
Examination Panelist's Report

**Paper IV
PBE Business Law and Taxation
(December 2017 Session)**

(The main purpose of the following report is to summarise candidates' common weaknesses and make recommendations to help future candidates improve their performance in the examination.)

General Comments

The performance in this paper was unsatisfactory. The problems which existed in the previous sessions still prevail. In general, candidates were careless in reading the questions, and very often they came up with some totally unrelated answers. Besides that, candidates demonstrated a very limited scope of knowledge and they were only able to answer questions related to the main topics.

Specific Comments

Section A – Optional Questions

Question 1 – 20 marks

The first question was related to contract law. Part (a) required candidates to discuss frustration and part (b) required candidates to discuss misrepresentation. In part (a), only a handful of candidates identified the issue as frustration. Most of the candidates wrongly regarded the question as one on conditions and warranties, and then focused on the available remedies. Candidates performed slightly better in part (b). While many candidates realised the question was related to misrepresentation, many of them placed the emphasis incorrectly. The question required candidates to define misrepresentation, and the various elements in constituting misrepresentation. Many candidates indeed wrote a lengthy answer in explaining the different types of misrepresentation.

Question 2 – 20 marks

There were four different parts in this question. Each part required candidates to explain a principle or concept in the common law system. Part (a) required candidates to explain the meaning of common law. This was the best answered part in the whole question. Most candidates pointed out that the common law system was based on decisions from courts. Part (b) required candidates to explain natural justice. Very few candidates could grasp its correct meaning, and most candidates came up with irrelevant answers. Part (c) required candidates to explain the rule in *Pepper v Hart* which was related to statutory interpretation. Only a few candidates had a correct understanding of the question. Most of the candidates were completely ignorant of this legal principle. Part (d) required candidates to explain the ejusdem generis rule. This rule concerns statutory interpretation. Again, almost none of the candidates answered correctly. This question (as a whole) required candidates to explain a specific concept, there were no analysis nor facts to deal with. Candidates might be handicapped by this kind of question if they missed this part in their revision.

Question 3 – 20 marks

This question was about contract law. Part (a) required candidates to explain the two major remedies, namely specific performance and damages. Though many candidates wrongly identified the issues as warranties and conditions, and discussed in detail concerning whether the contract had been breached. Candidates should indeed focus on the meaning of damages and specific performance. Most importantly, candidates should apply the relevant principles to the facts, and explain which one is applicable in our case. Part (b) required candidates to explain remoteness of damages and promissory estoppel. Most candidates misunderstood that remoteness related to tort, and focused their discussion on causation in tortious liability. It was an avoidable mistake since the question already stated that it was related to contract law. Promissory estoppel is a very important concept related to consideration. Only a few candidates were barely capable of explaining this concept, and most candidates showed a complete lack of knowledge.

Question 4 – 20 marks

Part (a) of this question related to a promoter and pre-incorporation contract of a company. Candidates should explain the meaning of promoter, the various problems related to a pre-incorporation contract and how this kind of contract should be approved by the company. Only a small number of candidates pointed out the correct issues. Many candidates mistakenly regarded the core issue of this question as the separate legal entity of the corporate. Some candidates focused on the breach of fiduciary duties. Part (b) required candidates to list out the differences between a private and a public company. Candidates were largely able to state the differences between the two. Though some of them used the business approach in answering this question. For example, to compare the pros and cons between the two types of companies in running a business. There were also some candidates who mixed up the meaning of public and listed companies.

Question 5 – 20 marks

This was a direct question regarding company law. Part (a) required candidates to explain the various grounds of petition in winding up a company. While most candidates were able to list out the six different grounds in a winding up application. Almost none of them explained the relevant grounds in detail. This was an obvious example in illustrating that candidates were very careless in reading the question. The question clearly stated that candidates should explain and not just list out the different grounds. The marks distribution also suggested that a detailed explanation was required. Unfortunately, many candidates still ignored this. Part (b) required candidates to explain the role and responsibility of the committee of inspection. Most of the candidates failed even to identify its nature as an organ to assist the winding up process. For those who recognised its basic role, still only a few of them could explain its function sufficiently.

Section B – Optional Questions

Question 6 – 20 marks

Part (a) of this question required candidates to discuss the special features of the Hong Kong taxation system. Most of the candidates misunderstood this question. They wrongly focused their discussion on the different types of tax in Hong Kong. Therefore, their answers were almost all about the characteristics of profits tax, property tax and salaries tax. There were a few candidates who answered correctly, and most of their answers were fine. Part (b) required candidates to discuss the action taken by the IRD in case of default on the payment of tax. Candidates mostly could explain the consequences of default, including advanced payment and surcharge. However, only a few candidates could point out that a default in the payment of tax may indeed trigger court proceedings.

Question 7 – 20 marks

This question consisted of two parts. Part (a) required candidates to calculate the tax liability concerning the leasing of a property. Part (b) required candidates to provide an explanation of the calculation. Candidates made a lot of careless mistakes in working on the calculation. This included the correct taxable period and all the related details in the leasing agreement. Generally, candidates were very weak in discerning which item should or should not be taxable / deductible.

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