



Examiner's report

F4 Corporate & Business Law (MYS)

June 2009

General Comments

The examination consisted of ten compulsory questions. Questions 1 to 7 were straightforward 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 reasonably well prepared and the overall performance of the candidates was satisfactory.

On the whole, the candidates showed good understanding of what the questions required. The questions were clear and there was no ambiguity which was likely to cause candidates to misinterpret any question.

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 are also, once again, reminded of the following recurring problems:

- **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. The June 2009 session clearly reflected this improvement. Nevertheless, there is still a small number of candidates who have difficulty in expressing themselves clearly. Candidates who have such difficulty are advised to use shorter sentences and appropriate illustrations to make the answers 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. Some candidates answered the first few questions very well and in good detail while the later answers were too 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 One

This question, on the Malaysian legal system, required candidates to define the concept of 'human rights' with reference to the Human Rights Commission of Malaysia Act 1999. They were further expected to mention any four provisions which protect human rights as enshrined in the Federal Constitution.

The question was quite well answered. Candidates generally had sound knowledge of what is meant by 'human rights' and were also able to mention the provisions under the Federal Constitution which dealt with fundamental liberties. The better candidates even referred to the relevant Articles of the Constitution. Some candidates answered too briefly. The question required some explanation of the provisions and those who merely stated the rights without any explanation lost some valuable marks.

Question Two

This question related to employment law. Part (a) required the candidates to explain the ways in which a contract of service may be terminated under the Employment Act 1955 while Part (b) required them to explain what constitutes 'due enquiry' for the purpose of dismissing an employee for misconduct.

For part (a), candidates were expected to refer to the Employment Act 1955 and mention the various situations when a contract of service could be terminated, i.e. automatic termination, termination with notice and termination without notice. On the whole, candidates answered the question well.

For part (b) candidates were expected to refer to the guidelines laid down in case law and explain how 'due enquiry' should be conducted. Candidates also answered this part well. Only a small number were unable to answer this question satisfactorily.

Question Three

This question on the law of contract was a straightforward question requiring the candidate to state and explain the essential elements of a valid contract, namely, offer, acceptance, consideration, capacity and intention to create legal relations. This was also well answered. Most of the candidates were familiar with the main elements of a contract and many candidates were even able to cite the relevant sections of the Contracts Act 1950. Some candidates went into unnecessary detail in their enthusiasm to display their knowledge. Candidates are reminded that unnecessary detail will not earn them higher marks. On the contrary, it may take up valuable time which may be utilised for other questions.

Question Four

This question, on company law, contained two parts. Part (a), which carried 3 marks required candidates to state any three persons who may petition to wind up the company by the court. Part (b) required the candidates to explain and distinguish a scheme of arrangement from a reconstruction of a company and to state any two orders that the court can make to facilitate a reconstruction or amalgamation of companies.

This question was not very well answered. Many candidates were only able to state one or two persons who could petition to wind up the company. Further, part (b) was not answered well either. The answers indicated that many candidates were not well prepared for this topic. Only a minority was able to properly distinguish a scheme of arrangement from a reconstruction and state the orders that the court could make to facilitate a reconstruction.

Question Five

This question, on agency law, contained two parts. Part (a) which carried only two marks required candidates to explain how an agency by ratification may arise and part (b) required the candidates to state the requirements which had to be fulfilled in order for an agency by ratification to arise.

This question was fairly well answered. The majority of the candidates were able to state how an agency by ratification would arise. Further, a large number of candidates were able to state at least some of the requirements for an agency by ratification to arise, thereby achieving pass marks. Some of the candidates were able to even refer to the relevant sections of the Contracts Act 1950 to substantiate their answer.

Question Six

This question, on company law, contained two parts. Part (a) tested the candidates' knowledge on what is a preference share and the rights that may be attached to preference shares. (They were required to mention only three such rights). Part (b) tested the procedure for the variation of class rights under Table A of the Fourth Schedule.

This question was not very well answered. Most of the candidates did not have a clear idea of what is a preference share as opposed to an ordinary share. They also did not have sufficient knowledge of the rights that may be attached to preference shares. Many mentioned one or two rights but they were largely not accurate.

Part (b) was also not encouraging. Candidates were expected to state that under Table A the class rights may be varied with the written consent of the holders of three fourths of the issued shares of that class or by a special resolution passed at a separate meeting of that class of shareholders. However, many only mentioned a special resolution of the company in a general meeting, which was not accurate.

Question Seven

This question required the candidates to explain the concept of the business judgment rule in the context of directors' duties under the Companies Act 2007. Candidates were expected to generally explain what is the business judgment rule and then explain the provisions of s 132(1B), which was introduced in 2007 by the Companies (Amendment) Act 2007. It was expected that since almost two years has lapsed since the implementation of the amendments, candidates would be sufficiently prepared for this question.

However, the answers indicated that the candidates were most unprepared for this question. Most of the candidates took this question to be an invitation to discuss generally the duties of directors and did not attempt to explain the concept of the business judgment rule. This was clearly incorrect. Many candidates also did not attempt this question. On the whole this was the most difficult question for the candidates and the answers were generally incomplete or inaccurate.

Question Eight

This problem-based question on company law tested the candidates' ability to identify and apply the law relating to lifting of the veil of incorporation.

Part (a), which carried 4 marks, required the candidates to identify the situation where the corporate veil could be lifted if a company had been set up with the intention of perpetrating a fraud or to evade a legal obligation. Although the question related to whether an order for specific performance could be obtained the question specifically required the candidates only to discuss issues pertaining to company law. Many candidates misunderstood the question and proceeded to discuss the remedy of specific performance under the law of contract, completely missing out the issue on lifting the corporate veil. This resulted in many candidates not achieving pass marks for this part of the question.

Part (b) was quite well answered. It required candidates to identify two separate situations in which the veil of incorporation could be lifted under the Companies Act 1965.

The first related to lifting the veil of incorporation where the number of members falls below the statutory minimum. It required candidates to discuss s.36 of the Companies Act 1965. Many candidates were able to identify this issue and give accurate answers.

The second situation related to lifting the corporate veil where the name of the company had not been properly stated on the company's cheque, promissory note, etc. It required a discussion of s.121 of the Companies Act 1965. This part was also answered quite well.

On the whole this question was satisfactorily answered.

Question Nine

This problem based question on company law tested the candidates' ability to identify and apply the law relating to the prohibition on loans to directors under the Companies Act 1965.

Candidates were required to identify s133 of the Companies Act 1965 and to discuss the exceptions to the rule that a company is prohibited from giving loans to its directors. They then had to apply the law to the given facts and advise Serena on the legal position.

Most of the candidates were able to recognise the legal issue and discuss the operation of s.133 and its exceptions. Many applied the law and the exceptions accurately, giving sound answers and obtaining reasonable marks. However, there were a number of candidates who mentioned that s. 133 applied to public companies only and not to private companies. This is inaccurate. Section 133 clearly refers to companies generally and not to public companies only. Those who advised Serena that only Lotsamunny Bhd was prohibited from giving loans to directors because it was a public company, were inaccurate.

This question was, generally, satisfactorily answered.

Question Ten

This problem-based question, on contract law, contained two parts. Part (a) tested the candidates' ability to identify and apply the law relating to the issue of exclusion clauses while part (b) tested them on the issue of whether the payment of a lesser sum is sufficient consideration to settle a debt of a larger sum.

Part (a) was not very well answered. Although many candidates recognised the exclusion clause, they presumed that the clause was valid and that Sally would not be able to sue for breach of contract. A number of candidates inaccurately identified the issue merely as one relating to conditions and warranties. However, a proportion of the candidates did recognize the issue of validity of the exclusion clause and proceeded to consider the application of the contra proferentum rule in the interpretation of exclusion clauses.

Part (b) was also not answered as well as expected. Many of the candidates recognised the issue as one relating to consideration. However, a large number only saw the issue as one relating to sufficiency of consideration rather than one requiring discussion on whether the payment of a lesser sum is sufficient consideration for a debt of a larger sum. The question required candidates to mention the rule in Pinnel's case and to state that it does not apply in Malaysia in view of s 64 of the Contracts Act 1950. A reasonable number of candidates did discuss s 64 and correctly concluded that Kah Yah's claim for the balance of RM2,000.