Examiner's report

F4 Corporate and Business Law (SGP)
June 2012

General Comments

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

Most candidates attempted all ten questions. Questions 3, 6 and 10 were the most inadequately answered questions. Questions 1, 2 and 5 were the best answered questions.

Excellent 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 year's. 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 knowledge based 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. However, it did also appear that many did not quite understand that they had to address both the concept of *stare decisis* as well as the hierarchy of courts. Oddly, a very large minority wrote exclusively on the various courts that we have in Singapore.

Question Two
For part (a), most candidates were able to explain consideration such that this part was satisfactorily handled.

As for part (b), a significant number of candidates were not able to clearly distinguish between executed and executory consideration. Those who could distinguish executed from executory consideration, unfortunately, were not able to express themselves well when explaining the two types of consideration.

For part (c), there were very few candidates who could accurately define past consideration although most were able to give an example. A significant minority also put the promise before the consideration in their explanation of past consideration.

Question Three
Part (a) was inadequately answered. Many candidates discussed terms i.e. conditions and warranties instead and thus failed to answer the question.

Candidates did better in part 3(b) than part 3(a) although answers to part (b) also fell below expectation. Most candidates failed to discuss the relevant sections of the Unfair Contract Terms Act (UCTA) (Cap 396) and provided answers in very general terms to the effect that exemption clauses must be fair to be valid. A very large number only referred *exclusively* to s 2(1) UCTA on the liability for death or personal injury due to negligence.

Question Four

Candidates were generally able to explain the concept of lifting of the corporate veil, but the vast majority had difficultly outlining and clearly explaining four situations as required by the question.

Question Five

Most candidates fared well for this question, with some being awarded the maximum number of marks. Most candidates were able to provide some differences between the rights of preference shareholders and creditors. However, some candidates incorrectly compared the rights of *ordinary* and preference shareholders. There were some answers that were however not comprehensive.

Question Six

A very large number of candidates were unable to answer this question well. A common shortcoming was observed in all three parts. They often focused on the **duties** of the board of directors/managing director/individual directors rather than their respective **powers** to bind the company. Concepts of agency and authority were hardly ever referred to in the answers. Many candidates also confused individual directors with *independent* directors.

Question Seven

Most candidates could not explain the three ways, namely s. 216, s. 216A and s.254 Companies Act (CA) (Cap 50) through which a minority shareholder may be protected as required by the question. There was also confusion between a personal action under s. 216 CA and a derivative action under s. 216A CA. Requirements for an action under s216A were often listed as requirements for an action under s216. Some candidates did not have a good grasp of these sections.

Question Eight

Most candidates failed to clearly explain and apply the concepts of duty of care, breach and resulting damage necessary to sustain an action in negligence. Some candidates did write about the duty of care owed by Tan & Co to Speedy. However, many candidates merely answered in a general manner that Tan & Co had a duty to press Alex for the employment contract. And since Tan & Co did not, then they were negligent. Interestingly some candidates concluded that there was no breach, and some even misread the requirements of the question and focused on Alex's breach of duty as director instead.

Question Nine

Many candidates resorted to producing answers based solely on common sense without discussion of any legal principles, for example, those laid down in *Peso Silver Mines Ltd v Cropper* or *Regal (Hastings) Ltd v Gulliver* in support. Many answers were premised on the reason that as Ho had resigned he could not be liable for any breach of duty.

Question Ten

With respect to part (a), answers displayed that many candidates were generally unfamiliar with the procedures for a creditors' voluntary winding up and winding up by the court. Under creditors' voluntary winding up, few

made reference to the need for a special resolution to be passed, nor to the directors' declaration of solvency. Under winding up by the court, again only a very few were truly conversant with s.253 and s.254 CA. Many answers were confused. For example, there were answers that incorrectly opined that winding-up leads to the appointment of a judicial manager who could then take steps to rescue the ailing company.

With respect to part (b), many candidates were unclear and unconvincing in their reasons as to which type of winding up is preferred. Some also did not appear to understand that Fox was an unsecured creditor.