

Examiner's report

F4 Corporate and Business Law (MYS)

June 2011



General Comments

The examination consisted of ten compulsory questions. As usual, 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 very 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.

As usual the following recurring weaknesses were found:

- **Answers too brief:**

This problem has been highlighted many times before. A number of candidates did not answer in full sentences. Some merely answered in point form without any accompanying explanation. As a result the candidate would have lost valuable marks.

- **Failure to answer all parts of a question or the required number of questions:**

As usual, there were some candidates who 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.

- **Time management**

Time management continues to be a serious factor contributing to unsatisfactory performance in the examination. Candidates are reminded 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 contained two parts. Part (a) required the candidates to describe the hierarchy of the Malaysian courts. Part (b) required them to explain the operation of the doctrine of binding judicial precedent.

This question was answered well. Most of the candidates were familiar with the structure of the Malaysian court system and gave accurate answers thus earning very high marks for part (a).

Part(b) was also well answered generally, though not as well as part (a). Candidates were expected to explain the operation of the doctrine by naming and stating how courts lower in the hierarchy were bound by the decisions of the superior courts. They were also expected to mention the importance of the concept of '*ratio decidendi*' in relation the operation of the doctrine. Although many candidates displayed familiarity with the doctrine of binding judicial precedent and were able to attain pass marks, a number of candidates did not go further to explain the importance of the *ratio decidendi* and obtain more marks.

Question Two

This question, on employment law contained two parts. Part (a) required candidates to explain four ways in which a contract of service may be terminated under the Employment Act 1955. Part (b) required the candidates to explain what constitutes 'constructive dismissal'.

This question was quite well answered. For part (a) most of the candidates displayed sufficient knowledge of the ways in which a contract of service could be terminated and were able to obtain satisfactory marks. Some of the candidates, however, cited different types of misconduct which would warrant the employer terminating the contract of service. This was not what the question required.

Part (b) was also quite well answered and very many candidates obtained high marks for this part. On the whole this question was more than satisfactorily answered.

Question Three

This question on the law of agency required the candidates to explain the ways by which an agency may come into existence.

This question was very well answered. The vast majority of the candidates were familiar with this topic and gave sound answers. Many candidates scored very high marks for this question. Some even obtained full marks.

Question Four

This question tested the candidates' knowledge on some aspects of the law of tort. Part (a) required them to define a tort, while part (b) which contained two sub-parts, which required them to describe the tort of negligence and the tort of defamation.

This question was not well answered. It appears from the answers that most of the candidates had only studied the basic aspects of the tort of negligence although the syllabus requires them to have basic knowledge of the major torts.

For part (a), many candidates could not define a tort in general. A large number of candidates went on to state what constitutes the tort of negligence, which was not what the question required. Thus they failed to obtain satisfactory marks.

For part (b)(i) candidates were required to describe the tort of negligence. This part was generally well answered. Most of the candidates were able to mention what constituted the tort of negligence and were able to obtain satisfactory marks.

For part (b) (ii), the candidates were required to describe the tort of defamation. The answers indicated that the vast majority of the candidates had not studied this topic. The answers were largely incorrect resulting in low marks.



Question Five

This question on company law contained two parts. Part (a) required candidates to distinguish a fixed charge from a floating charge while part (b) required them to state four disadvantages of a floating charge as a security to a lender.

This question was reasonably well answered. Most of the candidates displayed sufficient knowledge in this area. They were able to state the main differences between a fixed charge and a floating charge as well as some of the disadvantages of the floating charge and obtained pass marks. There were a number of candidates who gave excellent answers which earned them very high marks. There were a handful of candidates who clearly did not understand the nature of a fixed charge as opposed to a floating charge. They stated that the fixed charge was a charge which carried a fixed rate of interest while a floating charge carried a floating rate of interest. This was clearly incorrect.

On the whole the answers were satisfactory.

Question Six

This question on company law contained two parts. Part (a) required the candidates to explain the procedure for removal of directors of a public company while part (b) required them to explain the fiduciary duty of directors to act in the best interests of the company.

This question was fairly well answered with many candidates achieving pass marks. For part (a) candidates were expected to state that removal of directors could be done by an ordinary resolution of which special notice had been given and that the director being removed had, among others, the right to make a written representation as well as to attend the meeting at which the resolution was to be passed. Most of the candidates were able to state so. Some candidates were able to refer to the relevant section of the Companies Act as well as to explain what a special notice is. There were some candidates who stated that directors could only be removed by a special resolution. This was clearly incorrect.

In part (b) candidates were expected to focus on explaining the scope of the directors' duty to act in the best interests of the company. Although many candidates did explain the concept of this fiduciary duty and attain pass marks, the larger majority took this question to be an invitation to discuss fiduciary duties of directors in general thus losing the focus of what the question specifically required.

Question Seven

This question on company law contained two parts. Part (a) which carried only 3 marks required the candidates to explain the rationale for the doctrine of maintenance of capital. Candidates were expected to state that the rationale was primarily to protect the creditors of the company and secondarily to protect the shareholders' investment. The answers to this part were not very encouraging. Many candidates mentioned other matters such as requiring enough capital to sustain the business and to develop the business further.

Part (b) required the candidates to discuss s 67A Companies Act 1965, which permits a company to purchase its shares. Candidates were expected to explain the conditions which had to be satisfied under s 67A before a company is permitted to purchase its own shares. This part was not well answered. Although there were some satisfactory answers, most of the candidates did not display familiarity with the requirements of the section. Many candidates mentioned the general rule that a company cannot purchase its own shares and the reasons why a public company was permitted to purchase its own shares, but were not able to state the relevant conditions which must be satisfied before a public company was allowed to do so.

On the whole this question was less than satisfactorily answered.



Question Eight

This problem-based question on company law contained two parts which tested the candidates' knowledge and ability to apply the law relating to the doctrine of *ultra vires*. Part (a) required the candidates to determine whether in the given scenario the contract for the purchase of steel was *ultra vires*. Part (b) required the candidates to advise Charles, a shareholder, on his rights in relation to the contract on the presumption that the contract was in fact *ultra vires*.

Part (a) was not answered as well as expected. Candidates were expected to state what is meant by the term, '*ultra vires*' and to identify the existence of the Bell Houses clause which stated that the company could carry on any other activity which in the opinion of the directors could be carried on with the other businesses of the company. They were required to advise Charles whether the contract was *ultra vires* or not.

A fair number of candidates did identify the existence of the Bell Houses clause and gave the correct advice and earned high marks. However, the larger number of candidates did not identify the existence of the Bell Houses clause and simply concluded that the contract was *ultra vires*. Further, many candidates unnecessarily discussed s 20 Companies Act and concluded incorrectly that as a result of s 20 the contract was not *ultra vires*.

The answers to part (b) were more encouraging. Most of the candidates displayed some knowledge of s 20 as they were expected to do and correctly concluded that under the section Charles might be able to obtain an injunction to stop the company proceeding with the *ultra vires* transaction or, alternatively, to sue the directors to make them personally liable.

On the whole the performance for this question was fair.

Question Nine

This problem-based question on company law, which contained three parts, tested the candidates' knowledge and application skills in relation to company meetings and resolutions.

Part (a) of this question required candidates to display knowledge of the time span within which a newly incorporated company must hold its first annual general meeting (AGM) and to advise whether in the given scenario the company had breached the Companies Act or not. Candidates were expected to state that the company could hold its first AGM within 18 months of its incorporation even if this resulted in the company not holding it in the year of its incorporation or the following year. On the facts the company had not breached the Companies Act.

The answers to this part were satisfactory. A number of candidates were knowledgeable in the area and gave accurate answers earning them high marks. Some obtained full marks.

Part (b) was not well answered. The question required candidates to identify the type of resolution required for an alteration of the articles of association as opposed to one for an increase of capital. They were expected to state that the alteration of the articles require a special resolution whereas the increase of capital requires only an ordinary resolution. As both resolutions were passed by a 60% majority, only the resolution for increase of capital was valid. However, most of the candidates simply stated that both resolutions were invalid as they should have been passed by a special resolution, i.e. a 75% majority.

Part (c) was well answered. The question required candidates to recognise that notice of meeting was not sent to Jim due to an inadvertence on the part of the company and that such inadvertence would not invalidate the meeting. Most of the candidates were able to identify this point and give accurate advice to Jim.

Question Ten

This problem-based question on contract law contained two parts. Part (a) tested the candidates' knowledge and application skills in relation to the postal rule relating to acceptance of an offer while part (b) tested them on the remedy of specific performance.

On the whole the question was reasonably well answered.

For part (a) the majority of the candidates were able to identify the postal rule and correctly concluded that acceptance took place on 5 May 2011 upon the posting of the acceptance by Ramu and not on 12 May 2011 upon receipt of the acceptance by Ah Seng. Thus there was a valid contract between Ramu and Ah Seng. Of course, there was a small minority who did not have knowledge of the postal rule and stated that there was no contract between Ramu and Ah Seng because Ah Seng had sold the car to someone else before the date of receipt of the letter of acceptance.

Part (b) was not as well answered as part (a). Candidates were expected to explain the remedy of specific performance and cite instances when the remedy might or might not be granted. Many candidates simply stated that Ramu would be entitled to the remedy of specific performance as the car was a rare one and monetary compensation would be inadequate. This could not earn them high marks as they failed to identify the point that the car had already been sold to the third party and this would make it unlikely for Ramu to obtain the remedy of specific performance. Those who recognised this point earned high marks.