
Examiner's Report

Paper 6
Hong Kong Business Law

General Comments

Candidates' performance in this paper was again average. They had no problem in passing the multiple choice section. Unlike previous sessions however, the overall performance of the candidates in the Section B was poor. Most candidates generally failed to cover the whole syllabus adequately.

Section A – 20 Multiple Choice Questions

In general, the pass rate in this section was good despite the fact that the whole section covers a wide range of topics in the syllabus.

Section B – 4 Short Questions

The overall performance of candidates in this section was poor. There were five sub-parts in this section, and on average, candidates could only answer two or three sub-parts. Question B1 was on interpretation of statutes but candidates seemed to be more familiar with the common law rules than the statutory aids. Cap 1 and section 2 (usually) of individual ordinances belong to the latter. Candidates should cover them when they study the topic.

Question B2 on differences between commercial and domestic agreements should have been an easy one but answers were disappointing. Not many candidates could explain the concept of rebuttable presumption of intention. Similarly in Question B3 they could not explain special crossing properly, not to say its effect on a cheque so crossed. A lot of candidates confused special crossing with general crossing, "not negotiable" crossing and "A/C payee" crossings.

Question B4(i) was on something basic – nominal capital and unissued capital. But most candidates could not explain what they were and tell their differences. Question B4(ii) on ordinary and special resolution by contrast was satisfactorily answered, but a number of candidates forgot to mention the notice requirements and some confused ordinary resolution with ordinary business in an AGM.

Section C – 5 Long Questions

Question C1

Question C1 was on the Basic Law of the HKSAR and candidates' performance was satisfactory. In parts (a) and (b)(i), they generally could explain Articles 8 and 18 of the Basic Law without difficulty. But when asked to apply the rules in parts (b)(ii) and (c), most who did not grasp the issues well simply made wild guesses.

Question C2

The candidates' performance in Question C2 was satisfactory. The question was on contract law and candidates showed a basic understanding of the topic. Part (a) was about the formation of contract. Most candidates were familiar with this area and they correctly identified when the contract was formed. Part (b) was about the exemption clauses and more than half of the candidates applied the law correctly. Part (c) was on warranty. Some candidates, however, rushed into and rambled about specific performance, injunction, rescission and common law remedy of damages in part (c) perhaps because they saw the word "remedy" there.

Question C3

Question C3 on partnership was popular but was not answered well. Candidates had no problems in defining a partnership in part (a) but they failed to explain why a partnership had not been formed at the material time. Many of them treated the organisation as an incorporated company. Their performance in part (b), the formality in forming a partnership, was good. But quite a number

of them wrongly pointed out that a partnership needed to be registered with the Companies Registry. Their explanation of the liability of partners in part (c) was also inadequate.

Question C4

Question C4 on charges was the most popular one in the paper and was the best answered. The following deficiencies were however noted:

First, many candidates failed to explain why a fixed charge is better than a floating charge from the lender's point of view. Secondly, candidates failed to apply section 267 of the Companies Ordinance properly. Thirdly the question was not on the registration aspect of charges. Yet some answers set out registration requirements or the types of charges that are registrable in some length.

Question C5

Question C5 on minority protection was the least attempted. Very few candidates knew what section 168A and the new statutory derivative actions were. The topic did not come up often in the past and probably was the last choice for most candidates. Candidates' performance in this question was therefore the least satisfactory. In some answers cases were cited as examples of unfair prejudicial conduct in part (a) but very few could state the statutory provisions that part (b) asks.

[END OF EXAMINER'S REPORT]