



Examiner's report

F4 (CHN) Corporate & Business Law For Paper Variant exams June 2015

General Comments

The June examination introduced a format through which candidates were asked to answer 45 questions, worth 1 or 2 marks each, and 5 further questions worth 6 marks each in 2 hours. All questions were compulsory. The question type of the questions in Section A was objective in that the correct answers had to be selected in order to earn marks. It was not possible to award marks when candidates offered more than the required number of answers or answered the same question more than once. While the question type of the questions in Section B was paper the scenario based questions, more or less same as the previous exams. The overall standard of scripts was satisfactory, suggesting that the majority of candidates had prepared well for the examination.

Comments about Section A performance

In terms of syllabus coverage, 45 questions in this Section include most parts of the Study Guide outcomes, which means that candidates need to have a comprehensive understanding of the examinable topics and the detailed rules. Therefore, it is not easy for candidates to make a correct choice to the relevant question. However, candidates performed well.

Sample question

This section of the report discusses two questions which are important under the business laws of China which were difficult for candidates to answer.

Question 21

In relation to the Property Law, which of the statements conforms with the law if the mortgagor intends to sell the apartment, mortgaged for a loan, before the expiration of the loan agreement?

- A They are entitled to sell but should notify the mortgagee in advance
- B They are entitled to sell without having to notify the mortgagee
- C They are entitled to sell but should notify the mortgagee and pay off the debts
- D They are not entitled to sell, since it is the mortgagee who should have the priority to buy

The correct answer is **C**.

In social practices it is often that a debtor or a third party provide movable or immovable property as a guaranty to a creditor for a loan or other contractual right. It is also not rare that the debtor or third party to sell the things under mortgage before the expiration of the loan agreement. Under such circumstances one should determine whether the things under mortgage can be disposed. And if the answer is positive, under what conditions such properties can be disposed.

According to the relevant provision of the Property Law, under some conditions the mortgaged properties may be sold or disposed in other legitimate forms. Therefore, D should be eliminated first, as it states that the party is not entitled to sell the mortgaged apartment. Moreover, in explaining the reasons for such a conclusion is that the mortgagee should have the priority to buy the mortgaged thing. It is really incorrect since the mortgagee only has the right of priority to be settled in the process of dispute resolution, not the right of buying in priority.

As to choice A, although it states they are entitled to sell, the party should notify the mortgagee in advance of the condition. It is also entirely incorrect as it would damage the rights and interests of the mortgagee. The property under mortgage is the guaranty provided by the debtor or third party to the creditor (mortgagee). Where the mortgaged apartment is sold out by merely giving a notice to the creditor, the creditor would lose the guaranty to their credits. Therefore, this is not the correct answer.

As to choice B, the reason why it is an incorrect answer is the same as that for the choice A. Furthermore, it states that they are entitled to sell the mortgaged apartment even without notice. It is incorrect and easy to eliminate.

Choice C is the correct answer, since it satisfies the conditions for a debtor to sell the property under mortgage before the expiration of the main agreement, including the giving notice to the mortgagee and repaying off the debts.

Comments about Section B performance

In Section B, five scenario questions in relation to the Property Law, Contract Law, Company Law, Enterprises Bankruptcy Law as well as the fraudulent behaviour in corporate management and securities transactions were examined. As a whole the performances in this Section were satisfactory. Most of candidates were able to understand the questions clearly and give correct answers.

Syllabus topics on which candidates performed comparatively well included the system as to the transactions of mortgaged property and transfer of shares of a limited liability company.

Syllabus topics on which candidates performed inadequately included the formation of contract and offset of debts during the process of bankruptcy.

Following are the two questions in discussions.

Question Two

In question 2 the scenario states the facts of a transaction between Sanyi Farm and Food Shop without a contract in writing. Candidates were required to determine the legal nature of the relevant party's action and whether there is contract between the two parties. Therefore, the type of this question which requires candidates to answer against each part of the question by giving a determination and brief reasons.

As to the answer to part (a), the legal nature of the fax sent by Food Shop is an invitation to offer, not an effective offer. Since this fax contained only the name and quantity of the goods, lacking the price of goods, an essential and necessary factor for an effective offer. For any commercial transactions the price of goods or services is one of the most important factors for any parties to enter into a contract. Some candidates, however, considered it to constitute an offer because they failed to understand the essential factors to be an effective offer.

Part (b) of this question requires candidates to determine the nature of Food Shop's action. It is clear that it sent an invitation to offer to Sanyi Farm, hence the delivery of goods of Sanyi Farm should be an offer in a form of action with which Sanyi Farm expresses its intention to establish a contractual relation with Food Shop. Under such a circumstance the taking delivery of goods by Food Shop should

certainly be an acceptance. However, some candidates still could not give a correct conclusion to this part, or could answer correctly but failed to give a correct reason.

If candidates were able to make the correct conclusions for part (a) and part (b), the conclusion for part (c) is natural that Sanyi Farm and Food Shop entered into a contract by way of the delivery of goods and taking delivery. Among the candidates who gave the conclusion for this part, some candidates failed to explain the reasons why the two parties have already entered into a contract even though they did not sign a contract in writing.

Question 4

This question required candidates to deal with debts due between the two parties. The scenario is complicated as both parties are creditor and debtors mutually. Moreover, the key issues to be dealt include that whether the meal service fees could be offset and what benefit Stine could have if the request to offset was accepted. In addition, one of the debtors was under the bankruptcy process. All these factors were combined and should be taken into consideration by candidates when they made the conclusions. For these reasons few candidates answered this question correctly and give the brief reasons with a satisfactory manner.

According to the Enterprise Bankruptcy Law, where a creditor is indebted with their debtor before the bankruptcy application is accepted by the court, they may claim for debts offset to the bankruptcy administrator. The conditions for offsetting under such circumstances include: first, the debts should be taken place before the bankruptcy application is accepted; second, both parties are the creditors as well as the debtors; third, the debts have already been due.

As to part (c), almost no candidates could expressly give the reasons for the benefit by offsetting the debts due. Since Mering was unable to settle its debts due, the credits of all creditors could not be repaid fully at the end of liquidation. While the debts owed to Mering should be settled in full by Stine. If offsetting was accepted, Stine might reduce his losses in the liquidation process.