



# Examiner's report

## F4 Corporate & Business Law (HKG)

June 2009

### General Comments

The examination paper comprised ten questions, and the candidates were required to answer all of them. Performance of the candidates in this examination was fair.

In relation to the candidates' performance in questions 8, 9 and 10, which are problem type questions, most of the candidates were able to identify the areas of law being examined by those questions. However, the majority of the candidates simply provided information without making use of the information to solve the problems. Relatively, most of the candidates did not perform well in questions 1, 7 and 9.

There was also an increase in the number of candidates failing to answer all the questions. Such an increase could be attributable to the question spotting tactic approach being adopted by those candidates when they prepared for the examination.

Performance of the candidates in this examination was fair.

### Specific Comments

#### Question One

The question was about the doctrine of precedent and divided into part (a) and part (b). Part (a) tested the candidates' knowledge of the doctrine and part (b) tested the candidates' knowledge in the operation of the doctrine.

Candidates' performance in part (a) was better than their performance in part (b). While this area of law had been examined for several times, performance of the candidates was just fair. The marks scored by the candidates were widespread.

As far as part (b) is concerned, not all the candidates were able to provide a detailed answer about the way the doctrine is operated. The most problematic area was the lateral aspect of the doctrine. Candidates having problem in understanding the doctrine are advised to read the full judgment of the Court of Final Appeal in *A Solicitor v The Law Society of Hong Kong* (2008) HKSAR.

#### Question Two

The question invited the candidates to show their knowledge in the significance in differentiating an employment relationship from independent contractors.

The candidates performed satisfactorily in this question. The majority of them were able to show the importance in distinguishing an employee from an independent contractor. Nevertheless, not many of the candidates were able to point out the fact that the Employment Ordinance (Cap 57) ('EO') does not define what an employment relationship is about and the question of whether a relationship is an employment relationship or not is still governed by common law. Besides, there were a number of candidates who failed to mention that an employer is vicariously liable for the tort committed by their employees in the course of their employment.

The marks scored by the candidates were widespread. There were candidates who performed very well in this question.

#### Question Three

The question was divided into two parts. Part (a) invited the candidates to show their knowledge in the nature of contractual liabilities and part (b) tested the candidates' knowledge in the difference between the law of tort and criminal law.

While the majority of candidates answering the question were able to supply brief information about the areas of law being examined, not many of the candidates were able to explain clearly about the difference between the law of tort and criminal law.

The future candidates should note that both the law of tort and criminal law relate to the breach of duties imposed by the law, which means that, as opposed to contract law, the duties are not governed by the parties themselves. Given the nature of the duties, it is not unusual that a person violating criminal law by committing an offence may also commit a tort at the same time.

Performance of the candidates was fair. There were candidates who did not answer the question at all. Nevertheless, there were candidates who performed well in this question.

#### **Question Four**

The question invited the candidates to demonstrate their knowledge in the concept of agency in part (a) and the creation of an agency relationship by agreement and necessity in part (b).

The candidates performed better in part (a) than in part (b). A number of the candidates had a clear understanding in what an agency was about. Nevertheless, there were a number of the candidates having problems in offering a clear explanation regarding the creation of an agency relationship by necessity.

Candidates' performance in the question was satisfactory. The marks scored by the candidates were widespread. There were candidates who performed extremely well in this question.

#### **Question Five**

The question was about company law and invited the candidates to show their knowledge in the significance of the concept of separate legal entity. While the concept is central to company law, it appeared that there were candidates who had not a clear idea about the concept.

The marks scored by the candidates were widespread. Nevertheless, the overall performance of the candidates in the question was fair.

The future candidates should bear in their mind that the concept of separate legal entity is very important in understanding the difference between the liabilities of the shareholders of a limited company and that of the partners of a partnership. As such, the future candidates should make sure that they have very clear understanding in the concept, which is not only for the purpose of the examination but also for their future practice as accountants.

#### **Question Six**

The question invited the candidates to show their knowledge in the difference between a fixed charge and a floating charge.

The majority of the candidates performed well in this question. This was the question being best answered by the candidates. Most of the candidates were able to provide detail information about the concepts being examined. There were candidates who performed the question extremely well.

#### **Question Seven**

The question was about the takeover of a company ('the target company') by another company and it invited the candidates to show their knowledge in the statutory provisions governing the compulsory acquisition of the minority's shareholding of the target company.

The subject area being examined in this question was new to the syllabus. There were a number of candidates who did not answer the question. The majority of the candidates were only able to supply a general description about the concept of takeover. Very few candidates could give a clear explanation about the provisions. The performance of the candidates in this question was not satisfactory.

### **Question Eight**

The question invited the candidates to demonstrate their knowledge in the classification of terms in contract law and the right of the innocent party to a contract upon the breach of contractual terms.

The majority of the candidates had a clear understanding in the effect of the terms though not all of them were able to make use of the chance to spell out clearly the classification. Similar to previous examinations, the problem with most of the candidates was about the application of the law to the facts of the problem scenario. The performance of the candidates in this question was satisfactory. The marks scored by the candidates were widespread and there were candidates who performed well in this question.

### **Question Nine**

The question tested the candidate's knowledge in the duties of an auditor of a company in part (a) and the existence of a special relationship between the auditor and an investor of the company's shares in part (b). On the whole, performance of the candidates in part (a) was better than their performance in part (b).

As regard part (a), most of the candidates were able to describe briefly about the statutory duties of an auditor. While the majority of the candidates were able to come to the conclusion that the auditor of the problem scenario was negligent, not many of the candidates were able to supply a clear explanation as to how they arrived at their conclusions.

The problem with the candidates' performance in part (b) is similar to that in part (a). Besides, not many of the candidates had a sound knowledge about the related common law. The performance of the candidates in this question was fair.

### **Question Ten**

The question invited the candidates to show their knowledge in the power of the directors and the shareholders over the management of a company in part (a) and part (b) respectively.

There were candidates who did not answer the question at all. For those who did, most of them could only provide a brief description about the area of law being examined. There were candidates who seemed to be unaware of the amendment of Article 82 and hence arrived at the incorrect conclusion as a result. Performance of the candidates in the question was fair and was not as good as the examiner had expected.

The question tested the candidate's knowledge in the common duty of care owed by a director to the company. Though the subject matter of this question had come up several times in previous settings, it appeared that there were candidates who still did not quite understand the nature of such a duty. Some candidates simply provided a description about directors' duties. A number of the candidates failed to consider the common law duty of care. Nevertheless, there were candidates demonstrating that they had mastered the concept very well by giving a detailed explanation as to what the duty was about. By reason of what has been said the marks scored by the candidates were widespread, and the performance of the candidates was not satisfactory.