

Examiner's report

F4 Corporate and Business Law (MYS)

June 2010



General Comments

The examination consisted of ten compulsory questions. Questions 1 to 7 were knowledge-based questions while questions 8 to 10 were problem-based questions requiring candidates to demonstrate the ability to identify legal issues and apply it to given situations. Many of the candidates were reasonably well prepared for the examination and the overall performance of the candidates was satisfactory.

On the whole candidates displayed sound 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. Nevertheless there is still room for improvement in the quality of the answers.

The following recurring weaknesses were found:

- **Answers too brief:**

This problem has been highlighted many times before. Many candidates did not answer in full sentences. 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:**

As usual, a good number of candidates did not answer all parts of a question. This also resulted in lower marks. Candidates are advised once again to attempt all parts of a question. Many candidates did not attempt all the ten compulsory questions indicating that they were not fully prepared 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**

Time management is another factor contributing to weaker performance in the examination. Candidates must be reminded once again of the importance of time management in order to do well in the examination, Some candidates answered the first few questions very well but the later answers were too brief indicating that they were short of time to complete the paper. As a consequence of this, the total marks obtained by the candidate was lower than what could have been achieved if the candidate had spaced out his time and was able to answer each question adequately. Candidates are advised to divide their time properly for each question so as to achieve better results.

Candidates are also reminded (as before) that past year questions and answers provide a very useful guide in their preparation for the examination and they could much improve their results by constantly referring to them.

Specific Comments

Question One

This question, on the Malaysian Legal system, required candidates to explain three rules of statutory interpretation, namely, the literal rule, the *ejusdem generis* rule and the mischief rule.



The question was generally well answered. Many candidates were knowledgeable on the rules of statutory interpretation. Some were even able to relate the rule to decided cases.

However there were some candidates who only answered part of this question well. In particular, a number of candidates did not explain the mischief rule accurately. Thus they did not obtain as many marks as they otherwise could have obtained.

Question Two

This question related to employment law. It contained two parts. Part (a) which contained two sub-parts required the candidates to explain what is meant by redundancy as well as to state four circumstances in which an employee may be said to have been made redundant. Part (b) required the candidates to state the period of notice required to be given in the event the employer or employee wishes to terminate the contract of service.

This question was also well answered. In part (a) candidates generally displayed sound knowledge of what is meant by redundancy and were also able to state the four circumstances in which an employee would be said to be redundant. There were of course a number of candidates who were not able to accurately state those circumstances.

As for part (b) it was clearly well answered. The majority of the candidates were able to correctly state the period of notice required.

Question Three

This question on the law of agency tested the candidates' knowledge on two types of authority of an agent, namely actual authority and ostensible authority.

This question was not very well answered. Most of the candidates were able to explain to some extent, actual authority, with relevant examples and obtain some marks. However, many candidates did not explain ostensible authority accurately. Candidates were expected to explain that ostensible authority arose as a result of a representation made to the third party that the agent had authority when in fact he did not. A number of candidates wrongly stated that ostensible authority was implied authority. Some others thought that ostensible authority referred to agency by necessity.

Question Four

This question required the candidate to explain any five advantages of incorporating a company as opposed to other forms of business organisation.

Candidates were expected to mention that the company was a separate legal entity, unlike an unincorporated association. As a result the company enjoyed several advantages over such unincorporated associations. These included perpetual succession, the right to sue and be sued in its own name, the right to hold property, the possibility of members enjoying limited liability and being able to transfer their shares without affecting the status of the company.

The answers to this question were not very encouraging. There were some decent answers but many candidates seemed unprepared for this question. Many candidates either did not at all touch on the matters mentioned or touched only one or two of those matters. Instead they touched on other matters such as the ability of the company to conduct business, the requirement for the memorandum and articles of association and a board of directors.

Question Five

This question on company law contained three parts. Part (a) required the candidates to explain and distinguish between the memorandum of association and the articles of association. Part (b) required them to mention three matters which are required to be stated in the memorandum of association and part (c) required them to explain two restrictions on the alteration of the memorandum of association.



The answers were not encouraging. The majority of the candidates were not able to properly distinguish between the memorandum and the articles. Candidates were expected to state that these two documents formed the constitution of the company and that the memorandum contained those particulars, which were more relevant to third parties dealing with the company while the articles related to the internal matters of the company which would be more important to the insiders of the company, like the members and officers. With respect to part (b) most of the candidates were able to mention one or two matters, such as the name clause and the objects clause and were able to obtain some marks. However, the larger majority were not able to correctly state three matters. As for part (c), it required candidates to display knowledge of s 21(1) and 21(1A) of the Companies Act 1965, which state that the memorandum can only be altered to the extent permitted by the Act itself (e.g. the objects clause may be altered by special resolution pursuant to s 28) and that matters which are in the memorandum which could lawfully be in the articles of association could be altered by special resolution. Very few candidates seemed to be knowledgeable on this.

Question Six

This question on contract law tested the candidates' knowledge on the remedy of specific performance. They were required to explain the remedy as well as state two instances in which the court may grant specific performance, as well as six instances in which the court may not grant the remedy.

This question was quite well answered. Most of the candidates were knowledgeable on the subject matter and gave sound answers. Some were able to give full and accurate answers. Some candidates were able to give some explanation and state some of the instances in which the court may or may not grant specific performance.

Question Seven

This question on corporate governance tested the candidates' knowledge on the meaning of corporate governance as well as the principal responsibilities of the board of directors in relation to Best Practices in Corporate Governance, as recommended in the Code on Corporate Governance.

The first part of this question which carried four marks was well answered. Most of the candidates had some idea of what is corporate governance and obtained at least pass marks for this part.

The second part of this question was answered well by some candidates but many did not give the required answer. Candidates were expected to mention the principal responsibilities of the board, such as reviewing and adopting a strategic plan for the company, identifying principal risks and implementing systems to address those risks. However, many candidates did not properly appreciate what the question required and mentioned instead matters such as the need for independent directors and audit committees.

Candidates are reminded to read the question carefully to determine what the question requires so that they can avoid pitfalls of this nature.

Question Eight

This problem-based question on contract law contained two parts. Part (a) tested the candidates' on their ability to identify the issue of invitation to treat as opposed to an offer, and to apply it to the given problem. Part (b) tested them on their ability to identify the issue of counter-offer as opposed to an acceptance and to apply it to the given problem.

This question was the most well answered one by the candidates. They appeared ready for this question and were able to not only identify the issues and apply the law to the given problem but also state and explain relevant cases to support their answer. Many candidates obtained full marks for both parts of this question.

Question Nine

This problem-based question on company law contained three parts. Part (a) tested the candidates' ability to identify and apply the law concerning the restriction on the power of directors to issue shares. Part (b) tested them on the issue of validity of acts done by over-aged directors and part (c) tested them on the issue of removal of directors of public companies.

Part (a) was not well answered. The question required candidates to identify the requirement under the Companies Act 1965 (s 123D) for a resolution of the members to be passed before the directors can issue shares. However, the large majority of the candidates missed this point.

Part (b) was reasonably well answered. Many candidates were able to identify the issue of disqualification of over-aged directors. However, there were also many candidates who were not aware that the acts of the director would be valid despite being disqualified by reason of age (as provided for under s 129(3)).

Part (c) was quite well answered. Most of the candidates recognised that there was a failure to follow the proper procedure for the removal of the director and thus the removal of the director was not valid. Some candidates even explained the operation of s.128 and made specific reference to s 128(8), which clearly states that a director of a public company cannot be removed by the board of directors itself. Many candidates performed well on this part.

Question Ten

This question on company law contained four parts, all relating to the rules on payment of dividends.

Part (a) tested the candidates' knowledge on whether the share premium account could be utilised for the payment of cash dividends to members. The Companies Act 1965 provides that the share premium account can be utilised for the payment of dividends, provided that such dividends are paid in the form of shares (s 365 and s 60). Thus it cannot be utilised for the payment of dividends in the form of cash.

Many candidates were not knowledgeable in the law in this area. Some merely stated that it could not be so utilised while others said that it could, without any further clarification. Only a few candidates gave full and accurate answers.

Part (b) was answered quite well. Most of the candidates were aware that dividends can only be paid from the profits of the company declaring the dividend and not from the profits of its subsidiary. Some candidates even supported their answers with relevant case law.

Part (c) was not very well answered. The question tested the candidates' knowledge on whether a company may pay dividends from current revenue profits without offsetting the revenue losses for the previous years. Under case law, the company may do so. However, many candidates did not display knowledge of the law. They merely stated either that the company could or could not do so without further explanation. This resulted in them not obtaining satisfactory marks.

Part (d) tested the candidates' knowledge on the legal consequences where a company had paid cash dividends out of capital. Candidates were expected to state that in such situations the directors would be guilty of an offence and, in addition, they would be liable towards creditors of the company. However, the vast majority of the candidates did not give the correct answer.