

Fundamentals Level – Skills Module

# Corporate and Business Law (Hong Kong)

Monday 18 June 2012



**Time allowed**

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

**Do NOT open this paper until instructed by the supervisor.**

**During reading and planning time only the question paper may be annotated. You must NOT write in your answer booklet until instructed by the supervisor.**

**This question paper must not be removed from the examination hall.**

The Association of Chartered Certified Accountants

# Paper F4 (HKG)

The ACCA logo, consisting of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black rectangular background.

**ALL TEN questions are compulsory and MUST be attempted**

- 1 In relation to Basic Law and Human Rights under the Hong Kong legal system:**
- (a) Describe the concept of human rights as expressed in the Bill of Rights Ordinance (Cap 383). (6 marks)**
  - (b) Explain the impact of the Basic Law on statutory interpretation and on common law. (4 marks)**
- (10 marks)**
- 2 In relation to the terms of a contract, comment on the following:**
- ‘As far as the contracting parties are concerned, whether a contractual term is a condition or a warranty depends on the choice of the party suffering from the breach of the term’.**
- (10 marks)**
- 3 In relation to employment law, explain the importance in distinguishing an employee from a self-employed person.**
- (10 marks)**
- 4 Explain the following:**
- In relation to the tort of negligence, the definition of ‘neighbour’ regarding a person committing a negligent physical act is wider than the definition of ‘neighbour’ regarding a person making a negligent misstatement.**
- (10 marks)**
- 5 In relation to the administration of companies adopting Table A of the Companies Ordinance (Cap 32) as its article of association:**
- (a) Describe the appointment procedure of the company secretary. (3 marks)**
  - (b) Describe the power and duties of the company secretary. (7 marks)**
- (10 marks)**
- 6 In relation to the management, administration and regulation of a company adopting Table A of the Companies Ordinance (Cap 32) as its articles of association, if a company wishes to change its name:**
- (a) Explain the resolution required. (3 marks)**
  - (b) Explain the requirements of the notice for calling the meeting to pass the resolution. (5 marks)**
  - (c) Explain the statutory requirement regarding the registration of the resolution. (2 marks)**
- (10 marks)**

**7 In relation to company law:**

**(a) Explain what is 'corporate veil', and the effect of the corporate veil.** (5 marks)

**(b) Explain and distinguish between the liabilities of the shareholders of a limited liability company, and the company itself.** (5 marks)

**(10 marks)**

**8** Bob was employed as an account clerk by Andy, who runs a supermarket business selling different kinds of perishable foods ('the goods'). Andy has just come back to Hong Kong after his vacation. Before Andy left for his vacation, he told Bob to take care of all the accounting matters of the business. However, he did not provide Bob with the means to contact him on his vacation.

During Andy's vacation, a fire broke out and goods of the market were damaged to various extents.

Unable to contact Andy, Bob made the decision of selling all the goods at prices much lower than their original prices in order to minimise the loss to be suffered by Andy.

Andy now demands Bob pay him back compensation of the difference between the prices.

**Required:**

**In relation to agency law, advise Bob as to whether he is liable to pay Andy the compensation.**

**(10 marks)**

**9** ABC Limited was incorporated in 1995. The company has an objects clause, which states that the company is not allowed to engage in business other than garment trading.

In 1996, the company purchased several real properties for investment purposes. The purchases were completed by several mortgage loans being created between the company and a bank ('the First Mortgage Loans').

In 2006, the company again purchased several other real properties for investment purposes. The purchases were completed by arrangement similar to the First Mortgage Loans with the same bank ('the Second Mortgage Loans').

Recently, the company has been unable to settle the monthly repayment of both the First and Second Mortgage Loans.

**Required:**

**In relation to company law, advise the bank as to the enforceability of the First and Second Mortgages against the company.**

**Note:** In answering the question, you should:

– Ignore all issues relating to the registration requirements of charges under Companies Ordinance (Cap 32).

– Assume that the bank has no actual knowledge of the objects clause at any time.

**(10 marks)**

**10** Collins was a director and was primarily responsible for running the business of a company.

A year ago, Money Bank loaned to the company a sum of money and the company made use of the company's only property as security for the loan ('the security transaction').

In March of this year, the company was in financial difficulties. In an attempt to solve the problem, Collins re-negotiated with the bank, which was followed by a rearrangement about the security transaction between the parties ('the Rearrangement'). The effect of the Rearrangement was that a large part of the loan became unsecured.

By the time of the re-negotiation, Collins genuinely believed that the company would have a promising future by the Rearrangement.

About a year after the Rearrangement, an order was made by the court to wind up the company compulsorily.

**Required:**

**Advise Collins as to whether he had committed fraudulent trading by reason of the Rearrangement.**

**(10 marks)**

**End of Question Paper**