Financial Training College Pakistan
Technical Article from Students Accountant
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Answering the Law Paper - Pitfalls and Strategies

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01 Mar 2000 **Professional Scheme**

As a preliminary point, we must bear in mind the reasons for the subject and the examination paper. The purpose of the subject Legal Framework is to provide students with an appreciation of the legal environment within which an accountant works. He must have sufficient knowledge of the law and legal issues that **are** relevant to his profession.

The examination serves to ensure that the ACCA affiliate possesses the requisite legal knowledge and skills to prepare him for professional life. As a general point, it would do candidates well to remember that in written examinations, it is not so much the hours of study put in but what appears in the answer booklet that decides the grade. So, be smart!

In this article, I shall point out the key common mistakes that candidates make. Then follows two actual examples of good answers from the December 1999 paper 2(P) examination, and some comment on those answers. Finally, I shall make concluding remarks of the appropriate strategy for the law paper.

Common mistakes

Poor statements of law

This is a paper to test the candidate's grasp of the law. As such, the ability to state the relevant legal principle in clear and succinct terms is vital. For example, what is frustration? Frustration occurs when, without the fault of either contracting party, the contract has become incapable of being performed in that it would now be radically different from what was originally contemplated. The key elements are "radically different" and "without the fault of either party". A good statement of law is critical.

Or, suppose you are required to write short notes on "contributory negligence". Are you able to state the law simply and clearly? The concept of contributory negligence is that a party injured by the negligence of another person may himself have acted carelessly and thereby contributed to the incident or injury. The legal principle is that since he contributed to it, his claim for damages should be reduced to the extent of his share of fault.

Vague or ambiguous statements of law will not do.

Rambling, unfocused answers

To say that the candidate should answer the question is to state the obvious. But sometimes, candidates just do not answer the question. For example, if the question is: "Give a short comparison of winding up and judicial management", then a short comparison is required. Basically, you should point out the key differences and perhaps one or two similarities. It will not do to simply talk about each of the two concepts/schemes in isolation.

Dealing with hypotheticals

Whilst Section A questions, being more knowledge-based, are quite straightforward, Section B questions require application of law to a factual situation and therefore especially call for good answering techniques.

In approaching hypotheticals, candidates should know that there are really four aspects or stages:

- Issues;
- Law;
- Fact; and
- Application.

Issue(s)

In order to answer a law hypothetical, the candidate must, in the first place, be able to identify the legal issues that arise from a given fact situation; for example, breach of director's duty not to make secret profits, breach of the duty to disclose interest in contracts and the availability of the derivative action. If the candidate is not able to identify three or four issues, then he should not attempt the question.

Law

For each legal issue identified, the candidate should know what the legal principle is. As mentioned above, the ability to give a succinct statement of the law is very important. Some candidates cite authorities for the principle. This is good practice for landmark cases; for minor cases, citation is not essential. A common mistake of candidates is to give a detailed account of the facts in the authority cited. This is quite unnecessary. The test is in your analysis of the fact situation given to you, not whether you have managed to memorise facts of authorities. Besides, time is precious.

Fact

Having stated the legal principle on the issue, the next thing is to state the relevant fact(s) in the question. Where the facts are unclear, some discussion of the alternative possibilities (e.g., that A knew or did not know) is appropriate, because the answer varies depending on the actual facts.

Application

Finally, applying the legal principle to the fact at hand, an answer is reached: for example, X is in breach of the contract or James has breached his duty as a director.

In summary, the way to answer hypotheticals is, first of all, to identify the legal issues. It is appropriate to state them in the opening paragraph. Next you should deal with each issue. Headings may be appropriate here; e.g., Incorporation of exemption clause, Construction of clause, Reasonableness etc. For each issue, give a clear

statement of law. Thereafter, analyse the facts before you finally apply the law to the facts and give your conclusion. It is not necessary to answer in such a straight-jacketed fashion, but essentially, these are the components of a good answer.

Sample Examination Answers

A helpful way of explaining is to exemplify. I have chosen two very good answers (one from Section A, and the other from Section B) from the December 99 (2P paper) to illustrate.

Q *What does it mean when a company contract is ultra vires? What is the effect of such a contract in Singapore?*
A When a company is ultra vires, it means that the contract is not made within the corporate capacity of the company. In other words, it is not in line with the objects clause in the memorandum of association.
A company's memorandum of association states the objects or purpose of the company's existence. For example, the objects clause of an Internet provider company would state the objective of providing Internet access to homes and organisations. If this is the sole object and the company enters into a contract to set up a bakery, this contract would obviously be ultra vires since it has nothing to do with the provision of Internet access.
Under common law, such a contract would be void. This is to protect shareholders from the arbitrary decisions of the directors to branch out or set up any business that is not stated in the memorandum and which shareholders will not know of. However, this may be unduly harsh on the external party who is deemed to have constructive notice of the objects clause.
In Singapore, the Companies Act states that an ultra vires contract is not rendered invalid. This means that the contract, though not in line with the objects clause, can still be carried out.
However, the concept of *ultra vires* is still applicable in three situations.
Firstly, the shareholders or floating charge holders can apply to the court to restrain the performance of the ultra vires contract. The court will make its decision and if it should decide to stop the contract, it will allow the external contracting party to seek compensation for expenses in the making of the contract. However, anticipated profits may not be claimed.
Secondly, the ultra vires contract can be the basis of a lawsuit by the company or shareholders against the former or present directors of the company who entered into the contract.
Thirdly, an ultra vires contract will enable a Minister to step in and wind up the company.
As can be seen, although an ultra vires transaction may not be rendered invalid in Singapore, its validity can be challenged.

Under examination conditions, this is an extremely good answer. The candidate displayed a clear and comprehensive understanding of the law. Observant readers may point out the failure to mention the specific section (Section 25) but this omission is more than made up for by the very clear presentation of the law. I would also point out that this answer occupies one written page of the examination booklet. So, a very long answer is not required. We move on to a Section B answer.

Q *Andrew and Ben are two of five directors in ABC Pte Ltd. Andrew is the managing director while Ben's involvement takes the form of attending board meetings when these are held.*
Last week, Andrew committed the company to a golf club membership costing $150,000 in joining fees, as he felt it was necessary to entertain the company's clients. Two days ago, Ben, in his free time, attended a liquidation sale. He was attracted by a state-of-the-art multimedia presentation system. Thinking it was very useful to the company, he entered into the contract to buy the system for $20,000, signing as director of ABC Pte Ltd.
The other directors now learn of the two purchases and are appalled at what they consider to be extravagance. The items have yet to be paid for, and they wonder if the company is bound by the two

directors' actions. Article 70 of the company's articles of association provides that the limit of the managing director's authority to enter into contracts on behalf of the company is $100,000 per contract. Advise the other directors.

A The issue in this question is whether the company is bound by the contracts entered into by Andrew and Ben, as managing director and director respectively of ABC Pte Ltd.

Golf club membership

If Andrew has authority to enter into the contract to buy the golf club membership for $150,000, the company will be bound by the contract.

Authority can be express, implied or apparent. Express authority is given where the agent is told to do something by the principal. Here, the other directors did not tell Andrew to buy the membership and, hence, express authority is absent.

Implied authority stems from the contracting party's position or from express authority. As the managing director of ABC Pte Ltd, there is an implied authority for Andrew to carry out transactions reasonably incidental to the management of the company. This term is frequently spelt out in the articles of association.

It is debatable whether the purchase of the membership is indeed incidental to the management of the company. Andrew will argue that managing the company extends to and includes entertaining clients. Hence, since the membership is meant to entertain clients, it is incidental to the management of the company. The others director can adopt a narrower view in that management of the company covers only the handling and supervision of day to day transactions and does not authorise extravagant expenses. Essentially, the question boils down to the interpretation of Andrew's management responsibilities by the courts. The company will be bound by the contract if the court decides that Andrew has implied authority to make the transaction.

If Andrew does not have implied authority, he cannot make such a contract alone. Instead, he probably has to bring up the issue at a directors' meeting and let the other directors decide if the membership should be bought. Only if they agree to the purchase will authority be specifically delegated to Andrew to enter into the contract.

The point to note here is that Article 70 of the articles of association, which limits Andrew's authority to enter into contracts valued above $100,000. Since the membership contract is worth $150,000, Andrew does not have authority to enter into it and hence the company is not bound by the contract.

It is irrelevant that the golf club did not know of the limitation. By way of constructive notice, the law deems that all external contracting parties are aware of terms in the articles of association and hence are bound by them. The golf club can sue Andrew for a breach of warranty of authority.

Multimedia presentation system

Ben is merely a non-executive director of the company. He does not have the right to transact on behalf of the company unless authority was specifically delegated to him by the board of directors. In this case, this express authority is absent since the other directors did not find out about the contract until it was concluded.

There is also an absence of implied authority here since Ben’s position of director does not give him any special authority whatsoever.

Apparent authority comes into play where it is represented by words or conduct that one has authority to do something. This representation must be made by someone with authority to do so. The external party must have relied on this representation. In this case, there was no such representation made to the seller of the system.

It appears that Ben had no authority whatsoever to enter into a contract on behalf of the company. Hence, the company is not bound by the contract. As with the membership contract, the seller of the system can sue Ben for a breach of warranty of authority.

This is really an excellent answer because all the relevant issues were identified, and for each of them, the law was well-stated, the facts analysed and a good application of the law was made. This candidate displayed the ability to analyse the legal issues in a given scenario, state the law concisely and make a well-reasoned application to the scenario.

As for length, the answer occupied two pages; again conciseness rather than length is the key.

Conclusion

The candidate who does well is one who is well-prepared and a good manager of his time. In his study and revision, it is critical that he has a good grasp of the law. In particular, the ability to encapsulate key elements in a clear and concise statement is invaluable. To prepare for hypotheticals, it is useful to look at past year questions to test one's ability to identify the issues and to analyse the facts; weakness on either of these skills indicates an unclear or incomplete understanding of the law.

Time management during the examination is also critical. In addition, time must be given for planning an answer, especially in Section B. What examiners wish to see are clear and well-organised answers.

In conclusion, a smart approach to studying law and answering the examination questions is required for one to excel.