
Examiner's Report

Paper IV
Legal Environment

(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 poor. Many candidates still exhibit the same weaknesses as in the previous examinations, that is, lack of authority on the rules put forward as relevant, and poor examination technique in dealing with and analyzing the issues. It was unclear why in many questions, application was simply entirely absent or limited to no more than a few sentences given almost invariably at the end of the answer asserting a conclusion without any support or reasons. Many candidates tended to give their own personal views on legal issues without any discussion of relevant legal rules and concepts. Though, some views and recommendations made by candidates might be correct from a policy point of view, these views and recommendations carried no mark for a law examination which essentially was a test of legal knowledge and practical use of such knowledge. It is believed that insufficient preparation was the major reason contributing to failure.

Specific Comments

Section A – Compulsory Questions

Question 1

Candidates were expected to compare the advantages and disadvantages of forming a company as opposed to trading as a partnership. Most of them managed to discuss relevant concepts, including separate legal entities, perpetual succession, creation of charges, etc.

There were three parts in this question and part (b) was answered the least satisfactorily where many candidates failed to discuss the case study satisfactorily. Most candidates managed to point out that setting up a company was more appropriate for the parties, while only a few managed to do sufficient discussion and give explanation.

Question 2

This question had three parts and part (b) carried 10 marks, i.e. half of the marks of this question.

Many candidates did not understand the meaning of “ultra vires” transactions. Some of them managed to point out the concept of objects clause in a company’s memorandum of association, while only a few managed to identify relevant sections about ultra vires in the Companies Ordinance, including s5(1A), s5A and s5B. Although, an objects clause is now optional under s5(1A) of the Companies Ordinance, a company may still choose to include an objects clause in its memorandum of association and rules about ultra vires transactions may then be relevant in that case.

Part (b) was answered the least satisfactorily in this question as many candidates failed to identify the relevant legal issues. A few managed to identify relevant legal issues, i.e. ultra vires and apparent authority. However, most of them failed to apply the relevant rules to the case study and discuss it. Many candidates arrived at their conclusions without any discussion at all.

Section B – Optional Questions

Question 3

This question was concerned with some fundamental concepts of the Hong Kong legal system, including the Basic Law, doctrine of precedent and rules about non-Hong Kong companies under Part XI of the Companies Ordinance. Many candidates only restated Article 8 in their answer without any discussion.

Candidates were expected to point out that the basis of the doctrine of precedent is that “like cases should be treated alike, and dissimilar cases should be treated differently”. Candidates were also expected to briefly explain the concepts of ratio decidendi and obiter dictum.

Part (c) was answered the least satisfactorily in this question. Many candidates managed to explain the meaning of non-Hong Kong companies while most of them failed to explain its legal implications and registration requirements. Only a few managed to explain s333 of the Companies Ordinance which provides that within one month of establishing a place of business in Hong Kong, a non-Hong Kong company has to deliver an application form to the Companies Registry containing the required information.

Question 4

Question 4 was on directors’ duties which should have been relatively familiar to many candidates. Most candidates managed to explain the rules about directors’ duties. However, only a few could cite any relevant case to support their answer. Many simply pointed out the rules about directors’ duties without any discussion and application.

Part (c), which accounted for 6 marks, was badly answered. Most candidates failed to explain the role of a managing director in a company. Only a few of them managed to point out relevant articles in Table A which empower the board of director to appoint a managing director. Many candidates did not appreciate that appointment and removal of a managing director can be done by the board of directors instead of a general meeting, while an ordinary resolution in a general meeting is needed to remove a director.

Question 5

This was a very straightforward question on articles of association and members’ meetings. Most candidates managed to explain the meaning of annual general meeting and relevant rules. A few failed to distinguish the differences between an ordinary resolution and a special resolution. Many mistakenly believed that a special resolution in a general meeting is required to remove a director or an auditor.

Question 6

Most candidates managed to explain the nature of a fixed charge and a floating charge and the registration requirements under s80 of the Companies Ordinance. However, many candidates failed to appreciate the meaning of statutory books and did not explain the legal requirements for a company to keep its statutory books. Candidates were expected to explain that a company is required to keep its statutory books, including register of members, register of directors and secretaries, register of charges, register of debenture holders, and minutes under the Companies Ordinance.

* * END OF EXAMINER’S REPORT * *