

# Examiner's report

## F4 (HKG) Corporate and Business Law

### For Paper Variant exams June 2016

#### General Comments

In this paper, the candidates were required to answer 45 multiple choice questions in section A, worth 1 or 2 marks each, and 5 analysis 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. There were candidates who performed well in both sections of the paper.

#### Comments about Section A performance

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

Most candidates performed well in contract law. Nevertheless, the candidates had some problems in distinguishing remedies in common law and those of equity. The following examination question is about remedies that the courts may grant for the breach of a contract.

#### **Which of the following is NOT an equitable remedy for the breach of a contract?**

- A Specific performance
- B Declaration
- C Injunction
- D Damages

Upon the breach of a contract, the innocent party may sue the party in default for breach and apply to the court for granting appropriate remedies that fit for their situation.

Specific performance is an order from the court to demand a party to complete the contract in question. Declaration is an order from the court declaring, for example, whether an act of a party has the effect of breaching the contract. An injunction is an order being granted by the court to forbid a party to do anything in contrary to the contractual terms. An order of damages is an order from the court demanding the party in breach to compensate for the loss of the innocent party in monetary terms.

Of the four remedies, even though the innocent can prove that the other party has breached the contract, the court will not grant specific performance, declaration and injunction unless the particular circumstances of the case justify such a grant. These three remedies are equitable remedies in the sense that they are discretionary and the court may refuse to grant if it is not justifiable to do so. Usually, the court will consider the issue of fairness in determining if an equitable remedy is to be granted.

Damages is a remedy in common law in that once the innocent party can prove a breach of the contract and prove that the party has suffered loss, then the court must grant the order. It is granted as a matter of right.

Answer to the question is therefore 'D'.

### **Comments about Section B performance**

Performance of the candidates in section B was also satisfactory.

In the area of partnership law, future candidates can improve their performance by giving more information as to why a partner in a partnership has to be responsible for the debt incurred by other partners in the course of the partnership business.

### **Summary**

Overall, the candidates performed satisfactorily 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 problem scenario can improve candidates' performance.