Law of Associations
Examiners Comments
September 2018

Question 1

This question required an analysis of section 232 and 233 of the Corporations Act.

The question required reference to the general test of oppression in section 232 by reference to such cases as Wayde v NSW Rugby League Limited (1985) 180 CLR 459; Nassar v Innovative Precasters Group Pty Limited (2009) 71 ACSR 343; Mopeke Pty Limited v Airport Fine Foods Pty limited (2007) 61 ACLR and those general principles applied to the facts in the question. Students should also have specific reference to Scottish Co-operative Wholesale Society v Meyer [1951] AC 324.

The question also required an understanding and application to the facts of Campbell v Backoffice Investments Pty Limited (2009) CLR.

Question 2

This question was concerned with sections 180(1) and 180(2) of the Corporations Act and with the general principles discussed in cases such as ASIC v Healy [2011] FCA 717; ASIC v Vines (2003) 48 ACSR 322; ASIC v MacDonald (2009) 71 ACSR 368; ASIC v Hellicar & Ors [2012] HCA 17; ASIC v Rich (2010) 75 ACSR 1.

Students were required to identify the legal principles discussed in the cases above and to apply them to the facts.

Finally students were required to consider s180 (2) of the Act to the facts in the question.

Question 3

This question required consideration of sections 127-130 of the Corporations Act dealing with the indoor management rule.

Students were required firstly to apply cases such as Freeman and Lockyer v Buckhurst Park Properties Co Limited [1964] 2 QB 480 and Story v Advance Bank of Australia Limited (1993) 31 NSWLR 722 to section 128 (1) of the Act. Many students did not understand the significance of these cases in the light of the facts and did not adequately consider whether there was a “dealing” pursuant to section 128 (1) allowing the Bank to make the assumptions in section 129 of the Act.

Students were then required to specifically recognise sections 129 (1) (2) (3) (5) and (6) as containing the major assumptions that the Bank could make (assuming that section 128 (1)
was satisfied) having regard to the facts in the question. Students should also have referred to Soyfer & Anor v Earlmaze & Ors [2000] NSWSC 1068 and the analysis of Hodgson J on the meaning of “appears” in sections 129(5) and 129(6).

Students were required to recognise that an important issue in the question was whether the Bank could make the assumptions in section 129 (assuming s 128(1) was satisfied) pursuant to sections 128(3) and 128(4) of the Act and whether the Bank had “actual knowledge” or “actual suspicion”.

**Question 4**

This question required an analysis of sections 236 and 237 (1) (2) (3) and section 129 of the Corporations Act dealing with derivative actions.

Reference should have been made to section 236 of the Act regarding standing to bring an application under 237 and to Swanson v R A Pratt Properties Pty Limited (2002) 42 ACSR 313 and the test set out by Justice Palmer to satisfy the requirements in section 237(2) of the Act. Answers should have included reference to and application of the principles in Charlton v Baher (2003) 47 ACSR 31; Chahwen v Euphoric Pty Limited (2008) 65 ACSR 661 and to Justice Austin’s judgment in Fiduciary Limited v Morning Star Research Pty Limited [2004] NSWSC 664;

Students should have recognised that section 237(3) provides the circumstances in which there is a rebuttable presumption that granting leave would not be in the “best interests of the company” and determining whether that section applied to the facts in the question.

Finally students should have applied the facts to 129 of the Act.

**Question 5**

This question was in two parts, namely the liability of unincorporated non profit associations at common law and under the Associations Incorporation Act 2009 (NSW).

In relation to unincorporated non profit associations, the answer specifically required a consideration of the common law propositions set out in Cameron v Hogan (1934) 51 CLR 358.

Students were required to apply the above common law principles in Cameron’s case to the facts in the question. Then students were required to consider any exemptions to Cameron’s case that applied specifically to the facts in the question.

The second part of the question required an analysis of the relevant sections of the Associations Incorporation Act to highlight the difference between unincorporated associations and incorporated associations and to explain whether relevant sections of the Act would change your advice on the facts in the question and why.
Question 6

This question concerned partnership and needed to be answered in two parts.

Firstly, the question required a consideration of whether a partnership existed between Jennifer and Peter pursuant to section 1 and section 2 of the *Partnership Act*.

This part of the question also required reference to authorities such as *Canny Gabriel Castle Advertising v Volume Sales (Finances) Pty Limited* (1994) 131 CLR 321; *United Dominions Corporation v Brian* (1985) 157 CLR 1; *Lang v James Morrison and Co Limited* (1911) 13 CLR 1; *Ex Parte Delhasse In re Megevant* (1877-1878) 7 Ch D 511.

The second part of the question required a consideration of whether Peter (assuming that Peter was a partner) was liable to the Hospital. This required students to find or assume that Peter was a partner and to consider and properly apply to the question the elements of section 5 of the *Partnership Act* and have regard to the authorities such as *Polkinghorne v Holland* (1934) 51 CLR 143; *Goldberg v Jenkins* [1889] 15 VLR 36. *Mercantile Credit v Garrod* [1962] All ER 1103; *Construction Engineering (Aust) Pty Limited v Hexyl Pty Limited* (1985) 155 CLR