



# Corporate and Business Law Malta (LW MLA) June 2021 Examiner's report

The examining team share their observations from the marking process to highlight strengths and weaknesses in candidates' performance, and to offer constructive advice for those sitting the exam in the future.

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## General Comments

The exam was divided into two parts, both of which were compulsory. Section A consisted of 45 multiple-choice questions (MCQs) worth either 1 mark or 2 marks each, carrying a total of 70 marks. Section B consisted of 5 scenario-based questions carrying 6 marks each. These scenario-based questions tested candidates' ability to identify and apply the relevant law to the given scenarios. All questions in Sections A and B were compulsory.

Section B required answers based on the given scenarios. Candidates were expected to identify the issue in the given scenario, explain the applicable law and arrive at a conclusion based on the law applied. Thus, candidates would be able to achieve satisfactory marks for Section B if they correctly identified the relevant issue, explained the law and applied the law to the given facts.

On the whole, the performance of the candidates was adequate. A very good majority of the candidates achieved reasonable marks in Section A. However, it is to be noted that more consistency would have been expected between the performance in the Section A and Section B questions, in that, several candidates appeared not to have prepared themselves with the required consistency in the subject-matter covered by the scenario-based questions. Furthermore, many answers to the same questions lacked the required depth resulting in answers lacking detail or not providing direct and to the point answers.

Some general indications of sound practice to follow:

- candidates must be well prepared for the exam - on all topics and not on what they consider the 'most important' and this particularly because all questions are compulsory and therefore candidates require knowledge and complete overview of all of the subject areas;
- not reading the question clearly and therefore presenting material which was not relevant to the question;
- candidates need to manage their time effectively given that the exam has so many questions which should all be attempted;
- candidates must read carefully understand the requirements of each question, in particular each distractor in the Section A questions;
- keep in mind that the marks that the examiner allocates to each part of the question is indicative of the detail which candidates are required to provide;
- provide concise but complete answers;
- candidates should provide the information required according to the points raised in the questions and should provide sufficient detail depending on the marks allocated to each part of the questions;
- lack of reasoning – where candidates presented a solution to the problem outlined in the question but did not justify that outcome with any reference to the relevant legal rules.

## **Comments on Section A performance**

Section A draws from all areas of the syllabus and from all areas of each topic. Candidates should ensure that they have covered all areas and pay attention to detail when covering a particular topic.

Many candidates achieved reasonable marks in Section A, suggesting that the vast majority of the candidates had prepared very well for this section of the examination and were able to identify the key. Since Section A is MCQ based and there were no issues or problems associated with examination technique.

Syllabus topics on which candidates performed well included the following topics – sources of law and court structure, employment law, contract law and corporate law. Syllabus topics on which candidates performed less well included questions which dealt with professional negligence, classes of shares, wrongful trading and director disqualification orders.

This section of the report discusses questions in Section A with which some candidates experienced difficulties.

### **Example 1**

**Which of the following would NOT constitute an administrative measure/sanction which can be imposed against a person regulated by the Accountancy Profession Act 1979?**

- A** A temporary prohibition, from carrying out statutory audits of up to three years' duration
- B** A notice requiring termination of conduct causing breach
- C** The imposition of administrative pecuniary sanctions
- D** A term of imprisonment of six months

Article 14 of the Accountancy Profession Act 1979 provides for those administrative measures and sanctions which can be imposed by the Accountancy Board against a professional who breaches the provisions of the Act. A term of imprisonment is not an administrative measure. Therefore, the correct answer was D while the most popular answer was C.

### **Example 2**

**Who of the following may bring forward an action for wrongful trading?**

- (1) The official receiver**
- (2) A contributory**
- (3) The liquidator**
- (4) A director**

- A 1 and 2
- B 2, 3 and 4
- C 1 and 3
- D 3 only

The Companies Act 1995 provides for various offences including fraudulent and wrongful trading. In the case of wrongful trading, action can be brought forward by the liquidator.

The correct answer was D while many candidates selected other distractors. This highlights the importance of being familiar with the detail in each topic rather than just the broad outline or definition. Candidates should prepare for questions on all elements of a topic and read the question and the potential answers carefully.

Farrugia & Associates is a firm of accountants and auditors assisting Change plc to issue a prospectus for an issue of shares to the public. An incorrect statement is found in the prospectus and a third-party claimed that they suffered damages as a result of the statement.

### **Example 3**

#### **Who would be liable for professional negligence?**

- A The directors of the issuing company
- B The stockbroker
- C Farrugia & Associates
- D All persons responsible for the issue of the prospectus jointly

When a claim for damages is brought forward one has to determine responsibility for such damages. In this case, all persons responsible for the issue of the prospectus would be held jointly responsible for any claims made by third parties as a result of the contents of the prospectus. The correct answer was D, while several candidates opted for distractors A and C.

### **Comments on Section B performance**

Section B contained 5 scenario-based questions and each question carried 6 marks. Each question was further divided into two or three parts. As mentioned above, the questions in this Section were designed to test the candidates' ability to identify the legal issue(s), explain the law on that issue, apply the law to the given scenario and arrive at a sound legal conclusion.

### **Question 46**

Candidates were expected to mention two points in respect of part a) of the question namely whether the financial controller could have been engaged on a fixed term of 5

years and with a 12 months' probation. Few candidates made reference to the relative legal provisions whereby fixed contracts automatically convert into indefinite contracts after 4 years and whereas the standard period of probation is of 6 months this can be extended to 12 months in the case of employees holding technical, executive, administrative, or managerial posts, as in the case of the financial controller and whose wages are at least double the minimum wage. A majority of the answers given did not mention nor amplify on both points and the reasons therefore. Part b) referred to all employees having a letter of engagement/written statement in the absence of a contract of employment laying down the main conditions of employment and the fact that employees must receive payment of wages in legal tender in the country in which they are working. Once again, a majority of answers lacked accuracy and detail.

#### **Question 47**

Some candidates were able to detail the procedure which must be followed where a public company suffers a serious loss of capital. The law lays down a simple procedure which must be followed showing the action which a company must take when faced with such a situation in order to protect its creditors. The law requires that where the net assets of a public company are half or less of its called-up issued share capital, the directors shall, not later than 30 days from the earliest day on which that fact is known to any director of the company, duly convene a general meeting of the company by means of a notice to that effect for a date not later than 40 days from the date of the notice for the purpose of considering whether any, and if so, what steps should be taken to deal with the situation, including consideration as to whether the company should be dissolved. The vast majority of answers lacked any similar explanation.

Part b) referred to the procedure to be adopted where a company intends to increase its capital whether the consideration shall be in cash or in kind. Some candidates drew out the difference in the different procedures to be followed but further detail and clarity would have been expected.

#### **Question 48**

In general candidates were able to discuss the fiduciary duties of directors and the duty to avoid situations of conflict as required in part a) of the question. Several answers given to part b) of the question were superficial with candidates not explaining the disclosure requirements to the rest of the board of directors.

Part c) refers to the voting required in order to remove a director by the members of a company. Few candidates gave accurate answers to this part of the question.

#### **Question 49**

Most candidates were able to discuss in considerable detail what constitutes responsibility under the Prevention of Financial Markets Abuse Act 2005 and to bring out the distinction which exists between the responsibility of a tipper and of a tippee in terms law and in relation to the facts of the case.

## **Question 50**

Most candidates were able to identify the requisite of consent in the contract being discussed in the scenario and in particular how consent can be vitiated by violence and fraud. While some answers lacked depth insofar as explaining how the consent was vitiated the vast majority gave satisfactory answers demonstrating that many candidates had sufficient knowledge of the relevant rules and were able to apply such knowledge to the given facts.

## **Conclusion**

On the whole most candidates demonstrated a reasonable knowledge of the law in Section B. However, it was noted that candidates did not adequately cover the material which featured in some of the questions. It is important that candidates study and prepare well for the full range of topics on the syllabus rather than a select few.

Candidates should be careful to present the information required to answer the question which has been asked. An improvement was noted here in that candidates answered questions on point and did not dwell on aspects of a topic not required by the questions. Candidates should ensure that they approach the problem solving in a way which is consistent with their explanation of the legal rules. The application should be based on the legal rules and candidates should refer to the rules in their answers. They should use the law to support their opinion. It is also important that candidates give reasons for their answers when they are applying the law to the facts of the case and not simply give their opinion.