by the Registrar. As Halsbury Tan was an advocate and solicitor, he was qualified to be a proxy and the chairman was wrong in holding that Halsbury Tan's appointment as proxy was invalid. This part was not answered as well as expected. Many candidates did not get the right answer. They were of the opinion that Halsbury Tan was not qualified to be a proxy as he was a non-member.

On the whole this question was satisfactorily answered.



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 the postal rule in relation to offer and acceptance. Part (b) tested their ability to identify and apply the issue of a counter-offer as opposed to an acceptance.

Both parts of this question were 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 the postal rule in relation to communication of acceptance under the Contracts Act 1950. For part (b) most of the candidates indicated sound knowledge of the difference between an acceptance and a counter-offer and were able to apply the law appropriately to the given situation.

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