

Examiner's report

F4 Corporate and Business Law (SGP)

June 2010



General Comments

The examination consisted of 10 questions of equal marks.

Most candidates attempted all questions. Reasonable answers were given by some candidates to all the questions. However, the overall performance of candidates was unsatisfactory due to a large number of candidates who appeared to be unprepared for the examination as they did not attempt all the questions. For the candidates who failed, their answers did not discuss adequately the issues raised. In many instances, the candidates' answers did not address the issues that were raised. Candidates should read the question carefully and answer the specific question that has been asked instead of providing a general discussion on the topic.

Specific Comments

Question One

The majority of candidates could explain the doctrine of stare decisis. The main focus should be on the doctrine of binding judicial precedent. Some candidates however explained only the concepts of ratio decidendi and obiter dicta.

As for the second part of the question, the vast majority of candidates ignored the issue completely and did not address the rationale for the doctrine.

Question Two

Candidates were generally not prepared for this question. Instead of explaining what is meant by the phrase in question, candidates explained the meaning of consideration. As such, their answers were irrelevant to the question that was asked. Some candidates were able to give a brief explanation of the general rule that performance of an existing contractual obligation is not good consideration.

However, very few candidates answered the second part of this question which required an explanation of the exceptions to this general rule. One exception is where the promise required the promisee to do something more than his existing contractual obligation, then it would be supported by sufficient consideration *Hartley v Posonby* (1857). The second exception is found in the decision of *Williams v Roffey* (1991).

Question Three

This question required an explanation of the situations entitling an innocent party to terminate the contract, which are outlined in the judgment of the Singapore Court of Appeal in *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd* (2007). However, many candidates did not seem to know what was required and presented answers on remedies for breach of contract generally. Among the candidates who answered the question correctly, their answers showed adequate knowledge of the situations giving rise to an option to terminate the contract.

Question Four (a)

Candidates' answers to this question were generally adequate.

Part (b) required a statement of four circumstances when the courts will lift the corporate veil and treat the company and its members (or officers) as one. The majority of candidates were able to name two or three such circumstances.

Question Five

(a)

Candidates' answers to this question were generally adequate.

Part (b) required a comparison of the legal effects of raising capital by way of equity and debt. Candidates' answers showed a reasonably adequate knowledge of these differences. The most commonly raised difference



was the requirement of payment of interest and repayment of principal sum for debts whereas repayment of capital only arises when the company is in liquidation and is subject to rules.

Question Six

(a)

Some candidates were able to assert the fact that directors' duties are owed by directors to the company, and not to any individual shareholders or a group of shareholders, employees or creditors. However, that many candidates held the mistaken view that directors' duties were owed to shareholders.

Part (b)

Instead of addressing the company's remedies for breach of directors' duties, many candidates presented answers explaining the circumstances when a director is in breach of his duties. Of the candidates who address the company's remedies, the majority identified the company's option of suing for damages or for an account of profits by claiming the profit earned by the directors from their breach. However, very few candidates mentioned the remedy of rescission of the contract that was entered into in breach of directors' duties and the recovery of property that has been disposed of in breach of directors' duties.

Question Seven

Candidates' answers to this question generally lacked the attention to detail that was required. The majority of candidates stated the trading offence but many failed to state the procurement or communication offence.

The answer also required an explanation that the connected person in relation to the trading offence– section 218(5) Securities and Futures Act (SFA). Others who are not directors or officers of the company are not 'connected persons' but they may be 'insiders' within the meaning of section 219 SFA. This is relevant because insiders, as well as connected persons, may commit the procurement offence.

Likewise, the communication offence can be committed by a connected person or an insider. The expected answer also required an explanation of section 216 and section 215.

Question Eight

This question required an analysis and discussion as to whether the facts show an enforceable misrepresentation has taken place. That is, whether there was any false statement made by the developer which was of an existing or past fact (and not intention or opinion) and that induced Desmond to enter into the contact. Some candidates were able to discuss this issue adequately.

The majority of the candidates however, treated the question as asking which type of misrepresentation had taken place, which was not the question asked.

Question Nine

(a)

Candidates' answers to this question were generally adequate.

Part (b)

The majority of answers to this question were adequate. However, many candidates answers had the order of priority incorrectly.

Question Ten

This question required an application of an understanding of the differences between a sole proprietorship and a company to the facts given in the question. Some candidates presented good answers. The majority however, stopped short of giving a general explanation of the differences between a sole proprietorship and a company, without any reference to the fact relating to Amanda in the question.