

Examiner's Report

June 2009 Session

Paper 6

Fundamentals of Business Law

General Comments

This was the first time questions were set based on the new syllabus. New topics such as the tort of negligence were added and some old ones were removed. The format of the paper has also been changed. Despite the release of the pilot paper, a number of candidates showed that they were not familiar with the structure of this paper. Nonetheless, candidates' performance on the whole was more or less the same as that in the previous diets. They had no problem in passing the multiple-choice section. Again, the performance of the candidates in Sections B and C was poor. Most candidates generally failed to adequately cover the whole syllabus especially the new topics.

Section A – 20 Multiple-choice Questions

In general, the pass rate in this section was good despite the fact that it covers a wide range of topics in the syllabus.

Section B – 2 Compulsory Questions

The overall performance of candidates in this section was poor. There were two sub-parts in this section.

Question B1 was a simple question on the Unconscionable Contracts Ordinance, Cap 458. This was a topic newly added to the syllabus. One quarter of the candidates did not attempt this question which was compulsory. Candidates who prepared the topic usually did well as this question was straightforward. Some candidates could give examples of unconscionable contracts and showed a good understanding of the subject. Not too much case law on unconscionable contract has come out but it is worth to note future development as theoretically this Ordinance can have wide application.

Question B2 was another straightforward question on the different tests or rules relating to the laws of negligence. Again this was another topic newly added to the syllabus. Candidates' answers to this question showed that the topic has not been given sufficient attention. The Tort of negligence is a major tort and students should think twice before omitting it in their study. Lord Atkin's neighbour principle in *Dongohue v Stevenson* (1932) was the cornerstone of the law of negligence and this was what part (a) asked. Part (b) on the reasonable man test was better answered by comparison. Some candidates could even cite leading cases. Most candidates who attempted the question did not have any idea of the egg shell rule which was asked in part (c).

Section C – 3 Optional Questions

Candidates should notice that under the new examination format, section C carries 50% of the marks instead of the previous 40%. They are only required to answer two questions instead of three and the marks allocated to each question have been increased. However about 10% of the candidates only attempted one question and they failed the examination.

Question C1

Question C1 was a straightforward question. Part (a) which was about the doctrine of precedent should present no difficulty. Answers were above average. But answers to Part (b) were poor. A common feature in the Part (b) answer was that many could not explain *holder for value* and *holder in due course*. To deepen their understanding of the three terms that the question asks, candidates may look at the examples or cases that textbooks give on each term. They should note that rote memory was not the key to success in the examination.

Question C2

Question C2 covered the law of contract. Part (a) asked about common law remedies and the remedies under the Sale of Goods Ordinance. In general performance on the common law part was satisfactory though some answer wrote on equitable remedies of injunction and specific performance. Candidates should note what the question asked and they appear not to have understood the question if they put in irrelevant things. Answers to the Sale of Goods Ordinance part were average but in future candidates can impress the markers more by identifying the correct sections. Many candidates did not mention the duty to mitigate loss and the rule in *Hadley v Baxendale* (1854). Part (b) on s15 of the Sale of Goods Ordinance was surprisingly less well done. Many answers merely listed all implied conditions but could not point out s15 as the applicable section.

Question C3

Question C3 was on business structure and was the best performed question. A common feature among the less satisfactory answers in part (a) was the reproduction of everything one may have studied on the topics, i.e. a simple comparison of company, partnership or sole trader, without addressing the issues of the question posted. Part (b) on the change of name of a company was well answered. Better answers could further state sections 20 and 93 of the Companies Ordinance. But there were few candidates who simply stated the procedures of setting up a limited company instead of answering the question.

[END OF EXAMINER'S REPORT]