

Examiner's report

F4 Corporate and Business Law (MYS)

December 2010



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 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. 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:**

Although there appears to be some improvement at this sitting with less candidates displaying evidence of spotting, it still remains an area for concern. Some candidates answered some questions very well while not being able to give adequate answers to other questions. This is a common occurrence especially when students do not have adequate time to prepare fully for the examination. Invariably such selective studying will not be beneficial to the candidate. As questions can come from across the syllabus, candidates are reminded not to study by spotting topics.

- **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 contained two parts. Part (a) required the candidates to distinguish between “written” law and “unwritten” law. Part (b) required candidates to explain two sources of written law and two sources of unwritten law.

The question was reasonably well answered. Many candidates displayed sufficient knowledge of the difference between written and unwritten law and were also able to explain the sources of both written and unwritten law thus obtaining pass marks.

However there were some candidates who only answered part of this question well. In particular, a significant number of candidates did not adequately or accurately explain the sources of the law as required. This caused them to lose valuable marks.

Question Two

This question on employment law required the candidates to explain the remedies for unjustifiable dismissal. This was a very well answered question. The vast majority of the candidates knew the answer and gave a full explanation of the three remedies and obtained very high marks. Some candidates, however, merely stated the remedies without giving a sufficient explanation of the remedies. This resulted in their not achieving higher marks. Candidates are reminded that they should read the question carefully and answer what the question requires. Thus where a question requires an explanation, they must give some explanation and not merely list, or state the points.

Question Three

This question on partnership law tested the candidates’ knowledge on the ways in which a partnership may be dissolved. Candidates were required to explain any five ways and were expected to explain those five ways from different sections of the Partnership Act 1961.

However the majority of the candidates answered the question by referring to five different situations in which the courts would order a dissolution of the firm under s 37 Partnership Act 1961. Nevertheless, candidates were given due credit for this, and they were able to pass the question. There were very few candidates who did not achieve pass marks for this question. On the whole it was satisfactorily answered.

Question Four

This question, on contract law, contained two parts. Part (a), which carried four marks, required candidates to explain the nature and effect of an exclusion clause. Part (b), which carried six marks, required them to explain the importance of the contra proferentem rule in relation to the interpretation of exclusion clauses.

Part (a) of this question was better answered in comparison with part (b). The majority of the candidates appeared to be familiar with the topic of exclusion clauses. They were able to explain the nature and general effect of exclusion clauses and achieve at least pass marks. Part (b), however, was not answered that well. Although many candidates were familiar with the contra proferentem rule and its application, there was a substantial minority who did not display sufficient knowledge of the rule and its importance in the interpretation of exclusion clauses. Some candidates were able to illustrate the law with suitable examples and decided cases.

Question Five

This question on company law required the candidates to explain and illustrate the legal effect of the memorandum and the articles of association of a company. Candidates were expected to explain that the terms of the memorandum and articles of association were, by virtue of the Companies Act 1965, to be regarded as the



terms of a contract between the company and its members. Thus the candidates were required to discuss the contractual effect of the memorandum and articles, highlighting some of the legal issues that arise there from.

This question was inadequately answered. Although there were some sound answers, most of the candidates were not able to display sufficient knowledge to achieve a pass mark. A number of candidates discussed the ultra vires doctrine in relation to the objects clause and were thus far off the mark. Candidates have been tested on this topic in previous examinations in the form of problem-based questions and they were able to answer it. This time around the topic was tested in a knowledge-based question and candidates appear not to be able to handle it. Candidates must be reminded that questions may be knowledge-based or problem-based and that they should be sufficiently prepared for it.

Question Six

This question on company law tested the candidates' knowledge on the nature and importance of a scheme of arrangement as well as the duties of a receiver.

The first part of this question was not very well answered. Many candidates were not knowledgeable on the nature of a scheme of arrangement or its importance. Some mistakenly discussed mergers or takeovers, which involve more than one company. This topic has been previously examined and the performance was also less than satisfactory. It would appear that candidates find this topic difficult and so avoid it.

The second part of this question tested the candidates' knowledge on the duties of a receiver. Answers for this part were more encouraging. Most of the candidates had some idea of who is a receiver and what his duties are and were able to obtain pass marks.

On the whole this question was answered satisfactorily.

Question Seven

This question on company law contained two parts. Part (a) tested the candidates' knowledge on the characteristics of a private company as opposed to a public company. Part (b) tested their knowledge on the situations in which a company is deemed to be a subsidiary of another company.

On the whole this question was satisfactorily answered. Most of the candidates were able to state some of the features of a private company as distinguished from a public company. There were a few candidates who were confused and mistakenly stated the features of a private company as the features of a public company and vice versa.

The second part was reasonably well answered with most candidates mentioning at least two situations in which a company is deemed to be a subsidiary of another company thus earning them pass marks. However, very few candidates were able to mention all the four situations.

Question Eight

This problem-based question on company law contained three parts. Parts (a) and (b) tested the candidates' ability to identify the issue of fraudulent trading and the civil and criminal liabilities arising there from, and to apply it to the given problem. Part (c) tested them on their ability to identify the offence of wrongful trading and the personal liability arising there from and to apply it to the given problem.

The answers to this question were not very encouraging. Although many candidates seemed familiar with the concept of fraudulent trading, they were not able to highlight the point that the intention to defraud is necessary for fraudulent trading while wrongful trading does not depend on such intention. Many candidates also did not display full knowledge on the extent of personal liability that could attach to persons knowingly a party to those offences.

There were a substantial number of candidates who merely stated that Ali and Badri have committed a criminal offence and that they could incur personal liability without explaining the legal basis on which they arrived at that conclusion. A number of candidates also mistook fraudulent trading for wrongful trading and vice versa, causing them to lose valuable marks. On the whole the answers for this question were less than satisfactory.

Question Nine

This problem-based question on contract law contained two parts. Part (a) tested the candidates' ability to identify and apply the law relating to one of the exceptions for the need for consideration, namely, a promise to pay a statute -barred debt. Part (b) tested them on the issue of intention to create legal relations.

This question was very well answered. Besides question two, this was the best answered question. Most of the candidates were able to identify the issue of statute- barred debts. They were able to recognise that the agreement to repay a statute -barred debt must be in writing and that the given facts indicated that the agreement to repay was an oral one and therefore the exception did not apply. Most of the candidates scored very high marks for this part. There were a few candidates, however, who stated incorrectly that the limitation period for enforcement of the debt was five years instead of six. Some even mentioned seven years. This resulted in less marks earned by them.

Part (b) was also very well answered. Most of the candidates seemed familiar with the topic. They were able to identify the issue of intention to create legal relations and apply the law correctly to the given problem thus earning very high marks.

Question Ten

This question on company law contained two parts. Part (a), which contained two sub-parts, tested the candidates' ability to identify the issue of disqualification of directors while part (b) required the candidates to identify and apply the law on directors' duty to disclose their interests in contracts with the company.

On the whole this question was not very satisfactorily answered. Part (a) touched on the issues of whether non-residents and undischarged bankrupts are qualified to appointed as directors. Many candidates were able to recognise these issues but their answers were not fully accurate. For example, several candidates considered that non-citizens were not qualified at all, whereas the law only requires that a company should have at least two directors whose only or principal place of residence is Malaysia. Thus so long as a company has two directors who satisfy the residence requirement, the company may have other directors who are non-residents. Many candidates missed this point, thus failing to gain more marks. With regard to the position of undischarged bankrupts, many candidates failed to point out that they could be appointed as directors if they obtained the leave of the court. Some candidates mistakenly stated that the disqualification of bankrupts was only for a period of five years and as the facts showed that Joe was declared bankrupt six years ago, he was therefore qualified to be appointed as a director. This mistake also lost them valuable marks.

Part (b) was also not answered as well as expected. While there were some sound answers with reference to case law as well as the provisions of the Companies Act 1965, a large number of candidates merely discussed the fiduciary duty of directors to avoid conflict of interest without specifically identifying the duty to disclose their interests in contracts with the company. Some candidates even went on, mistakenly, to state that there was no breach of duty because the director concerned did not participate or vote at the board meeting. They were unable to see that a director's non- participation at the board meeting was irrelevant to the duty to disclose their interest in contracts with the company.