

Examiner's Report

December 2017 Session

Paper 6

Fundamentals of Business Law

General Comments

Candidates' performance on the whole was more or less the same as that in the previous sessions. The overall performance in the Section C was weak. Candidates who failed did so mostly because they did not read the questions carefully and merely reproduced all they had memorised from the answers in the past papers. As Section C carries 50% of the total marks, candidates should pay more attention to this section and make sure they have answered sufficiently to pass this section.

Section A – 20 Multiple-choice Questions

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

Section B – 2 Compulsory Questions

The overall performance of candidates in this section was satisfactory. There were two parts in this section.

Question B1

Question B1 was a problem-based question on counter-offer and request for information. This question was relatively simple and candidates grasped the concepts well. Candidates were also required to illustrate these concepts with examples or cases. *Hyde v Wrench* and *Stevenson v McLean* are two well-known cases that explain the principles. If candidates could not remember the cases, they could make up an example to illustrate the concepts. Candidates would not get full marks if they did not give examples or cases as illustration, even if they had explained the principles correctly.

Question B2

Question B2 was another uncomplicated question on the defences under the Defamation Ordinance. The performance was fair. Various defences are available under Defamation Ordinance such as unintentional defamation, fair comments, justification and privileges. But some candidates might have left out this part of the topic in their revision.

Section C – 3 Optional Questions

Question C1

Question C1 was a straightforward question but not a popular one.

Part (a) asked candidates to explain the roles played by the Chief Executive in the legislative process of the HKSAR. Some candidates stated the legislative process, but did not focus on the roles of the Chief Executive. This showed that they did not read the question properly as the question started off by asking: "Explain the roles played by the Chief Executive in: ..." Candidates should at least point out that a bill passed by the Legislative Council will take effect only if it is signed and promulgated by the Chief Executive. After receiving the Chief Executive's signature, the bill will then become an Ordinance (Article 76 of the Basic Law of the HKSAR). The Chief Executive is also responsible for the appointment or removal of judges of the courts at all levels in accordance with legal procedures. Candidates are advised to read the Basic Law of the HKSAR in detail, as this is the most important constitutional document for Hong Kong.

Part (b) was on bills of exchange and candidates also answered poorly. Many of them could only give the definition of a holder in due course and failed to apply it to the scenario. Under section 24 of the Bills of Exchange Ordinance, a forged signature is wholly inoperative.

Question C2

Question C2 was a problem-based question on contract law. Three different areas of contract law were asked but candidates only showed a fair understanding of one or two the topics in this question.

Part (a) required candidates to describe any two implied terms that impose an obligation on Percy under the Sale of Goods Ordinance. Candidates' performance was good for this part of the question. They were able to name two implied terms with reasonable accuracy.

For part (b), it was a question on the analysis of frustration. Candidates were advised to give the definition and legal principles of frustration before analysing the scenario. They should not immediately jump to the conclusion without explaining the legal principles first. Frustration of a contract occurs when its performance becomes impossible due to some unforeseen changes in circumstances arising from events outside the control of the parties. The fact that there is a strike only makes the contract more difficult to perform or not so profitable for Percy. It is still possible for Percy to perform the contract by delivering the cocoa powder through alternative routes or methods and hence the doctrine of frustration will not be applied.

For part (c), it was a question on anticipatory breach and it seemed that most candidates were unable to identify this issue correctly. An anticipatory breach occurs when one party to a contract notifies the other party that he does not intend to fulfil his obligations.

Question C3

Question C3 was about types of companies and advantages of forming a corporation. This was the most popular question.

In part (a), many candidates might have misunderstood the question and described the different types of business organisation that could be formed, such as partnership and sole proprietorship. They thought the question was about different types of business organisation but they should note the wording in the question: "type of company under the Companies Ordinance". A partnership could not be formed under the Companies Ordinance. As a result, many of them gave a long description of the nature of partnership and hence could not receive a pass mark for this question. Candidates should have read the question properly. They should have pointed out that five types of companies can be registered under the Companies Ordinance: a public unlimited company with a share capital, a public company limited by shares, a private unlimited company with a share capital, a private company limited by shares and a company limited by guarantee without a share capital.

Part (b) was on the definition of holding company and it was puzzling why some candidates described the procedure of forming new company, a topic which bears little relevance to the question.

Part (c) was about the advantages of corporation form. This part was satisfactorily answered.

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