

# Examiner's report

## F4 Corporate and Business Law (SGP)

December 2014



### General Comments

The purpose of this report is to provide feedback on the performance of candidates in the December 2014 examination. It identifies strengths and weaknesses demonstrated by the candidates, and also highlights best practices so that those presenting themselves for the examination in the future should take some points into account in order to maximise their prospects of success.

The December examination introduced a new format through which candidates were asked to answer 45 multiple-choice questions in Section A, worth 1 or 2 marks each, and 5 short questions in Section B worth 6 marks each, in a total of 2 hours. All questions were compulsory. The multiple-choice questions were objective in that the correct answers had to be selected in order to earn marks. The short questions were also objective in the sense that the candidates had to focus on what was asked and answer it exactly to the point. No marks were given for candidates who discussed more issues than what was required in the question. The overall performance in the examinations can be improved through more thorough preparation for the examinations.

Syllabus topics on which candidates performed well included law and the legal system, sources of law, formation of a contract, law of negligence, general partnership and limited liability partnership, companies and legal personality.

Syllabus topics on which candidates performed inadequately included content of a contract, company meetings and resolutions, winding up and corporate rescue, rules on creditor protection.

### Section A

The following are examples of questions which candidates experienced difficulty.

#### Question 6

Which of the following is an exception to the general rule that there must be full and precise performance of the contract?

A There was partial performance of the contract B. The deviation in performance was very small C There is only one single indivisible obligation to be performed

The correct answer is B. The number of candidates were more or less evenly split among the three options. It is possible that many candidates chose A and C because they neglected to read the question carefully, namely, that it required an exception to the general rule of full and precise performance.

#### Question 39

Winners Pte Ltd has issued some preference shares.

Article 50 of Winners Pte Ltd's articles of association states that these preference shares are entitled to 5% cumulative dividend.

Article 51 of Winners Pte Ltd's articles of association states that the rights attached to any class of shares may be varied with a special resolution passed at a meeting of shareholders of that class.

Winners Pte Ltd wishes to reduce the dividend payable to its preference shares to 4%.

Which resolutions must be passed in order to amend article 50 of Winners Pte Ltd's articles of association?

(1) An ordinary resolution passed at the general meeting (2) A special resolution passed at the general meeting (3) A special resolution passed by preference shareholders

A (2) only B (3) only C (2) and (3) D (1) and (3)

The correct answer is C. Section 37 Companies Act Cap 50 makes clear a special resolution is required to amend an article of association. As such statement (1) is incorrect and so D is not a suitable option. Unfortunately, a fair number of candidates chose D. Article 51 would have conveyed to the candidates the objective of the question is to test the candidates' understanding on variation of class rights. Variation of class rights requires consent of the affected class in the manner provided for under article 51. The candidates should be able to infer from the existence of article 51 that a special resolution of the preference shareholders is required, which would necessitate the exclusion of A as the answer. Yet, a lot of candidates chose A as the answer. The candidates who chose C would have understood that an amendment of article 50 required both the consent of preference shareholders (as required specifically by article 51) and the consent of ordinary shareholders (as required by section 37 Companies Act for any kind of amendment to the memorandum and articles of association).

#### Question 40

Which of the following about commencement of winding up by the court is correct?

- A It commences at the time of the making of the application to court  
 B It commences at the time the court makes the winding up order  
 C It commences when the board of directors passes a resolution to wind up the company  
 D It commences when the shareholders pass a resolution to wind up the company

The correct answer is A. A large number of candidates chose B. The remainder chose C or D, with the numbers evenly split between C and D. When a winding up order is made, winding up is deemed to have commenced at the time of the making of the application and not at the time the winding up order was made: s. 255(2) Companies Act Cap 50. Since the question did not mention winding up order was preceded by a resolution for the winding up of the company and since the question was about winding up by the court as opposed to a voluntary winding up, the candidates should have eliminated C and D as possible answers.

The following is an example of a question on a regularly tested area, namely acceptance of an offer.

#### Question 18

Billy offered to sell his golf clubs to Jimmy. Jimmy immediately replied by letter accepting the offer, but his letter never reached Billy.

Which of the following statements about Billy's position is correct, and for what reason?

- A He is bound by the contract because Jimmy has accepted his offer  
 B He is bound by the contract because the postal rule applies  
 C He is not bound by the contract because the letter was lost in the post  
 D He is bound by the contract if it was reasonable for Jimmy to have used the post

The correct answer is D. Many candidates chose B as the answer and a small number chose A or C. The objective of the question is to test the rules on acceptance of an offer. Answer A should have been eliminated because it did not address the fact about the letter being lost in the post. Answer C should have been eliminated because it did not use a legal principle to explain why the letter being lost in the post affected the formation of the contract. Candidates who have eliminated A and C would then have to choose between B and D. The letter being lost in the post is a classic case of the postal rule having to be invoked. Candidates who have studied the postal rule would have chosen D because the postal rule applies only if it was reasonable to use post.

#### Section B

When attempting the short questions in section B in future, candidates must be aware that their answers have to be clear, unambiguous and to the point.

Where the question required the candidate to state the principles, it is observed that many candidates wasted valuable time by stating all the principles they have learnt on the particular topic, when it was only necessary to state one or two relevant principles as required by the question.

Where the question required the candidate to apply the principles to the facts, it is observed that many candidates regurgitate the principles they learnt without explaining how the principles resolve the issues raised in the hypothetical scenario. It is also observed that a large number of candidates often appeal to some hazy idea of 'common sense' or 'fairness' to answer the question. It is hoped that candidates will note that this is a law examination and they are expected to know relevant legal principles and apply them to a hypothetical scenario. The objective of the examination is not to ask what the candidates think makes good common sense or is fair.

Question 1(a) asked about the manner in which exclusion clauses are incorporated in a contract. Many candidates did not state methods, for example, by signature, reasonable notice or previous course of dealing and instead wrote about unrelated topics like oral and written contracts, conditions and warranties.

Question 1(b) required an application of principles associated with exclusion clauses. Only a small minority realized that the Unfair Contracts Terms Act Cap 396 made the exclusion of liability for personal injury caused by negligence void in the scenario. Only a small number of candidates applied the correct rule of construction to the exclusion clause in question.

A large majority of candidates merely interpreted the articles mentioned in Question 2, with no reference whatsoever to the law under s. 39 Companies Act Cap 50 that the memorandum and articles of association of a company are a statutory contract between a member and every other member, as well as between the company and its members. Quite a few candidates did not state whom the party in the question could enforce the article against although it is explicitly required in the question.

For Question 3, many candidates did refer to the duties of a director to use reasonable care, skill and diligence in the discharge of their duties and not to place themselves in a position where their duty and his interest conflict. However, few realised the question asked about statutory duty and so focused their discussion on common law duties instead of s. 156 and 157 Companies Act Cap 50.

A relatively large number of candidates did question 4(a) well in that they could state the requirements that have to be fulfilled before a person can bring a derivative action. Question 4(b) required the candidates to identify if a derivative or personal action was suitable on the facts and to explain their choice. Perhaps about half of the candidates could identify that a derivative action was appropriate for part (i) and a personal action was appropriate for part (ii). However, many candidates failed to then go on to explain the reasons for their choice which is explicitly required in the question.

Question 5 was the most poorly answered question in section B. For part (a), only a small handful of candidates were aware of the purposes mentioned in s. 227B(1) Companies Act Cap 50. For part (b), very few candidates could explain what the moratorium pursuant to a judicial management order entailed. Many candidates merely answered part (a) by saying the court should make the order because it is fair and answered part (b) by saying the judicial management order is made by the court and so must be very powerful.

## **Conclusion**

The examination paper is broad-based, requiring a relatively fundamental knowledge of many theories, concepts and practical applications. In order to pass it is not necessary to know any individual topic in great depth but it is necessary to know the basic principles associated with every topic in the syllabus.

Candidates should attempt all questions. While it is recognised that few individuals will be fully prepared to deal with every question, it should be possible to make a reasonable attempt at every question. As mentioned above, distractors can often be eliminated by a process of deduction.

Section B of the paper now includes 5 short questions, usually with 2 or 3 parts carrying 2 or 3 marks each. It is vitally important that candidates read the questions carefully. Too many candidates answered the questions by writing narrative answers that were of no benefit and wasted valuable time by offering detailed responses. Since each sub-part is worth 2 or 3 marks only, it is only necessary to focus specifically on what the question required, which usually involves stating or applying one or two legal relevant principles.

It is hoped the candidates will exercise good time management. Candidates should spend an adequate amount of time reading the multiple choice questions and their options carefully. They should not rush through the multiple choice questions only to spend a large amount of time writing copious answers to the short questions, which do not garner them marks if they are not relevant to the question.