

Examiner's report

F4 SGP Corporate and Business Law (SGP)

December 2010

The ACCA logo is a black square with the letters 'ACCA' in white, bold, sans-serif font.

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 much better prepared for this examination than in the past. Time management also does not appear to be an issue as most candidates were able to discuss the 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. There are some candidates who fail to label which questions were being attempted or labelled the question numbers incorrectly. It would be better if answers to each question could be started on a new page.

Specific Comments

Question One

This question tested candidates' ability to explain various types of law in Singapore, namely, statutes, subsidiary legislation and case law.

With respect to part (a), most candidates were able to describe the manner in which statutes are passed by Parliament. They appear to have expected the question and many were able to provide a comprehensive description of the law-making process.

With respect to part (b), most candidates appear not to have expected the question. As such, many answers were either incorrect (e.g. some answers stated that the subordinate courts promulgated subsidiary legislation) or the part was left unanswered.

With respect to part (c), most candidates were able to describe how judges make law through accumulated precedents over time. Some candidates had equated case law with the doctrine of stare decisis and so fared inadequately because of the incorrect focus.

Question Two

This question test candidates' ability to describe the ingredients of a contract, namely, offer, consideration and intention to create legal relations.

With respect to part (a), most candidates were able to define an offer.

With respect to part (b), most candidates were able to define consideration.

Most candidates appear prepared for these two parts.

With respect to part (c), most candidates appear not to have 'spotted' the topic. As such, some did not attempt this part or gave incorrect answers, e.g. many thought that intention to create legal relations was an invitation to treat.

A number of candidates, although they had studied the concepts tested in this question, nevertheless did not achieve full marks for the question because they overlooked the word 'illustrate' in the question and so failed to provide a suitable illustration.

Question Three

This question tests the candidates' ability to explain the consequences for breach of contract, such that in addition to claiming for damages, the innocent party may choose to terminate the contract.

Those who had expected this question were able to answer the situations accurately. Many could explain the concepts of condition and innominate term very well. Some chose to discuss anticipatory breach and did it very well too.

There were some candidates who could have misinterpreted the question. They perhaps understood termination of contract to mean rescission of contract and so discussed various topics, for example, misrepresentation.

Question Four

This question was well answered. Most candidates seem to have anticipated this question. There were many who scored satisfactory marks. However, there were some candidates who clearly had studied the topic on meetings and could explain each type of meeting stipulated, but could have overlooked the part of the question that also required to them to state how each of these meetings were convened. These candidates therefore lost a few marks because of the omission.

Question Five

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

With regards part (a), many candidates appear unfamiliar with the doctrine of maintenance of capital. For those who attempted the question, there appears to be some confusion as to the nature of share capital and the purpose of the doctrine.

With regards part (b), many candidates did not attempt the question and those who did appear not to have the requisite knowledge. This is probably the least attempted question for the entire paper.

With regards part (c), some candidates cited section 403 Companies Act and many were able to state when dividends can be declared. However, many were not able to achieve full marks for this part because they overlooked the part of the question requiring them to state how dividends are to be declared. Many were not aware that the procedure may be found in the company's articles and the procedure set out in default article 98 of Table A.

Question Six

Parts (a) and (b) were not very well answered. Part (c) was extremely well answered.

With regards to part (a), even though some of the many candidates had studied the topic, they seem to have overlooked the word 'initiated'. They therefore focused on other aspects, for example, solvency. The question required them to discuss the procedure that initiates each type of winding up, namely, application to court by someone with locus standi and passing of special resolution by the general meeting.

With regards to part (b), even though some of the candidates appear to have studied the topic and are aware that solvency is the distinguishing feature, they did not appear to know what a solvency declaration is. Many candidates revealed a lack of understanding as to what a creditors' voluntary winding up is when they discussed a creditor's application to court pursuant to section 254 as a creditors' voluntary winding up.

With regards to part (c), many candidates obtained full marks because they only had to mention two grounds from a whole list of possibilities.

Question Seven

This was one of the best answered questions in the entire paper. For those who anticipated the question, they were able to come up with four or five differences between share capital and loan capital. Many candidates therefore obtained high marks for this question.

Question Eight

This question was not very well answered as a whole. Many candidates listed all the directors' duties they could remember without focusing on the doctrine of usurping corporate opportunity, which is the subject matter of the question. Due to the failure to focus on usurping corporate opportunity, 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. Many candidates are also not clear about the consequences for Andy's breach of duties, with some stating consequences such as civil penalty under Securities and Futures Act which does not apply on the facts, and omitting the important consequence of recovery of secret profit by the company.

Question Nine

This question was not very well answered as a whole. The question covered four issues, namely, contemporaneity, sufficiency of notice, construction of exclusion clause and application of Unfair Contract Terms Act (UCTA). Most candidates covered just one or two of the issues. Quite a few candidates also brought in reasonableness under the UCTA although this was a case of personal injury.

Question Ten

This question was well answered. Most candidates anticipated the question and were able to discuss differences between partnership, limited liability partnership and company. Most candidates discussed the issue of Ann's personal liability sufficiently and therefore scored high marks. Some candidates were not able to distinguish between the three types of business organisations, and did not apply those distinguishing features in the context of the question by dealing with Ann's concerns.