

Examiner's report

F4 Corporate and Business Law (HKG)

June 2011



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 type questions, which required the candidates to demonstrate their abilities to analyze 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 two and three. Candidates had performed satisfactorily in other knowledge type questions. There were a few candidates who performed well in question 7.

As regards the analysis type questions, most of the candidates were able to identify the areas of law being examined by the questions. It is the examiner's observation that most of the candidates had improved their abilities in answering analysis type question by making attempt to apply the law to the salient facts of those questions and arrived at conclusions of their own. Most of the candidates had performed well in question eight. Marks scored by the candidates were widespread. There were a few candidates who had a very good performance and scored high marks. In the examiner's view, the average performance of the candidates was satisfactory.

Specific Comments

Question One

The question invited the candidates to demonstrate their knowledge in the doctrine of precedent and its operation in the court system of the Hong Kong Special Administrative Region ('HKSAR') in part (a) of the question. In part (b), the candidates were also invited to show their knowledge in the circumstances under which the doctrine is not applicable.

In part (a), most of the candidates showed in their answers of their knowledge in the doctrine. However, some of the candidates did not answer in detail how the doctrine has been operated in the court system of the HKSAR. Most of the candidates had performed part (b) satisfactorily.

On the whole, the candidates performed satisfactorily in this question.

Question Two

The question was divided into two parts. Part (a) invited the candidates to show their knowledge in the concepts of void contract, voidable contract and unenforceable contract. Part (b) required the candidates to show their knowledge in the concept of past consideration.

Most of the candidates did not perform well in part (a), which is quite out of the expectation of the examiners. Most of the candidates mixed up a void contract with an unenforceable contract when they mentioned in their answers that a void contract was one that not enforceable. From the answers of the candidates, it is the examiner's observation that some of the candidates did not have knowledge of the meaning of unenforceable when they treated an unenforceable contract as no contract at all.



The future candidates are reminded that an unenforceable contract is one which is not enforceable in court only. It is still a contract and, as such, any transfer of property between the contracting parties still binding on the parties.

There were candidates who mentioned in their answers that a void contract was one which did not have all the elements for the formation of a contract, i.e., absence of offer, acceptance, or consideration, etc. Future candidates should note that when there is no offer, acceptance or consideration, etc., there is no contract at all. As regard part (b), most of the candidates answered the question satisfactorily by demonstrating their knowledge in the question with example.

Question Three

The question tested the candidates' knowledge in the doctrine of apparent or ostensible authority.

The candidates had a fair performance in this question. A number of candidates mentioned in their answers general knowledge about the relationship between principals and their agents only. However, there were candidates who performed well in this question.

Marks were widespread.

Question Four

The question invites the candidates to show their knowledge in the liabilities of general partners in part (a) and their knowledge in limited partnerships in part (b).

As regards part (a), not many of the candidates could demonstrate their knowledge in the question with precise terms, though the majority of the candidates were able to describe the unlimited nature of the liabilities of a general partner generally.

For part (b), the majority of the candidates were able to state the difference between the liabilities of a limited partner and a sleeping partner. However, there were a number of candidates saying that a limited partner was the same as a sleeping partner. There were others who confused partnerships with companies incorporated under Companies Ordinance (Cap 32) when they stated in their answers that a partnership did have a separate legal entity.

Nevertheless, there were candidates who performed the question extremely well.

Question Five

The question was divided into three parts. Part (a) invited the candidates to demonstrate their knowledge in fixed charges, part (b) was about the advantages of a fixed charge and part (c) was about the statutory requirements for the registration of a charge.

Most of the candidates performed well in both part (a) and part (b) though the creation of an equitable charge was not touched on by almost all candidates. The majority of candidates did not perform well in question 5(c). In general, the majority of the candidates performed well in this question.



Question Six

The question comprised two parts. Part (a) tested the candidates' knowledge in the compulsory clauses of the memorandum of a company. Part (b) invited the candidates to show their knowledge in the nature of both the memorandum and articles of association of a company.

Most of the candidates performed well in part (a) though not many of them could provide good elaboration about the clauses.

However, many the candidates did not mention the effect of s 23 Companies Ordinance (Cap 32) when they failed to mention the contractual nature of the documents. Nevertheless, most of the candidates attempting this part did demonstrate their knowledge in the importance of the documents.

Overall, the candidates performed satisfactorily in this question.

Question Seven

The question was about the commission of insider dealing and was divided into two parts. Part (a) was about the circumstances under which insider dealing is committed and part (b) was about the concept of 'relevant information' in the context of insider dealing.

The candidates performed satisfactorily in part (a). In general, most of the candidates demonstrated by their answers that they had a fairly reasonable understanding in what insider dealing was about. There were a number of candidates who could even state clearly the circumstances under which the offence was committed.

Performance of the candidates in part (b), in general, was not as good as their performance in part (a) though most of them could provide a general description as regards the concept of relevant information.

Overall performance of the candidates was satisfactory. Marks obtained by the candidates were widespread. There were candidates who performed extremely well in this question.

Question Eight

The question was about employment matters. In part (a), the question tested the candidates' knowledge of s 70 Employment Ordinance (Cap 57) ('EO'). In part (b), the candidates were invited to demonstrate their knowledge of s 9 ('EO').

For part (a), most of the candidates were able to state clearly the statutory requirement relating to the notice period for terminating an employment contract after probation and arrived at the conclusion that the term in question was invalid. However, not many were able to mention the effect of s 70 ('EO') over the binding effect of those terms of an employment contract when the terms were in conflict with EO.

Most of the candidates could state clearly the circumstances under which an employer may dismiss an employee summarily under s 9 EO. In relation to the application of the relevant law to the facts of the problem, most of the candidates demonstrated an improvement in the understanding of the law they learnt by making a proper application to the salient facts and hence arrived at a right conclusion.

Most of the candidates performed well in this question.



Question Nine

The question was about the commission of professional negligence by an accountant.

The question raised two issues: the first issue was about the existence of a duty of care and the second was about causation.

Regarding the first issue, the majority of the candidates concluded that the accountant in the question did not owe to the bank a duty of care. When the candidates arrived at the conclusion, they either failed to support their answers by adequate explanation of law or they just referred to *Caparo Industries Plc v Dickman* (1990) (HL) UK. The future candidates should note that the Caparo case is an authority over the relationship between the accountant of a company the shareholders of the company.

The future candidates should also be aware that when the issue of duty of care arises, what the question really asking is whether there exists a neighbour relationship between the parties in question. In the context of negligent misstatement, what we really talk about is whether there exists a special relationship between the parties such that one party should owe to the other a duty of care in relationship to the misstatement in question. Perhaps, that could be the reason why not many of the candidates could state clearly the law relating to the establishment of a neighbour relationship.

Performance of the candidates in part (b) was not satisfactory. Not many of the candidates were able to identify the issue of causation. There were a number of candidates who incorrectly treated the issue as one of remoteness of damages.

Performance of the candidates in the question was not as good as their performance in other questions.

Question Ten

The question had two parts. Part (a) was about the power of the directors of a company and part (b) was about the power of the shareholders to stop the directors to do something the shareholders do not agree.

Performance of the candidates was fair in part (a). There were a number of candidates who incorrectly treated the issue raised in this part was about directors' duties. There were others who approached the question as one about unfair prejudice. Nevertheless, there were a few candidates who performed well in this part of the question.

As regards part (b), the majority of the candidates were able to point out the power of the shareholders in an extraordinary meeting by passing a resolution. However, not many of them were able to point out that the resolution had to be a special one.

Performance of the candidates in this question was a fair one. Marks scored by the candidates were widespread. There were candidates who performed well in both parts of the question.