



Examiners' report

F4 Corporate and Business Law (HKG)

June 2008

This examination paper consisted of ten compulsory questions. The paper was a fair one in that it provided those well-prepared candidates the opportunities to score high marks. Questions 1 to 7 were essay type questions and related to basic concepts in business and corporate law. Questions 8 to 10 were problem type questions, which aimed at testing candidates abilities in the application of the law they learnt.

There was an improvement in the performance of the candidates. Nevertheless, most of the candidates did not perform well in questions 4, 5 and 10.

There was an increase in the number of 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. The future candidates are strongly urged not to do so.

Specific Comments

Question 1

The question invites the candidates to show their knowledge in the Basic Law of the Hong Kong Special Administrative Region.

Most of the candidates performed well in that they were able to show that they had a good understanding in the area of law being examined. The marks scored by the candidates were widespread. Candidates scoring lower marks were those who could only provide a general description about the impact of the Basic Law in the legal system of the Hong Kong Special Administrative Region.

The overall performance of the candidates was satisfactory.

Question 2

The question invites the candidates to show their knowledge in the statutory duties of partners.

Most the candidates were able to provide a general description of the duties being examined. There were candidates mixing up the statutory duties of partners with the partners' duties in common law, which could be the result that they did not have a clear understanding in the difference between common law and statutory law.

The candidates had a fair performance in the question. The marks scored by the candidates were widespread.

Question 3

The question was about employment law and divided into two parts. Part (a) invited the candidates to show their knowledge in the concept of continuous contract and the importance of the concept. Part (b) tested the candidates' knowledge in the difference between termination of an employment contract by breach and by choice.

Regarding part (a), most of the candidates had a good understanding in what continuous contract was about. Yet, not many of the candidates appreciated the importance for an employment contract to be a continuous one. There were students who wrote that that Employment Ordinance (Cap 57) ('EO') did not apply to employment contracts which were not continuous.

The future candidates should note that EO applies to all employment contracts, be they continuous or not. The main difference lies in the degree of protection from EO. For employment contracts which are also continuous contracts at the same time, they attract more protection from EO.

Another point the future candidates should be aware of is that EO does not provide for a definition for employment contract. It follows that we have to consider the control test, integration test and mixed test, which are common law, in determining whether a contract is one of contract of service, i.e., employment contract, or contract for services.

The majority of candidates performed well in part (b). Most of the candidates had performed well in this question.

Question 4

The question was divided into two parts. Part (a) was to test the candidates' knowledge in the tort of passing off and part (b) invited the candidates to show their knowledge in the concepts of causation.

The areas of law covered by this question were new in that both were not covered by the previous syllabus and they were examined for the first time, which, in the examiner's view, was the main reason for most of the candidates not performing well in the question.

As regard part (a), most of the candidates were only able to show that the tort was about the use of a company's name without the company's permission. In relation to part (b), while some of the candidates referred to 'but for' test, they were unable to elaborate the concept any further. As for the rest, they could only show a vague idea about what causation was about.

Performance of the candidates was unsatisfactory. Given that the concepts were not difficult to understand, it is the examiner's view that the candidates' failure in revising these areas during their revision could be the main reason for the candidates' performance in this question. Given the performance of the candidates in this question, these areas of law will come out again in future examinations.

Question 5

The question invites the candidates to demonstrate their knowledge in the reporting duties of directors and chief executives of listed companies regarding their interests and dealings in shares, short positions and debentures of the listed companies under Securities and Futures Ordinance (Cap 571).

Again, this is a new topic being made examinable by the syllabus of F4 (HKG) paper. Prior to this session of examination, the examiner had made a note about this area of law and provided direction of studying to the students. It appeared to the examiner that not many of the candidates had paid attention to the note when most of the candidates gave only a general description of the duties of the directors in common law.

Future candidates should pay attention to the examinable documents on the ACCA website for the publication is a good channel of communication between the examiner and the candidates.

Similar to question 4, the candidates' performance in this question was not satisfactory. Given that it is the intention of the HKSAR to a financial centre in the Far East, the issue of corporate governance is an important one. As such, questions over this area will come out again in future examinations.

Question 6

The question was divided into two parts. Part (a) was about the difference between an annual general meeting and an extraordinary general meeting. Part (b) tested the candidates' knowledge in the meaning of 'share'.

Most of the candidates had performed well in this question. Candidates who did not perform were those being unable to provide a clear explanation as to what a share was about.

Overall candidates performed well in this question.

Question 7

The question comprised two parts. The candidates were required to explain the relationship between memorandum and articles of association in part (a) and the clauses in the memorandum in part (b)

The candidates performed well. Most of the candidates answered both parts satisfactorily. The main reason for candidates scoring low marks was their failure in providing explanation to those clauses in the memorandum.

Question 8

The question invited the candidates to demonstrate their knowledge in the presumptions adopted by the courts in determining the contracting parties' intention to enter into a legal relationship.

The question was a problem type question which demanded the candidates to show their understanding in the area of law being examined by applying their knowledge to the facts given by the question.

There was a great improvement in the candidates' ability in applying the law to the facts of the problem scenario. Instead of jumping to the conclusion after stating the law, most of the candidates were able to give a clear explanation as to how the law was applied to the facts, which rightly supported the candidates' conclusion that the contract was binding on the parties in question.

Candidates who did not perform well in this question were those who failed to identify the issue being raised or those who failed to provide a clear explanation about the relevant law.

Most of the candidates had a satisfactory performance in this question.

Question 9

The question invited the candidates to demonstrate their knowledge in undisclosed agency.

The marks gained by the candidates in this question were widespread and the candidates' performance in this question was unsatisfactory.

While most of the candidates were able to identify the area of law being examined, which was agency law, not many of them could identify the issue correctly. Nevertheless, there were candidates who had very good performance in this question.

Question 10

The question invited the candidates to show their knowledge in unfairly prejudicial behaviour of the majority shareholders of a company.

Though questions over this area had been examined several times before, the performance of the candidates was not satisfactory. Quite a number of candidates incorrectly stated that the question was about the breach of directors' duties. For those who correctly identified the issue, not many of them were able to give a full account of the relevant law.

The marks scored by the candidates were widespread. Candidates who performed well in the question were those who had a good understanding of the area of law being examined.

The subject area being examined is important. It is under s 168A of the Companies Ordinance (Cap 32) that the courts are given great power to protect the interests of the minority shareholders of companies by making various types of orders to regulate the behaviour of the majority shareholders. Given the performance of the candidates in this sitting, questions over this area will surely come out again in the future.