
Examination Panelist's Report

Paper IV
PBE Business Law and Taxation

(June 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

The performance in this paper was disappointing. Candidates made the same mistakes as before. That said, most of the candidates only focused on a few topics, and thus were unable to answer any questions beyond their limited preparation. Besides, candidates were very careless in reading the questions. Many of them answered something totally irrelevant. It showed that most candidates have failed to learn from the previous mistakes and they are not willing to spend time on reading the past papers or the panelist's reports. Candidates should broaden their knowledge and avoid studying selectively. The ability to identify the right issues is the key to success in any business law examination.

Specific Comments

Section A – Optional Questions

Question 1 – 20 marks

This question was an open type question. This means candidates were given a case and were required to advise a party concerning his legal liability. There were no sub-questions and candidates were free to organise their answers. Candidates were in fact required to discuss and explain duty of care, breach of duty and causation and to quote the leading case *Donoghue v Stevenson*. Most of the candidates were capable to answer this question sufficiently. Though some of them failed to quote any authorities to support their answers and some organised their answers poorly.

Question 2 – 20 marks

This question was divided into three parts and all of them were related to contract law. Part (a) required candidates to define implied terms. The performance in this part was average. While most candidates were able to demonstrate a basic understanding of implied terms, only a few of them could answer accurately. Part (b) required candidates to state three circumstances where terms may be implied into a contract. This was a direct question without referring to any facts and no analysis was needed. The performance in this part was mixed. While some candidates were able to answer correctly, many of them showed complete ignorance. Some candidates even wrongly treated this question as one related to consideration. Part (c) required candidates to discuss exemption clause by referring to a case. The performance in this part was unsatisfactory. Most candidates failed to realise the core issue of this question and spent time discussing the relevant statutes. Indeed, candidates should focus on the case *Olley v Marlborough Court Hotel Ltd (1949)*, as this case was very similar to the facts in the question. Candidates should apply the principles mentioned in this case to resolve the problems in the question.

Question 3 – 20 marks

This question was related to company law. Part (a) required candidates to discuss whether the allotment of shares was valid by referring to the case given. The performance in this part was poor. Only a handful of candidates realised that the focus of this part was related to obtaining the proper approval in the general meeting and the possibilities that the directors might abuse the allotment of shares for some ulterior purposes. Many candidates wrongly treated this part as one related to unfair prejudice or derivative action. Part (b) required candidates to identify the possible liabilities of Alfred and Bobby. This part was short and direct. Candidates should point out that the directors were likely to be in breach of their fiduciary duties by abusing the allotment of shares. Since most of the candidates failed to relate the problems on abusing the issuance of shares and directors' duties. Therefore, the performance in this part was poor.

Question 4 – 20 marks

This question was divided into two parts. Part (a) required candidates to explain the meaning of limitation of actions in civil litigation. Candidates were required to explain the limitation ordinance and to specify its various requirements on cases related to contract and tort, personal injury, recovery of debt and action related to the recovery of land. Only a handful of candidates answered this part correctly. Most of them mistakenly treated this part related to remedies. Part (b) required candidates to state the jurisdiction of the Court of First Instance and the Magistrate Courts. Most of the candidates could answer a few features of these two courts. Though very few of them could answer sufficiently and correctly. Many candidates showed a complete lack of basic knowledge regarding the primary function of the Magistrate Court as a venue for criminal issues only.

Question 5 – 20 marks

This question was divided into two parts. Part (a) required candidates to explain the basic features of the anti-corruption law in Hong Kong. This part was direct and simple. Candidates only need to explain the scope of application of the Prevention of Bribery Ordinance ("POBO") (Cap.201). The performance in this part was average. While most of the candidates were capable of listing out certain features related to corruption only very few of them could clearly relate their answers to the POBO. Many candidates resorted to a common sense approach in this question only without giving any references to the ordinance. Part (b) required candidates to explain the Sex Discrimination Ordinance (Cap.480) and its available remedies by referring to a case. Most of the candidates could point out the relevant unequal events in the case, but very few candidates could relate them to the laws. Many candidates mixed up general remedies available to a breach of contract and specific remedies available to the victim of sex discrimination under the relevant ordinance.

Section B – Optional Questions

Question 6– 20 marks

This question was divided into two parts. Part (a) was a very straightforward question requiring candidates to explain the general principles on source of profits and Inland Revenue Department's view on the locality of profits. The performance in this part was poor. Only a

handful of candidates realised that they should focus on the operation test (CIR v TVBI case) and the rules under Departmental Interpretation and Practice Notes No.21. Instead, many candidates wrongly answered this part by referring to the six badges of trade. Part (b) required candidates to explain the differences between a person paying profits tax and salaries tax. The performance in this part was mixed. Some candidates were able to focus their discussions on the control test, integration test and economic reality test. However, many candidates failed to fully realise the essence of the question and resorted to a common sense approach in answering or wrongly focused on discussing the employment ordinance.

Question 7 – 20 marks

This question was about profits tax. Candidates were required to do the computation in part (a) and to explain the pooling system in calculating the depreciation allowance in part (b). In part (a), most candidates demonstrated their knowledge of profits tax calculation sufficiently, though many of them made careless mistakes in arranging the numbers correctly. Part (b) required candidates to have a clear understanding of the relevant sections in the Inland Revenue Ordinance (mainly ss.36 and 39). Only a very few candidates referred to the correct sections and most of them just relied on the usual interpretation of depreciation without any legal basis.

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