



# Examiners' report

## F4 Corporate and Business Law (MYS)

December 2007

### General Comments

This was the first sitting of the F4 MYS paper. Candidates were required to answer all questions as they were all compulsory. The vast majority of the candidates did attempt all questions. The overall performance was not as good as expected. This could possibly be because of the change in format as well as the introduction of the new syllabus, which contains some new topics such as corporate governance and fraudulent behaviour.

On the whole the candidates showed clear understanding of what the questions required. There was no ambiguity which could cause candidates to misinterpret any question. As usual there were some candidates who were clearly well prepared for the examination and performed well.

However, the following recurring problems must be highlighted:

#### Language and expression:

Although the language and expression has improved over the years, there is still a small number of candidates who had difficulty in expressing themselves. This resulted in those candidates not being able to achieve higher marks. Candidates who have such difficulty may try using 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 appears to be a rather common occurrence. A number of 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

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. Candidates are reminded of the need to allocate 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 define legislation and delegated legislation and to explain the advantages and disadvantages of delegated legislation. This question was generally well answered. Many of the candidates were knowledgeable on the difference between legislation and delegated legislation and were also able to state some of the advantages and disadvantages of delegated legislation. However there were a couple of candidates who did not fully appreciate what the question required and went on to discuss the procedure for the passing of legislation by Parliament. Candidates are reminded to read the question carefully to understand what the question requires and to avoid going out of point.

### **Question 2**

This question related to employment law. It required candidates to distinguish a “lay-off” from a “redundancy” and to state, with reference to the Employment Act 1955, the situations in which an employee may be said to be (1) laid-off and (2) made redundant.

This question was not as well answered as question 1. Although there were some answers displaying full knowledge of the law, many candidates did not appear well prepared for this question. Many gave very brief answers which were either incomplete or inaccurate. On the whole answers were inadequate. Candidates should bear in mind that there is likely to be one question on employment law for each sitting and it would be important to pay attention to this area as all questions are now compulsory and must be answered.

### **Question 3**

This question was on partnership law. It required candidates to explain the essential characteristics of a partnership under the Partnership Act 1961. Candidates were expected to refer to section 3 and explain the elements of a partnership, i.e. that there must be (1) an association of persons, (2) carrying on business, (3) in common and (4) with a view of profit. A good number of candidates answered the question accurately. However, a large number of candidates did not fully appreciate what the question required and went on to discuss matters like the rights of partners to take part in the management of the business, the right to share profits and losses equally, and the right to dissolve the partnership.

### **Question 4**

This question, on company law, contained two parts. Part (a) tested the candidates' knowledge on the differences between an exempt private company and a non-exempt private company. Part (b) required the candidates to define a wholly-owned subsidiary company. As usual, there were some sound answers. However, on the whole, the question was not well answered at all. Many candidates could not distinguish between the two types of companies. Part (b) was misconstrued by many candidates. Instead of defining a wholly-owned subsidiary they proceeded to state the situations in which one company is deemed to be the subsidiary of another company.

### **Question 5**

This question, on the law of contract, contained two parts. Part (a) tested the candidates' ability to distinguish between an offer and an invitation to treat while part (b) required the candidates to explain the ways in which an offer may be revoked, under the Contracts Act 1950.

This question was well answered. Candidates were generally very knowledgeable on the difference between an offer and an invitation to treat as well as the situations in which an offer may be revoked. Many cited relevant case law and provisions of the Contracts Act 1950. Only a small minority performed inadequately for this question.

### **Question 6**

This question, on company law, required the candidates to explain, (a) the procedure and (b) the methods by which a company may reduce its capital as well as the protection for creditors who may be prejudiced by such reduction.

For part (a) candidates were expected to mention that in order to effect a reduction of capital a company must have authority in its articles of association, must pass a special resolution and obtain a confirmation by the court. In addition the candidates were expected to mention the three methods by which a company may reduce its capital as stated in s 64 of the Companies Act 1965. Many candidates did not give a full answer to this part. The majority only mentioned the requirement for a special resolution and a confirmation by the court.

Part (b) was also not very well answered. Some merely mentioned that creditors had a right to sue the company without referring to the right to object to the reduction and to have their objections heard, before the court gives its confirmation, as provided under s.64.

On the whole, this question was not satisfactorily answered.

### **Question 7**

This question, on corporate governance, tested the candidates' knowledge on the composition of audit committees for public listed companies. Candidates were also required to state any five functions of the audit committees. This question seems to have taken most candidates by surprise. It was a new area within the scope of the new F4 syllabus. Most of the candidates were not prepared for this question and did not perform satisfactorily. Many also did not even attempt this question. There were, however, a few sound answers.

Candidates are reminded that questions will be set over a spectrum of the syllabus and should expect at least one question on new areas of the F4 syllabus.

### **Question 8**

This problem-based question on company law contained two parts. Part (a) tested the candidates' ability to identify and apply the law relating to one aspect of the lifting of the veil of incorporation, i.e. s 36 of the Companies Act 1965. This part was quite well answered. Most of the candidates were able to identify the issue of lifting the veil of incorporation and were able to apply it to the given problem. Many candidates explained s 36 correctly but did not apply it fully. The question indicated that Ah Kong had left the company in June 2006. The first debt was incurred in October 2006 which is within the six month period from the time Ah Chong became the sole member. Thus he would not incur personal liability for this debt. He would only incur personal liability for the second debt which was incurred on in August 2007. Quite a number of candidates missed this point and simply concluded that Ah Chong would incur personal liability for both debts. This resulted in candidates failing to obtain higher marks.

Part (b) touched the issue of lifting the veil of incorporation as well as ethical issues and fraudulent behaviour. Candidates were expected to identify s.304(1) of the Companies Act 1965, which deals with the lifting of the veil of incorporation for fraudulent trading. Many candidates were able to identify the issue and apply it to the problem correctly. Some even went on to discuss the possibility of wrongful trading, though it was not necessary as the question clearly indicated that Jack and Jill had the intention to defraud the creditor. On the whole this part was also satisfactorily answered.

### **Question 9**

This problem based question on company law also contained two parts. Part (a) related to s 132E and the issue of substantial property transactions involving directors while part (b) related to the issue of appointment of over-aged directors under s 129 of the Companies Act 1965.

Part (a) was satisfactorily answered. Most of the candidates were able to recognise that the transaction involved the acquisition of property from a director which required the approval of the members by a resolution in a general meeting, though they could not identify s 132E. However, a number of the candidates were able to explain and apply s 132E well.

Part (b) was quite well answered in comparison with part (a). Most candidates identified the issue of the director being over-aged and therefore disqualified. Many were able to mention s129 and state that an over-aged director could be re-appointed by a special procedure and since such procedure was not followed, Samseng's appointment was not valid. However, a large number did not state what that special procedure was. Further, many candidates did not see the point that though Jolly Trading Sdn Bhd was a private company, it was a

subsidiary of a public company and so was subject to s 129. More marks could have been obtained by the candidates if they had mentioned these points.

#### **Question 10**

This problem-based question, on contract law, contained two parts. Part (a) required the candidates to identify and apply the law relating to the issue of sufficiency of consideration. Part (b) tested the candidates' ability to identify and apply the law relating to the issue of certainty as a requirement for a valid contract.

Part (a) was generally satisfactorily answered. The majority of the candidates were able to identify the issue of sufficiency of consideration, explain the law satisfactorily and apply it correctly to the given problem. Some candidates, however, were unable to correctly distinguish sufficiency of consideration from adequacy of consideration resulting in incorrect advice to Ali. A few candidates went off-point by discussing the exceptions to the rule that contracts without consideration are void, under s 26 of the Contracts Act 1950.

Part (b) was well answered. Most candidates were able to identify the issue of certainty as an element of a valid contract and that such certainty was lacking in the given problem. Many also supported their answer with the relevant case of *Karuppan Chetty v Suah Thiam*. Only a few candidates were unable to identify the issue and consequently concluded that the contract was a valid one, resulting in incorrect advice to Ali.