



Examiner's report

F4 (HKG) Corporate & Business Law

June 2015

General Comments

The June examination had a format through which candidates were asked to answer 45 multiple choice questions in section A, worth 1 or 2 marks each, and 5 easy type questions in section B, worth 6 marks each in 2 hours. All questions were compulsory. All candidates attempted all section A questions and the great majority of the candidates answered all section B questions.

Section A questions are objective in that the correct answers had to be selected in order to earn marks. For section B questions, candidates were required to analyse the related problem scenarios and express their views in writing. The overall standard of scripts was satisfactory. Candidates performed well in both sections.

Comment about Section A performance

In general, the majority candidates had a satisfactory performance in all topics in this section though there were some problems in topics relating to tort law, partnership law, contract law and company law.

Problem with company law seems to be related with the change in the law, which is the enforcement of the new Companies Ordinance (Cap 622) ("the new Companies Ordinance"). To have a better performance in this area, the future candidates should familiarise themselves with the sections of the new Companies Ordinance in relating to, for example, documents relating to the constitution of a company, concepts relating to capital, notice period for calling meeting of different kinds for different purposes as well as the duties of the directors.

In relation to contract law, the majority of the candidates had a good general understanding of topics over this area. To have a better performance, future candidates should have a more thorough understanding over those elements essential for the formation of contract as well as concepts relating to the breach of contract and its effects.

Tort law is the area of law which is governed by common law, which perhaps is the main reason for a relatively inadequate performance by candidates in this area. The following examination question is about different concepts in tort law, which had been mixed up by many candidates.

Which of the following about remoteness in tort is valid?

- A It determines the cause of the damages in question
- B It determines the quantum of damages to be awarded
- C It determines the legal responsibility of the wrongdoer
- D It determines the type of damages to be compensated for

In any question about tort, there will be two board issues: liability and quantum issues. The liability issue is about whether the alleged tort-feasor should be liable for the amount of damage, which is the quantum of damages being claimed for by the victim of the tort. The quantum issue will never arise if the tort-feasor is not liable for the tort in question. If the liability issue is ruled against the tort-feasor, that is to say, the tort-feasor is liable for committing the tort, then, we move on to consider the quantum issue.

By making use of the tort of negligence as an example, in determining the liability issue, we have to ask first whether the tort-feasor had exercised the duty of care up to the standard being required by the law. Having determined that the tort-feasor had failed to exercise reasonable care and skill, the next thing to consider is whether the failure to exercise due diligence was a cause of the damage in question; in other words, we talk about the cause of damages in question. If the causation issue is again ruled against the tort-feasor, the tort-feasor is legally responsible for the damages suffered by the victim.

The next question is about the type of damages that the tort-feasor should be responsible for. In a car accident case, for example, the negligence of the tort-feasor, that is the careless driver, might have caused personal injury to the victim, who was a pedestrian crossing the road and knocked down by the car in the accident. A driver who was unable to attend a meeting by reason of the accident and hence lost a contract could not claim against the tort-feasor for the damage the driver suffered for the loss is too remote by reason that it is purely economical.

The answer to the question is therefore D.

Comment about Section B performance

Performance of the candidates in section B is somewhat weaker than their performance in section A. It appears that a number of the candidates had not included agency law in their revision.

In the area about the formation of contract, most of the candidates had pointed out the importance of such elements as offer, acceptance, intention to create a legal relationship, as well as consideration for creating a contract. In relation to acceptance, a promise to do something in the future is by itself an acceptance of the offer and a consideration for the formation of the contract in question at the same time. In this regard, the consideration is executory, that is to be performed in the future.

Future candidates could improve their performance in this section by offering a brief explanation about the related concepts in their answers and write more clearly about the application of the related law to the facts of the problem scenario.

Conclusion

The candidates had a satisfactory performance in this paper. Most of the candidates had performed better in section A than in section B. For section B questions, instead of just writing down the related points, elaboration of the points and attempts to apply the law to the facts of the problem scenario can improve much of the candidates' performance although it should be noted that lengthy answers are not required.

To have better performance, future candidates should familiarise with the new Companies Ordinance Cap 622 over the areas about the constitution of a company, concepts relating to capital, notice period for calling meetings of different kinds for different purposes as well as the duties of the directors.