
Examination Panelist's Report

Paper IV
PBE Business Law and Taxation

(December 2018 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

In general, the performance of candidates in this paper was fair. The paper consisted of problem questions, short questions and numerical questions.

Candidates were good at numerical questions, but most were weak in answering problem questions. Candidates generally stated legal advice without further elaboration or explanation of the law related to the issues in the problem questions. Short questions requiring an explanation of some legal concepts were more or less straight forward, but the topics asked were selected from a wide range of topics. The only reason for weak answers was that candidates did not revise the topics thoroughly and prepare well. Those candidates who did achieve good marks produced solid answers and demonstrated good effort in their preparation for the examination.

Specific Comments

Section A – Optional Questions

Question 1 – 20 marks

This question required candidates to answer a problem-based question on contract formation. This was the second most popular question and most candidates were able to pass this question satisfactorily.

Although a number of candidates correctly pointed out that a valid contract was formed in the case, many of them did not obtain a high score. This was because they failed to give reasons and justifications for their advice. Candidates were required to analyse the whole negotiation process step by step, as well as state the law to back up their advice.

Question 2 – 20 marks

This question required candidates to explain certain terms related to tort law and to analyse a negligent misstatement case. This question was satisfactorily answered.

There are three sub-questions and most candidates could only answer the part on vicarious liability well. Many candidates did not know the meaning of "*res ipsa loquitur*" and failed to explain with reference to the relevant leading cases, which the question required. As to the advice on negligent misstatement, only a handful of candidates could identify this was a case on pure economic loss. The "special relationship" test must be explained and applied to the case.

Question 3 – 20 marks

This question required candidates to analyse a problem question on contract and explain two legal terms related to contract law. This was another poorly answered question.

There are three sub-questions and candidates did not perform well in all components. Part (a) was related to past consideration. Although a number of candidates could identify this issue, most of them could not explain the principle using examples or leading case law.

Part (b) asked candidates to explain liquidated damages and equitable remedies. For liquidated damages, the answer was fair and candidates could point out that this is the fixed amount that is payable upon breach of contract and must be a genuine pre-estimate of loss. But for equitable remedies, candidates did not realise they are granted at the discretion of the court. Usually, this type of remedy may be granted when an award of damages is insufficient to remedy the loss suffered by the injured party.

Question 4 – 20 marks

This question required candidates to explain a few legal concepts under company law. This was the least attempted question. The performance was poor.

For part (a), candidates had to explain the concept of statutory contract under s.86 of the Companies Ordinance. Most candidates were not familiar with this concept. The company's article, once registered, shall have the effect as a contract under seal between the company and each member and between a member and each other member. Some candidates wrongly thought that it was something related to contract law and discussed at length the elements in forming a contract.

For part (b), knowledge of fraudulent trading and unfair preference were tested. Those candidates who prepared well were able to explain these two concepts sensibly.

Question 5 – 20 marks

This question required candidates to explain four different concepts related to the legal system. This question was answered fairly.

The topics include legislative process, judicial precedent, small claims tribunal and labour tribunal. Most candidates were at least able to give a brief answer to each of them. Some better candidates could even point out in passing that there was an update of the jurisdiction of the small claims tribunal in December 2018.

Section B – Optional Questions

Question 6 – 20 marks

This was a popular question. For part (a), candidates had to explain the meaning of “owner” and “assessable value” under the Inland Revenue Ordinance. Candidates’ answers to this part were only superficial, demonstrating that candidates did not possess good knowledge of these two terms.

Most candidates who attempted this question were able to score good marks in part (b), which required them to explain the six badges of trade in the context of profits tax.

Question 7 – 20 marks

This question required candidates to perform a simple numerical computation of salaries tax and property tax. This was the most popular question and average candidates passed this question. Some candidates failed to explain why standard rate was not applicable to the case, and errors were also seen in choosing the appropriate figure for personal allowances. Many candidates also made careless mistakes in calculations and in arranging the numbers correctly.

Conclusion and Recommendation

Candidates on average were good in answering taxation questions in Section B. However, most of them were unable to answer analytical questions well. They did not give reasons to justify their decision or analysis.

Candidates should prepare well for the examination and should revise all topics. Topics are vast, and therefore candidates should formulate an effective revision; for example, candidates can prepare themselves better on the topics they intend to answer. They should have confidence to choose at least five questions and answer them well before entering the examination venue.

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