

EXAMINER'S REPORT
MIA QE SEPTEMBER 2019
PAPER: BUSINESS & 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)	Define terms: Goods on Display and Auction	As per Answer Scheme	<p>Most candidates only state the name of the case without any narrative of the facts;</p> <p>Some candidates did not include any form of authority at all.</p>	<p>Some relevant facts of the case should be included in the answers.</p> <p>Statutory provisions should be accurately cited.</p>
1(b)	Circumstances that causes revocation of offer	As per Answer Scheme	<p>Almost no candidate got this question perfectly.</p> <p>Some candidates did not address the correct issue (Not understanding the question properly).</p>	Careful consideration of the question requirement is important.
1(c)	Advise on validity of contract; past consideration.	As per Answer Scheme	Some candidates addressed this question from a different point of law; Company Law instead of Contract Law.	<p>Understanding and identifying issues in a problem style question is vital.</p> <p>Awareness of the area of law dedicated to each part of the exam question will help eliminate this mistake.</p>
2(a)	3 elements of contract of sales	As per Answer Scheme	Most answers lack the legal provision required.	Attention to the importance of citing statutory provisions in answering mainly 'definition' question, will earn candidates a full mark for the question.

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2(b)	Sale by a mercantile agent	As per Answer Scheme	There is quite a number of candidates who gave answers about merchantable quality instead of about mercantile agent.	Care should be taken in understanding the exact requirement of the question.
2(c)	Conditions for agency by ratification	As per Answer Scheme	Some candidates wrote about conditions for a principle to ratify an agent's action instead of situations whereby a ratification may be required/valid.	Care should be taken in understanding the exact requirement of the question.
3(a)	Essential elements of partnership	As per Answer Scheme	Some candidates did not identify the elements with accuracy.	Knowing basics is vital.
3(b)	Liability of partners	As per Answer Scheme	Candidates did not specifically identify the provision of law that excuses a partner from liability when another partner breaches partnership agreement.	Attention should be drawn towards provisions that creates the general provisions in the law as well as any exception to the same.
3(c)	Liability on professional negligence	As per Answer Scheme	Candidates failed to identify element of damages/injury actually caused, by negligence. In this case, death was not caused by negligence of the hospital.	In problematic questions, skills in identifying issues properly as well as analytical observation is key.
4(a)	Meaning of corporate principle and circumstances where corporate veil may be lifted.	Separate legal entity principle. Circumstances where this principle will be disregarded by the courts.	Most candidates were very prepared for this question. Unfortunately, there were also a small number of candidates who were ill prepared for	Candidates were expected to explain the veil of incorporation and the concept of the company as a separate legal person. Candidates were also expected to discuss five circumstances in which the courts OR

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			this question and were not able to give accurate answers.	statutes would ignore this concept and treat the company and its members as one.
4(b)(i)	A problem-based question on the capacity of a company and its promoter to enter into a contract with third party before its incorporation.	Statutory provision that regulate the extent of liabilities of a company and its promoter to enter into a pre-incorporation contract.	The question was not answered as well as expected. Some answers failed to identify the issue correctly. This resulted in them not gaining good marks.	Candidates were expected to explain and discuss about a contract made by a promoter on behalf of a company at a time when the company has not been formed; And a pre- incorporation contract that may be ratified by the company after its incorporation.
4(b)(ii)	A problem-based question on the breach of fiduciary duty of a promoter and remedies available for such a breach.	Promoters fiduciary duty towards the company on secret profit and remedies available for such a breach.	Many candidates were clearly not prepared for a question on this topic and was not able to identify the issues and give accurate answers. For example, there were some candidates who identified this issue in relation to director's fiduciary duties. Some had also identified this question as duties of partners in partnership and agent in agency law. Valuable marks will be lost in these circumstances.	Candidates were expected to discuss and explain the liabilities of a promoter in gaining a secret profits, and the remedies available to the company.
5(a)(i)	A problem-based question on the priority of charges.	The general principles relating to priorities of two contesting charges over the same assets.	The question was not answered as well as expected. Some answers failed to identify the issue correctly and discuss general principles relating to	Candidates were expected to explain and discuss the priority of the two floating charges and also to discuss general principles relating to priorities of two

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			<p>priorities of two contesting charges over the same assets.</p> <p>As for the priority between the two floating charges, many candidates did not discuss the issue of the effect of the negative pledge. The legal consequences were not mentioned causing candidates to miss out on some valuable marks.</p>	<p>contesting charges over the same assets in the case of winding up of a company.</p> <p>Candidates were also expected to explain and discuss the issue of the effect of the negative pledge clause i.e. that it would only bind a subsequent charge who has knowledge of the restriction.</p>
5(a)(ii)	A straightforward question on the effect of a negative pledge clause in the floating charge document.	A negative pledge clause is a type of negative covenant that prevents a borrower from pledging any assets if doing so would jeopardize the lender's security.	The question was not answered as well as expected. Answers demonstrate inability of candidates to explain the related law in question.	Candidates were expected to explain that The existence of a negative pledge and the effect of a clause giving a floating charge priority over the subsequent fixed charge and floating charge.
5(a)(iii)	A straightforward question on the position of a fixed charge over the other floating charge.	The general principle relating to two charges created over the same assets.	A majority of the candidates correctly pointed that as a general rule fixed charge will have the priority over a floating charge. However, they have failed to point out that the outcome may be different where there is a negative pledge clause in the floating charge document.	Candidates were expected to explain the exception to the general principal that fixed charge will not always rank in priority over the floating charge where there is a negative pledge clause in the floating charge document.

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5(b)	This was a straightforward question requiring candidates to explain in what ways can a public and a private company raise their capital.	The ways in which a public and private companies raise up their capital.	Candidates performed reasonably well in this question. However, there were a small number of candidates who gave the procedures in raising up capital by public and private companies instead. Valuable marks will be lost in these circumstances.	Candidates were expected to write a clear distinction between these two types of companies on how they raise up their capital. Candidates must read question carefully and thoroughly to avoid misinterpretation of question asked.
5(c)	This was a straightforward question asking candidates to explain the Civil liability of persons in issuing a misleading prospectus.	Civil liability of persons in issuing a misleading prospectus.	Candidates' performance in this part was unsatisfactory. Some of the candidates did not attempt this part of question.	Candidates were expected to understand the correct meaning of the provision before interpreting it.
6(a)	A problem-based question on the director's fiduciary duties.	The breach of fiduciary duties by the directors with regard to conflict of duty and personal interest in contract and conflict of duty and personal interest by usurping for themselves a corporate opportunity.	This question was inadequately answered. Some answers do not provide authority at all. Only some candidates recognised the issue of director having an interest in a contract with the company and conflict of duty and personal interest by usurping for themselves a corporate opportunity. Some candidates incorrectly identified the problem as a contract in which the	Candidates were expected to write the issues correctly, explain the law clearly and apply it to the given facts to arrive at a reasonable and appropriate conclusion. Candidates must bear in mind the importance of reading the question carefully to determine accurately the issue in the question.

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			<p>company is disposing to or acquiring from a director a property of requisite value, falling under Companies Act 2016, and which requires approval from the general meeting of the company.</p> <p>Many candidates merely stated that all the directors had a fiduciary duty to the company and because of that one of them should have made a disclosure. This is not accurate. This will not be sufficient to achieve satisfactory marks.</p>	
6(b)(i)(ii)	These were both straightforward questions requiring candidates to write on the qualifications of a company auditor and removal of an auditor.	Qualifications of a company auditor and removal of an auditor under the Companies Act.	Most candidates were very prepared for this question. Unfortunately, there were also a small number of candidates who were not prepared for this question and were not able to give accurate answers.	Candidates were expected to state straight forward the the required qualifications of an auditor and the removal of an auditor under the Companies Act.
7(a)(i)(ii)	These were both straightforward question on Disclosure rules on Bursa Malaysia.	To explain "material information' and state the examples of events which may require immediate disclosure.	Candidates' performance in this part was unsatisfactory. Answers portrayed lack of knowledge in this topic.	<p>Candidates were expected to explain briefly "material information' and straight forward state the examples of events which may require immediate disclosure.</p> <p>Candidates are reminded of the need to be well prepared for the examination. It</p>

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				would be too risky to study selected topics only.
7(b)	This was a straightforward question on Corporate rescue mechanism	To explain Judicial Management and the parties involved in making the application.	Candidates' performance in this part was unsatisfactory. Some of the candidates did not attempt this part of question.	<p>Candidates were expected to give a brief and direct answers in explaining Judicial Management and the parties involved in making the application.</p> <p>Candidates are advised that the questions come from all parts of the syllabus, candidates could only do well in this part if they had studied across the syllabus and not selectively.</p>
7(c)(i)(ii)	A problem-based question on the winding up of a company and a straight forward question on the commencement of a winding up of a company	To explain 2 modes of winding up: 1) Voluntary winding up and 2) Compulsory i.e. Winding up by Court and to propose which one is the most appropriate one. And the commencement date for the both winding up.	Candidates' performance in this part was unsatisfactory. Explanation is inaccurate or confused between the two types of winding up. Some answers failed to identify the issue correctly and solved the problem wrongly.	<p>Candidates were expected to have the knowledge on the actual differences and sound understanding of the difference between the two methods of winding up and the commencement date for the winding up.</p> <p>Candidates must bear in mind the importance of reading the question carefully to determine accurately the issue in the question and to apply the law to the problem to arrive at the sound conclusion.</p>

General Recommendation

To Facilitators	<p>Emphasis on the importance of understanding the legal principles carefully and thoroughly.</p> <p>Emphasis on the importance of including authorities in candidates' answers.</p> <p>A general provision of the law is sufficient so long as it captures the meaning/intention of the provision (not necessarily the exact wordings of the statute).</p>
To Candidates	<p>Understanding and remembering the gist of case laws is an integral part of a course in law.</p> <p>Although memorising may be one of the methods used for this purpose, actual understanding of the principles of law contained therein is required.</p> <p>Merely stating the correct statutory provisions alone, may earn you marks.</p> <p>Take note of the area of law being examined in each part of the exam question ie; Part A consists of areas such as Contracts, Sale of Goods, Agency, Partnership and Professional Negligence.</p> <p>Candidates are advised to equip themselves with adequate knowledge of the law in the various topics of the syllabus in order to stand a higher chance of doing well.</p>