
Examination Panelist's Report

Paper IV
PBE Business Law and Taxation
(June 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 overall performance in this paper was unsatisfactory. The most serious problem was carelessness in reading and understanding the meaning of the questions. In addition, candidates demonstrated a very limited knowledge to the syllabus as a whole. As a result, many candidates were only capable of answering the questions with certain pre-determined content regardless of the underlying requirements.

Specific Comments

Section A – Optional Questions

Question 1 – 20 marks

This question was about contract law. Part (a) required candidates to explain consideration in general. Parts (b) and (c) required candidates to explain two major principles in contract law under a given scenario. In part (a), most of the candidates misunderstood the question. A lot of them discussed the required elements in forming a valid contract instead of focusing on the meaning of consideration. Though some candidates correctly restricted their discussion on consideration, they were not aware that the principles asked for in parts (b) and (c) shall be excluded in the answer of part (a). Candidates performed relatively well in part (b), although most candidates failed to support their answers with authorities. Candidates' performance in part (c) was fine, many of them were able to point out the core issue. Some candidates approached this question from a common sense perspective, which was obviously wrong given that this was an examination on business law.

Question 2 – 20 marks

Part (a) of this question simply require candidates to explain the meaning of wrongful dismissal. It was a direct question for which neither authorities nor detailed analysis were needed. Performance in this part was fine although only a handful of candidates were able to answer the question accurately and sufficiently. Part (b) was related to the Disability Discrimination Ordinance (Cap.487). Most candidates failed to state the essential features of the ordinance. Instead, candidates mostly resort to a common sense approach by making allegations of unfair treatment received by the victim only. Candidates also failed to state and explain the available remedies sufficiently apart from monetary compensation.

Question 3 – 20 marks

This question was about tort law. Part (a) required candidates to state the three elements in establishing neighbourhood. Almost all candidates misunderstood this question and wrongly treated it as a question about the elements in establishing duty of care. The poor performance on this question was exemplary in illustrating that most candidates were extremely careless in reading the questions and rushed into their pre-determined answer regardless of the requirements of the questions. Part (b) required candidates to explain the

thin skull rule. Performance in this part was fine, but only a handful of candidates were able to explain the principle thoroughly and precisely.

Question 4 – 20 marks

This question was related to company law. Part (a) required candidates to explain the rule in *Foss v Harbottle* and its impact on the minority shareholders. It was a straightforward question, where candidates only needed to explain the principle without the need to refer to a given scenario. Part (b) required candidates to explain unfair prejudice related to minority shareholders. The greatest problem in this question was that most of the candidates mixed up parts (a) and (b) of the question. While most of the candidates realized this question was related to minority protection (as it was already stated in the questions), many of them failed to tell the differences and relationship between the rule in *Foss v Harbottle* and s.724 in the Companies Ordinance. The result was that many candidates mixed up the two, and their answers either appeared in the wrong part or tended to be seriously repetitive.

Question 5 – 20 marks

This question was also related to company law. Part (a) required candidates to discuss Turquand's rule and its effect on internal management and outsiders' protection. While some candidates spotted the main issue, most of the candidates wrongly treated this question as one on director's duty and problems related to general meetings. Part (b) required candidates to discuss the requirement and procedure in removing a director. Candidates in general did not understand that a director could be removed by an ordinary resolution regardless of any other restrictions. Therefore, the discussion was mistakenly focused on the amendment of articles or the way of obtaining a special resolution. Candidates usually mixed up the special procedure in removing a director and the normal procedure in convening a meeting. Only a few candidates pointed out the correct procedure and were able to specify the required days of notice and the proper procedure in removing a director.

Section B – Optional Questions

Question 6– 20 marks

Part (a) required candidates to discuss the 60 days rule. It was a direct question without the need to relate the laws into a scenario. Most candidates could grasp the basic meaning of the rule, but only a few could state all the essential elements and discuss the rule thoroughly. Part (b) required candidates to state the procedure in lodging an objection and appeal against tax assessment. Most candidates were able to point out the basic procedure including the deadline and the supporting documentation in case of an objection, although only a few candidates realized the correct procedure regarding an appeal against assessment. Candidates generally understood that there existed a way to appeal in the IRD, but only a few of them pointed out that the aggrieved parties could also seek remedies from the courts.

Question 7 – 20 marks

Part (a) required candidates to state the four heads required to be stamped under the Stamp Duty Ordinance. It was a simple and direct question, where candidates mostly performed well. Part (b) required candidates to explain the consequences for a failure in stamping. Only a few candidates pointed out that documents which failed to be properly stamped would lose their legality and thus would become unenforceable in the courts. Instead, most candidates simply concluded that the consequence for failing to stamp was a fine only. Part (c) required candidates to compute the required stamp duty related to a property transaction. Candidates were expected to understand the meaning and requirements of AVD and SSD. Most of the candidates identified the core issues, but many of them still made mistakes with regards to the exact amount of payable stamp duty. Candidates demonstrated a very limited knowledge regarding the SDO.

Conclusion and Recommendation

Candidates made almost the same mistakes as in the previous sessions. Candidates must read the questions carefully, and should not overly focus on certain hot topics only during their revision.

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