

# Examiner's report

## F4 Corporate and Business Law (HKG)

### December 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 abilities 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 question two. Candidates performed satisfactorily in other knowledge type questions.

As regards analysis type questions, the majority of candidates were able to identify the areas of law being examined by the questions. Most candidates performed satisfactorily in question eight and nine.

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 invited the candidates to demonstrate their knowledge in the importance of the Basic Law.

In general, most of the candidates were able to point out that Basic Law has been regarded as a mini constitution of Hong Kong and it gives effect to the one country two systems in China.

Nevertheless, there were other aspects of Basic Law which are also important to Hong Kong, which were not mentioned by many candidates.

The marks scored by the candidates were widespread. There were candidates scoring very high marks.

##### Question Two

The question invited the candidates to show their knowledge in circumstances under which a person owes a common law duty of care to others. The question therefore asked the candidates to provide information relating to the establishment of a neighbour relationship between two parties.

Performance of the candidates in this question was not as expected.

There were candidates who mixed up the subject matter of the question with that of the remoteness of damages and provided information which had no direct relevance to this question.

There were other candidates treating the question relating to negligent statement and hence providing duties relating to an auditor.

For those who did answer the question in the right direction, most of them were just able to describe the reasonable man test without further elaboration. Such factors as fairness and proximity were not mentioned at all by the majority of the candidates.

Performance of the candidates was fair and not very high marks were scored by most of the candidates.

##### Question Three



The question invited the candidates to show their knowledge on the grounds upon which the contracting parties to an employment contract can terminate the contract upon its breach by the other.

In general, the candidates performed well in this question. Most of the candidates were able to demonstrate their knowledge by providing information relating to sections 9 and 10 Employment Ordinance (Cap 57).

Nevertheless, there were candidates who provided information relating to the implied terms of an employment contract and answered the question by treating the question as one relating to contract law.

Marks scored by the candidates were a bit widespread. There were candidates who performed well in this question and hence scored very high marks.

#### **Question Four**

The question invited the candidates to show their knowledge of whether an agent shall be liable for a contract entered into on behalf of a principal.

The majority of candidates performed well when they answered the question by explaining the concept of disclosed and undisclosed agency.

There were candidates regarded the question as one relating to the types of authority exercisable by an agent and hence answered the question incorrectly.

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.

#### **Question Five**

The question invited the candidates to show their knowledge in matters relating to the capital of companies. The question comprised three parts. Part (a) was about authorised capital. Part (b) was about issued share capital and part (c) was about premium.

The majority of candidates performed well in this question. There were candidates who provided information about the requirement from Companies Ordinance (Cap. 32) regarding the treatment of premium.

There were candidates who performed well in all parts of the question and hence scored very high marks.

#### **Question Six**

The question invited the candidates to show their knowledge in the insolvency of a company. The question consisted of three parts. Part (a) tested the candidates' knowledge of the meaning of liquidation. Part (b) and part (c) invited the candidates to demonstrate their knowledge of voluntary and compulsory liquidation respectively.

At part (a), a number of candidates appeared to have no idea about what liquidation meant and they provided grounds to wind up a company. It seemed that those candidates had mixed up part (a) and (b).

As regards part (b) and (c), a number of candidates again mixed them up by providing same information for a company to liquidate in both part (b) and part (c), i.e., a company would be wound up when it was insolvent. For them, it was the examiner's observation that they had not prepared for a question over this area during their revision.

Nevertheless, there were candidates who had a sound performance in all the parts and hence scored very high marks.



### **Question Seven**

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

Most of the candidates performed well in this question though a number of them did not explain clearly as to the nature of floating charge. Nevertheless, the majority of candidates were able to distinguish the two.

Marks scored by the candidates were widespread. There were candidates performing the question extremely well and hence scored very high marks.

### **Question Eight**

The question invited the candidates to show their knowledge in the differences amongst a condition, a warranty and an innominate term.

In general, performance of the candidates in this question was fair. Though the majority of candidates were able to spot the issue correctly, they just provided information relating to the difference between a condition and a warranty with inadequate explanation.

The main problem with most candidates was that it seemed they had no knowledge about the concept of an innominate term. As a result, the majority of candidates jumped to the conclusion by explaining their answers in terms of a condition or a warranty.

Candidates' performance in this question was unsatisfactory.

### **Question Nine**

The question invited the candidates to show their knowledge in the fiduciary duties of a non-executive director of a company.

The majority of candidates performed well on this question and were able to provide information about the duties of a director in general. Similar to other questions, a number of candidates did not provide detailed explanation about the duties. There were candidates who incorrectly concluded that the duties owned by a non-executive director were different from an ordinary director and hence arrived at an incorrect conclusion that there was no conflict of interest as far as the non-executive director of the company in the question was concerned.

In general, the candidates had no problem in finding that a non-executive director should be liable for breaching his director's duties and hence was liable to account to the company for the profit he earned.

Marks scored by the candidates were widespread. There were candidate who performed well in this question and hence scored high marks.

### **Question Ten**

The question invited the candidates to show their knowledge in insider dealing.

From the answers of the candidates most of the candidates appreciated the problem caused by insider dealing and provided information in their answers describing what insider dealing was about.

Most of the candidates had no difficulty in concluding that the mother in the question, Amy, should be liable for insider dealing even if not many of them were able to provide clear reasoning.

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