

Examiner's report

F4 SGP Corporate and Business Law (SGP)

June 2011

The ACCA logo consists of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black square.

General Comments

The examination consists of 10 compulsory questions. Each question carried 10 marks. The first seven questions required knowledge of the content areas and the ability to describe, explain, compare, distinguish and illustrate with examples various aspects of law. The last three questions required knowledge of the content areas coupled with the ability to identify issues, apply appropriate legal rules and recognise legal implications in the context of a hypothetical case.

Many candidates attempted all 10 questions. It would appear that the candidates are fairly prepared for this examination. Time management also does not appear to be an issue as most candidates attempted all the questions and were able to discuss the majority of questions with sufficient depth.

Sound answers were presented by many for some questions and very high marks were achieved by a number of candidates. The performance of candidates overall is encouraging.

The unsatisfactory performance of some candidates is due in part to lack of preparedness, 'spotting' the wrong topics to focus on and exacerbated by a failure to carefully read the content and requirements of questions. This contributed to loss of some marks for the questions.

Answers are generally written in a legible form. There are, however, some candidates with illegible handwriting. For some of the questions which were divided into parts, some candidates failed to identify which part of the question was being attempted. It would be better if answers to each question could be started on a new page and labelled correctly.

Specific Comments

Question One

This question tested candidates' ability to explain various rules of statutory interpretation. Candidates were generally able to give a basic definition of the terms. Some who did extremely well were able to provide illustrations or examples from cases to illustrate how the rules are applied.

Question Two

This question was done well by most candidates. Most candidates explained the similarities and differences between a limited liability partnership and a company exhaustively. However, there were some candidates who confused a general or a limited partnership with a limited liability partnership and hence did not fair well for the question.

Question Three

Part (a) was fairly well done. Most of the candidates had a rough idea of the concept of misrepresentation and were able to explain the different types of misrepresentation. There were some who found some difficulty in differentiating the types of misrepresentation properly.

Part (b) was inadequately answered. Only a handful could set out the situations in which the innocent party would be barred from rescinding the contract. The vast majority of candidates confused bars to rescission with warranties and innominate terms, or with situations where there was no misrepresentation in the first place.

Question Four

With regards part (a), most candidates were able to explain liquidated damages, but many had difficulty in explaining unliquidated damages. Some candidates were confused between pecuniary and non-pecuniary loss.

Part (b) was generally well answered. Many candidates referred to the case of *Hadley v Baxendale*, were able to explain the test laid down in the case, and were also able to give examples of losses arising naturally and exceptional losses. However, there were a handful of candidates who confused this question with duty of care requirements in the tort of negligence.

Question Five

With regards part (a), in discussing the legal effect of the company's memorandum and articles of association, most candidates did not mention the contractual impact of the memorandum and articles, namely, that it was a contract between company and members, and between members inter se. Many elaborated on the contents of the memorandum and articles instead, which was not exactly what the question intended.

Part (b) was generally well answered. Most candidates were able to set out the requirements for amending the memorandum and articles. Candidates were able to go further to discuss additional requirements for the alteration of entrenching provisions and provisions containing class rights.

Question Six

With regards to part (a), a fair number of students were able to describe generally what judicial management is. Better answers were further able to explain the objectives of judicial management and the moratorium that is put in place.

Part(b) was generally not well answered. Many candidates explained what the judicial manager can do, without answering the point of the question, which is, how judicial management might be beneficial to the applicant.

Question Seven

This question was not well answered. Most candidates appear not to have anticipated this question.

Only very few understood the concepts of fraudulent trading and wrongful trading. Many did not even attempt the question while the majority of those who did attempt to answer confused the concepts with that of insider trading.

Question Eight

This question was fairly well answered as a whole.

The candidates generally showed an understanding of the elements of offer and acceptance. Some were of the view that the advertisement was an invitation to treat, whereas others were of the view that it was an offer akin to the offer in *Carlill v Carbolic Smokeball Co*.

Although the candidates had a general idea of the concepts of offer and acceptance, the better answers were those that who managed to apply the concepts to the hypothetical case and gave a thorough and logical analysis of the issues.

Question Nine

This question was not very well answered as a whole.

Many candidates listed directors' duties generally, referring to all sorts of duties a director owes. Due to the failure to focus, the answers tended to be a list of directors' duties without showing sufficient understanding as to how these rules apply in the context of the case scenario.

Some candidates identified the duty of care and diligence owed by directors but did not manage to discuss the issue very satisfactorily. Better answers made specific reference to s.157 Companies Act, *Lim Weng Kee v PP* and were able to discuss Mrs Lim's breach of duties with application to the facts.

Some candidates wasted their effort in discussing Luke's breach of duties, which is not what the question required.

Question Ten

This question was fairly well answered. A number of candidates mentioned the use of a derivative action under s.216A Companies Act and also managed to set out the requirements for taking such an action.

Those who did not do well seemed confused and discussed oppression remedy under s.216 Companies Act. The question specifically required a discussion of how Carol may bring an action against Jack in Win's name, not in Carol's name.