



# Examiner's report

## F4 Corporate and Business Law (HKG) December 2014

### Introduction

The paper comprised two sections, viz., section A and section B. Section A consisted of 45 multiple choice questions, which were either 1 or 2 marks questions. Section B consisted of 5 problem-type questions with each of the question carried 6 marks. All questions were compulsory.

In general, performance of the candidates in Section A was reasonable and was better than their performance in Section B.

As for Section B, the marks scored by the candidates were widespread. Of the five questions, candidates had a relatively unsatisfactory performance in questions 1(a), 2(b) and 4(a) and most candidates performed well in question 2(a), question 3(b) and question 4 and question 5

Overall, the candidates performed well in this examination.

### Comments about Section A performance

As said, performance of the candidates in general was reasonable.

Nevertheless, there were a few questions in which the candidates did not perform well and the reason for this, from the examiner's observation, was mainly because the candidates did not have a clear understanding about the topic being examined.

For example, there was a question about the damages recoverable by the victim of a tort. The question is reproduced below:

Q41 Thomson was an accountant before he died in a traffic accident caused by a careless driver. Before Thomson died, he gave HK\$20,000 per month to his wife as the family expenses and earned HK\$100,000 per month.

**In relation to the law of tort, which of the following compensations do NOT need to be paid by the driver?**

- A Hospital expenses of Thomson
- B The pain and suffering of Thomson before he died
- C The loss of family expenses to Thomson's wife
- D The loss of future earnings of Thomson

The answer to this question is "C". The majority of candidates choose "B" as the correct answer. One possible reason for the candidates to choose "B" could be that the candidates thought that pain and suffering could not be quantified and hence could not be compensated for.

The approach of the court in determining the quantum regarding the pain and suffering has been to make reference to decided cases, which is a typical example of the application of the doctrine of precedent in case law.

The candidates should bear in mind that in principle, the one committing a tort has to put the victim, in money term, back to the position the victim would have been in had the tort not been committed. As such, had the tort not been committed, Thomson would not have been suffered from the pain and other suffering and, for that



reason, Thomson was entitled to compensation, even though pain and suffering could not be quantified in money term conceptually.

Choice “C” is therefore the correct answer by reason of the principle just mentioned.

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

As mentioned, marks scored by candidates were widespread. A few candidates performed really well in this section. There were candidates writing lengthily answers when the question only required them to state the related knowledge.

The examiner would like to discuss the approach by future candidates in answering question relating to an exclusion clause, which has the effect of taking away the right of a victim to claim for loss or damages against the party relying on the clause to exempt from liability as a result of the wrong being done by the party.

For such a clause to be effective, it has to be a part of the contract binding on the contracting parties and covers the damages suffered by the victim. So, all principles relating to the formation of a contract are applicable in determining the effectiveness of such a clause.

The most problematic area is whether the party being affected by the clause has knowledge of the clause before the contract is concluded. If the party has no knowledge of the clause, then, the clause does not bind the party because the clause does not form part of the contract in question. The requirement of the law is that it rests on the one relying on the clause to do whatever is reasonable to bring the clause to the attention of the victim before the conclusion of the contract.

In determining the issue of knowledge, factors to be considered by the court are mainly from previous decisions of the court, and whether the party affected has knowledge of the clause depends very much on the particular facts of the case. In this area, future candidates will be required to demonstrate their analytical skill.

Having decided that the clause forms part of the contract and cover the damages in question, the one relying on the clause still has to persuade the court that the clause does not contravene the Control of Exemption Clauses Ordinance (Cap 71). The ordinance has the effect of limiting the effect of an exclusion clause for policy reasons.

### **Conclusion**

The new F4 (HKG) paper is broad-based, requiring a relatively fundamental knowledge of many concepts in law and their practical applications. In order to pass, it is not adequate for the candidates to focus their preparation for the examination on just one or two topics.

Future candidates should pay more time in preparing questions of Section B. In answering the question, future candidates have to read Section B questions carefully so that they will not waste their time in writing lengthily answers when, in fact, the question does not require them to do so.

For this paper, most of the candidates performed well.