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# Examination Panelist's Report

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Paper IV  
PBE Business Law  
and Taxation  
(December 2009 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 general performance was satisfactory overall. The performance in the business law questions by most candidates was much better than their performance in the company law questions. It seemed that many candidates did not understand some very important concepts in company law, e.g. an unfairly prejudicial act and the just and equitable ground to wind up a company. Many candidates exhibited weaknesses in answering the long case study, e.g. failure to identify relevant issues, lack of authority on the rules put forward as relevant, and poor examination technique in analysing and discussing the relevant issues. Many candidates simply repeated the case facts without any discussion or analysis, or simply gave their conclusion at the end of the answer without any supporting evidence or reasons. It is believed that insufficient preparation was the major reason contributing to failure.

## **Specific Comments**

### **Section A – Compulsory Questions**

#### **Question 1 – 20 marks**

Question one was divided into part (a) and part (b). Part (a) required candidates to discuss the rules relating to the breaching of directors' duties. Most candidates managed to identify the relevant issues and answered this part satisfactorily. However, most candidates were unable to identify the relevant issue in part (b), which required candidates to discuss the separate legal entity concept and lifting the corporate veil. Candidates were expected to cite the case, *Gilford Motor Co. v Horne* (1933) Ch 935, which was very similar to our case study. However, most candidates failed to explain the relevant concepts in this part and failed to answer this part satisfactorily.

#### **Question 2 – 10 marks**

The performance of candidates was not satisfactory in this question. Only a few candidates managed to point out the relevant concept, i.e. unfairly prejudicial act under s168A of the Companies Ordinance. Candidates were expected to explain the meaning of unfair prejudicial act by referring to relevant cases and discuss whether there was an unfairly prejudicial act in our case study. However, most candidates simply did not answer this question indicating that they did not understand the concept, unfairly prejudicial act, under s168A of the Companies Ordinance. Some candidates were confused about the concepts: just and equitable ground to wind up a company under s177(1)(f) of the Companies Ordinance and unfairly prejudicial act under s168A of the Companies Ordinance.

### Question 3 – 10 marks

Candidates were expected to compute the tax liability of the party in the case study. Most candidates correctly included some relevant deductions and allowances in their answers, although only a few of them correctly calculated the exact amount of tax liability of the party at the end of their answers. Many candidates did not realise that the dependent parent/grandparent's allowance could not be claimed by merely paying \$500 per month to the dependent parent/ grandparent. Some candidates did not include the single parent allowance or the \$8,000 tax waiver for the year 2008/09 in their answers.

### **Section B – Optional Questions**

#### Question 4 – 20 marks

This question was concerned with some fundamental concepts about negligence. Most candidates managed to identify the relevant issues and explained the relevant rules satisfactorily. Candidates were also expected to discuss contributory negligence and vicarious liability. The performance was satisfactory for this question.

#### Question 5 – 20 marks

Candidates were expected to discuss the rules about the misrepresentation and remoteness of damage in this question. Most candidates correctly identified the relevant issue with regard to misrepresentation and correctly explained the relevant rules. However, some candidates failed to understand the distinctions between tort of negligence, where there is no contract between the parties, and misrepresentation, where there is a contract between the parties and one party gives a false statement of facts inducing the other party to enter into the contract. Only a few candidates managed to explain the rules concerning the remoteness of damage in their answers.

#### Question 6 – 20 marks

Question 6 was divided into three parts. Part (a) required candidates to explain the rules about long service payment under the Employment Ordinance. Most candidates managed to point out that an employee is entitled to claim a long service payment if he/she has been working for the same employer for not less than 5 years. Most candidates also managed to point out the formula to calculate the amount of an employee's long service payment. However, only a few candidates realised that there is a monthly salary limit of \$22,500 in calculating the long service payment. As a result, most candidates failed to calculate the correct amount of the long service payment in this question.

Part (b) required candidates to explain the rules about pregnancy discrimination under s8 of the Sex Discrimination Ordinance. Only a few candidates managed to explain the relevant rules in the Sex Discrimination Ordinance while most candidates simply answered the question using their general knowledge without referring to any relevant legal rules.

Part (c) required candidates to explain the main distinctions between contract of service and contract for service. Most candidates managed to identify the relevant issues and explained the relevant rules satisfactorily.

#### Question 7 – 20 marks

There were two parts in this question. Part (a) was quite satisfactorily answered. Most candidates correctly explained the grounds for petition for winding up and satisfactorily explained the concept, just and equitable ground to wind up a company.

Part (b) was badly answered. Most candidates failed to explain the main distinctions between liquidation and receivership. Many candidates mistakenly believed that liquidation is for insolvent companies while receivership is for solvent companies. Only a few candidates managed to point out that receivership is a remedy for secured creditors. In other words, a company may continue to run its business after receivership while a company will be dissolved after liquidation.

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