

Examiner's report

F4 Corporate and Business Law (HKG)

December 2013



General Comments

This paper has ten compulsory questions. All questions carried equal marks, i.e., ten marks for each of the questions. Questions one to seven were knowledge type questions. Questions eight to ten were analysis type questions, which required the candidates to demonstrate their abilities to analyse a factual problem and apply what they had learnt to solve the problem.

Most candidates attempted all questions. In general, the candidates performed well in questions 2 and 8. Relatively, questions 3, 4, 7 and 10 are not well answered.

Specific Comments

Question One

The question was divided into two parts. Part (a) invited the candidates to demonstrate their knowledge in the enforceability of the International Covenant on Civil and Political Rights ('ICCPR') in the Hong Kong Special Administrative Region ('HKSAR') and part (b) invited the candidates to demonstrate their knowledge of the concept of human rights covered in the ICCPR.

As regards part (a), a number of the candidates treated the question as one about the status of Basic Law in the HKSAR and answered the question by writing something about the hierarchy of the sources of law in HKSAR.

Most of the candidates demonstrated that they had a vague concept about the relationship between Basic Law and the Bill of Rights Ordinance (Cap 383) ('BRO'), which incorporates provisions of the ICCPR. There were few candidates knowing very well the entrenchment of BRO by Basic Law.

Relatively, performance of the candidates in part (b) was better than that in part (a). Most of the candidates showed that they had some concept about the rights covered by BRO.

Performance of the candidates in this question was satisfactory. Marks obtained by the candidates were widespread. However, there were candidates performed very well and hence gained full marks.

Question Two

The question invited the candidates to show their knowledge about the tests adopted by the courts in distinguishing a contract of service from a contract for services.

From the answers of the candidates, most of the candidates demonstrated that they had a sound knowledge about the differences between a contract of service and a contract for services. Some of candidates had spelled incorrectly the word 'services' in the phrase 'contract for services' when they used the singular form instead of the plural form of the word. Future candidates should be aware that the phrase 'contract for services' is a technical term and correct spelling of the words is very important.



On the whole, performance of the candidates in this question was satisfactory, though there were a number of candidates who just mentioned the differences between the two types of contract and provided little information about the tests adopted by the courts which were required by the question.

Marks obtained by the candidates were widespread. Those candidates who performed extremely well in the question scored very high marks.

Question Three

The question was about the law of tort and was divided into two parts. Part (a) invited the candidates to show their knowledge in the concept of causation and part (b) required the candidates to show their knowledge in the concept of remoteness of damages.

In part (a), most of the candidates showed that they had a vague knowledge about the concept of causation when they mentioned that the damages in question had to be caused by the related act without mentioning the 'but for' test.

Not too many candidates mentioned that fact that causation does not concern the allocation of legal responsibility, i.e. the extent of the victim's damage for which the person committing the tort should be responsible, which is a question to be determined by considering the remoteness of damage. In determining the issue of causation, the question to ask is whether the tortious act is a cause, i.e. not the only cause, which materially increases the risk of the damage suffered by the victim.

Performance of the candidates in part (b) was not as satisfactory as their performance in part (a). Not many of the candidates were able demonstrate a clear knowledge about the test for determining the extent of damages suffered by the victim that should be responsible for the wrongdoer.

In general, performance of the candidates in this question was unsatisfactory.

Question Four

The question had two parts. Part (a) invited the candidates to demonstrate their knowledge of the authorities of partners of a partnership and part (b) asked the candidates to show their knowledge in the circumstances under which the partners of a firm were liable for the act of a partner to the firm.

In general, the performance of the candidates was unsatisfactory. A number of candidates mixed up the two parts of the question when they incorrectly treated both parts of the questions about the liabilities of the individual partners towards the act of other partners. Nevertheless, many of the candidates did know that a partner could be treated as an agent of the partnership.

It is likely that the reason for the candidates had treated the question in the manner referring to in the foregoing paragraph was that those candidates had not included the areas covered by this question in their revision.



Question Five

The question invited the candidates to show their knowledge of the duties of the auditors of a company and the removal of the auditors by a company under the Companies Ordinance (Cap 32) ('CO') in part (a) and part (b) respectively.

In part (a), most candidates were able to show some knowledge about the duties of the auditors, though not many of them had included the common law duties of care in their answer.

In part (b), most of them incorrectly stated that a special resolution was required for the removal of an auditor by the company. Some candidates mentioned the requirement of a special notice.

In general, performance of the candidates was satisfactory in this question.

Question Six

The question tested the candidates' knowledge in the certificate of incorporation of a company and the nature of the articles and the memorandum of associations of a company.

Most of candidates performed well in this question while there were candidates who showed in the answer that they had not known quite well as to what the certificate was about.

The common problem for the majority of the candidates was that they seemed to have forgotten the contractual nature of the articles and memorandum.

Marks scored by the candidates were wide spread. There were candidates who performed extremely well and obtained very high marks.

Question Seven

The question invited the candidates to demonstrate their knowledge of the main differences between a voluntary liquidation and a compulsory liquidation.

In this question, most of the candidates focussed mainly on the differences in the grounds for petitioning a voluntary liquidation and a compulsory liquidation. As a result, there were not many candidates who were able to provide information about the differences in these two kinds of liquidation on the aspect of control over the process, which had been touched on by a similar question in a previous session.

The performance of the candidates in this question was unsatisfactory. It appeared that most of the candidates had not included this area in their revision exercise.

Question Eight

The question tested the candidates in their knowledge about such fundamental concepts of contract law as offer, invitation to treat, counter-offer and the acceptance of an offer.

The performance of most of the candidate was not as satisfactory as the examiner had expected. A number of candidates stated the general requirements for the formation of a contract, i.e., offer, acceptance, consideration and intention to create a legal relationship. They then jumped into the conclusion that no contract was formed by making use of their common sense.



There were candidates who had a clear understanding of the question, were able to apply correct knowledge in solving the problem and came to a sound conclusion.

Performance of the candidates was satisfactory. Marks scored by the candidates were widespread. There were candidates who scored extremely high marks by reason of their sound performance.

Question Nine

The question invited the candidates to show their knowledge of the concepts of separate legal entity and lifting the corporate veil in company law.

Performance of the candidates was satisfactory. Most candidates demonstrated that they had a sound understand of the concept of separate legal entity in company law. Nevertheless, not many of the candidates were able to explain clearly the circumstances under which the courts would lift the corporate veil by treating a person and the company as the same.

Marks scored by the candidates were widespread. There were candidates who scored very high mark by reason of the sound understanding in the area of law being examined.

Question Ten

The question invited the candidates to show their knowledge about the offence created by the Prevention of Bribery Ordinance (Cap 201).

Performance of the candidates was not satisfactory though similar questions had come up in previous sessions. While the majority of candidates showed in their answer that they had some idea about the offence of bribery, not many of them could provide a detailed description of the offence, which was required by the question.

Most of the candidates had come to a correct conclusion though their answers showed that they did not have a sound knowledge about the offence. The failure by the candidates to include this area in their revision could be a reason for the performance of the candidates in this question.