

# Examiner's report

F4 Corporate and Business Law (HKG)

June 2012



## 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 and application type questions, which required the candidates to demonstrate their ability to analyse a factual problem and apply what they had learnt to solve the problem.

Most candidates attempted all questions. For knowledge type questions, most candidates did not perform well in questions Q1(a), Q4 and Q5(a). Candidates performed satisfactorily in other knowledge type questions. For the performance of the candidates in questions one to seven, it is the examiner's observation that the candidates appeared not to have a clear understanding in the areas being examined, though most of the candidates did show in their answers they had some knowledge over the areas being examined.

As regards the analysis type questions most of the candidates were able to identify the areas of law being examined by the questions, though there were candidates who thought incorrectly that question nine was about charges. Most candidates performed satisfactorily in question eight. Regarding the analytical skill of the candidates, it appeared that candidates' ability in this regard is not as good as those in December 2011 session.

Marks scored by the candidates were widespread. There were a few candidates who scored high marks. In general, performance of the candidates was satisfactory.

## Specific Comments

### Question One

The question invites the candidates to show their knowledge in the importance of both, in part (a), the concept of human rights as expressed in the Bill of Rights Ordinance (Cap 383) and, in part (b), Basic Law over the interpretation of statutes.

Most of the candidates had a satisfactory performance in part (b). However, it appeared that the majority of the candidates had problems in part (a).

As regards part (a), while a number of the candidates demonstrated their knowledge in what human rights is about in general terms, there were very few candidates who could state specifically what human rights are and what is the relationship of the Ordinance and Basic Law.

Most of the candidates did not perform well in part (a).

### Question Two

The question tests the candidates' knowledge in the classification of terms of a contract.

The majority of the candidates had good understanding of the difference between a condition and a warranty of a contract. However, not many of the candidates were able to make use of what they had learnt in answering the question directly.

As regards the knowledge aspect, many of the candidates demonstrated that they had sound knowledge in what had been examined. The marks scored by the candidates therefore were widespread. There were candidates who scored very high marks.

In general, the candidates had a satisfactory performance in this question.



### **Question Three**

The question invited the candidates to demonstrate their knowledge in employment law and required the candidates to demonstrate their knowledge in the difference between an employee and an independent contractor.

In general, the candidates performance well in this question. Most of the candidates were able to demonstrate their knowledge by providing such information as the application of Employment Ordinance (Cap 57) and the common law tests to differentiate the two.

Nevertheless, instead of making a comparison between the two, most of the candidates just explained what an employment contract was about and followed by stating the peculiarity of an independent contractor. Such an approach is not a proper approach to answer a question calling for a comparison. Future candidates should make reference to the suggested answer of this examination paper.

### **Question Four**

The question invited the candidates to show their knowledge in the tort of negligence in general and negligence misstatements in particular.

Most of the candidates were able to show their knowledge about the definition of 'neighbour' in law over tort committed by a physical act. There were also a number of candidates who demonstrated their knowledge in the concept of 'neighbour' when the tort is committed by a negligent statement. However, only very few candidates could point out clearly the difference in the definition between the two, the scope of 'neighbour' in negligent misstatement is narrower than that in tort involving physical acts.

As a result, the marks scored by the candidates were widespread. There were a few candidates scored very high marks in this question when their answers met the requirements of the question. As far as knowledge is concerned, most of the candidates performed satisfactorily in this question.

### **Question Five**

The question was divided into two parts. In part (a), the candidates were invited to demonstrate their knowledge in the appointment of a company secretary. Part (b) of the question tested the candidates about their knowledge in the power and duties of the secretary.

. In general, candidates' performance in part (b) was better than their performance in part (a). Most candidates were able to describe the power and duties of a company secretary in general, though not many of them mentioned the fact that the secretary also owes to the company a fiduciary duty.

As regards part (a), only very few candidates knew that it is the directors that appoint the secretary. It appeared that most candidates did not prepare for a question over this area in their revision.

Overall, the candidates did not perform well in this question and the marks scored by the candidates were relatively low.

### **Question Six**

The question was divided into three parts. Part (a) tested the candidates' knowledge in the type of resolution required to change the name of the company. Part (b) invited the candidates to show their knowledge in the procedure required to call for a shareholders' meeting to pass a special resolution, and part (c) invited the candidates to show their knowledge in the registration of a resolution.



The majority of the candidates performed well in this question, though not many of them were able to explain the details of the 'clear day' concept.

Overall, the candidates' performed well in this question. Some candidates performance well in all the parts and hence scored very high marks.

### **Question Seven**

The question invites the candidates to demonstrate their knowledge in the concept of corporate veil and the difference in the liabilities between the shareholders of a limited company and the company itself.

Again, this is a question that most of the candidates performance well in. From their performance, it is the examiner's observation that most of the candidates had mastered the concepts about corporate veil and the liabilities of the shareholders of a company very well.

There were a few candidates who stated incorrectly in their answers that corporate veil referred to liabilities of the directors in that the directors would not be liable for their wrongful act only. Those candidates are reminded that corporate veil refers not only to the liabilities of the directors. The veil also relates to the capacity of a company to perform an act legally in that, unless the court lifts the veil, it is the company that is the person which enters, says, in to a contract.

As said, most of the candidates' performance well in this question. Marks scored by the candidates were high in general.

### **Question Eight**

The question invited the candidates to demonstrate their knowledge in agency law in general and the creation of an agency relationship by necessity in particular.

Most of the candidates had knowledge over such fundamental concept as the authorities of an agent in agency law.

While not many of the candidates were able to explain in detail the requirements in law for the creation of an agency relationship by necessity, a number of the candidates managed to tackle the problem by making use of such a concept as creation of an agency relationship by estoppel.

The marks scored by the candidates were widespread. There were candidates providing detailed explanations over the concepts being tested by the question and they scored very high marks in this question.

Overall, candidates had a satisfactory performance in this question.

### **Question Nine**

The question invited the candidates to show their knowledge in the operation of the doctrine of *ultra vires* before and after 1997.

In general, most of the candidates did not perform well in this question. There were candidates thinking incorrectly that the question was about charges and hence focused their answer over that aspect. Very few candidates addressed the impact of the abolition of the effect of constructive notice by s 5 Companies Ordinance (Cap 32). Nevertheless, there were candidates correctly directing their attention on how the knowledge of the bank over the object clause of the company in question might affect the enforceability of the mortgage loan.

The question may arise as to why question over object clause and knowledge over notice still have to be asked in the examination paper when a company in Hong Kong is now free to take away the object clause. There are



many companies in Hong Kong being incorporated before the amendment to the Companies Ordinance (Cap 32) and hence such companies might still have object clause in their memorandum. As such, auditors of such companies are therefore under a duty to check if a transaction of such companies is outside the object clause of the companies for, by reason of what has been mentioned in the suggested answer to this question, the company might not be liable for such a transaction and even the company is liable, the auditor will have to be alert that the company may demand the directors involved to indemnify the company for the loss suffered by reason of the breach of duties being owed by the directors to the companies.

Overall the performance of the candidates was not satisfactory. Relatively high marks were scored by candidates who had demonstrated their knowledge over the impact of actual notice in the enforceability of the mortgage loan in the question.

#### **Question Ten**

The question invited the candidates to show their knowledge in fraudulent trading.

The majority of the candidates had performed the question satisfactorily by correctly come to the conclusion that the director in the question probably would not be liable for fraudulent trading. There were a number of candidates who demonstrated in their answer their familiarities over the knowledge in this subject by providing detailed explanation on the requirements for the commission of fraudulent trading.

The marks scored by the candidates were widespread. There were candidates who scored very low marks by reason that they might not have prepared for this subject in their revision.