



Examiners' report

F4 Corporate and Business Law (HKG)

December 2008

The examination paper comprised ten questions, and the candidates were required to answer all of them. Performance of the candidates in this examination was not as good as the examiner had expected. Most of the candidates performed well in question five and question nine. Performance of the candidates in the other questions was fair.

In answering questions 8 to 10, it appeared that quite a number of the candidates simply provided information without making use of the information to solve the problem being raised by the problem scenarios. In this regard, it appeared that the candidates' abilities in the application of the law they learnt has deteriorated.

Compared with previous setting, there was an increase in the candidates of failing to answer all the questions, which was one of the reasons why the candidates failed in this examination. It was the examiner's observation that other reasons for the candidates to fail in the examination were, among others, failing to prepare for the examination or adopting question spotting tactics when they prepared for the examination. However, there were candidates who performed very well in the examination.

Question 1

This question was divided into two parts. Part (a) invited the candidates to demonstrate their knowledge in the common law rules of interpretation of Ordinance adopted by the courts. Part (b) tested the candidate's knowledge in the effect of the Bill of Rights Ordinance (Cap 383) ('BOR') on the application of such rules. Performance of the candidates in this question was not as satisfactory as the examiner had expected. Most of the candidates had performed well in part (a). Nevertheless, a number of the candidates were unable to explain the mischief rule. Performance of the candidates in part (b) was not as good as in part (a). There were only a few candidates who could provide clear answers to part (b). Not many candidates could explain the concept of entrenchment of the Bill of rights Ordinance (BOR) by the Basic Law.

Given the performance of the candidates in part (b), it is highly likely that question over BOR will be examined in the future.

Question 2

The question invites the candidates to show their knowledge in the nemo dat rule in part (a) and some of the exceptions to the rule in part (b). The candidates had a fair performance in this question.

Most of them were able to demonstrate some basic concepts about the rule. However, not many of the candidates could provide a complete explanation of how the rule is operated. Some of them explained the rule by making use of the concept of title, which is usually employed over the area of real property. As far as the Sales of Goods Ordinance (Cap 26) ('SOGO') is concerned, the Ordinance use the word 'property' to describe what the owner of a personal property owns.

Part (b) (i) was about etoppel. Though not many of the candidates could give a full explanation of the concept of estoppels within the context of SOGO, most of candidates demonstrated that they had a general understanding of the concept and the effect in the application of the concept over the legal position of a seller in a transaction relating to good sold and delivered.

Part (b) (ii) was about the concept of market overt. Performance of candidates was similar to Part (b) (i). Many of the candidates had a good understanding in the requirement of good faith for the concept to apply in order to protect a buyer purchasing property from a seller who is not the true owner of the property. Performance of the candidates in the question was fair and not as good as the examiner had expected. Marks scored by the candidates were widespread. There were a few candidates having performed the question very well.

Question 3

The question invited the candidates to demonstrate their knowledge in various remedies available to innocent parties being suffered from a breach of contract.

The majority of candidates answering the question were just able to supply information about the right of the innocent party to claim for damages, which are the only remedy available in common law. There were candidates with information about different types of breach in their answers, which was not what the question asked. Nevertheless, there were candidates who performed well in this question.

This was one of the questions which were not performed well by the candidates. It was the examiner's observation that the main reason was that candidates were just focusing on the issue of breach of contract in the course of their preparation for the examination. Overall, performance of the candidates was unsatisfactory.

Question 4

The question tested the candidates to demonstrate their knowledge about unreasonable dismissal in part (a) and unlawful dismissal in part (b). This is a new area being examined. Nevertheless, prior to the examination, the examiner had already drawn the candidates' attention over these areas in the examinable documents.

In answering Part (a), most of the candidates were only able to supply information about the grounds upon which the employers could dismiss employees summarily by referring to section 9 of the Employment Ordinance (Cap 57) ('EO'). Very few candidates were able to show their understanding in the subject being examined. Unreasonable dismissal, under s 32K EO, was a termination of the contract by the employer with the intention of depriving the employee's right under the EO. I use 'termination' because unreasonable dismissal has nothing to do with summary dismissal under s 9 EO. The candidates are reminded that an employer can always summary dismiss an employee if a substantial breach of the contract, by reason of s 9 EO, can be established. I use the term 'substantial breach' because summary dismissal, by nature, is the same as the right of a contracting party to terminate a contract upon the repudiation of the contract by the party in default.

Candidates' performance in part (b) was better than that in part (a). However, their performance was not satisfactory.

From the way the candidates handled this question, it is the examiner's observation that the candidates had mixed up the following concepts, viz., termination of an employment contract by agreement, by summary dismissal or constructive dismissal, i.e., by breach, unreasonable dismissal, which has nothing to do with the breach of an employment contract, and unlawful dismissal, which again has nothing to do with breach and is related to termination of the contract in circumstances being prohibited by law.

This was another question which the candidates did not perform well, and the performance of the candidates was unsatisfactory.

Question 5

The question invited the candidates to show their knowledge in some areas of corporate law.

Performance of the candidates in the question was satisfactory. There were candidates who performed extremely well.

Question 6

The question was divided into two parts. Part (a) tested the candidates' knowledge in the circumstances under which insider dealing took place. Part (b) invited the candidates to show their knowledge in "relevant information".

The examiner was pleased to see that most of the candidates had general knowledge over this area of law. Nevertheless, not too many of them were able to supply adequate information over the topics being examined. Performance of the candidates was unsatisfactory. Marks scored were widespread.

Question 7

The question was divided into three parts. Part (a) tested the candidates' knowledge in winding up. Part (b) required the candidates to show their knowledge in the circumstances under which a company may be wound up voluntarily. As regard part (c), candidates were invited to show their knowledge in the procedure being needed to be followed by a company to be wound up voluntarily.

Performance of the candidates in this question was not satisfactory. In answering Part (a) and part (c), a number of the candidates simply provided general information about compulsory winding up when they said in their answers that the winding up process was initiated by the creditors in time of the company's insolvency. A number of the candidates said in their answers that the winding up of a company meant the cessation of a company's business, which may also occur as regard a dormant company.

In answering part (c), many candidates seemed to have forgotten that a certificate of solvency has to be issued by the company in respect of a members' voluntary winding up.

Performance of the candidates in this question was not satisfactory. The marks scored by the candidates were widespread.

Question 8

The question invited the candidates to demonstrate their knowledge in the business vehicles being available for a group of people to conduct business in Hong Kong.

Performance of the candidates was not satisfactory, which was not what the examiner had expected. Most of candidates were able to provide information about private company and partnership and many of them advised that using a private company to carry out business was the best choice. One problem common to most of the candidates was that the candidates simply giving an advice without explaining why by using the information from the problem scenario.

Only a few of the candidates mentioned limited partnership in their answers. However, such candidates could only provide a very brief description of the concept.

Some of the candidates wasted their time by providing information relating to sole proprietorship, which was not a suitable business vehicle in the context of the question.

Marks scored by the candidates were widespread.

Question 9

The question tested the candidate's knowledge in contract law over the effect of a counter-offer in part (a) and the nature of an option in part (b).

The question was one of the questions being best answered by the candidates. In relation to part (a), the majority of the candidates were able to provide clear information about the effect of a counter-offer in the formation of a contract and gave correct advice. There were candidates having performed this part extremely well.

Performance of the candidates in part (b) was not as good as their performance in part (a). A number of the candidates simply said that the company could withdraw the offer without giving explanation. Most of the candidates were failed to realize that there were in fact two offers in the problem scenario.



The candidate's performance in the question was satisfactory. Marks scored by the candidates were widespread.

Question 10

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 for 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 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.