Answers

1 With the enactment of the Application of English Law Act (Cap 7A) ('AELA') in November 1993, the extent to which English statutes and English common law applies in Singapore has been clarified.

Clarification as to application of English statutes and English case law was achieved in two ways. First, s.4 AELA states that only those English statutes that have been specifically provided for in the AELA or other written law will apply in Singapore. In any case, English statutes which are applicable in Singapore have now been enacted as Singapore statutes. These include the Misrepresentation Act (Cap 390), the Unfair Contracts Terms Act (Cap 394) and the Sale of Goods Act (Cap 393). Having been enacted as Singapore statutes, any amendments to the English equivalent will not be automatically applicable in Singapore. The Singapore statute has to be amended by the Singapore Legislature in order for the amendments to apply in Singapore.

Second, s.3 AELA provides that the case law of England (including the principles and rules of equity) so far as it was part of the law of Singapore immediately before 12 November 1993, shall continue to be part of the law of Singapore, so far as it is applicable to the circumstances of Singapore and its inhabitants and to such modifications as those circumstances may require. It is unclear, though, whether s.3 AELA provides for a cut-off reception as at 12 November 1993 or a continuing reception of English case law.

2 **(a)** The first element in a contract is the offer. In *Preston Corpn Sdn Bhd* v *Edward Leong* (1982), an offer was defined as:

'An offer is an intimation of willingness by an offeror to enter into a legally binding contract. Its terms either expressly or impliedly must indicate that it is to be binding on the offeror as soon as it has been accepted by the offeree.'

Thus for instance, if A says to B, 'Would you like to buy this bike from me for $20?' that would be an offer. Similarly, if B said to A, 'Will you sell me your bike for $20?' that would also be an offer.

An offer need not be expressed as 'offer' as seen in the above illustrations. Similarly, just because there is reference to the word 'offer', it does not necessarily mean that there is an offer. Thus when there is a sale and the business uses the phrase 'special offer', that does not necessarily mean the business is making an offer in the legal sense.

An offer may be made to a single person, a group of persons or even to the whole world.

(b) An invitation to treat is an offer to negotiate or an offer to receive offers. Unlike an offer, it is not an indication by the person making it that he is willing to be bound should the other party be interested in proceeding further.

The following are some common instances of invitations to treat.

(i) Display of goods
In *Pharmaceutical Society of Great Britain* v *Boots Cash Chemicals* (1952), the issue arose as to whether the display of goods on an open shelf in a shop constituted an offer. The court held that it was a mere invitation to treat. The court also held that it was the customer who made the offer when he went to the cash desk. The sale or contract was made when the cashier accepted the customer's offer.

(ii) Advertisements
In *Partridge* v *Crittenden* (1968) the court held that the advertisement in question was an invitation to treat and not an offer. In general, advertisements, catalogues and even menus would usually amount to invitations to treat.

(iii) Auctions
In general, an auction that calls for bids is an invitation to treat. When the bidder places a bid, that will be an offer. When the auctioneer selects the highest bid and knocks with his hammer, that will be acceptance and a contract will come into being at that stage. Similar principles are likely to apply to online auctions, though acceptance would take place by electronic means rather than through the knock of the hammer.

(iv) Tenders
Large corporations often invite interested parties to submit tenders for various projects. The call for the tender itself is an invitation to treat. When the tender is placed, that is an offer. Since that is an offer, the corporation is not obliged to accept the tender even if that is the lowest, unless the corporation expressly binds itself to accept the highest (or lowest) tender as was the case in *Harvela Investments Ltd* v *Royal Trust Co of Canada Ltd* (1985).

(v) Quotations
Businesses often issue quotations on request. Would such a quotation amount to an offer or invitation to treat? It appears this would depend on factors like what the quotation actually states and whether essential matters have been addressed. In *Scancarriers* v *Aoeteroa International Ltd* (1985), the shippers sent to the exporters a telex which stated, 'we agree to a rate of US$120 and this rate will be held until 29/7/82'. The court held that, as many matters, such as the quantity of cargo, the number of shipments, or dates of shipments had not been fixed, the quotation was not an offer. On the other hand, if the quotation had provided for essential matters, it might have constituted a valid offer.

3 Insider dealing is regulated by s.218 and 219 Securities and Futures Act (Cap 289) ('SFA').

Section 218 SFA applies only if the person concerned is a 'connected person'. A person is connected to a corporation if he or she falls within one of three categories of relationship to the corporation or a related corporation. The categories are:

– He or she is an officer of the corporation;
– He or she is a substantial shareholder of the corporation; or
– He or she occupies a position that may reasonably be expected to give him or her access to non-public and price-sensitive information by virtue of any profession or business relationship between himself or herself (or his or her employer or a corporation of which he or she is an officer) and that corporation; or his or her being an officer of a substantial shareholder in that corporation.

Section 219 SFA, on the other hand, applies to any person who is not a person connected to a corporation but who possesses non-public and price-sensitive information.

For a person to be liable under either s.218 or 219 SFA, he or she must possess information that a reasonable person would expect to have a 'material effect on price or value of securities'. Section 216 SFA defines that to mean that a reasonable person would expect information to have a material effect on the price or value of securities if the information would be likely to influence people who commonly invest in securities in deciding whether to subscribe for, buy or sell the securities.

In addition, the information has to be 'not generally available'. Section 215 SFA demarcates the boundaries as to when information is generally available, so if the information does not fall within what has been demarcated, the information is 'not generally available'. Section 215 SFA provides that information is generally available if:

– It consists of readily observable matter;
– It has been made known (disseminated) in a manner likely to bring it to the attention of investors and a reasonable time period has elapsed; or
– It consists of deductions, conclusions or inferences made or drawn from readily observable matter or information that has been disseminated to investors.

The person concerned must not only possess information that is 'not generally available' and would have a 'material effect on price or value of securities'. He or she must have used the information to trade, to procure another to trade or communicated the information. A person would have traded using the information if he or she subscribes for, buys or sells the company's securities. A person would have procured another to trade if he or she incites, induces, encourages another to subscribe for, buy or sell the company's securities. A person would have communicated information if he or she knows or should know that the other person will be likely to subscribe for, buy or sell the company's securities; or procure another person to subscribe for, buy or sell the company's securities.

The elements of s.218 SFA are:

1. A person connected to the corporation possesses information that is not generally available and a reasonable person would expect it to have a material effect on the price or value of securities of that corporation;
2. The connected person knows or ought reasonably to know that the information is not generally available and if it were generally available, it might have a material effect on the price or value of those securities;
3. The connected person used the information to trade, procure others to trade or communicate the information to others.

The elements of s.219 SFA are:

1. A person who is not connected to the corporation but possesses information that is not generally available and a reasonable person would expect it to have a material effect on the price or value of securities of that corporation;
2. Such a person knows that the information is not generally available and if it were generally available, it might have a material effect on the price or value of those securities;
3. This person used the information to trade, procure others to trade or communicate the information to others.

4 **(a)** *Spandeck Engingeering Pte Ltd* v *Defence Science & Technology Agency* (2007) has held that a two-stage test applies in deciding whether there was a duty of care in all claims arising out of negligence. Before embarking on the two-stage test, the court held that it had to first satisfy itself whether factually speaking, it was foreseeable that the defendant's actions or omissions could cause damage to the plaintiff. The court also said that this factual inquiry would almost always be satisfied. Once that is met, the court would then have to determine whether legally speaking:

1. There is a close and proximate relationship between the parties. Proximity does not refer to geographical or physical proximity. Rather, proximity refers to whether there is a close and direct relationship between the parties so that one party ought to have had the other in contemplation when carrying out any acts or omissions.
2. If so, whether nonetheless there are policy considerations which negate the finding of a duty of care.

(b) Even if the defendant has breached a duty of care owed to the plaintiff and that breach has caused loss to the plaintiff, it does not follow that the plaintiff can claim for all ensuing losses. The test for determining whether the loss is too remote is generally whether the loss is reasonably foreseeable.

In the *Wagon Mound (No.1)* (1961), the defendants carelessly discharged oil from their ship. Wind and tide carried the oil to the plaintiffs' wharf, which was 200 yards away. The plaintiffs, after consultation, thought it was safe to carry on with the welding works and so they continued doing so. Nearly two days later, molten metal from the welding works came into contact

with some cotton rag floating on the oil; as a result there was a big explosion, in which the plaintiffs' wharf was damaged. The court held that in order for damages not to be too remote, they must be reasonably foreseeable and that on the facts, the damages were not reasonably foreseeable. This was because it generally could not be foreseen that oil on water would ignite.

In relation to the test of reasonable foreseeability, usually what has to be foreseen is the kind of harm, not the extent of harm. In *Bradford* v *Robinson Rentals Ltd* (1967) the defendant employers carelessly exposed the plaintiff-employee to extreme cold during the course of his work. He suffered frost-bite as a result. What was foreseeable was something such as a chill. Nonetheless the defendants were held liable for the frostbite, as it was just a more severe manifestation of a type of harm that was foreseeable.

5 (a) Separate legal personality

Salomon v *Salomon & Co Ltd* (1897) has established the principle that a company is a legal person separate from the persons who became associated with its formation, or who are now its members. There is a corporate veil obscuring the members most of the time. The company is a legal person in its own right. It may, for example, sue and be sued in its own name, has perpetual succession, own land. To say a company is a separate legal personality often implies that rights and duties attaching to the company are not rights and duties of its directors or members.

Example

X formed a company, X Pte Ltd. X owned all the shares of the company. X was also the company's sole director. Although X was the controller of X Pte Ltd, in fact they were distinct persons in law. X could enter into an employment contract with X Pte Ltd.

(b) Limited liability

A company can be a separate legal person but its shareholders may still have unlimited liability for its debts. Limited liability under the Companies Act (Cap 50) means that shareholders are under no obligation to the company or its creditors beyond their obligations on the issued price of shares in the case of a company limited by shares or under their guarantee in the case of a company limited by guarantee. According to s.4 Companies Act, a 'company limited by shares' is 'a company formed on the principle of having the liability of its members limited by the memorandum to the amount (if any) unpaid on the shares respectively held by them.'

Example

X invested $1,000 in X Pte Ltd. X was issued with 1,000 shares of $1 each. The shares were fully paid up. X Pte Ltd was sued by Y Pte Ltd on a debt of $100,000. If X Pte Ltd was unable to pay its debt, it may be wound up as an insolvent company. Y Pte Ltd would not be able to sue X to recover any sums due to it because X's liability was limited to the amount of he invested in the company and cannot be asked to help pay for X Pte Ltd's liability.

6 (a) A fixed, or specific, charge is one that attaches to a specified asset whether presently in existence or acquired in the future. Thus, a fixed charge over all machinery currently owned or subsequently acquired by the chargor is effective to create a fixed charge over machinery that is acquired after the creation of the charge. The chargor's power to deal with asset is limited because he/she is unable to dispose of the asset charged without the consent of the chargee. If the asset is transferred, the charge generally follows it but may be defeated by the *bona fide* purchaser of the asset without notice of the existence of the charge.

(b) A company may also create a floating charge over its present and future assets. A floating charge, in contrast to a fixed charge, is 'ambulatory and shifting in its nature, hovering over …the property which it is intended to affect until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp.' The essence of a floating charge is that it does not attach to any specific assets until it is 'crystallised': at that point it becomes a fixed charge. As long as the charge remains floating the assets comprised within the charge may be dealt with in the ordinary course of business as if they were unencumbered.

A floating charge is a charge on a class of assets rather than on a specific asset. For instance, a company may charge its stock-in-trade, present and future. While the charge remains uncrystallised the company may sell part of its stock–in-trade and purchase replacements. The existence of the floating charge does not affect the goods once they are disposed of. When the charge crystallises, however, it affects all the goods within the class at the time; these goods are then subject to a fixed charge.

According to Romer LJ in *Yorkshire Woolcombers Association Ltd* (1903), a floating charge will have these characteristics:

(i) If it is a charge on a class of assets of a company present and future;
(ii) If that class is one which, in the ordinary course of business of the company, would be changing from time to time; and
(iii) If it is contemplated that until some future step is taken by or on behalf of those interested in the charge the company may carry on its business in the usual way as far as concerns the particular class of assets in question.

7 **(a)** Directors must exercise their discretion *bona fide* in what they consider is in the interests of the company. According to *Townsing Henry George* v *Jenton Overseas Investment Pte Ltd* (2007) the Court of Appeal has held that the duty of honesty and the duty to act *bona fide* may be regarded as a composite obligation and that its statutory equivalent is the statutory duty under s.157(1) Companies Act to 'act honestly in the discharge of his duties as a director'. In reviewing the directors' exercise of discretion, the courts do not substitute their own judgement for that of the directors. Directors, when acting as directors, may only consider the interests of their company when making a decision. Their overriding motive must be to advance the company's interests.

This rule may also be seen as a duty to ensure that whatever transactions are authorised by the board or by individual directors must be commercially justifiable from the company's point of view. 'Commercially justifiable' does not mean that profits must be maximised in all cases. Directors are allowed to take a wider view of what the company's interests are. Thus, a transaction that seems on the face of it to be a bad one may be commercially justifiable if it leads to other intangible benefits for the company.

(b) The director occupies a fiduciary office. According to *Chew Kon Huat* v *Ricwil (Singapore) Pte Ltd* (2002), the duty of loyalty obliges a director not to place himself in a position where his duty and his interest conflict or where his duties to the company and another party conflict. Unless he has provided full disclosure and obtained the informed consent of the company, a director who acquires a benefit in connection with his office is accountable to the company for that benefit.

The duty to avoid conflict extends beyond attaching liability to blameworthy disloyalty; it also serves as a prophylaxis against the risk that the director might prefer his personal or third party's interests over that of the company (*Bray* v *Ford* (1896)). By laying down a positive rule of this breadth, a director is required to make full disclosure if he wants to obtain release from his obligations. The duty to avoid conflict provides strong protection for the company's interest in the loyalty of its directors. The director's interests and those of the company 'possibly may conflict' when a reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict (*Boardman* v *Phipps* (1967)).

According to *Regal Hastings Ltd* v *Gulliver* (1942), if a director fails to disclose the conflict and obtain release from his obligations, he will not be permitted to assert that his action was *bona fide* thought to be, or was, in the interests of the company. Nor does his liability to account depend on whether the company has suffered any loss. The fact that the company could not have made the profit is also irrelevant.

(c) Directors must exercise their powers for a proper purpose. Even if directors have acted in good faith and the best interests of the company, they may have exercised certain powers in an improper manner. In *Howard Smith Ltd* v *Ampol Petroleum Ltd* (1974), the court adopted a two-step analysis to determine if there is a breach of this duty:

- The court will ascertain what is the particular power in question (e.g. the power of directors to issue shares) and the court will ascertain what are the legal purposes for which this power may be used; and
- The court will examine the facts of the case before it and decide what was the actual purpose for which the director exercised the power in question.

If the court determines that the actual purpose for which the director exercised the power is not within the lawful purpose for which the power can be exercised, the director would have breached his duty to act for a proper purpose.

8 **(a)** Whether Lim can terminate the agreement depends on the nature of the term set out in clause 21.

A condition is a term that is viewed as very important or fundamental. For instance, if there was a clause in a contract of employment that prohibited the employee from running his own business in competition with the employer while working for the employer, and the employee breaches that term, that is likely to amount to a breach of condition. Whether a term can be classified as a condition depends on various factors such as the intention of the parties as gathered from the factual matrix and whether past cases have held the term to be a condition.

In contrast, a warranty is not a vital or important term. For instance, in an ordinary residential lease, if the contract prohibits the tenant from hanging pictures on the walls, but the tenant nonetheless does so, that is likely to be a breach of warranty. The landlord cannot terminate the lease if this term is breached.

Regardless of the type of term breached, if the consequences of the breach are such as to deprive the innocent party of substantially the whole benefit which it was intended that the innocent party should obtain from the contract, the innocent party can terminate the contract. In *Hong Kong Fir Shipping Co* v *Kawasaki Kaisen Kaisha* (1962), Kawasaki chartered a ship to the plaintiffs. It was a term in the contract that the ship was to be 'in every way fitted for ordinary cargo service'. Unfortunately the crew was insufficient in number and incompetent, and so this term was breached. The question was whether the breach entitled the plaintiff to terminate the charter. The court held that the term in question would cover both trivial matters such as a missing nail and serious matters such as the ship being unseaworthy. Thus it could not be classified as a condition or warranty but was an 'innominate term'. The plaintiff could not terminate the contract because the consequences of the breach were not so serious that they substantially deprived the innocent party of the whole benefit of the contract.

On the facts, the express term in the rental agreement requiring JTC 'in every way to keep the building in good repair' is likely to be an innominate term as it comprises varying obligations.

Lim may argue that the breach deprived him of substantially the whole benefit that he was intended to obtain under the contract as the rental unit cannot be used now and the incident has resulted in not only physical losses but also significant financial losses. As such, the breach will entitle him to discharge the contract and claim damages. On the other hand, JTC may argue that the consequences are not serious as AC was only closed for two weeks after which business can resume, thus Lim can only claim damages.

If the court agrees that there was fundamental breach, Lim can opt to terminate the rental contract. In addition, he can claim damages.

(b) In order to claim damages, there must be causation in fact and in law. Using the but-for test, did the breach cause the losses sustained by Lim? Can we say that JTC's failure to keep the building in good repair led to the spalling concrete? Or was it due to another reason which had nothing to do with JTC's upkeep of the building?

In addition, Lim has to show that his losses are not too remote. Candidates should discuss the *Hadley* v *Baxendale* (1854) principles. First, the court in that case stated that damages would not be too remote if they arose naturally. Damages would be considered to have arisen naturally if, in the usual course of things, such damages would have been incurred. Second, if the loss were such that it would not normally have arisen, it would be exceptional loss. Such a loss can be claimed provided it was within the contemplation of the parties at the time of the contract.

Lim would probably be able to recover the damage caused to AC's printing machines, cancellation of existing services and loss of new deals. Physical damage and loss of business are arguably losses that arise naturally, in the usual course of things, from spalling concrete. On the other hand, the loss of $30,000 from the lucrative contract is likely to be a loss that would not normally have arisen, and assuming JTC had no actual knowledge of it, would not be within the contemplation of the parties at the time.

9 Article 6 is a modification of rights clause which provides the procedure set out in the article, namely, 80% of Class A shareholders have to consent to variation of Class A share rights.

Section 74(7) Companies Act (Cap 50) provides that 'for the purposes of this section, the alteration of any provision in the memorandum or articles of a company which affects or relates to the manner in which the rights attaching to the shares of any class may be varied or abrogated shall be deemed to be a variation or abrogation of the rights attached to the shares of that class'.

Since s.74(7) deems a variation of the modification of rights clause to be a variation of class rights, and variation of class rights has to comply with the procedure set out in the modification of rights clause, the procedure set out in article 6 has to be complied with in order to amend article 6. As such, the written consent of 80% of Class A shareholders has to be obtained.

After obtaining the written consent of 80% of Class A shareholders, the company has to call a general meeting to pass a special resolution to amend article 6 as required by s.37 Companies Act (Cap 50).

Provided article 6 has been validly amended by the procedure above, the level of consent required will now be 75% instead of 80% as stated originally. To amend article 5, the procedure set out in the new modification of rights clause has to be complied with, namely, the written consent of 75% of Class A shareholders to the reduction of dividend from 5% to 4% has to be obtained. Assuming that is obtained, the company has to call a general meeting to pass a special resolution to amend article 5 to reflect the new dividend rate of 4%.

10 Charles may invoke s.216 Companies Act (Cap 50). He may argue that he has been oppressed, or his interests have been disregarded. It would appear that commercial unfairness is used to determine if there has been unfair treatment of a minority shareholder. An application may be made by Charles as he is a member of the company. The conduct complained of relates to 'the affairs of the company' and 'the powers of the directors'.

It would appear that Don and Elliot have pursued a course of conduct designed by them to advance their own interests to the detriment of the company when they diverted business opportunities to the company controlled by them. The exclusion of Charles from management is arguably a breach of an implied understanding to allow Bob's family to participate in the management of the company. In addition, Charles may have been removed so that Don and Elliot may pilfer the company's opportunities unopposed. The holding back of dividends coupled with other instances of unfair conduct on the part of Don and Elliot could suggest that they were advancing their own interests to the detriment of Charles. There could have been an understanding that all the profits of the company would be distributed in one way or another, but Charles, having been removed as a director, is deprived of any share of the profits because profits is now channelled through paying directors' remuneration.

If Charles succeeds under s.216, he may ask the court to make an order for the company or Don and Elliot to purchase his shares in the company.

Alternatively, Charles may apply to wind up the company pursuant to s.254(1)(i) on the 'just and equitable' ground. In *Ebrahimi* v *Westbourne Galleries Ltd* (1973), Lord Wilberforce explained that the company may be wound up on the 'just and equitable' ground if the company were a quasi-partnership and the trust and confidence between the corporators have broken down. A quasi-partnership company should possess one or more of the following:

(i) A personal relationship involving mutual confidence. This element will often be found where a pre-existing partnership has been converted into a limited company like in the case of Mega.

(ii) An agreement that all or some of the shareholders shall participate in the conduct of the business. Alan and Bob used to make decisions by consensus. Bob had remained as director of the company throughout. All these may suggest an understanding that both families will be represented on the board of Mega.

(iii) A restriction upon the transfer of the member's interest in the company so that if confidence is lost, or one member is removed from management, he cannot take his stake and go elsewhere. Mega is a private company and it will not be easy for Charles to exit the company.

If Charles succeeds in his application under s.254, the court will wind up the company.

1 8 to 10 marks if candidate cites ss.3 and 4 Application of English Law Act (Cap. 7A) ('AELA') and is able to explain well the impact of the AELA on application of English statutes *and* English case law in Singapore.

5 to 7 marks if candidate is able to explain well the impact of the AELA on application of English statutes *or* English case law in Singapore.

3 to 4 marks if candidate is able to state very briefly the impact of AELA on application of English statutes *and* English case law in Singapore.

1 to 2 marks if candidate is able to state very briefly the impact of AELA on application of English statutes *or* English case law in Singapore.

2 **(a)** 4 to 5 marks if candidate defines an offer well *and* gives a relevant example.

3 marks if candidate defines an offer well *or* gives a relevant example.

1 to 2 marks if candidate indicates some basic understanding of what an offer is.

(b) 4 to 5 marks if candidate defines an invitation to treat well *and* gives a relevant example.

3 marks if candidate defines an invitation to treat well *or* gives a relevant example.

1 to 2 marks if candidate indicates some basic understanding of what an invitation to treat is.

3 2 marks for stating s.218 of Securities and Futures Act (Cap. 289) ('SFA') applies to 'person connected to corporation' and explaining who such a person is.

1 mark for stating s.219 SFA applies to person other than 'person connected to corporation'.

2 marks for explaining what is information that is 'not generally available'.

2 marks for explaining what is information which a reasonable person would expect to 'have a material effect' on price of securities.

1 mark each for explaining trading, procuring someone to trade and communicating information.

4 **(a)** 4 to 5 marks if candidate cites *Spandeck Engingeering Pte Ltd* v *Defence Science & Technology Agency* (2007) and explains the test well.

3 marks if candidate explains the test fairly well.

1 to 2 marks if candidate indicates some basic understanding of the test or cites *Spandeck Engingeering Pte Ltd* v *Defence Science & Technology Agency* (2007).

(b) 5 marks if candidate cites *Wagon Mound I* (1961) and explains the test well.

3 to 4 marks if candidate explains the test fairly well.

1 to 2 marks if candidate indicates some basic understanding of the test or cites *Wagon Mound I* (1961).

5 **(a)** 4 to 5 marks if candidate defines separate legal personality well *and* gives a relevant example.

3 marks if candidate defines separate legal personality well *or* gives a relevant example.

1 to 2 marks if candidate indicates some basic understanding of what separate legal personality is.

(b) 4 to 5 marks if candidate defines limited liability well *and* gives a relevant example.

3 marks if candidate defines limited liability well *or* gives a relevant example.

1 to 2 marks if candidate indicates some basic understanding of what limited liability is.

6 **(a)** 3 to 4 marks if candidate defines a fixed charge well.

1 to 2 marks if candidate indicates some basic understanding of what a fixed charge is.

(b) 2 marks for each characteristic of floating charge.

7 **(a)** 3 marks if candidate explains duty to act *bona fide* in the interests of the company well.

1 to 2 marks if candidate indicates some basic understanding of duty to act *bona fide* in the interests of the company.

(b) 3 to 4 marks if candidate explains duty of director not to put himself/herself in a position of conflict well.

1 to 2 marks if candidate indicates some basic understanding of director's duty not to put himself/herself in a position of conflict.

(c) 3 marks if candidate explains duty to act for proper purpose well.

1 to 2 marks if candidate indicates some basic understanding of duty to act for proper purpose.

8 **(a)** 5 to 6 marks if candidate identifies term as innominate term *and* discusses possible consequences for breach of innominate term well.

3 to 4 marks if candidate identifies term as innominate term *or* discusses possible consequences for breach of innominate term.

1 to 2 marks if candidate indicates some basic understanding of either condition or warranty or innominate term.

(b) 1 mark for discussing causation.

2 mark for stating two limbs of *Hadley* v *Baxendale* (1854) and 1 mark for applying them to the facts of the case.

9 To amend article 6:

2 marks for identifying article 6 as a modification of rights clause.

2 marks for stating that alteration of modification of rights clause is regarded as variation of class rights.

2 marks for stating that procedure set out in article 6 has to be complied with.

1 mark for stating that special resolution in general meeting has to be passed to amend article 6.

To amend article 5:

2 marks for stating that new procedure set out in article 6 has to be complied with.

1 mark for stating that special resolution in general meeting has to be passed to amend article 5.

10 Section 216

4 to 5 marks if candidate cites s.216 Companies Act and apply it to the facts of the case.

1 to 3 marks if candidate indicates some basic understanding of oppression remedy.

Section 254

4 to 5 marks if candidate cites s.254(1)(i) and apply it to the facts of the case.

1 to 3 marks if candidate indicates some basic understanding of winding up on just and equitable ground.