

Examiner's report

F4 Corporate and Business Law (HKG)

June 2013



General Comments

This paper has ten compulsory questions. All questions carried equal marks. Questions one to seven were knowledge type questions. Questions eight to ten were problem solving 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. For questions one to seven, candidates performed satisfactorily in questions 1(b), 3, 6(a), and 10. All candidates did not perform well in question 7, which is a question about bribery, a new topic.

Regarding problem type questions, most of the candidates performed well in question 10. As regards question 8, while most candidates had a general concept about the entitlement to paid maternity leave by employees being employed under continuous contracts, not many of the candidates were able to point out that any provision in an employment contract being designed to attenuate the employees' right under Employment Ordinance (Cap 57) is void under s 70 of the Ordinance.

Given the nature of the topics covered in this examination, the majority of them are about concepts fundamental to corporate and business law, it is the examiner's view that the majority of candidates did not perform well in the examination. Marks scored by the candidates were widespread by reason of the great disparity in the performance of the candidates.

Specific Comments

Question One

The question consisted of two parts. Part 1(a) invited the candidates to show their knowledge in the concept of case law and the difference between common law, in its narrow sense, and equity. Part 1(b) was about ordinance and delegated legislation. Both of the two parts are related to the sources of the law in the Hong Kong Special Administrative Region ('HKSAR').

Many of the candidates appeared to have no knowledge about the difference between common law and equity, though the same had been examined in previous sessions of this paper. Nevertheless, most of the candidates had a general idea about the nature of the common law case law system by explaining the application of the doctrine of precedent in general.

As regards part (b), the majority of the candidates had knowledge in what ordinance and delegated legislation were about though not too many of them were able to show in their answers clearly the difference between the two.

As far as part (b) is concerned, performance of the candidates was in general satisfactory. Marks scored by the candidates were widespread. Some candidates scored very high marks.



Question Two

The question consisted of two parts. Part (a) invited the candidates to show their knowledge of the rule about the discharge of a contract by performance. Part (b) related to the exceptions to the rule in part (a).

Performance of the candidates in this question was fair. There were candidates who had appeared to have no knowledge about the rule at all and they scored very low marks as the result. There were candidates treating the question as one testing them concepts relating to such concepts as void contract and frustration, etc.

Yet there were candidates who demonstrated by their answers that they had very clear understanding in this area of law. Hence, marks scored by the candidates were widespread. Some candidates scored very high marks.

Question Three

The question invites the candidates to demonstrate their knowledge in the authorities exercisable by an agent under an agency contract.

The question consisted of three parts. Part (a) related to express authority; part (b) was about implied authority and part (c) connected with the liabilities of agents when they acted beyond the scopes of their authorities.

Performance of the candidates in this question was satisfactory though not many of the candidates were able to explain why an agent should be liable under a contract which the agent claimed to enter into on behalf of the principal.

Question Four

The question was divided into two parts. Part (a) invited the candidates to show their knowledge in the concept of corporate governance and part (b) tested the knowledge of the candidates in the sources from which the rule relating to the corporate governance of a company derived.

Performance of the candidates was not unsatisfactory. Regarding part (a), the majority of the candidates were only able to mention that corporate governance was about control of a company in general. Not many of the candidates were able to point out the source of the rule relating to corporate governance though many of them mentioned that a company had to comply with legislation relating to a company.

Performance of the candidates in general was fair. Nevertheless, there were candidates who had performed extremely well in both parts of the question. As such, they scored very high marks.

Question Five

The question, which was divided into two parts, tested the candidates in their knowledge about the power and resignation of the company auditor. Part (a) was about the power of an auditor and part (b) was about the procedure for the resignation of an auditor.

Performance of the candidates in this question was unsatisfactory. For part (a), while the majority of candidates could show that they had knowledge in the auditor's power to inspect the accounts and related documents of a company, not many of them showed clearly the auditor's power relating to the accounts of the subsidiary of the



company. Nevertheless, the majority of the candidates were quite clear about the importance of an auditor in the management of a company.

As regards part (b), many candidates confused the resignation by an auditor from the auditor's office with the removal of an auditor by the company. As the result, many candidates provided information relating to the requirements of a general meeting and notice from the company to the shareholders.

Marks scored by the candidates were widespread. There were candidates performed very well in both parts of the question and hence obtained very high marks.

Question Six

The question was divided into two parts. Part (a) tested the candidate's knowledge in the formation of a partnership and the liabilities of the partners. Part (b) related to similar knowledge but was about limited partnership.

Performance of the candidates in this question was satisfactory. Most of the candidates performed better in part (a) than the same in part (b). The majority of candidates had no problem in the unlimited nature of the liabilities of the members of a partnership. As regards a limited partnership, it was the examiner's observation that some of the candidates were unable to explain clearly the liabilities of a limited partner and the limited partner's obligation of not being allowed to withdraw the partner's contribution to the limited partnership.

The examiner would like to stress two points relating to the nature of a partnership, be it a limited one or not. As opposed to a company incorporated under the Companies Ordinance (Cap 32) ('CO'), a partnership has no separate legal entity. The second thing is about the formation of a partnership. While the formation of a company calls for the strict compliance by the company with the incorporation procedure being laid down in CO, the formation of a partnership is mainly by a contract between the partners. As such, contract law relating to the formation of a partnership applies to the formation of a partnership.

Question Seven

The question tested the candidates' knowledge in the statutory control over bribery in the HKSAR.

The topic covered by this question was a new one. It appeared that many of the candidates had not prepared for this topic during their revision. For those who had, they had put their focus on the control of bribery over civil servant. Hence s 9 Prevention Bribery Ordinance (Cap 201), the application of which focuses mainly on private entity, was almost totally ignored by the candidates.

Performance of the candidates in the question was inadequate. Given the importance of the ordinance over the control of auditors in HKSAR in the course of carrying out their duties as such, question over this area, s 9 of the Ordinance in particular, will surely come out in future session of this paper.

Question Eight

The question invited the candidates to show their knowledge in the control of an employment contract by legislation and by case law.



Despite of the fact that question over employment had come out in previous sessions; performance of the candidates in this question was not satisfactory.

Only few candidates demonstrated that they had knowledge in s 70 Employment Ordinance (Cap 57) and answered the question satisfactorily. Many of the candidates just wrote down the definition of 'continuous contract' and provided general information about the right of an employee. The majority of candidates appeared to have neglected the control of a contract in restraint of trade by case law during their revisions.

There were candidates who incorrectly concluded that the provision in the problem scenario relating to restraint of trade was valid and hence legally enforceable by saying that the parties to a contract had freedom to agree anything. For future candidates, they have to bear in their mind that the notion of freedom of contract is just an academic concept and has no place in reality. In the real world, the validity of the terms of a contract are always subject to the law, be it statutory law or common law. Examples relating to such legal concepts as void contract, voidable contract and unenforceable contract are also examples showing the control of the content of a contract by the law.

Marks scored by the candidates were widespread. Some candidates scored very high marks.

Question Nine

The question invited the candidates to show their knowledge in the nature of the constitutional documents of a company.

Performance of the candidates was not as expected. There were candidates who seemed to have forgotten the fact that, under s 23 CO, the articles and memorandum of association of a company are contracts binding only on the shareholders and the company and hence can only be enforced by the same. As such, they came to the incorrect conclusion that the director in the question, who was not a shareholder of the company in question, could enforce the contractual term which was embedded in the articles against the company.

For those who remember the effect of s 23 CO, very few of them could come to a right conclusion by relying on the conducts of the parties, the result of which was the formation of a contract by conduct.

Again, marks scored by the candidates were widespread. Several candidates scored very high marks.

Question Ten

The question invited the candidates to show their knowledge in both the fixed charge and floating charge.

The majority of candidates had no problem in the understanding of the concepts, though not too many of them were able to explain why the first charge should be a floating charge when the subject matter of the charge were real properties, which is always made use of for the creation of a fixed charge.

The majority of candidates performed well in this question. Hence, the average marks scored by the candidates were high.