Answers

Section A

1	**A**
2	**A**
3	**C**
4	**D**
5	**B**
6	**A**
7	**A**
8	**D**
9	**A**
10	**C**
11	**D**
12	**A**
13	**C**
14	**C**
15	**B**
16	**C**
17	**B**
18	**D**
19	**B**
20	**B**
21	**C**
22	**A**
23	**D**
24	**B**
25	**A**
26	**B**
27	**A**
28	**C**
29	**C**
30	**B**
31	**B**
32	**C**
33	**B**
34	**B**
35	**C**
36	**B**
37	**D**
38	**C**
39	**A**
40	**B**
41	**C**
42	**C**
43	**D**
44	**C**
45	**D**

Section B

1 **(a)** The sign includes an exemption clause or exclusion clause. This is a clause in a contract which takes away the right of an innocent party to claim for loss or damages when the breach covered by the exclusion clause occurs.

For the clause to be effective, the following three conditions must be satisfied:

– The clause must have been incorporated into the contract before the conclusion of the contract in question;
– The clause must cover the breach in question; and
– The clause must not contravene the provisions of the Control of Exemption Clauses Ordinance (Cap 71) (‘CECO’).

(b) The stadium should be liable for the damage suffered by Edwin for two reasons.

First, since the contract between Edwin and the stadium had already been concluded when Edwin bought the ticket at the entrance, the sign did not form part of the contract between the parties when it was put outside the toilet but inside the stadium.

Second, the exclusion clause read: 'the stadium shall not be responsible for any loss or damages suffered by the spectators', and Edwin suffered personal injury, because of the negligence of the stadium.

Under s.7(1) CECO, a contractual term which excludes liability for death or personal injuries resulting from negligence is of no effect whatsoever. The exclusion clause in question is contrary to s.7(1) and therefore has no effect.

2 **(a)** For the purpose of the business of a partnership, a partner is an agent of the firm and the other partners; and the act of a partner is binding on the partnership if they have the authority to do the act in question: s.7 Partnership Ordinance (Cap 38).

In relation to a trading partnership, the partners have the implied powers to borrow money for the partnership: *Lane* v *Williams* (1692) UK. Hence the loan is binding on the partnership.

(b) Since Jacky's loan was made before the retirement of Jacky, Jacky is liable for the loan as if he is still a partner.

To the outsider, Jacky is still a partner after his retirement for he has not placed the notice of his retirement in the Government Gazette. Hence, Jacky will still liable for the other loans.

3 **(a)** A company must register the charge with the Company Registry within one month after its creation: s.335 Companies Ordinance (Cap 622) ('CO'). If the company fails to do so, the charge shall be void against subsequent creditors or against a liquidator: s.337(4) CO.

Therefore Lion Bank needs to check with the Company Registry to see if the trading stock has already been the subject matter of other charges created by the company.

(b) The charge over the company's trading stock is a floating charge.

The essential features of a floating charge are the following:

– It is a charge on a class of assets present and future.
– The class of assets will change from to time in the ordinary course of the company's business.
– The company may dispose of the assets in the course of business until the crystallisation of the charge.

4 **(a)** Under s.465(1) Companies Ordinance (Cap 622)('CO'), when carrying out their directors' duties, directors are expected to demonstrate:

– The general knowledge, skill and experience which may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (objective test); and
– The general knowledge, skill and experience which the director has (subjective test).

(b) As the directors of a money lending bank for ten years, it is reasonable to expect Frankie and Geoffrey to have the general knowledge, skill and experience regarding the circumstances which may affect the validity of a loan. Those circumstances include whether there are statutory requirements for the loan in question.

As accountants, both of them ought to have checked the law to see if the loan met the related statutory requirements.

By failing to check the law, they have failed to meet the standard required by s.465(1) CO.

Accordingly, they are liable for breaching the duty they owe to the company.

5 **(a)** Advantage, in the context of s.9 Prevention of Bribery Ordinance (Cap 201) ('PBO'), includes money, gift, etc. However, it does not include entertainment by way of the provision of food or drink for consumption on the occasion when it is provided: s.2(1) PBO.

Accordingly, the payment for dinner by Victor is not an advantage but the money paid by Victor to Teddy is an advantage.

(b) Pursuant to s.9 PBO, an employee commits bribery when they, without lawful authority or reasonable excuse, solicit or accept an advantage when conducting the affairs or business of the employer.

However, employees would not be so liable if they have permission from the employer to do the same.

When Teddy was appointed to sell the house, as the employee of an estate agent company, he was conducting the business of his employer.

When he sold the house and received the money, he had no permission from his employer as his employer was not aware of the sale and the payment.

As said in part (a), the money received by Teddy was an advantage within PBO.

Accordingly, Teddy committed the offence of bribery.

Section A

1–45 One or two marks per question; total marks 70

Section B

1 **(a)** One mark for each condition with maximum of two marks.

(b) 3–4 marks for a complete explanation of why the stadium should be liable.

1–2 marks for some understanding but lacking either application or explanation.

0 marks for no understanding of the substance of the question.

2 **(a)** and **(b)**

3 mark for a complete explanation of the reasons why the loan is binding on the partnership.

1–2 marks for some understanding but lacking either application or explanation.

0 mark for no understanding of the substance of the question.

3 **(a)** One mark for effect of failing to registering a charge at Company Registry and two marks for the need of checking the charge register at Company Registry together with explanation.

(b) One mark for stating that the charge is a floating charge and one mark for each point relating to the nature of a floating charge, up to the maximum of three marks.

4 **(a)** One mark for each relevant point regarding the standard of care and skill as stated in s.465(1) Companies Ordinance (Cap 622).

(b) 3–4 marks for a complete explanation of why the directors were liable for the breach of the duty.

1–2 marks for some understanding but lacking either application or explanation.

0 marks for no understanding of the substance of the question.

5 **(a)** One mark for correct statement about the advantage received and one mark for explanation.

(b) 3–4 marks for a complete explanation as to why the offence of bribery has been committed.

1–2 marks for some understanding but lacking either application or explanation.

0 marks for no understanding of the substance of the question.