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# Answers

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**Section B**

- 1 (a)** It is unlikely that Belle's claim can be taken to be a term of the contract since it would probably not have been found in the written contract. Therefore, Eric's and Belle's intention would not have been to include Belle's statement as a term of the contract. In order to succeed in an action for misrepresentation, Eric would have to show:
- (i) Belle made a false representation of past or existing fact. Whether or not Belle had designed those other websites would be a statement of fact.
  - (ii) The statement was made by Belle directly to Eric.
  - (iii) Eric was induced by Belle's statement to enter into the contract with her which appeared to be so on the facts.
- (b)** As Belle must have known that her statement was not true, she would have made the false statement knowingly. As such, the misrepresentation would constitute a fraudulent misrepresentation.
- Eric would be able to rescind the contract. If he chooses to do so, Belle would not be able to insist on finishing the job and claiming the \$10,000. Even though this would mean that Belle's work would be wasted, the court cannot order damages instead of rescission since this is a case of fraudulent misrepresentation.
- 2 (a)** Ann and Bill are partners since they are carrying on business in common with a view of profit and they have not set up a company. Both would be liable for the debt owed to Ryan. Section 9 Partnership Act Cap 391 provides that every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner.
- (b)** Carl was not a partner at the time the debt was incurred. Section 36(1) Partnership Act Cap 391 provides that a retired partner will still be liable to a third party who deals with their firm after their retirement unless the third party has had notice of his retirement or the third party never knew that they were a partner to begin with. Since Ryan had dealt with the firm before and knew that Carl was a partner but he was not informed of his departure, Carl would be liable to Ryan for the debt.
- (c)** Dan is not involved in the business and is only a guarantor in return for a fee. He would not be a partner within the definition of the Partnership Act. However, he has held himself out as a partner. Believing him to be a partner, Ryan then gave credit to the firm. Under s.14 Partnership Act Cap 391, Dan may be liable to Ryan as if he were really a partner.
- 3 (a)** Soh may have breached the duty to act in the interests of the company at law and under s.157(1) Companies Act Cap 50 when he recommended and approved the sale of the machine at \$100,000, knowing that the machine could raise \$150,000 instead.
- Soh may also have breached the duty to avoid conflict of interests at law and under s.156 Companies Act Cap 50. Soh is required to disclose his interest in the transaction between SC and Supreme at general law and under s.156(1) Companies Act. Soh is also required to disclose the conflict which arose because his wife possessed shares in Supreme.
- (b)** Pek and Woo may have breached their duty to act with care, skill and diligence at law and under s.157(1) Companies Act Cap 50. According to *Lim Weng Kee v PP* (2002), the standard of care and diligence expected of a director is objective, namely, whether they have exercised the same degree of care and diligence as a reasonable director in their position. It would appear that a reasonable director would have asked Soh some questions regarding the sale of the machine, for instance, the price at which the machine is valued.
- 4 (a)** Section 254(1)(i) Companies Act Cap 50 allows a member to wind up the company on the 'just and equitable' ground. Peter may show that, given the understanding between the three friends, Progress is a quasi-partnership and the personal relationship of mutual trust and confidence between them has broken down.
- Section 216 Companies Act Cap 50 allows a member to bring an action if the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to them or in disregard of their interests as members. It would appear that the test of commercial unfairness is satisfied as Mark and Nancy have reneged on the understanding between the three parties when they incorporated Progress.
- (b)** The court can only grant the remedy of winding up under s.254(1)(i) Companies Act Cap 50.
- The court may grant several different remedies under s.216 Companies Act Cap 50, which include having Mark and Nancy buy out Peter's shares, having Progress buy out Peter's shares or winding up Progress.

- 5** (a) A scheme of arrangement allows the board of directors to retain control of the company whereas the judicial manager will take over the powers of the board of directors for the duration the company is under judicial management. Since the board of directors wishes to retain control of the company, they will opt for a scheme of arrangement.
- (b) Under a scheme of arrangement, where creditors have rights which are so dissimilar that they cannot sensibly consult together with a view to their common interest, they have to be placed in separate classes. Since Easy Bank is a secured creditor and the rest of the creditors are unsecured, their rights are likely to be different and should be placed in different classes.
- (c) A majority in number representing three-fourths in value of the creditors is required to approve the scheme at each meeting convened by the court. Two meetings will be convened, namely one for Easy Bank and one for the 20 unsecured creditors. At the meeting for Easy Bank, the scheme will be approved by the statutory majority since Easy Bank constitutes 100% in number and 100% in value for that class of creditors. At the meeting for the 20 unsecured creditors, the scheme will not be approved by the statutory majority since there is no majority in number (10 out of 20 does not constitute a majority in number) and the creditors who approve do not represent three-fourths in value (they constitute 50% in value).

**Section B**

- 1** (a) 1 mark for each element of misrepresentation.  
(b) 1 mark for stating misrepresentation is fraudulent in nature. 1 mark for stating rescission is the appropriate remedy. 1 mark for stating the court will not order damages in lieu of rescission.
- 2** (a) 1 mark for stating Ann and Bill are partners of the firm. 1 mark for stating liability of a partner for debt of the firm incurred while they are partners.  
(b) 1 mark for stating Ryan knew Carl was partner but did not know he had resigned. 1 mark for stating a partner remains liable for debt of their firm after retirement if third party who dealt with the firm before did not have notice of his retirement.  
(c) 1 mark for stating Dan is not a partner. 1 mark for stating Dan was liable because he held himself out as a partner.
- 3** (a) 1 mark for stating duty to act in the interests of the company. 1 mark for explaining why Soh breached the duty.  
1 mark for stating duty to avoid conflict of interests. 1 mark for explaining why Soh breached the duty.  
(b) 1 mark for stating duty to act with care, skill and diligence. 1 mark for explaining why Pek and Woo breached the duty.
- 4** (a) 1 mark for stating winding up on the 'just and equitable' ground. 1 mark for stating why it is just and equitable to wind up the company.  
1 mark for stating oppression remedy. 1 mark for stating why test of commercial unfairness is satisfied.  
(b) 1 mark for stating winding up is the only remedy under s.254(1)(i). 1 mark for stating the court may order buy-out of shares or winding up under s.216. Candidates need only state one possible remedy under s.216.
- 5** (a) 1 mark for stating board of directors remains in control while scheme is implemented. 1 mark for stating board of directors hands over control to judicial manager during period of judicial management.  
(b) 1 mark for stating test for classification. 1 mark for stating secured creditor would have different rights from unsecured creditor.  
(c) 1 mark for stating requirements of statutory majority. 1 mark for applying the requirements to the facts.