



# Examiners' report

## F4 Corporate and Business Law (MYS)

### December 2008

#### 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 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.

Generally, the candidates displayed accurate 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. Nevertheless, there are still a sizeable 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 1

This question, on the Malaysian Legal system, required candidates to explain the structure of the court system and to state two advantages of having a hierarchy of courts. Candidates were expected to name the courts and

the order of their hierarchy as well as to state who heads the various courts. They were further expected to mention any two advantages of the hierarchical system of the courts.

The question was quite well answered. Some candidates only answered the first part of the question and thus lost the possible 2 marks for the second part. There were also a few candidates who only produced a diagram of the court hierarchy without any explanation. As the question required some explanation of the court system, the mere production of a diagram was not sufficient to earn them decent marks. With regard to the second part, there were some candidates who gave more than two advantages. Only the first two were taken into account. Candidates are reminded that they should only give the required number of advantages as they would be wasting valuable time writing down other advantages as they would not gain any marks for the extras.

### **Question 2**

This question related to employment law. Part (a) required the candidates to explain what constitutes constructive dismissal. Part (b) required them to state the remedies available to an employee who has been unjustifiably dismissed.

Part (a) of this question was quite satisfactorily answered. Most of the candidates were able to explain the concept of constructive dismissal. Some even referred to relevant case law. Part (b) was even better answered. Most of the candidates knew the three remedies, i.e. Reinstatement with back pay, Compensation in lieu of reinstatement and back pay, as well as Re-engagement. These remedies were generally well explained.

### **Question 3**

This question on the law of partnership was a straightforward question requiring the candidate to explain and illustrate with examples, any five grounds on which the court may order a dissolution of a partnership under the Partnership Act 1961.

This question was another well answered one. Most of the candidates displayed sound knowledge of the various grounds on which the court could order a dissolution of the partnership. Many were able to cite relevant cases and examples. There were some who mentioned more than the required number of grounds. However, only the first five grounds were taken into account.

Some candidates misread the question and stated even those grounds which would result in an automatic dissolution of a partnership, such as the death of a partner. They would not obtain any marks for this. Candidates are reminded to read the question very carefully. In this case the question clearly required candidates to state only the grounds on which the court may order a dissolution. These matters are specifically stated in s 37 of the Partnership Act 1961.

### **Question 4**

This question, on contract law, required the candidates to explain and distinguish three terms of a contract, namely, conditions, warranties and innominate terms.

This question was reasonably well answered. Many candidates showed familiarity with this area of the law and gave accurate answers. The better candidates even made reference to the Sale of Goods Act 1957 to explain the terms, condition and warranty. However, many candidates did not give examples to illustrate the answer. A handful of candidates, who were clearly not prepared for the exam, explained the terms, conditions and warranties in a manner unrelated to the question. For example, some stated that condition referred to the physical condition of a thing, like the poor condition of a car. Some described a warranty as the period of warranty given by a manufacturer of goods.

On the whole, however, answers were satisfactory.

### Question 5

This question, on company law, contained two parts. Part (a) required candidates to explain and distinguish a fixed charge and a floating charge. Part (b) required the candidates to state four disadvantages of a floating charge as a security to a lender.

Many candidates were able to generally distinguish a fixed charge from a floating charge. Candidates were expected to explain a floating charge by reference to its three characteristics as established in case law. Very few made reference to any authority.

In relation to part (b) many candidates were able to state some disadvantages of the floating charge. However, many of the answers did not state the disadvantages clearly.

### Question 6

This question, on company law, contained two parts. Part (a) tested the candidates' knowledge on the procedure for the removal of directors of a public company and the protection afforded to directors being so removed from office. Part (b) tested them on the position in private companies.

Although there were some sound answers, unfortunately, many candidates did not answer as required. For part (a), instead of discussing the procedure under s 128 of the Companies Act 1965, they went on to discuss the situations in which directors may be disqualified from holding office.

Part (b) was also not encouraging. Candidates were expected to state that the position for private companies was as provided in their articles of association or as per article 69 of Table A, if the company had adopted Table A. Many candidates did not display this knowledge.

### Question 7

This question required the candidates to explain what is meant by corporate governance and also to state three broad principles relevant to directors as stated in Part 1 of the Malaysian Code on Corporate Governance.

The answers to this question were not encouraging. Very few candidates seemed to possess knowledge in this area. Most of the candidates had some idea of what is corporate governance and managed to earn some marks. However, very few were able to explain with reference to the Code on Corporate Governance. The vast majority of the candidates were not able to accurately state the broad principles of corporate governance as provided for under the Code.

On the whole this question was not satisfactorily answered. Candidates must be reminded that corporate governance is an area of growing importance and it would be worth their while to give more attention to this area of the syllabus in the future.

### Question 8

This problem-based question on company law tested the candidates' ability to identify and apply the law relating to *ultra vires* transactions in Malaysia with reference to s 20 of the Companies Act 1965. It contained three parts. Part (a) required candidates to discuss and apply the law in respect of completed *ultra vires* transactions. Part (b) touched on the aspect of obtaining an injunction to prevent uncompleted *ultra vires* transactions. Part (c) concerned the possibility of instituting legal proceedings against officers who caused the company to enter into *ultra vires* transactions.

An average candidate should have been able to give a reasonable answer. However, the answers were not as expected. Although many candidates did make reference to s 20 of the Companies Act 1965, only a small number explained the operation of the section fully and accurately and applied the law correctly to the problem. Some wrote well on the common law position and explained how s 20 has modified that position. However, the

application of the law to the given problem was not sound. For example, after explaining that competed *ultra vires* transactions were valid in Malaysia, many candidates stated that the company could set aside the purchase of the ostriches, which the company had already taken delivery of. This of course was not a correct application of the law.

For parts (b) and (c) many candidates merely stated that the transaction could be set aside or that the company could sue the officers concerned, without a sound explanation of s 20.

### Question 9

This problem based question on company law tested the candidates' ability to identify and apply the law relating to the fiduciary duties of directors to avoid a conflict of duty and personal interest, and in particular, the duty not to make secret profits.

This question was generally satisfactorily answered. Candidates were able to identify the issue of fiduciary duties of directors and to recognise that the directors had breached such duties and that the company had the right to recover the profits made by the director concerned. However, many candidates did not discuss the fiduciary duties of directors in fair detail. Their answers were too brief. This resulted in failure to achieve higher marks. Candidates were expected to mention the fiduciary duties of directors generally before focusing on the main issue, i.e. the duty of the director not to make secret profits. The nature of the question required candidates to refer to relevant cases, in particular the case of *IDC v Cooley*, the facts of which were rather similar to the given question. A large number of candidates did not make reference to appropriate cases. Although candidates could achieve pass marks without referring to case law, more marks could have been obtained if relevant authority were cited.

### Question 10

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 sufficiency of consideration while part (b) tested them on the remedy of specific performance.

Part (a) was quite well answered. Candidates were knowledgeable on the issue of consideration, in particular, that consideration needs only to be sufficient and need not be adequate. Many candidates even cited relevant case law to support their answer.

Part (b) however, was not that well answered. The question required the candidates to consider whether the court was likely to make an order of specific performance in the given fact situation. Most of the candidates started off their answer with the situations in which the court is likely to make such an order. Some even proceeded to consider the situations when the court would refuse to make an order of specific performance. However, many jumped to the conclusion that the court would make such an order as the subject matter was a rare item, without considering the fact that the antique chair had already been sold to a third party for valuable consideration. The few candidates who recognised that the court would not order specific performance if Poh Tong was a *bona fide* purchaser for value without notice of the agreement between Oldo and Kah Yu were able to score decent marks.

On the whole this question was satisfactorily answered.