



Examiner's report

F4 Corporate & Business Law (MYS)

December 2009

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. Many of the candidates were reasonably well prepared for the examination and the overall performance of the candidates was satisfactory.

Most of 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.

Generally, the language and expression of the candidates has improved.

The following weaknesses were found:

- **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:**

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**

Candidates must be reminded of the importance of time management in order to do well in the examination. 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. As a consequence of this, the total marks achieved 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 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.

Specific Comments

Question One

This question, on the Malaysian Legal system, required candidates to explain and distinguish 'legislation' from 'delegated legislation' and to explain two advantages and two disadvantages of delegated legislation.

The question was very well answered. It was clear that candidates were knowledgeable in this area of the law. There were some candidates who gave more than two advantages and disadvantages of delegated legislation. Candidates are reminded that they should only give the required number of advantages or disadvantages as they would be wasting valuable time writing down more. They would not gain any marks for the extras. There were a handful of candidates who went out of point by discussing the advantages of the hierarchy of the courts and the advantages of the doctrine of binding precedent, thus losing valuable marks. Candidates must be reminded to read the question carefully and understand what the question requires before attempting to answer it.

Question Two

This question related to employment law. Part (a) required the candidates to explain and distinguish a contract of service from a contract for services. Part (b) required them to explain the tests that have been developed to determine whether a contract of service has come into existence.

This question was also very well answered. Most of the candidates were able to differentiate between a contract of service and a contract for services and obtain at least a pass mark for part (a). In part (b) most of the candidates clearly displayed knowledge of the three tests for determining the existence of a contract of service, namely, the control test, the integration test and the multiple test. However, some candidates failed to elaborate on these tests. If a question requires candidates to explain something, candidates are expected to give some explanation and marks would be awarded for appropriate explanation. Candidates are again reminded to read the question carefully to understand what the question requires them to do.

Question Three

This question on the law of contract tested the candidates' knowledge of who is a minor and the exceptions to the rule that contracts entered into by minors are void. This was also a very well answered question with almost all candidates being aware that the age of majority for purposes of entering into valid contracts is 18 years. There were a couple of candidates who incorrectly stated the age as 21 years. Many candidates also referred to the Age of Majority Act 1971 as authority for the age of majority being 18 years. In relation to the exceptions to the rule that contracts entered into by minors are void, most of the candidates also indicated sound knowledge. However quite a number of candidates did not explain the exceptions. As mentioned earlier, where a question requires explanation, candidates must give some explanation or risk losing some marks. A few enthusiastic candidates gave more than the required four exceptions.

Question Four

This question, on partnership law, contained two parts. Part (a) required the candidates to discuss the liability of a retiring partner for the debts of the partnership incurred both before, and after, his retirement from the partnership. Part (b) required the candidates to explain the steps that a retiring partner may take to protect himself from liability for future debts of the partnership.

For part (a), which carried four marks, candidates were expected to refer to the Partnership Act 1961, which provides that a partner does not, by virtue of his retirement from the partnership, become automatically discharged for the debts of the firm whether incurred before or after his retirement.

For part (b), candidates were expected to explain, with reference to the Partnership Act 1961 that retiring partners could protect themselves through agreement with the partners and the creditors, through giving of notice and through advertisement in the Gazette.

This question was not well answered. Many did not display familiarity with the provisions of the Partnership Act with regard to the position of retiring partners. It appears that many candidates did not expect this aspect of partnership to be examined.

Question Five

This question, on company law, tested the candidates' knowledge on the ultra vires doctrine. Candidates were expected to compare the common law position with the position under s.20 of the Companies Act 1965.

This question was also very well answered. Most of the candidates had adequate knowledge of the common law doctrine of ultra vires and the position under the Companies Act. There were some sound answers where the candidates even discussed the rationale of the ultra vires doctrine at common law and cited relevant case law.

It was clear that candidates were rather familiar with this aspect of company law.

Question Six

This question, on company law, contained two parts. Part (a) tested the candidates' knowledge on scope of the prohibition on companies giving financial assistance for the purchase of their own shares. Part (b) tested them on the exceptions to such prohibition.

For part (a) candidates were expected to explain what amounted to financial assistance and why the law imposed such a prohibition. This part was reasonably well answered. Many of the candidates had some idea of what amounted to financial assistance. However, many did not give full answers. Some only referred to financial assistance as the giving of loans not realising that it includes the giving of guarantees and the provision of security as well all other indirect forms of financial assistance.

Part (b) was also not answered as well as it could have been. Many candidates had knowledge of the three exceptions mentioned in the section but did not explain it very clearly. For example, many candidates just mentioned that companies whose business is to lend money are free to give financial assistance, whereas the section requires not only that the ordinary business of the company should include lending but that such lending should have been made in the normal course of its business and not in some unusual way.

On the whole the question was satisfactorily answered.

Question Seven

This question on company law contained two parts. Part (a) tested the candidates' knowledge on the qualifications necessary to be fulfilled to be appointed as a company secretary while part (b) tested their knowledge on who is an approved company auditor and who may appoint auditors of a company.

For part (a) candidates were expected to state the qualifications to become a company secretary with reference to the Companies Act. In particular, candidates were expected to state that a person must be a member of one of the professional bodies prescribed by the minister, for example, a member of the Malaysian Bar or alternatively obtain a licence from the Registrar. In addition they could mention that the company secretary must be a natural person of full age with his principal or only place of residence in Malaysia. This part was not answered as well as expected. Many candidates did not give full answers. Some only mentioned the need for a professional qualification. Some only mentioned the need to be a natural person of full age.

For part (b) candidates were expected to just mention that an approved company auditor is a person who has been approved by the Minister of Finance as a company auditor after considering the good character and competence of a person to perform the duties of an auditor. Many candidates missed this point. Instead they mentioned the disqualifications of an auditor, for example, that they should not be employees of the company and should not be indebted to the company in an amount above RM2,500.

On the aspect of who may appoint the auditors, again many candidates did not give full answers. They were expected to mention the board of directors, the members in a general meeting and the Registrar. However, many only mentioned one or two of these.

On the whole this question was not satisfactorily answered.

Question Eight

This problem-based question on the law of obligations tested the candidates' knowledge on the elements of the tort of negligence as well as the ability of the candidate to identify and apply the issue of duty of care to the given problem.

This question was not answered as well as expected. The part about elements of the tort of negligence was quite direct and while most candidates mentioned the three elements, namely, duty of care, breach of duty and consequent damage, a large number of candidates did not explain what they meant. This caused them to lose valuable marks. Nevertheless this part was on the whole satisfactorily answered.

The part relating to the application of the law to the problem was less than satisfactory. While a few candidates were able to identify the issue of lack of duty of care, many candidates failed to do so resulting in loss of marks. Some candidates were even able to cite cases such as *Caparo Industries Plc v Dickman* to support their answer.

Question Nine

This problem based question on company law contained two parts each carrying 5 marks. Part (a) 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 compete with the company which has now been statutorily imposed under s.132(2)(e) of the Companies Act 1965 by virtue of the Companies (Amendment) Act 2007. Part (b) tested the candidates' ability to identify and apply s.132E of the Companies Act 1965, as amended by the Companies (Amendment) Act 2007, which pertains to acquisition or disposal by a company of non-cash assets to or from a director or connected person.

Part (a) was not answered very satisfactorily. Many candidates just discussed the fiduciary duty of directors to act in the best interest of the company and not to place themselves in a position of conflict of duty and personal interest and concluded that there was a breach by Jack. The expected answer required candidates to have knowledge of the amendment to the Companies Act, which now states that directors must not, without the consent or ratification of a general meeting, engage in business which is in competition with the company. The vast majority of the candidates missed this point.

Part (b) was more satisfactorily answered. Many candidates displayed sufficient knowledge of s 132E, which essentially states that companies cannot acquire from or dispose to directors, substantial shareholders or connected persons, any shares or non-cash assets of the requisite value unless approved by the company in a general meeting. Many also displayed knowledge of what amounts to a non cash asset of the requisite value and were able to correctly apply the law to the given problem. Only a minority were not able to identify the issue.

Question Ten

This problem-based question, on company law contained three parts, all of which tested the candidates' knowledge and ability to apply the law relating to some aspects of company meetings and resolutions. It tested candidates' awareness of the changes effected by the Companies (Amendment) Act 2007.

On the whole this question was inadequately answered. Candidates generally did not display knowledge of the amendments.

Part (a) of the question required candidates to show that they are aware that today the law (s.145A) states that a company is free to hold its annual general meeting (AGM) anywhere in Malaysia unlike before the amendment when the company was required to hold its AGM in the state where its registered office was situated. Many candidates did not display knowledge of this amendment although a number merely mentioned that the meeting could be held anywhere in Malaysia.

Part (b) required the candidates to show that they are aware that today, the law (s 145(2A)) states that a public company is required to give 21 days' notice of an AGM unlike before the amendment when all companies, whether public or private was required to give only 14 days' notice. The majority of the candidates were not aware of this point.

Part (c) was also inadequately answered. The issue was whether the appointment of the over-aged director was done through the proper procedure. The question stated that candidates were to presume that the AGM had been validly convened. Candidates were expected to mention the procedure for appointment of an over-aged director as mentioned in s 129(6), i.e. by a resolution of which no shorter notice than that required to be given for an AGM has been duly given and passed by a majority of not less than three fourths of the members. This meant that the company should have given the members 21 days notice of the resolution to remove the director over and above the 21 days' notice of the AGM which they could presume had been given. A very large majority of the candidates completely missed this point and simply concluded that the appointment was validly done.

Candidates are reminded of the need to read each question very carefully so that they can fully appreciate what the question requires.