
Answers

Section B

- 1 (a) In a contract, an agent is the middle man between the other contracting party and their principal.
Once the agent enters into the contract, the agent disappears and the agent is not liable for and cannot enforce the contract.
- (b) What has been mentioned in section (a) is applicable to a disclosed agent only, it does not apply to an undisclosed agent.
An undisclosed agent is a person who enters into a contract in their own name without disclosing the fact that they enter into the contract for another person, i.e., the principal, before the conclusion of the contract.
When a person mentioned in the contract that they enter into it for an end user, they have disclosed the fact that they enter into the contract in the capacity as an agent: *Luxor International Travel Items Inc v Tsui Hing Fat trading as Kar Lai Industrial Co* (1993) HK.
As such Frankie is not a party to the contract and he cannot enforce the contract against Vehicle Ltd under his own name.
- 2 (a) The promise from Cindy is the consideration from Cindy in the formation of the contract for the sale and purchase of the computer from Micky at the reduced price.
Consideration is the 'price' paid by each party of the contract for the other party's promise. It is essentially where one contracting party does something, omits to do something or promises to do something in exchange for another contracting party doing, omitting or promising to do something.
In terms of performance, there are two kinds of consideration, viz, executed and executory. Executed consideration is given where a promise is made in return for the performance of an act.
Cindy's promise is an executory consideration. Executory means 'yet to be done'. There is a contract even though at the time it is concluded or agreed neither of the parties has actually done the thing that they have promised to do.
- (b) Given that there was offer and acceptance and assuming that there were intentions from the parties to create a legal relationship, there was a contract between Micky and Cindy about the sale and purchase of the computer at the reduced price when the parties exchanged their considerations, which are executory by nature.
Accordingly, Cindy can sue Micky for breaching the contract between them when Micky refused to sell the computer at the reduced price as agreed.
- 3 (a) In exercising their power, the directors owe to the company the following fiduciary duties:
- (i) The directors must act *bona fide* for the benefit of the company.
 - (ii) The directors must exercise the power for their proper purpose.
 - (iii) The directors must not allow any conflict between their personal interests and their duties as directors.
- (b) From the problem scenario, at issue is whether Catherine has allowed her personal interest to be in conflict with that of the company.
The law in this area has been clearly stated in *Aberdeen Rly v Blaikie* (1854) UK. '... [directors] have duties to discharge of a fiduciary nature towards their principal. And it is a rule of universal application that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting or which possibly may conflict with the interests those whom he is bound to protect ... so strictly is this principle adhered to that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into...'
The principle covers the use of a company's property or information and whether the company has suffered any loss is immaterial: *Regal (Hastings) Ltd v Gulliver* (1942) UK.
Being a partner of the partnership formed by her, Catherine has a share of any profit earned by the partnership. So when Catherine entered into the contract for the partnership without informing the company, she has allowed her personal interest to be in conflict with her role as a director of the company, viz., that she has to act for the best interest of the company. The fact that it was the company itself that rejected the offer was immaterial in light of the decision of the court in *Regal (Hastings) Ltd* case.
Accordingly, Catherine has breached the fiduciary duty she owed to the company by putting her personal interest to be in conflict with that of the company.

4 Beauty has two capacities in the company. She is a shareholder and a debenture-holder of the company at the same time.

(a) As a shareholder, Beauty has the following rights:

A share gives the holder of it, in general, the right to attend and vote at the general meetings of the company. It also gives the shareholder the right to payment of a dividend when the company decides to declare payment of the dividend.

A share is also a personal property which gives the owner of it the right to sell in the manner as required by the articles of the company.

(b) As a debenture holder, Beauty has the following rights:

The rights of a debenture holder, by and large, are governed by the debenture. A debenture holder has the right to be paid with interest in the manner as agreed by the parties in the debenture.

Nevertheless, a debenture does not normally give the holder of it the right to attend and vote at the general meetings unless the articles of the company and the debenture allow the holder to do so.

5 (a) The circumstance under which a person may commit insider dealing is defined under s.270 Securities and Futures Ordinance (Cap 571).

To begin with, insider dealing relates to listed companies only.

A person commits insider dealing under the following circumstances:

First, when a person connected with the company ('the connected person') either deals, or discloses relevant information knowing, or having reasonable cause to believe, that the recipient of the information would deal.

Second, when a person contemplating or has contemplated a take over, either deals or counsels or procures another to deal, or discloses information knowing, or having reasonable cause to believe, that the recipient of the information would so deal.

Third, when a person receives relevant information from the connected person or the person contemplating or has completed take over deals, or counsels or procures another person to deal.

(c) Since Collins dealt with the shares of his company by buying and selling the shares after the discussion, at issue is whether Collins received any relevant information before or during the discussion.

Relevant information, in relation to a corporation, means specific information about the corporation, a shareholder or officer of the corporation, or the listed securities of the corporation or their derivatives, which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to affect the price of the listed securities materially.

During the discussion, David disclosed to Collins of the intention of the Teaching Ltd to take over Collins's company. The information was not generally known to share traders in the public sector and that the information would certainly affect the price of Teaching Ltd in the share market. Accordingly, the information is a piece of relevant information.

As such, Collins has committed insider dealing.

Section B

- 1 (a)** One mark for each point as stated in the suggested answer with the maximum of two marks
- (b)** 3–4 marks for a complete explanation of the reasons why Frankie could not enforce the contract in question.
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)** 3–4 marks for a complete explanation regarding the importance of Cindy’s promise in the formation of the contract in question.
1–2 marks for some understanding but lacking either application or explanation.
0 marks for no understanding of the substance of the question.
- (b)** 1–2 marks for a complete application of the law and explanation.
0–1 marks for no understanding but lacking either application or explanation.
- 3 (a)** 1–2 marks for stating all three fiduciary duties.
0–1 marks for no or some knowledge of the duties.
- (b)** 3–4 marks for a complete explanation of the law.
1–2 marks for some understanding but lacking either application or explanation.
0 marks for no understanding of the substance of the question.
- 4 (a)** 3 marks for a complete explanation of the rights of Beauty as a shareholder of the company.
1–2 marks for some understanding but lacking either application or explanation.
0 marks for no understanding of the substance of the question.
- (b)** 3 marks for a complete explanation of the rights of Beauty as a debenture holder of the company.
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)** 1 mark for each relevant circumstance as stated in the suggested answer, up to the maximum of 4 marks.
- (b)** 1–2 marks for a complete explanation about the application of the law to the facts in question.
0–1 marks for no or some understanding but lacking either application or explanation.