

Examiner's Report

December 2009 Session

Paper 6

Fundamentals of Business Law

General Comments

This was the second time candidates were examined under the new syllabus. Their performance in this paper was marginal. They had no major problem passing Section A. The overall performance of the candidates in Sections B and C was poor. Most candidates generally failed to cover the whole syllabus especially the new topics adequately. Candidates should note that it would be difficult for them to pass the paper if they have left out any question in Section B and C or even a sub-part of these questions unanswered.

Section A – 20 Multiple-choice Questions

In contrast with other sections, the pass rate in this section was fair despite the fact that the whole section covers a wide range of topics in the syllabus. This indicates that candidates are generally weak in answering essay or problem questions.

Section B – 2 Compulsory Questions

Section B is a compulsory section. The overall performance of candidates in this section was unsatisfactory and hence this affected the overall pass rate of the paper.

There were two questions in this section and candidates could only answer one question well. Question B1 was on the discharge of a contract and remedies. Most candidates showed a reasonable understanding of the concepts asked and performed reasonably well. They were able to point out the meaning of duty to mitigate, anticipatory breach and *quantum meruit*. Performance of candidates on Question B2 *Hedley Byrne v Heller & Partners* was disappointing. This was a question that had not come up before. Nearly half of the candidates did not attempt this question and naturally gave up 15% of their marks. For those who attempted to answer, not many candidates could explain the “special relationship” test clearly. It should be noted that *Hedley Byrne* was the first case from the highest authority that recognised an action in the tort of negligence was possible for financial loss suffered through reliance on a negligent misstatement. A few of the candidates even thought that it was a case on partnership law. This suggests that the topic of negligent misstatement, as a new topic in the new syllabus, was not well studied. It is understandable that candidates would place emphasis on certain topics when they prepare for the examination; however, in regular study it is not advisable to ignore topics in the syllabus since there are compulsory questions in the paper.

Section C – 3 Optional Questions

Question C1

Question C1 was poorly answered. C1(a) was on the purpose of creating an Ordinance and also tested candidates’ understanding of the structure of an Ordinance. Some candidates could give appropriate examples to illustrate purposes of the creation of ordinances in part (i) but a large number of them thought that subpart (i) was a question on creating an Ordinance and therefore wrote at length about the process of legislation. Equally, candidates’ performance in subpart (ii) and (iii) was also disappointing. This type of question seldom appeared in the past papers and candidates’ answers gave the impression that they have never seen an ordinance before. For example, they did not realise for companies, that the definition of “director” could be found in Section 2, the interpretation section of the Companies Ordinance or that Table A could be found in the First Schedule of the Companies Ordinance. Candidates are advised to take a look at an Ordinance and this will help them to understand the legislation. They can easily browse any Ordinance by accessing the Department of Justice’s website. Part b was on the circumstances under which a paying bank’s authority to pay cheques drawn by its customer, a registered company, will be terminated. Again only a few candidates answered this part well.

Question C2

Candidates' performance in Question C2 was satisfactory. Candidates showed a basic understanding of the implied terms under the Sale of Goods Ordinance. Part (a) discussed a contract for the sale of goods and was a problem solving question. This type of question tested candidates' ability to apply the law to facts as well a knowledge of the law. For the part on implied terms, many candidates could provide a clear explanation of sections 16(2) and 16(3) of the Sale of Goods Ordinance but many of them were unable to apply the law to the facts of the case. Part (b) was about an exemption clause and more than half of the candidates applied the law correctly. Candidate should note that in a problem solving question they are usually expected to discuss the effect of the particular exemption clause in the question, not just the general effect of any exemption clause. Despite this, part (b) of the question was the most satisfactorily answered part when compared to the others parts in Section C.

Question C3

Question C3 focused on company and partnership law, and was a popular question. The candidates' answers were, a fair attempt at answering the question. In part (a) many candidates did not understand the concept of a shelf company. Candidates' performance in part (b) was by contrast good. This part of the question was a straight forward question asking the about the importance of a partnership agreement and its contents. Credit was given to those candidates who considered such terms in regard to the rights and liabilities of Vivian and Wallace, as partners. Candidates generally had no difficulty in pointing out the major terms that are to be included in the partnership agreement.

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