

# Examiner's report

## F4 Corporate and Business Law (HKG)

December 2010



### General Comments

The examination consisted of ten compulsory questions. All the questions carried equal marks, i.e., ten 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 questions. Where not all questions were attempted, Questions 3(a) and 7(a) were most frequently omitted.

In relation to questions one to seven, the majority of candidates did not perform well in questions three, four and seven. Most of the candidates performed well in other questions.

As regards the analysis questions that is questions eight, nine and ten. Except for question 9(b), 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 question by, instead of avoiding to handle the salient facts of the questions; the candidates did attempt to apply the law to those facts and arrived at conclusions. As regard question 9(b), which was a question about directors' duties, a number of the candidates incorrectly treated this part as a question about the duties of partners. Most of the candidates performed well in question eight.

Marks scored by the candidates were widespread. In general, performance of the candidates was Unsatisfactory.

### Specific Comments

#### Question One

The question invites the candidates to show their knowledge in the common law rules employed by the courts in the interpretation of statutory law, i.e., ordinance those parts of the Basic Law within the jurisdiction of the courts of the Hong Kong Special Administrative Region.

Candidates performed well in this question. Some of the candidates provided in depth answers.

#### Question Two

The question was divided into two parts. Part (a) invited the candidates to show their understanding of the meaning of 'continuous contract' as defined under the Employment Ordinance (Cap 57) ('EO') and its importance. Part (b) tested the candidates knowledge in the duties imposed upon both the employers and employees in common law.

In part (a), most candidates had knowledge of the concept of 'continuous contract' and the impact of it in the benefits enjoyed by employees under EO. The majority candidates performed well in this part.

Candidates did not perform as well in part (b) as they did in part (a). Some of the candidates mixed up the statutory duties with common law. The future candidates should bear in mind that the duty of an employer, for example, to make contribution to the Mandatory Provident Fund is not a common law duty. There were candidates who stated the duties but provided no explanation.

Marks scored by the candidates in this question were widespread.

#### Question Three

The question was divided into two parts, viz., part (a) and part (b), and the candidates were invited to show their knowledge in the tort of 'passing off' and the concept of causation respectively.



In part (a), most of the candidates were able to give general knowledge as to the circumstances under which the tort would be committed. Nevertheless, not many of the candidates were able to provide detail information about this tort.

In part (b), there were a number of candidates mixing up the concept of remoteness of damage in tort and the similar concept in contract.

Performance of the candidates in both parts was not satisfactory.

#### **Question Four**

The question comprised two parts and the questions tested the candidates' knowledge relating to corporate governance. Question of similar nature have been examined in the past.

Regarding part (a), the answers of the candidates showed that only a few of them had some knowledge over the area of law being asked by the question. Most of the candidates only managed to provide a general description relating to the need of good corporate governance in a company.

As regard part (b), most of the answers were focused on the duties of directors and Companies Ordinance (Cap 32) without mentioning how they were related to the question.

The performance of the candidates was not satisfactory. Given the performance, it is highly likely that questions over this area will be examined in future examinations.

#### **Question Five**

The question invited the candidates to demonstrate their knowledge in some concepts relating to the capital of companies. The question was divided into two parts. Part (a) related to the concept of 'share' and part (b) was about the differences in the rights between a shareholder and an unsecured debenture holder in a company.

Most of candidates performed satisfactorily in both parts of the question.

#### **Question 6**

The question was divided into two parts. Part (a) invited the candidates to show their knowledge in the power exercisable by auditors of companies. Part (b) invited the candidates to demonstrate their knowledge in the procedure relating to the removal of the auditors.

Regarding part (a), most of the candidates were able to provide answers relating to an auditor's power of having access to the accounts of a company. However, not many candidates mentioned the power of an auditor of a holding company to have access to the accounts of the subsidiaries.

Regarding part (b), the common mistake made by the candidates was that the removal of an auditor needed a special resolution when in fact only an ordinary resolution is required. As a result of the mistake, the candidates incorrectly stated that the notice period for a members' meeting to pass the resolution to remove an auditor was 21 days, which is related to the passing of a special resolution.

Performance of the candidate was unsatisfactory. The marks scored by the candidates were widespread.



### **Question Seven**

The question invited the candidates to demonstrate their knowledge in the application of the Codes on Takeovers and Mergers ('the Codes') in part (a) and the circumstances under which a person was required by the Code to make a mandatory general offer to buy the shares of the target company's shareholders in part (b).

Most of the candidates did not perform well in both parts of the question. Quite a number of the candidates did not answer part (a) at all. For those who did answer part (a), their answers were not satisfactory when they referred to the requirement of Companies Ordinance (Cap 32) ('CO') in their answers instead of the Codes. Candidates should note that the Codes are not a piece of legislation. They are just guidelines. It follows that a breach of the Codes does not have legal consequence. Besides, the Codes only apply to listed companies. CO, however, applies also to private companies as well.

In relation to part (b), as mentioned in the foregoing paragraph, most of candidates only provided information about statutory requirements, which has no direct bearing with the Codes.

Performance of the candidates was inadequate for this question.

### **Question Eight**

The question invited the candidates to show their knowledge in the difference between offer and invitation to treat.

This was the question in which most of candidates performed well. The majority of the candidates knew fully well the legal effect of putting goods on shelves in a shop in contract law. There were still some candidates making using the term 'invitation to offer' when, in the context of the answer, rather than an invitation to treat. Candidates should bear in their minds that legal terms are technical and have legal significance. As such, candidates are advised not to use the terms loosely.

Most of the candidates scored well in this question and the examiner was fully satisfied with the candidates' performance in this question.

### **Question Nine**

The question invited the candidates to demonstrate their knowledge in the fiduciary duties of the directors of a company in part (a) and the winding up of a company on the just and equitable ground in part (b).

Most of candidates performed better in part (b) than that in part (a).

In part (a), a number of candidates put information relating to the duties of partners to a partnership in their answers when the question clearly stated that the business vehicle was an incorporated company. Future candidates should take great care in reading the questions before they start answering them. Nevertheless, for candidates answering this question in the correct direction, most of them performed well.

Regarding part (b), while not many of the candidates could state precisely the ground for winding up the company in question, many of them recognised the importance in the lack of trust between the parties over the possibility for winding up the company.

By reason of the mistake made by a number of the candidates in part (a), performance of the candidates in the question was not satisfactory.

**Question Ten**

The question invited the candidates to show their knowledge in the application of the doctrine of holding out and the concept of ratification in partnership law.

In answering the question, most of the candidates were able to identify the issues of ratification and the issue of holding out. However, not many of the candidates referred to s 16 Partnership Ordinance (Cap 38) when they considered the liabilities of the employee who held himself out as a partner to the partnership in question. One point worth mentioning is that s 16 only applies to the particular transaction in question. In other words, an employee holding himself out as a partner regarding a particular transaction will not be liable for liabilities relating to other transactions of the partnership.

While most of the candidates stated in their answers correctly that the employee together with the actual partners of the partnership should all be liable to the damages in question, there were not many candidates who mentioned that all the parties should be liable jointly and severally for the damages as if all of them were partners together.

Performance of the candidates in this question was satisfactory and the marks scored by the candidates were widespread.