
Examination Panelist's Report

Paper IV
PBE Business Law
and Taxation
(June 2011 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 general performance of candidates was satisfactory in section B, i.e. Taxation questions, while the general performance of candidates was not very satisfactory in section A, i.e. Law questions. Most candidates managed to identify relevant tax items and correctly answered the taxation computation question in section B. Many candidates exhibited weaknesses in identifying relevant legal issues in section A. Many of them simply pointed out what they had memorised without accurately addressing the relevant issues of the questions. Most candidates did not provide any authority for the rules they put forward as relevant. Many candidates simply repeated the case facts in the questions without any discussion or analysis, and simply gave their conclusion at the end of the answer without any support or reasons. It is believed that insufficient preparation was the major reason contributing to failure.

Specific Comments

Section A

Question 1 – 20 marks

Candidates were expected to discuss the concepts, sufficiency and adequacy of consideration in part (a) of this question. Many candidates did not understand the distinctions between these two concepts. Some candidates managed to point out the rules about past consideration. Most candidates did not discuss the rules about part payment and discharge of pre-existing duties.

Candidates were expected to apply the concept of past consideration to the case study in part (b) of this question. Only a few candidates managed to identify the relevant legal issue in this question. Many candidates simply pointed out the five elements to form a contract and discussed many rules governing offer and acceptance, which were not very relevant to this question.

Question 2 – 20 marks

Candidates were expected to discuss the concepts about void and voidable contracts due to mistake in part (a) of this question. Most candidates failed to understand and explain the distinctions. Some candidates managed to explain the distinctions between void and voidable contracts. Most candidates failed to explain the circumstances in which a contract will be void or voidable due to different types of mistake.

Many candidates failed to identify the relevant issue in the question, i.e. mistake, in part (b) of this question. Many candidates simply pointed out the five elements necessary to form a contract and failed to explain that the contract in the case study may be invalidated due to mistake.

Question 3 – 20 marks

This question was divided into three parts. Part (a) of this question required candidates to explain the distinctions between an alternate director and a reserve director. Many candidates failed to point out the distinctions. Part (b) of this question required candidates to explain the bribery rules in the Prevention of Bribery Ordinance. Most candidates failed to identify and explain the relevant sections in the Prevention of Bribery Ordinance. Part (c) of this question required candidates to explain the rules about directors' duties. Most candidates managed to explain reasonably the rules governing directors' duties.

Question 4 – 20 marks

This question was divided into three parts. Part (a) of this question required candidates to explain the general effect of the Basic Law. Most candidates managed to explain some relevant provisions in the Basic Law. Part (b) of this question required candidates to explain the meaning of the doctrine of precedent. Most candidates managed to explain the meaning of precedent. Part (c) of this question required candidates to explain the meaning of non-Hong Kong companies. Most candidates failed to explain the legal implications and registration requirements of non-Hong Kong companies in Hong Kong.

Question 5 – 20 marks

This question was divided into two parts. Part (a) of this question required candidates to discuss s.168 of the Companies Ordinance. Most candidates failed to identify the relevant section. Part (b) of this question required candidates to discuss the rules about establishing an action in the tort of negligence. Most candidates managed to answer this part satisfactorily. Candidates managed to discuss the required elements to establish an action in the tort of negligence, i.e. existence of a duty of care, breach of duty and damage.

Section B

Question 6 – 20 marks

This question was divided into two parts. Part (a) of this question required candidates to explain the operation of property tax in Hong Kong. Only a few candidates managed to explain the relevant concept. It seemed that many candidates misinterpreted the question and only focused on the word "owner", without discussing anything about the operation of property tax in Hong Kong. Part (b) of this question required candidates to explain the term "employment". Most candidates managed to explain the three tests which determine whether there is a contract for service or a contract of service.

Question 7 – 20 marks

Candidates were expected to calculate the salaries tax liability of Mrs. Chan in the case study. Most candidates correctly included most of the tax items in their answers, but only a few of them correctly calculated the salaries tax liability of Mrs. Chan at the end of their answer. Many candidates mistakenly calculated the rent value by including Mrs. Chan's gain on exercising the share option.

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