



Examiners' report

F4 Corporate and Business Law (MYS)

June 2008

General Comments

The examination consisted of ten questions all of which were compulsory. This was the second sitting under the new syllabus. Questions 1 to 7 were direct knowledge-based questions while questions 8 to 10 were problem-based questions requiring candidates to demonstrate the ability to identify legal issues and apply them to given situations. Most of the candidates attempted all the questions. On the whole the candidates appeared to be better prepared and the overall performance of the candidates was better than the previous sitting.

Generally, the candidates showed clear understanding of what the questions required. There was no ambiguity which was likely to cause candidates to misinterpret any question. Some candidates performed very well. At the same time, there were some candidates who did not record satisfactory results.

Candidates must be reminded that past year questions and answers provide a very useful guide and they could improve their results by constantly referring to them.

Candidates should also be reminded of the following recurring problems and avoid them as much as possible:

Language and expression:

As a general rule, candidates are not penalised for poor grammar and sentence construction. Over the years, the language and expression has improved. However, quite a number of candidates still displayed difficulty in expressing themselves clearly. This resulted in those candidates not being able to achieve higher marks. Candidates who have such difficulty are advised to use shorter sentences and appropriate illustrations to make themselves clearer.

Answers too brief:

This problem has been highlighted many times before. A number of candidates did not give reasonably complete answers. Some merely answered in point form without any accompanying explanation. As a result the candidate may not have been able to achieve a pass mark.

Failure to answer all parts of a question or the required number of questions.

Quite a number of candidates did not answer all parts of a question. This also resulted in lower marks. This may also indicate lack of adequate preparation for the examination.

Spotting:

This is still a common occurrence. Some candidates answered some questions very well while not being able to give adequate answers to other questions. This indicates selective studying. Candidates are advised that questions can come from across the syllabus and candidates who study only by spotting topics will generally not fare well in the examination.

Time management

Poor time management continues to be a factor affecting candidates' performance. A small number of candidates answered the first few questions very well and in good detail while the later answers were short and brief indicating that they were short of time to complete the paper. This invariably results in candidates not achieving higher marks. Candidates are advised to divide their time properly for each question so as to achieve better results.

Specific Comments

Question 1

This question, on the Malaysian legal system, required candidates to explain the operation of the doctrine of judicial precedent and to state two advantages of the doctrine. Candidates were expected to explain not only that the doctrine refers to the rule under which decisions of the higher courts are to be followed by the lower courts but also to make reference to the hierarchy of the courts and the extent to which each of the higher courts decisions bind the courts which are lower in the hierarchy.

The question was reasonably well answered and many candidates performed well. Some candidates only answered the first part of the question and thus lost valuable marks. There were also some candidates who did not make reference to the hierarchy of the courts to explain how the doctrine operates in Malaysia, thus causing them to lose some marks. Some candidates, in attempting to state the advantages of the doctrine went out of point and stated instead, the advantages of having a system of appeals. Some candidates gave complete answers further explaining the importance of the *ratio decidendi* of the decision of the higher court, distinguishing it from “*obiter dicta*”.

Question 2

This question on the law of agency required candidates to explain any five duties of the agent to his principal as provided under the Contracts Act 1950. This question was satisfactorily answered. Most of the candidates who attempted the question were able to mention some of the duties. There were some sound answers where the candidates displayed their knowledge of the relevant sections and even gave some illustrations by referring to suitable examples and relevant cases. Many candidates could have performed better if they had given good explanations of the various duties rather than just mention them. As the question required candidates to explain the duties, candidates who merely listed down the duties did not achieve as much marks as they otherwise could have. Candidates are reminded that they should read the question carefully and tune their answers to what the question actually requires.

Question 3

This question related to employment law. Part (a) required the candidates to explain what a contract of service is. Part (b) required them to explain whether contracts of service could be made orally and whether an employer had the right to restrict an employee from being involved in a trade union or trade union related activities.

Part (a) of this question was quite well answered. Most of the candidates were able to explain a contract of service. However, part (b) was not too satisfactorily answered. One aspect of this part of the question was whether, under the Employment Act 1955, a contract of service could be made orally. Most of the candidates simply stated that it could be made orally. This was only partly correct. The Employment Act states that contracts of service for a period exceeding one month, or for the performance of a specified piece of work where the time reasonably required for the completion of the work exceeds or may exceed one month must be in writing. Thus only contracts of service for one month or less may be made orally.

Question 4

This question, on company law, required the candidates to explain the meaning of ‘veil of incorporation’ as well as to explain five situations in which the veil of incorporation may be lifted.

This question was well answered. They were generally able to explain the concept of the company as a separate legal entity with reference to the case of *Salomon v Salomon Ltd* and were also able to give sufficient instances where the veil of incorporation could be lifted. Some candidates did not explain the instances of lifting the veil but merely listed them. This resulted in them obtaining lower marks than they otherwise could have obtained if they had given some explanation of the various instances. Nevertheless, on the whole, this question was more than satisfactorily answered.

Question 5

This question, on the law of obligations, contained two parts. Part (a) required candidates to explain and distinguish a tort from a contract. Part (b) required the candidates to explain the basic elements of the tort of negligence.

This question seemed to have caught many candidates by surprise. This was the first time this topic had been questioned on. This was not to be totally unexpected as this was only the second sitting under the new syllabus. The answers were generally weak. While some gave satisfactory answers, many candidates were not able to accurately distinguish a tort from a contract. As for the elements of the tort of negligence, candidates were expected to mention the three requirements, i.e. that the defendant owed the plaintiff a duty of care, that the defendant breached the duty of care and that the plaintiff must have suffered damages as a result of the defendant's breach. Very few candidates gave accurate answers. On the whole this question was not well answered. Candidates are reminded that questions are likely to be asked on a cross section of the syllabus and there is a likelihood of this topic being questioned fairly regularly. Candidates should be adequately prepared.

Question 6

This question, on company law, required the candidates to discuss the duties of a company promoter as well as to explain the remedies for the breach of duty by the promoter.

This question was satisfactorily answered. Most of the candidates displayed fair knowledge of promoters' duties and the remedies for breach of such duties. Some candidates explained that the promoter was in a fiduciary position in relation to the company and went on to explain fiduciary duties and gave relevant cases and illustrations to support their answer. Some candidates could not explain the duties and remedies clearly. As usual there were some candidates who were not adequately prepared for the examination and consequently not able to give accurate answers.

Question 7

This question tested the candidates' knowledge on the offence of fraudulent trading in the context of governance and ethical issues relating to business.

Candidates were expected to refer to s 304 of the Companies Act 1965, which deals with liability for fraudulent trading, i.e. carrying on business with the intention to defraud creditors of the company or for any fraudulent purpose. It was expected that candidates would have been familiar with the offence of fraudulent trading as it is one of the circumstances in which the courts would lift the veil of incorporation to make those who are parties to such fraudulent trading personally liable for the debts and other liabilities. However, the answers did not reflect this expectation. Candidates generally were not able to give proper answers. The majority of answers did not display sufficient knowledge. On the whole this question was the least well answered.

Question 8

This problem-based question on company law related to company meetings and resolutions. It contained two parts. Part (a) tested the candidates' ability to apply the law relating to validity of meetings on the ground that the requisite notice of the meeting was not sent to the member. Part (b) tested the candidates' ability to identify and apply the law relating to the issue of the procedure for appointment of over-aged directors and the validity of resolutions that do not comply with the relevant procedure.

Part (a), which carried 3 marks, was not well answered. Candidates were expected to state that by virtue of the Companies Act 1965, the accidental omission to give notice of a meeting would not of itself invalidate the meeting. However, many candidates did not identify this. They merely stated that the meeting was invalid as no notice was received by the member. This was inaccurate.

Part (b), which carried 7 marks, was slightly better answered. Many candidates were able to identify that Jambu, being above 70 years of age was not qualified to be appointed as a director. However, quite a number of candidates failed to see the point that such directors could actually be re-appointed by a special procedure requiring a 75% majority vote but that the resolution which was passed was approved only by a 70% majority and therefore the resolution was not valid. On the resolution to alter the name of the company, most candidates correctly stated that it could be altered by a special resolution. However many presumed that the resolution was valid since it had been approved by more than 75 % majority. This was inaccurate because 21 days' notice of the meeting is required to be given to members for a special resolution to be passed whereas on the given facts only 14 days' notice had been given.

Question 9

This problem-based question on company law tested the candidates' ability to identify and apply the law relating to one aspect of the fiduciary duties of directors as well as the prohibition on the provision by companies of financial assistance for the purchase of their own shares.

This question was generally satisfactorily answered. Candidates were able to identify that the proposed issue of shares to Tulip, a close friend of the directors, Rose and Daisy, with the intention of diluting Petunia's shareholding would amount to a breach of directors' fiduciary duties. However, many candidates missed the point that such an issue would also amount to a breach of s.132D, which requires shareholder approval for issue of shares.

On the question of the company providing a fixed charge on its land as security to Bank Senang Pinjam which was prepared to give a loan to Tulip to finance the subscription of the shares, most candidates were able to identify that it would be a breach of s 67 which prohibits a company from giving any form of financial assistance for the purchase of its own shares. Some candidates also discussed the exceptions under s 67 and concluded that those exceptions did not apply to the given situation.

Question 10

This problem-based question, on contract law, tested the candidates' ability to identify the law relating to the postal rule in relation to offer and acceptance.

Candidates were expected to discuss whether there was a valid contract in circumstances where the acceptor had posted his letter of acceptance before the proposer's letter of revocation reached the acceptor. Candidates were expected to apply the postal rule. By s.4(2) of the Contracts Act 1950, where the parties have contemplated the use of the post as a means of communication, the communication of the acceptance is complete as against the proposer when the letter is posted. The communication of a revocation on the other hand is only effective as against the acceptor when it comes to his knowledge. Applying this law, the acceptance by Benny is valid against Azman as Benny posted his letter of acceptance on 10 March 2008 whereas Azman's revocation reached Benny on 11 March 2008.

The question was not answered as well as expected. Many candidates did identify the postal rule as to acceptance but did not take into account the rule as to revocation. Thus, they came to the wrong conclusion.