Examiner's report

F4 Corporate and Business Law (SGP)
December 2012

General Comments

The examination consisted of ten compulsory questions. Questions 1 to 7 are knowledge based while Questions 8 to 10 require application of law to the facts.

Most candidates attempted all ten questions. Questions 7, 8 and 9 were the most poorly answered questions. Questions 1, 2, 3 and 6 were the best answered questions.

Sound answers were presented by some for all ten questions and very high marks were achieved by these candidates. The performance of candidates overall was similar with the previous years'. A fair number of students appear to be unprepared for the examination.

Other than lack of preparation for the examination, some candidates performed inadequately because they failed to carefully read the content and requirements of questions. This may have contributed to the inadequate performance on some descriptive questions. With regards questions 8 to 10 which require application of law to the facts, some candidates who performed inadequately merely regurgitated principles they learnt but did not apply them to the facts.

A number of common issues arose in the candidates' answers:

- Failing to read the question requirement clearly and therefore providing irrelevant answers which scored few if any marks.
- Inadequate time management between questions, some candidates wrote far too much for some questions and this put them under time pressure to finish remaining questions.
- Illegible handwriting and inadequate layout of answers.

Specific Comments

Question One

This question was relatively well attempted by candidates. Part (a) was done best. Some candidates could not give a full explanation for part (c). Some candidates were confused between the mischief rule and the golden rule. Unfortunately, some candidates did not give illustrations in their answers and so did not achieve full marks for this question.

Question Two

For part (a), many candidates did provide the law in *Felthouse v Bindley* (1862) where the general rule is that the offeree's silence cannot amount to acceptance. Some candidates also went further to note exceptions to the rule: agreement of offeree that his silence can be acceptance, or waiver of communication, as in *Carlill v Carbolic Smoke Ball Co*.

In part (b), many candidates were aware of the general rule that acceptance is effective when received but did not expand on the explanation. Most merely focused on the postal exception.

Question Three

In part (a), only a minority of students understood the concept of discharge of a contract by *performance.* Many gave answers on the law relating to discharge by *breach* of contract. However those who did understand the concept of discharge of a contract by performance were able to state the rule in *Cutter v Powell* (1795).

Part (b) was better understood by students, with many candidates giving comprehensive answers on substantial performance, the *de minimis* exception, divisible contracts, prevented performance and acceptance of partial performance. However, a minority of students discussed instances of discharge of contract e.g. breach, frustration etc. instead of exceptions to the rule in *Cutter v Powell*.

Question Four

Part (a) was done fairly well by most. Candidates were able to explain in very general terms the separate legal personality of the limited liability partnership (LLP).

Few candidates referred to the LLP Act 2005 specifically in their answers for part (b). Most answers restricted discussion to the general concept of actual authority of a partner.

Little reference was made to s. 8 LLP Act for part (c). A large number of candidates simply gave the law on limited liability relating to companies. They even used the word 'company', perhaps reflecting a lack of appreciation that a company is different from a LLP.

Question Five

Most candidates did not actually understand what part (a) required and their answer was restricted to what a promoter was and the matters that a promoter had to take care of and had very little on the fiduciary duties that promoters owed to the company. Some candidates incorrectly assumed that all promoters are automatically directors and went on to discuss promoters' duties. Some candidates even though the promoters were the kind of marketing promoters found in supermarkets.

Part (b) was better done. Most candidates did have a sound grasp of the concept of *ultra vires,* but not all candidates wrote about the law in sections 23 and 25 Companies Act Cap 50. There is a minority who confused *ultra vires* with an agent exceeding authority.

Question Six

Most candidates were able to outline the main characteristics of a floating charge in part (a).

Most candidates were also able to explain the key advantage of a floating charge, which is the debtor company is able to deal with the assets, which are the subject matter of a floating charge, in the ordinary course of its business. There is a minority who did not understand the nature of a floating charge. These candidates explained the differences between loan interest rates that were either fixed or floating and concluded that having a floating rate might be more advantageous than a fixed rate.

Part (c) was well answered in general. Most candidates could explain the effect of non-registration under section 131 Companies Act Cap 50, i.e. that non-registration reduces the lender to the position of an unsecured creditor.

Question Seven

Candidates had difficulty appreciating the requirements of the question which concerned the division of powers between the board and general meeting. Very few made reference to the law in section 157A Companies Act Cap 50. A large number of candidates wrote about the different types of directors, the different types of general meetings and the different types of resolutions that a general meeting could pass. Most candidates answered this question inadequately.

Question Eight

This question was generally inadequately answered by most candidates. Many candidates discussed remedies for breach of contract instead of exemption clauses.

Of those who understood they had to discuss exemption clauses, very few of them referred to the requirements that an exclusion clause had to be properly incorporated, construed to cover the breach in question and it has to be reasonable to be valid under the Unfair Contract Terms Act Cap 396, if the Act applies. Many candidates gave a very limiting answer by concentrating merely on the fact that the exclusion clause was not in the contract signed by the Lims and so the Lims were not bound by it.

Question Nine

Only some candidates gave an adequate answer to this question. The priority order in section 328(1) Companies Act Cap 50 was to be adhered to. However, few candidates referred to the law in section 328(5) Companies Act, which would allow Wealthy Bank to only get back $240,000 out of the $300,000 raised from the book debts, as retrenchment benefits and Central Provident Fund payments have priority. A significant number of candidates were also not able to conclude that trade creditors and taxes would not be paid at all. A significant number of candidates answered this question inadequately.

Question Ten

Many candidates managed to give a satisfactory answer to this question. A large majority either gave a very general answer on duties of directors, or resorted to producing answers based solely on common sense without discussion of any cases or reference to the Companies Act Cap 50 in support. Some could have achieved more marks if they had discussed the *consequences* of Foo's breach of duties, i.e. that Sun can sue Foo for damages and that Foo may be guilty of an offence.