

Examiner's report

F4 Corporate and Business Law (SGP)

June 2013



General Comments

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

Most candidates attempted all ten questions. Questions 3, 6 and 7 were the most poorly answered questions. Questions 1, 2 and 4 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 year's. A fair number of candidates 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.

Specific Comments

Question One

Many candidates scored well for Question 1. The majority of candidates were able to explain the structure of the Singapore courts including their jurisdictional limits. Some candidates did not achieve full marks as they either left out details regarding the High Court or the components of the Subordinate Courts. However, a significant minority did not fully answer the requirements of the question when they chose to focus only on the doctrine of precedent without any reference to the courts' structure or the concept of *stare decisis*.

Question Two

Most candidates did not have a difficulty in giving a comprehensive discussion of offer, acceptance and consideration. A large majority of the candidates were also able to explain and/or illustrate each of the elements with case laws and/or examples. Intention to create legal relations was somewhat more difficult for some candidates. Not many discussed the presumptions under the element of intention to create legal relations. A few candidates received almost no marks as their answer was on conditions, warranties and innominate terms.

Question Three

The majority of the candidates did not give an acceptable answer for Question 3. Many answers were not even on point. Many confused restraint of trade with exemption clauses and set down the legal requirements for the latter. Among those candidates who understood the question to be about restraint of trade, they either gave a very general answer about when restraint of trade clauses were likely to be used by employers or just concentrated on the necessity of such clauses having a reasonable scope. The concept of legitimate interest of



the covenant and the fact that the restraint must not be contrary to public interest were often not adequately addressed.

Question Four

Most candidates were able to explain and distinguish between sole traders, limited liability partnerships and limited liability companies. There are at least eight areas in which the sole trader, the limited liability partnership and the limited liability company can be distinguished. Unfortunately, quite a few candidates lost marks as they had confused a limited partnership with a limited *liability* partnership. Some also seemed to be discussing general partnerships. There were some answers that were inadequately organised.

Question Five

Most of the candidates were able to outline some of the differences (e.g. with regard to voting, priority, etc) but answers were neither sufficiently comprehensive nor well explained. Only a small number of candidates were conversant with the various possibilities that preference shares can have eg being redeemable, participating, convertible, etc.

Question Six

Question 6 was not answered particularly well by most candidates.

For part (a), very few candidates were aware that the Companies Act Cap 50 does not prescribe the manner in which directors are appointed and that this is generally left to the company's articles of association.

Similarly in part (b), few candidates stated that the mode of removing directors before the expiration of their term of office is provided for in the articles of association. Many answers simply concentrated on situations when a person was fit to be a director and when he was not fit to be one, as in instances of bankruptcy and unsound mind.

Quite a few candidates were also of the opinion that special resolutions by members was a requirement under the law for both the appointment and removal of directors. Few referred to article 69 of Table A.

Question Seven

Question 7 was inadequately answered by most candidates. Many of them confused this question with the law of fraudulent and negligent misrepresentation or insider trader. Very few candidates knew that the relevant law was under sections 340 and 339(3) Companies Act Cap 50. Furthermore, only a minority could meaningfully distinguish the two sections.

Question Eight

Most candidates were unable to give a comprehensive answer for Question 8. Performance for this question was somewhat mixed.

Some candidates referred to duty of care under negligence. However, most knew that the pertinent law was under contract. Some candidates went to unnecessary lengths to explain the obvious breach of contract (e.g. whether it was breach of condition or warranty), with very little focus on the aspects of causation and remoteness of damages under the principles outlined in *Hadley v Baxendale*, and mitigation. Some candidates attempted to provide common sense answers unsupported by legal authorities and also omitted to discuss the aspect of non-pecuniary damages. Far fewer candidates stated that unhappiness and stress was a non-pecuniary loss but that the law in *Jarvis v Swan Tours* would allow such a claim in the current case.



Question Nine

For Question 9, a fair number of candidates were aware that Carol could apply for a derivative action under section 216A Companies Act Cap 50. However few candidates were clear in their answer that Carol could also pursue a separate derivative action under the *common law* for 'fraud on the minority'.

Some candidates also mentioned the law under section 216 Companies Act regarding oppression of a member and the right of a member to apply for winding up of the company on 'just and equitable' grounds pursuant to section 254 Companies Act.

A sound answer would require a brief discussion of all four possible actions that Carol could take. However, most candidates only managed to cover two possible actions at most. There was also a significant majority who confused the two different types of action (i.e. a personal action and a derivative action). Requirements for an action under Section 216A were sometimes incorrectly listed as requirements for an action under Section 216 instead.

Question Ten

Most candidates had some general idea of what judicial management was about. It was however surprising to note that only very few candidates actually made reference to Section 227B Companies Act Cap 50 or the requirements of that section.

As such, few answers discussed the need for PF to show that it was unable to pay its debts. However, a fair number of candidates did discuss whether or not a judicial management order would be likely to achieve the survival of the company, or the whole part of its undertaking as a going concern. Nevertheless, most answers were a little simplistic in that they merely stated that PF's problems were caused by an earthquake disrupting supplies, that it might be difficult to obtain alternative supplies and that client confidence had been affected. Sound answers related these facts and assumptions to the law in section 227B.