



Examiner's report

F4 (HKG) Corporate & Business Law For Paper Variant exams June 2017

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 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. There were candidates who performed well in both sections of the paper.

Comments about Section A performance

Most candidates had a satisfactory performance in this section. Majority of the candidates performed well in contract law though there were candidates having difficulties in the circumstances under which a contract can be discharged.

Performance of the candidates was unsatisfactory in company law and tort law. In company law, most candidates did not perform well in topics such as the capital of a company and the procedures for holding company meetings. Takeover was also an area that candidates had difficulty.

Concerning the legal system of Hong Kong, the great majority of the candidates had problem with the appellate roles of the courts and the appellate jurisdiction of the Court of First Instance was forgotten by most of the candidates. The following examination question invited candidates to show their knowledge in the appeal courts of Hong Kong.

Which of the following courts can hear appeals from the Magistrates' Court directly?

- A District Court
- B Court of Appeal
- C Court of First Instance
- D Court of Final Appeal

It should be noted at the outset that the Magistrate's Court has jurisdiction over minor criminal matters only. All other courts in the Hong Kong court system have jurisdiction over both civil and criminal matters. Besides, trial hearings are conducted only in the Magistrates' Court, the District Court and the Court of First Instance. Both the Court of Appeal and the Court of Final Appeal only have the jurisdiction of hearing appeal from other courts. Yet, the Court of First Instance also has the jurisdiction of hearing appeal from the Magistrates' Court.

When defendants are found guilty of an offence in the Magistrates' Court, they may challenge the decisions by making appeals to the Court of First Instance. If they lose their appeals in the Court of First Instance, they may appeal again in the Court of Appeal. If the defendants lose again, they may appeal to the Court of Final if they have the approval or leave from that court.

The Court of Final Appeal does not grant leaves to appeal in the court unless the leaves are certified by the Court of Appeal or by the Court of First Instance that a point of great and general importance is involved in the appeals.

The leaves may also be certified by the Court of Final Appeal itself. However, the leaves to appeal to the Court of Final Appeal must be granted by the Court of Final Appeal itself if the only ground of the appeals is one of substantial and grave injustice.

Accordingly, the correct answer to the question is C.

Comment about Section B performance

Performance of the candidates in Section B was satisfactory.

Some candidates did not have a clear idea about the statutory definition of directors when they simply stated that a director was the chief executive officer of a company without elaboration. Legally, those performing the functions of directors in a company are all directors of the company. The functions relate to the management of the day-to-day business of the company. Accordingly, even a person is described as 'trustee' in the company's articles; the person is a director in legal sense if their responsibilities are to perform the functions aforementioned. For those performing the functions of directors and validly appointed by the company, they are described as 'de jure' directors. Directors are described as 'de facto' directors when their appointments are invalid. Both 'de jure' and 'de facto' directors have to meet the related legal requirements when they perform the functions.

Summary

Overall, the great majority of candidates had performed well in this paper. Most of the candidates performed well in both of Section A and Section B. For Section B questions, most of the candidates did attempt to apply their knowledge to solve the problems, which reflected that the candidates had clear understanding in what they had learnt.