

EXAMINER'S REPORT**MIA QE MARCH 2018****PAPER: BUSINESS AND COMPANY LAW**

Question no.	Question's Requirement	Expected Answer	Weaknesses in the Answer Provided	How answer should be written to get more marks
1(a)	Candidates are tested on their knowledge on the issue of 'Discharge of Contract by Frustration' based on a short illustration.		Some candidates display almost no knowledge of what is meant by discharge by frustration.	
1(b)	Candidates are required to give three examples of 'invitation to treat' under the law of contract, with supporting case laws.	Three examples of an invitation to treat with corresponding case laws.	Some candidates did not furnish any case laws at all.	Candidates should pay attention to the full requirement of the question.
1(c)	Candidates are required to identify three elements necessary under a contract of sale under SOGA, supported by statutory provisions OR case laws.	Three elements necessary to form a contract of sale supported by authorities.	Some answers are without any 'authorities' at all, either statutory provision or case laws.	A brief description of the elements accompanied by either authority.
2(a)	Question on Law of Agency: Agency by necessity	To state at least three conditions required for an agency by necessity to arise.	Some candidates gave 'Duties of Agents' as answer. Others gave more than three but incorrect elements.	Pay attention to the question and what it actually requires. Giving more than what the question requires does not necessarily translates into more marks.
2(b)	A problem question based on	To state the extent of a	Some candidates failed to give	To state clearly the issue in the

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	the law of agency: Indemnifying an agent's expenses/costs.	principal's duty to indemnify an agent and its implication if the agent's act involves illegality.	an accurate interpretation of the provision that absolves the principal's duty from indemnifying the agent for acts involving illegality.	problem, then to proceed with the most suitable provision of law and finally to apply the law to the situation and conclude.
2(c)	1. Agent's apparent/ostensible authority; 2. Agency by necessity.	A brief explanation of the two types of agency.	Some candidates failed to answer this question totally. Others gave wrong explanations.	This is a straight forward question which can only be answered if the candidate knows.
3(a)	A problem question on the status of partnership property.	To state the law clearly pertaining to partnership property and its status after the partnership is dissolved.	Most answers are without a clear interpretation of the provision relating to the issue in question.	To state clearly the issue in the problem, then to proceed with the most suitable provision of law and finally to apply the law to the situation and conclude.
3(b)	How a partnership may be considered to exist even without a partnership agreement.	State the criteria recognized by law as sufficient in forming a partnership.	Some candidates gave the statutory requirements for forming a partnership, including the partnership agreement!	To be careful when reading the question and to give only answers required.
3(c)	A problem question on the issue of professional negligence.	To determine whether there is duty of care owed by the party claimed to be negligent.	Some candidates did not apply any legal provision or case law to support their contention. In most cases, there is very little analysis of the legal issue at hand.	To state clearly the issue in the problem, then to proceed with the most suitable provision of law and finally to apply the law to the situation and conclude.

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4(a)(i)(ii)(iii)	This question on company law tests the candidates' knowledge on promoters of a company.	Candidates are expected to discuss on the essential duties imposed by law on the promoter of a company and remedies available for a company if a promoter breaches their duties.	Candidates have failed to give a proper definition on what is the meaning of promoters. There were a number of candidates who failed to give full answers on the essential duties of a promoter and remedies available for a company if a promoter breaches their duties. Some candidates could not explain the duties and remedies clearly.	Candidates should elaborate their answers based on point of laws instead of stating common-sense answers. Candidates are reminded that questions must be answered clearly and in full sentences in order to achieve satisfactory marks. (Please refer to the suggested answers)
4(b)(i)(ii)(iii)	This question on company law tests the candidates' knowledge on resolutions of a company.	Candidates are expected to state the instances in which a special resolution is required; the requirements to affect the resolution requiring special notice; and the instances provided under the Act that would require the giving of a special notice before a resolution can be passed.	Candidates have wrongly portrayed in their answers the understanding on special resolution and special notice. Candidates seem to have lack of understanding on the questions itself and what the questions required.	Candidates should give the definition of special resolution and under what circumstances will a special resolution be made by a company. With regards to the requirements to affect the resolution requiring special notice, candidates were expected to state the procedure to affect the resolution. (Please refer to the suggested answers)
5(a)(i)(ii)	This problem based question on company law tested the	Candidates are expected to write on fiduciary duties of	Candidates did not discuss the fiduciary duties of directors in	Candidates should mention the fiduciary duties of directors

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	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 make secret profits.	directors and to recognise that the directors had breached such duties and that the company had the right to recover the profits made by the director concerned.	fair detail. Their answers were too brief. This resulted in failure to achieve higher marks.	generally before focusing on the main issue, i.e. the duty of the director not to make secret profits. The nature of the question required candidates to refer to relevant cases. (Please refer to the suggested answers)
5(b)	This question required the candidates to explain the features and the exemptions acquired by an <i>Exempt private company</i>	Candidates are expected to write on the features and benefits of an exempt private company.	Most of the candidates only gave the answers on the features and not on the benefits of an exempt private company.	Candidates should write on the benefits of an exempt private company where it is allowed to lend money or give financial assistance to directors (and persons connected to directors) and it is exempted from filing audited financial statements and reports to the Registrar of Companies. (Please refer to the suggested answers)
5(c)	This question required the candidates to explain the concept of the business judgment rule in the context of directors' duties under the Companies Act 2016	Candidates are expected to write on the duty of care, skill and diligence when directors fulfil 4 instances which is provided under the Companies Act 2016.	Most of the candidates took this question to be an invitation to discuss generally the duties of directors and did not attempt to explain the concept of the business	Candidates should generally explain what is the business judgment rule and then explain the provisions. (Please refer to the suggested

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			judgment rule. This was clearly incorrect.	answers)
6(a)(i)(ii)	This problem question on company law tests the candidates' knowledge on prohibition against financial assistance in a form of guarantee to purchase shares.	Candidates are expected to explain what amounted to financial assistance and why the law imposed such a prohibition and whether a director could successfully challenge the validity of the guarantee given by the company.	Most of the candidates just mentioned that the company cannot give the guarantee to a director however in this question the senior operation manager of the company is not a director but an employee. Hence the guarantee may be valid.	Candidates should state the exceptions to the prohibition against financial assistance by a company for the purchase of its own shares. 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 six exceptions mentioned under section 125 of the Companies Act 2016. (Please refer to the suggested answers)
6(b)	This question on company law tests the candidates' knowledge on a company's auditor.	Candidates are expected to state the circumstances set out in the Companies Act 2016 where an approved company auditor is disqualified from acting as auditor for a company.	Candidates only gave answers on the duties and of an auditor.	Candidates should mention that an approved company auditor is disqualified from acting as auditor for a company under certain circumstances set out in the Companies Act 2016 (Please refer to the suggested answers)

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6(c)	This question on company law tests the candidates' knowledge on corporate rescue mechanism.	Candidates are expected to state with reference to the Companies Act 2016, the Corporate Voluntary Arrangement (CVA) and Judicial Management.	Most of the candidates gave totally wrong answers in this question.	<p>Candidates should state a Corporate Voluntary Arrangement (CVA) is essentially a scheme of arrangement under which a company can restructure its debts voluntarily under an agreement with its members or creditors.</p> <p>Judicial Management is essentially a process that gives prime consideration to rescuing distressed companies. It is a temporary court supervised rescue plan.</p> <p>(Please refer to the suggested answers)</p>
7(a)(i)(ii)	This question on company law concerned the method effecting the alteration; issue of alteration of the articles of association of the company and the right of the minority to challenge the validity of such alteration.	Candidates are expected to describe the method effecting the alteration made by the company with reference to the Companies Act 2016 and the right of the minority to challenge the validity of such alteration.	Candidates were expected to identify the issue that any alteration of the articles of association must be done bona fide for the benefit of the company as a whole. Most of the candidates were not able to identify this.	<p>Candidates were expected to conclude that as the alteration was intended to allow directors to allow directors to compulsorily acquire the shares of members who are in competition with the company, the alteration would be considered for the benefit of the company and thus valid.</p> <p>(Please refer to the suggested answers)</p>

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7(b)(i)(ii)	This question on company law tests the candidates' knowledge on company's receivership	<p>Candidates' are expected to explain the duties of the receiver appointed by the Bank with regard to the payment of a company's debts and the position of the receiver and receiver and liquidator when the company going into compulsory or voluntary winding up.</p>	<p>Most of the candidates took this question to be an invitation to discuss generally the duties of a receiver and receiver manager.</p>	<p>Candidates should state about certain debts of the company as specified in the Companies Act 2016 that should be paid out from the assets coming into the hands of the receiver in priority to the claim of the debenture holders.</p> <p>In the second part of the questions, candidates should explain with reference to decided cases that the liquidator was only entitled to the property to which the company was entitled. The company's right when a receiver was appointed was a right of redemption over the property charged and, consequently, the liquidator's right was also a right of redemption.</p> <p>(Please refer to the suggested answers)</p>

General Recommendation

To Facilitators	<p>Emphasize the importance of understanding the legal principles, concepts and practical applications in business and company law.</p> <p>Some emphasis on techniques in using case laws in answering problem question is required; (practice).</p> <p>Emphasis on importance of authority in answering law papers (cases & statutory provisions).</p>
To Candidates	<p>In answering problem question, candidates are reminded to ensure that their answers show that they have identified the legal issue, explained the law on that issue, applied the law to the given scenario and finally, arrived at a sound legal conclusion. Very brief answers and point form answers will result in candidates losing valuable marks.</p> <p>Case reading and understanding techniques to utilise legal principles need to be improved.</p> <p>Understanding the question requirement and giving only the appropriate answer is important.</p> <p>Statutory provisions must be included in answers wherever specifically required.</p>