

Examiner's Report

June 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 Sections B and C was weak, especially in Section B. It is important to note that Section B is compulsory and carries 30% of the marks of the Paper and candidates should aim at passing both questions in this section in order to pass the whole paper. Candidates failed mostly because they did not know what the questions asked for and merely reproduced all they had memorised from the answers in past papers. As a result, their performance was not satisfactory.

Section A – 20 Multiple-choice Questions

In general, the pass rate in this section was good 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 not satisfactory, even though the question was relatively straightforward. There were two questions in this section.

Question B1 was a problem-based question on frustration. Many candidates did not have sufficient knowledge of this topic. They might have left out this topic in their revision. 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. There must be a radical change in the circumstances, which in effect goes to the root of the contract. The court is prepared to find that a contract is discharged by frustration in limited circumstances.

Question B2 was another typical question on the principles of negligent misstatement. The performance was, however, not satisfactory. Most candidates were only able to describe the principle under *Donoghue v Stevenson* but failed to point out the law under *Hedley Byrne v Heller*. The latter case established the important doctrine of negligent misstatement. The House of Lords in that case held that a duty of care could be owed by a professional man, a provider of information, to a third party if he/she even has made a statement negligently, even in cases where there was no contractual relationship between them.

Section C – 3 Optional Questions

Question C1

Question C1 was also a straightforward question but the performance was poor. Part (a) was about the jurisdiction of courts. It is fundamental that candidates should know the court system. The answers were, however, disappointing. The jurisdiction of Small Claims Tribunal consists of any monetary claim founded in contract, quasi-contract or tort where the amount claimed is not more than \$50,000. The Court of First Instance has unlimited jurisdiction in both civil and criminal matters in the first hearing.

Part (b) was on bills of exchange and candidates also answered this part poorly. Many candidates could only give the definition of a bill of exchange and failed to point out a feature of negotiable instrument in that the Bills of Exchange Ordinance modifies the rule on past consideration for a holder for value. Under section 27(1) of the Bills of Exchange Ordinance, valuable consideration for a bill may be constituted by an antecedent debt or liability.

Question C2

Question C2 was a problem-based question on contract law and candidates showed a fairly good understanding of the law on formation of contract. Part (a) was about invitation to treat, offer and acceptance. Candidates' performance was good in this part of the question. They were also able to distinguish the different types of documents. Part (b) was a question on the analysis of exemption clause. An exemption clause purports to exclude either in whole or in part liability for certain breaches of contract or the consequence of certain events. Answers to this part of the question were weak, again, probably because candidates had overlooked this topic in their revision.

Question C3

Question C3 was on the differences between a limited company and a sole proprietorship. Although this question was satisfactorily answered, many candidates did not read the question carefully. The task required them to compare the ownership and governance structure of these two forms of business. For example, in a sole proprietorship, the sole proprietor owns the business whereas for a limited company, the shareholders are the owners of the company. But many of the candidates only gave a list of advantages and disadvantages of these business structures.

[END OF EXAMINER'S REPORT]