

Examiner's report

F4 Corporate and Business Law (MLA)

December 2010



General Comments

The examination paper consisted of ten compulsory questions, all of which had 10 marks each. A few candidates did not attempt all the questions. This does not appear to have been due to time pressure but due to lack of knowledge of the subject-matter posed in the relative questions. From the answers given the majority of candidates allocated the same amount of time to the answering of each question as in the majority of cases appropriate detail was given and the length of the answers given were commensurate to the mark allocation of each part of the question.

From the answers given one could note that candidates did read the questions and identify the requirements of each part of the question given.

The report will begin with some general brief comments on the overall performance of candidates in this session before going on to look at the questions in the paper in detail. One notes that both positive and negative aspects of performance are given so as to enable candidates to learn from past performers and performance.

In this session there were few high performers and in the majority candidates obtained average marks. As stated in previous sessions, this is evidence that with a little more effort better marks can be achieved. The principal reason for the under performance of candidates is lack of adequate preparation for the examination with many answers not having sufficient detail to be afforded higher marks.

Some general indications of good practice to follow:

- candidates must be well prepared for the exam - on all topics and not on what they consider the 'most important';
- candidates need to manage their time effectively;
- candidates must read carefully and understand the requirements of each question;
- keep in mind that the marks that the examiner allocates to each part of the question is indicative of the detail which candidates are required to go into;
- provide concise and complete answers;
- candidates should indicate the question number in the paper on each page of the respective reply;
- start each question on a new page;
- general essay answer format should not be used for problem questions as these will contain little information relating to the specific issues raised in the problem question.

Specific Comments

Question One

The question dealt with the court structure in Malta and the division into the different courts having different areas of jurisdiction. Candidates were expected to identify the different courts and refer to the jurisdiction of various courts. The Maltese Courts could be divided between the Superior Courts and the Inferior Courts. A distinction is also made between the courts of first instance and the courts of second instance.

All candidates attempted this question. Many candidates gave very satisfactory answers with quite a good number going into detail into the role of the various courts and their scope/jurisdiction.

Question Two

This question was also a one part question which specifically dealt with one aspect of contract law, namely a valid offer and how this differs from an invitation to treat. An offer or proposal is a unilateral act as it is made by the proposer to one or more contracting parties or to the public at large. It is the manifestation of the will and



intention of one of the contracting parties to enter into an obligation with one or more parties. An offer has to be distinguished from an invitation to treat where a person is not considered to have made an offer but merely expresses himself to be ready to consider any offers that may be made to him.

The majority of candidates attempted this question. Many answers given to this question were satisfactory. Few candidates referred to both the internal and external requirements instead of restricting their answers to what was requested.

Question Three

The question dealt with employment law and specifically to a situation of a transfer of business. Candidates were expected to make reference to the provisions of the Transfer of Business (Protection of Employment) Regulations, 2002 issued under the Employment and Industrial Relations Act 2002.

A number of candidates were not able to provide sufficient detail to achieve higher marks.

Question Four

This question dealt with one aspect of company law. The question dealt with the contents of the memorandum of association of a limited liability company. Most candidates gave very satisfactory answers.

Question Five

This question was divided into two parts, with the first part dealing with the capital requirements of a company requiring candidates to explain the type of capital a company must have. The second part dealt with a situation where a company faced a capital loss.

Answers to the first part of the question were satisfactory. It is to be noted that there were some candidates who failed to distinguish between the authorised and issued share capital of a company. Answers to the second part of the question failed to make specific reference to the relevant provision of the Companies Act where the law lays down the steps which a company must take when faced with such a situation.

Question Six

This question was also divided into two parts. The first part required candidates to define an officer of a company. In terms of the definition section under the Companies Act, 1995, an officer of a company is said to include a director, manager, or company secretary, but does not include an auditor. The second part required candidates to refer to the role of the company secretary.

The vast majority gave detailed and very satisfactory answers to this question.

Question Seven

This question dealt with a single member company and the criteria which a company must comply with in order to have such a status. While one of the main characteristics of limited liability companies remains that the share capital must be subscribed to by at least two members, the law now provides for the setting up of or consequent change of status of a company into a single member company.

For a company to be a registered or to become a single member company it must not only have the status of a private exempt company but its objects must specify which activity of the company shall be its main trading activity and the business of the company must consist principally of that activity.

A good number of candidates gave satisfactory answers but some failed to trace both the requirements of a private exempt company and of a single member company which are all essential.

Question Eight

This question is divided into two parts, both dealing with contract law. The first part of the question dealt specifically with capacity and the age requirement for a valid contract. Candidates had to determine whether Simon was able to purchase the object on his own and without having parental consent. In terms of the provisions of the Civil Code, between the age of 14 up to 18 years of age, the law distinguishes according to whether the child is subject to parental authority or tutorship. Simon falls within this age bracket. In order to determine whether the sale contract would have been a valid one had he purchased the equipment one would have to be aware of certain other facts, such as whether he was still subject to parental authority and whether or not he had been emancipated to trade. The majority of candidates replied to this part of the question and also gave their opinion on the matter and explained why they reached the particular conclusion.

The second part of the question dealt with the aspect of consent and whether the contract could be invalidated on this ground. Candidates were expected to give their opinion and base their arguments on the provisions at law and in jurisprudence on the matter. Many candidates failed to provide sufficient detail to be awarded higher marks.

Question Nine

This question dealt with the offence of fraudulent trading and with the issue of disqualification orders against defaulting directors.

The Companies Act provides for two principal offences for which directors can be held liable in the case where the company continues to trade when in financial difficulties and such company is subsequently dissolved, namely fraudulent and wrongful trading. The main differing feature between the two offences is the intention to defraud, which must be found to exist in order to hold a person liable for fraudulent trading. Thus, if in the course of winding up, it appears that any business of the company has been carried on with the intent to defraud creditors of the company, or any other person or for any fraudulent purpose, the court may declare that any persons who were knowingly parties to the carrying on of the business, be held liable for fraudulent trading.

Most candidates gave satisfactory answers to this part of the question clearly showing that they were conversant with the provisions of law on the subject matter and quite a few distinguished between fraudulent and wrongful trading.

Most candidates were aware of the measure whereby disqualification orders can be issued against defaulting directors but not many were able to give sufficient detail.

Question Ten

This last question was again divided into two parts with five marks being allocated to each part. The question dealt with the provisions of the law on corporate recovery and with the role of the special controller.

With respect to the first part of the question candidates had to analyse the facts given to determine whether the relative provisions on corporate recovery apply. In terms of the said Act, where the directors of a company become aware that the company is unable to pay its debts or is imminently likely to become unable to pay its debts, they shall, within 30 days from when the fact became known to them, duly convene a general meeting of the company by means of a notice to that effect for a date not later than 40 days from the date of the notice for



the purpose of reviewing the company's position and of determining what steps should be taken to deal with the situation, including consideration as to whether the company should be dissolved or, where applicable, whether the company should make a company recovery application. Most candidates answering this part of the question did mention the procedure to be followed when a company has applied for corporate recovery and in sufficient detail.

The second part of the question related to the role of the special controller in terms of law. On the appointment of the special controller, any power conferred on the company, its directors or its officers, whether by the Companies Act, by any other law, or by the memorandum or articles of association of the company, shall be suspended and shall be assumed and exercised by the special controller unless the consent of the special controller to exercise such power has been obtained, which consent may be given either generally or in relation to a particular case or cases, and no meeting of the company may be summoned except with leave of the court and subject to such terms as the court may deem fit to impose. On this part of the question answers given were not as detailed as those given in respect of the first part of the question.