



Examiners' report

F4 Corporate and Business Law (HKG)

December 2007

The examination paper consisted of ten compulsory questions. There were seven knowledge type questions and three problem type questions.

The paper was set under the new syllabus. The paper was a fair one and provided those well-prepared candidates the opportunities to score high marks. In general, the performance of the candidates in the examination was fair.

Knowledge questions were related to basic concepts in business and corporate law. Question 4, which was about the concept of 'duty of care', and 5, which was about corporate governance, were both new topics and examined for the first time. The candidates' performance in these two areas was not satisfactory. As regards the problem questions, a number of candidates had performed well in question 8, which was a question relating to employment law.

There were candidates writing answers of different questions on the same page or failing to write down the numbers of the questions they attempted at the front page of the answer books. Future candidates are urged not to do so.

Specific Comments

Question 1

The question tests the candidates' knowledge in the doctrine of precedent at common law, and the candidates were specifically required to comment on the consistence and flexibility of the doctrine.

A number of candidates were only able to provide information about the sources of law in the Hong Kong Special Administrative Region. Most of the candidates only focused on the consistence aspect and did not address the flexibility of the doctrine.

The performance of the candidates in this question was unsatisfactory.

Question 2

The question invited the candidates to explain the concepts of offer, invitation to treat, and the importance in distinguishing the two.

This question served to test the candidates' knowledge in the basic concepts about contract law. It appeared that the majority of the candidates had no difficulty in tackling the question. Overall candidates performed well in this question.

Question 3

The question invited the candidates to show their knowledge in the concept of disclosed agent, the role of such an agent in the formation of a contract for their principal, and the creation of agency relationship by ratification.

Most of the candidates performed well over the area of law relating to a disclosed agent.

Regarding the concept of ratification, a number of the candidates could not explain clearly what ratification was about. There were a number of the candidates who demonstrated their understanding over this area by making use of the role of subscribers in the formation of companies as an example to demonstrate the concept.

Some candidates performed well in this question however generally speaking, the performance of the candidates in the question unsatisfactory.

Question 4

The question invited the candidates to show their knowledge in the concept of 'duty of care', which is an essential ingredient for establishing the commission of the tort of negligence.

Most of the candidates provided a general description of tort in their answers. As such, they gave information relating to the establishment of liabilities in tort, which was not what the question asked. For example, some candidates gave information about remedies available to the victim, defence available to the defendants, the concepts of causation and remoteness of damages.

A number of the candidates provided a detail description of the leading case in this area, viz., *Donoghue v Stevenson* (1932) UK, by giving the facts of the case. However, most of them were unable to state the principle laid down by the court in that case.

The performance of the candidates was not satisfactory, and questions over this area will come up in the future.

Question 5

The question was related to corporate governance, a new examination topic. The question was divided into three parts and the candidates were required to show their knowledge in the importance of corporate governance in part (a), their knowledge of non-executive directors as well as their responsibilities in part (b), and their knowledge in the fiduciary duties of the directors.

Most of the candidates had the best performance in part (c). As regard parts (a) and (b), the majority of the candidates provided a general description of the concepts being examined. Candidates' performance in this question was fair.

Question 6

The question was related to company law. The candidates were invited to show their knowledge of 'special resolution' in part (a), 'special notice' in part (b) and 'special business' in part (c).

The majority of the candidates attempting this question had a good performance well in part (a). It appeared that there were candidates who seemed to have no knowledge as regard what a special notice and what the special business of a company were about. The result was that most of the candidates had a fair performance in this question.

Question 7

The question invited the candidates to show their knowledge in the charges created by companies. The majority of the candidates attempting this question seemed to have no difficulty in managing this question when they provided answers giving very clear explanation regarding the concepts being examined.

Overall, the candidates performed well in this question.

Question 8

The question invited the candidates to show their knowledge in the formation of a partnership relationship in part (a) and the liabilities of persons holding themselves out as partners of a partnership in part (b).

In relation to part (a), most of the candidates stated correctly that the agreement in the question was not in fact one which created a partnership. There were a few of the candidates stated correctly that the issue of the creation of a partnership was a question of facts and particular circumstances created the relationship had to be considered in determining if a partnership relationship was created.

As regard part (b), not many of the candidates could provide correct answers. For those who did, most of them only referred to the common law principle of holding out and failed to consider the related statutory provision in Partnership Ordinance (Cap 38)

Performance of the candidates in this question was fair.

Question 9

The question tested the candidates' knowledge in the termination of an employment contract by breach, which is the subject matter of s 9 of Employment Ordinance (Cap 57).

Performance of the candidates in this question was satisfactory. While a number of candidates were unable to refer specifically to the related section of the Ordinance, the majority of them were able to provide information showing that they had a general understanding in this area.

There were a few candidates who showed their understanding in the application of contract law regarding the repudiation of a contract to the termination of an employment contract by an employer by way of summary dismissal, which is the approach adopted by the courts in determining if a summary dismissal is a wrongful one.

There were candidates stating in their answers that a written warning would be more appropriate, with which the examiner agreed.

In general, the candidates had a satisfactory performance in this question.

Question 10

Question 10 tested the candidates' knowledge in fraudulent trading under section 275(1) of Companies Ordinance (Cap 32).

A number of the candidates spotted the correct issues and answered the question satisfactorily. These candidates were those demonstrating by their answer that they had very good commercial sense.

There were those who seemed to have no knowledge about the statutory requirements for proving the commission of fraudulent trading.

Overall, the performance of the candidates in the question was fair.