

# Examiner's report

## F4 Corporate and Business Law (HKG)

June 2010

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### General Comments

The examination consisted of ten compulsory questions. All the questions carried equal marks, i.e., 10 marks for each of the questions. Questions one to seven were knowledge type questions while questions eight to ten were analysis type questions.

Most candidates attempted all 10 questions. Where not all questions were attempted, Question 6 and 8 were most frequently omitted.

In relation to questions one to seven, the majority of the candidates had performed well in questions two and six. The majority of candidates did not perform well in question six.

As regards candidates' performance in analysis questions, that is question eight, nine and ten. Most of the candidates were able to identify the areas of law being examined by those questions. Nevertheless, it is the examiner's observation that the majority of the candidates just provided information over the related areas of law without applying the law to the facts of the problem. As such, only few candidates could provide complete solution to those questions. Most of the candidates did not perform well in question eight, which was a question about professional negligence of auditors. However, the majority of candidates had performed satisfactorily in question ten.

There was an increase in the number of candidates failing to answer all the questions. The performance of candidates overall, however, continued to be unsatisfactory with a number appearing to be unprepared for the examination.

Marks scored by the candidates were widespread.

### Specific Comments

#### Question One

The question invited the candidates to demonstrate their knowledge in the sources of law of the Hong Kong Special Administrative Region ('HKSAR').

Most of the candidates answered the question satisfactorily. Most of the candidates demonstrated that they had knowledge as to the main sources of law in the HKSAR. However, not many of them were able to distinguish legislation from delegated legislation. There were a few candidates saying in their answers that common law was derived from Basic Law, which is a very serious mistake as Basic law by nature is a piece of statutory law, and common law is derived from the decisions of the courts.

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

#### Question Two

The question invited the candidates to demonstrate their knowledge in summary dismissal and constructive dismissal.

Most of the candidates could distinguish summary dismissal from constructive dismissal. The majority of them were also able to explain quite clearly the grounds for summary dismissal and constructive dismissal.

Nevertheless, not many of the candidates were also able to show that employees were not entitled to have severance payment or long service payment if they are dismissed summarily by their employer. Overall, the candidates performed satisfactorily in this question.

### Question Three

The question invites the candidates to show their knowledge of what a partnership is.

The question was not satisfactorily answered by most of the candidates. In answering the question, most candidates only provided a general description of what a partnership is about without elaborating any further. The majority of the candidates gave detailed information about the duties of the partners to the partnership, which was formed just a minor part of the answer.

Besides, not many of the candidates were able to give detailed explanations of the concept of 'joint and several', which is central to the extent of liabilities among the partners regarding the liabilities of the partnership. The marks scored by the candidates in this question were widespread.

### Question Four

The question invited the candidates to demonstrate their knowledge in agency law

This is the question that the candidates performed best in. The majority of candidates answering the question could provide satisfactory answers. Most of the candidates were able to point out that the main difference between a disclosed agent and an undisclosed agent is that the former has already disclosed his capacity as an agent before the formation of the contract while the latter has not.

### Question Five

The question invited the candidates to show their knowledge in the fiduciary duties of the directors of a company. Most of the candidates attempting this question were able to provide a general description of what the duties were. Nevertheless, not many of the candidates could provide clear explanation regarding the duties. There were also candidates making the mistake that the duties were owed by the directors to the shareholders, that is a mistake. Directors only owe their duties to the company as a whole.

There were candidates providing answers covering the directors' statutory duties and common law duties of care. Candidates are reminded that fiduciary duties of a directors stem from the special position of directors in companies and the duties are equitable by nature. As regards statutory duties, they are the result of legislation by the Legislative Council. In relation to common law duties of care, it is related to the tort of negligence by reason of the existence of neighbour relationship between directors and the company.

Marks scored by the candidates were widespread.

### Question Six

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

The candidates performed inadequately in this question.

Quite a number of the candidates simply wrote down information relating to insider dealing. For others, they just gave examples to illustrate the concept without giving the statutory definition.

Given the performance of the candidates, it is likely that this area will be examined again.

### Question Seven

The question invited the candidates to show their knowledge in the concept of separate personality of a company and the circumstances under which the personality would be ignored by the court.

The question relates to fundamental concept in company law. However, candidates' performance was unsatisfactory. While the majority of candidates were able to provide a general description of what 'separate personality' in the context of company law was about, only a few of the candidates could go on and explain the circumstances under which the corporate veil of companies would be lifted up by the court, which was required by question.

Marks scored by the candidates were widespread.

**Question Eight**

The question invited the candidates to demonstrate their knowledge in the circumstances under which auditors were liable for their negligent misstatement.

The performance of the candidates was unsatisfactory. Most of the candidates could only mention that the question was about negligence and then jumped into the conclusion as to whether the auditors should be liable without explaining the law relating to the establishment of the duty of care between two persons.

While a minority of the candidates was able to provide very brief explanation about the neighbour principle, only very few of them could refer to the concept of proximity of relationship by reason of the knowledge of the auditors regarding the reliance of the bank on the report and arrived at the right conclusion.

This area of law is important. Hence questions over this area will be examined again.

**Question Nine**

The question invited the candidates to demonstrate their knowledge in the conditions for the formation of a contract. Issues raised in this question were about the formation of a contract, revocation of an offer and the option.

Many of the candidates had knowledge that a display at shop window amounted to an invitation to treat by case law and they applied this information and arrived at the conclusion that the 'special offer' was an invitation to treat by reason of the case law. Future candidates are reminded that they should accept the information given by the question as facts when they answer the question. Take this question as an example; one cannot possibly say that the 'special offer' is an invitation to treat when the question already makes it clear that it is an offer.

The issue of option went untouched by the majority of candidates. The issue of option has been examined in the past. It appeared that some of the candidates did not make adequate preparation before they sat for the examination.

Most of the candidates simply wrote down the related law and arrived at their conclusion without applying the law to the important or material facts in giving advice.

In general, performance of the candidates was unsatisfactory.

**Question Ten**

The question invited the candidates to show their knowledge in the characteristics of a floating charge and the crystallisation of the charge.

Most of the candidates performed satisfactorily in the question. The majority of the candidates were able to explain clearly what a floating charge was about. \candidates also provided information about fixed charge. However, there were some candidates who related the word 'floating' with the interest rate under the loan. Nevertheless, not many of the candidates were able to provide a clear explanation about the concept of automatic crystallization.

On the whole, candidates performed satisfactorily in this question.