

EXAMINERS' REPORT
MIA QUALIFYING EXAMINATION MARCH 2020
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)	Meaning of expression	As long as there is some form of consideration, it is sufficient to constitute a complete contract.	Some answers were totally off cue; explaining the basic tenets of contracts instead.	<ol style="list-style-type: none"> 1. Explain what is meant by the expression; 2. State the requirement of consideration to constitute a valid contract.
1(b)	Three exceptions to the voidability of contract on restraint of trade.	Three exceptions to section 28; in sale of business goodwill, dissolution of partnership & carrying on similar/competing business to the existing partnership business.	Some answers described how contracts may become void, generally or how a contract may become void.	<ol style="list-style-type: none"> 1. Direct application of the exceptions to section 28 of the Contracts Act, 1950.
1(c)	Three ways in which a contract may be discharged (parties discharged from contractual obligations).	<ol style="list-style-type: none"> 1. Discharge by performance, section 38; 2. Discharge by Agreement, sections 63 & 64; 3. Discharge by frustration, section 57; OR 4. Discharge by breach, section 40. 	<p>Some answers stated factors that contributed to a contract becoming void or voidable; such as insanity, incapacity, uncertainty of terms, etc.</p> <p>Not many candidates cited any statutory provision at all;</p>	<ol style="list-style-type: none"> 1. State and explain the meaning of each type of causes for the discharge of contract (performance, breach, frustration, etc.); 2. State the relevant statutory provisions.
2(a)	Three basic elements constituting the contract of 'sale of goods'.	<ol style="list-style-type: none"> 1. Transfer of Property; section 4(1); 2. Goods; section 2; 	Some gave their own versions of the meaning of the elements, which was not accurate or even wrong.	When defining legal terms, it is always done with reference to the relevant legal

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		3. Price; section 2.		provisions and its corresponding interpretation.
2(b)	Meaning of the term 'future goods' under SOGA.	1. Meaning of future goods; section 2	- As above -	- As above -
2(c)	Duties of principal towards his agents under the law of agency.	1. Remuneration; sections 170, 172, 173 & 174; 2. Indemnity; sections 175 & 176; 3. Compensation; section 178.	Some answers described the duties of an agent towards the principal. Some stated various moral duties that should be practised. Some described all the relationship dynamics in an agency relationship.	The duties of a principal towards his agents are clearly laid out in the corresponding sections; candidates may paraphrase or explain in their own words provided that the meaning is unchanged.
3(a)	Specific legal principles on: i. Number of partners; ii. Partners' liability on debts; iii. Legal status of a partnership	i. Min 2, Max 20 with an exception for incorporated partnerships; ii. Partners jointly and severally liable & liability is unlimited; section 11; iii. Partnership is not a legal entity.	Quite a number of candidates described partnership as a corporate body as well as a legal entity in itself. Some even state that the courts may 'lift the corporate veil' in cases involving a partnership.	Direct and explicit reference to the relevant statutory provisions would be best. Although it is not mandatory to state the exact section; the gist of the answer should represent the true meaning of the statutory provision.
3(b)	Problem question: Issue on: Partnership property.	i. What is classified as partnership property;	i. Some answers did not identify the legal principle/issue correctly; some	i. Identifying legal issues correctly is paramount;

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		ii. What happens to the property upon death and retirement of partners?	<ul style="list-style-type: none"> equated a partnership to a company, without reservation; ii. Some candidates did not recognise the significance of a person 'acting on the estate' and its general legal ramifications; iii. Failure to maintain the integrity of legal principle earlier established (a retired partner cannot claim ownership of partnership property). 	<ul style="list-style-type: none"> ii. Determine the legal principle governing the issue and 'stand' by it; iii. Careful application of the legal issues to the subjects in the problem question.
3(c)	Problem question: Professional Negligence: Extent of tortious liability of an external auditor.	<ul style="list-style-type: none"> i. General rule governing the extent of liability of external auditors, under the Companies Act. ii. The common law principle on the legal issue as laid in Caparo Industries Ltd; iii. Application of the rule to the subjects in the problem question. 	<ul style="list-style-type: none"> i. Some candidates did not fully comprehend the scenario; confusing between external parties and internal parties in a corporation; ii. Lack of clarity in stating the principle of law in question; iii. Some degree of misinterpretation of legal principles/facts in relation to case authorities. 	<ul style="list-style-type: none"> i. A proper knowledge on terminologies and their meaning is highly important; members, shareholders, investors, etc.; in a problem question, these roles may determine the class/validity of their pertinent acts, thus determining conclusion on the issue in question; ii. Extracting legal principles from case laws is vital; understanding what actually happens in a case is far more useful than memorising every detail;
4(a)	A straightforward question on the effects of Incorporation of a company.	To briefly explain the effects of incorporation of a company.	Most candidates were very prepared for this question. Unfortunately, there were a small number of candidates who misinterpreted the question wrongly as the process of incorporation of a company i.e. the information required	Candidates were expected to explain the effects of incorporation of a company.

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			by the registrar for incorporation to register a company.	
4(b)	A straightforward question on an exempt private company.	To briefly discuss an exempt private company.	Most candidates were very prepared for this question, however some gave answers in point form which lead them to gain lower marks.	Candidates were expected to briefly discuss an exempt private company.
4(c)(i)(ii)	A problem-based question on company's constitution.	To discuss the issue on whether the proposed change/alteration/amendment on the company's constitution by the majority shareholders to compulsory purchase the shares AND to change the name of the company.	Many candidates were not prepared for the question. Candidates were not able to identify the issues and apply the correct law to the facts of the question given. There were a large number of candidates that gave incomplete answers and outside the scope of the question. Most of the candidates gave the procedure in amending the constitution instead.	Candidates were expected to discuss on the authority given by the statute, company's constitution and common law cases in relation to change/alteration/amendment of the company's constitution. Candidates must bear in mind the importance of reading the question carefully to determine accurately the issue in the question.
5(a)	A straightforward question on Share Capital.	To give a brief definition on share capital.	The question was not answered as well as expected. Most of the candidates explained the definition of company's shares instead of company's share capital itself.	Candidates were expected to briefly explain company's share capital not company's shares. It is important for the candidates to understand clearly both terms and the differences between the two.
5(b)	A short problem-based question on the maintenance of capital rule.	To explain briefly the 'methods' and 'ways' as provided by the Companies	The question was not answered as well as expected. Answers demonstrated inability of students to explain the related law in question. Most of the	Candidates were expected to briefly explain that 'methods' and 'ways' provided by the Companies Act 2016 on the reduction of capital by a company.

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		Act 2016 on the reduction of capital by a company.	answers were detailing on the importance of maintaining a share capital in general instead of focusing their answers on the 'methods' and 'ways' of the reduction of capital by a company.	
5(c)(i)(ii)(iii)	A problem-based question on the preference shareholders rights and variation of class rights.	(i) To explain the rights of the preference shareholders as provided under the Companies Act 2016. (ii) and (iii) To briefly discuss and explain the procedure in varying the class rights and the rights of the holder of the preference shares in challenging the variation.	The question was not answered as well as expected. A large number of candidates misinterpreted the question as a question pertaining to dividend rule. Valuable marks will be lost in these circumstances.	(i) Candidates were expected to state the rights that could be acquired by a preference shareholder as mentioned under the law. Care should be taken in understanding the exact requirement of the question. (ii) and (iii): 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.
6(a)	This was a straightforward question on the fiduciary duties of directors.	To discuss director's fiduciary duties.	Most of the candidates performed very well in this question.	Candidates were expected to discuss director's fiduciary duties provided under the statute and common law.
6(b)(i)(ii)(iii)	A short problem-based question on the company secretary.	To advice a company on the qualifications, disqualifications of a company secretary.	Candidates' performance in this part was very good.	Candidates were expected to state straight forward the required qualifications, disqualifications of a company secretary as mentioned under the Companies Act 2016.

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6(c)	This was a straightforward question on the topic of company's meeting.	To give a brief definition on 'written resolution'.	This question was inadequately answered. Answers portrayed lack of knowledge in this topic. There were large number of candidates that gave answers outside the scope of the question.	Candidates were expected to have knowledge on the differences between an ordinary resolution and a written resolution.
7(a)	This was a straightforward question on the topic of winding up of a company.	To explain what is meant by a company is 'unable to pay its debts'.	Candidates' performance in this part was unsatisfactory. Answers portrayed lack of knowledge in this topic. Large number of candidates gave answers based on common sense rather than based on the laws.	Candidates were expected to explain what is meant by a company is 'unable to pay its debts' as provided under the Companies Act 2016 which involve a company having to receive a notice of demand; the creditor has obtained judgement against the company; and when the court is satisfied that the company is unable to pay its debts after being taken into account the company's contingent and prospective liabilities.
7(b)	A short problem-based question on the topic of winding up of a company.	To explain the differences between members voluntary winding up and creditors winding up.	Candidates' performance in this part was unsatisfactory. Answers portrayed a lack of knowledge on members voluntary winding up and creditors winding up. Some answers portrayed a great confusion between members voluntary winding up and compulsory winding up.	Candidates were expected to explain the differences between members voluntary winding up and creditors winding up. The most glaring differences between these two types of winding up are that a members' voluntary winding up is only possible if the company is solvent; and if company is insolvent or subsequent to a members voluntary winding up petition, the liquidator appointed by the members

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				forms the opinion that the debts of the company will not be paid in full, it will then proceed as a creditor's winding up petition.
7(c)	This was a straightforward question on a liquidator and a receiver	To explain the major differences between a liquidator and a receiver as well as how each of them are appointed.	Candidates' performance in this part was unsatisfactory. Explanation is inaccurate or confused between a liquidator and a receiver with regard to the powers and appointment of each two. Some of the answers were too brief and portrayed lack of requisite understanding in this area.	Candidates were expected to have the knowledge on the major differences and sound understanding of the difference between liquidator and a receiver and how each of them are appointed.
7(d)	This was a straightforward question on corporate governance.	To briefly define corporate governance.	Candidates' performance in this part was unsatisfactory. Some of the candidates did not attempt this part of question.	Candidates were expected to have in their answers inter alia; corporate governance is the structure of rules, practices as well as processes used to direct and manage a company.

General Recommendation

To Facilitators	<p>It may be good to impress upon candidates the importance of understanding the legal principles, concepts and mechanism, in order to enable them to apply it in exam situations.</p> <p>Emphasise on the importance of understanding the terms in the questions asked in the examination for example ‘explain’; ‘discuss’; ‘state’; and ‘define’.</p>
To Candidates	<p>When learning the law, memorising is something that is done after the law, principle and concept is fully understood. You will find that, memorising alone will not be so helpful to you during exams.</p> <p>Reading extensively is the hallmark of learning law; to date, mankind has not found an alternative.</p> <p>Candidates must read the questions carefully and thoroughly to avoid misinterpretation of the question asked.</p> <p>Candidates should improve their command of English as language proficiency may hamper effective understanding and answering of questions.</p>