



Examiner's report

F4 Corporate & Business Law (HKG)

December 2009

General Comments

The examination paper comprised ten questions, and the candidates were required to answer all of them.

In relation to the candidates' performance in problem type 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 answers to those questions. Of those three questions, most of candidates performed best in question eight.

As regards question one to question seven, the majority of the candidates had performed well in questions two and six. A number of the candidates did not perform well in questions one and seven. There was also a decrease in the number of candidates failing to answer all the questions. It could be an indication that the candidates had got used to the new examination format.

On the whole, the candidates had performed satisfactorily in this examination. Performance of the future candidates can be improved if they can take more time on practicing the application of law.

Specific Comments

Question One

The question invited the candidates to demonstrate their knowledge in the difference between legislation and delegated legislation of the Hong Kong Special Administrative Region.

A question over this area had been examined in the previous examination. Most of the candidates demonstrated that they had knowledge as to what legislation and delegated legislation were about. However, not many of them could provide the information in depth. As such, only a few candidates could supply answers showing that they had adequate knowledge about the difference between the two.

It follows that the marks scored by the candidates were widespread. There were a few candidates who performed well in this question. The overall performance of the candidates in this question was not satisfactory.

Question Two

The question invited the candidates to demonstrate their knowledge of the concepts of 'offer' and an invitation to treat, which are basic concepts about the formation of a contract.

The candidates performed well in the question. The majority of the candidates demonstrated that they had a sound understand the concepts when, for example, they pointed out clearly that only the acceptance of an offer could form a contract and that an invitation to treat was just an invitation to the others to make an offer.

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

Question Three

The question invited the candidates to show their knowledge in the concept of remoteness of damages in tort.

While most of the candidates could state in general term the principle about compensation for damages in tort, not many of the candidates could explain clearly the concept of remoteness of damage. Quite a number of the candidates appeared to have mixed up the issue of quantum of damages and the issue of remoteness of damage. The candidates should note that the aim of the rule governing the remoteness of damages is not to determine the amount of compensation to be awarded, i.e., the quantum of the damages, which is a question that will only be considered after the issue of remoteness of damages, has been answered positively.

There were candidates who briefly mentioned the facts of *Oversea Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd, the Wagon Mound* (1961) UK, which is the leading case over the concept of remoteness without explaining the concept.

The candidates' performance in this question was not satisfactory.

Question Four

The question invited the candidates to show their knowledge in the actual authority of an agent and the binding effect of the act being done by an agent without authority.

Part (a) of the question had been examined in previous settings. However, not many candidates were able to offer a clear explanation about the concept of actual authority. That could be attributed to the question spotting tactic adopted by the candidates in preparing for the examination. Most of the candidates performed better in part (b) than in part (a)

Candidates' performance in the question was not satisfactory. The marks scored by most candidates were low.

Question Five

The question was divided into two parts. Part (a) invited the candidates to demonstrate their knowledge in changing the authorised capital of a company. Part (b) tested the candidates' knowledge in the concept of 'clear day' and the content of the notice to call a meeting.

As regards part (a), most of the candidates provided a description about the requirement of a special resolution. Nevertheless, not many of the candidates were able to show that an ordinary resolution could perform the same task if the articles of a company expressly said so.

In relation to part (b), not many of the candidates could explain clearly what 'clear day' was about. The marks scored by the candidates were widespread. Nevertheless, the overall performance of the candidates in the question was fair and was not as good as the examiner had expected.

It is the examiner's view that the fair performance of the candidates could be attributed to the question spotting tactic adopted by the candidates in preparing for the examination.

Question Six

The question invited the candidates to demonstrate their knowledge in concepts relating to the capital of a company.

The question comprised two parts. Part (a) tested the candidates' knowledge in the concepts of both authorised capital and premium. Part (b) invited the candidates' to show their knowledge in the difference between a share and a debenture.

This was the question in which most of the candidates performed well. From the answers of the candidates, the great majority of the candidates had no problem in part (a). As regards part (b), there were a number of candidates who were unable to supply clear information over the difference.

Question Seven

The question comprised two parts. Part (a) invited the candidates to show their knowledge in the grounds for winding up a company by the court. Part (b) tested the candidates' knowledge in the major difference between a voluntary winding-up and an involuntary winding-up as regards the involvement of creditors, contributories and the court.

Performance of the candidates in this question was not satisfactory. Relatively, the candidates performed better in part (a) than in part (b). The question was not attempted by a number of the candidates.

Most of the candidates did not perform well in part (b). While most of the candidates could describe the general difference between the two types of winding-up, only very few candidates provided answers mentioning the involvement of the creditors, contributories and the court. The reasons could be, firstly, the subject matter of the question was not within the scope of the candidates' revision topics, and, secondly, the candidates just had a general understanding of the two types of winding-up.

Question Eight

The question tested the candidates' knowledge in the circumstances under which an employee may be dismissed summarily by the employer.

Most of the candidates performed satisfactorily in this question. The majority of the candidates showed that they had a clear understanding in summary dismissal and section 9 of the Employment Ordinance (Cap 57).

As mentioned at the very beginning of the report, the problem with most of the candidates was about application of the law to the important or material facts in giving advice. The marks scored by the candidates were widespread.

Question Nine

The question invited the candidates to show their knowledge in the rights of a partner of a partnership. The question raised two issues which the duties owed by a partner to the other partners of a partnership and the right of a partner to inspect the account of the partnership. The candidates performed satisfactorily in this question. Most of the candidates demonstrated that they had an understanding in the duties and the right of a partner to inspect the account though not many of them were able to explain clearly why it was so. The marks scored by the candidates were widespread.

Question Ten

The question tested the candidates' knowledge in the fiduciary duties being owed by directors to a company and the problem of conflict of interest in particular.

Performance of the candidates in this question was inadequate. Most of the candidates could only provide a general description about the duties owed by directors to the company. Not many of the candidates could provide a clear explanation about the case law over the issue of conflict of interest. For those they did, most of them did not tackle the problem scenario by analysing the facts and applying the law to the facts.

Most of them only wrote down the law and jump to the conclusion by applying their common sense.