Answers

1 (a) A statute

Statutes are written laws made by Parliament. A statute begins life in the form of a 'bill', which is presented to Parliament for consideration. Bills are usually introduced on the initiative of a government minister, though, exceptionally, a private member's bill may be laid before Parliament.

The first stage in which a bill is introduced into Parliament is called the 'First Reading'. The Clerk of Parliament reads out the long title of the bill (this usually states its purpose) and it is then published for general information. The next stage is the 'Second Reading'. At this stage the bill is debated and, if necessary, a vote is taken. The bill is then committed to a committee (usually comprising Members of Parliament) for consideration clause by clause. Sometimes a Select Committee is formed to gather feedback on particularly controversial bills or one which may be technical in nature.

Following the Second Reading, the bill is read a third time and passed. The bill is then sent to the Presidential Council for Minority Rights, which vets it for any 'differentiating measures', i.e. provisions which discriminate against minorities. Following this, the bill is sent to the President for his assent. The bill becomes law after the President assents to it.

Following the Presidential assent, the Act is published in the Acts Supplement of the Singapore Government Gazette. The Act comes into force upon publication in the Gazette, unless some other date is stipulated.

(b) Case law

Case law is another source of law in Singapore. Case law can also be referred to as common law. These two terms are often used interchangeably. Case law (or common law) refers to law which is derived from the decisions handed down by judges in the cases which appear before them in court.

Once a decision is made on a case which is heard in a court of Singapore, the case as well as the decision becomes part of the law of Singapore and, through the operation of the theory of *stare decisis*, becomes binding on lower courts. The theory of *stare decisis* is a concept found in common law systems and relates, in essence, to the binding precedence of court decisions. The effect of the theory of *stare decisis* as it applies in Singapore is that the previous decisions of higher courts bind the lower courts where the relevant facts of the cases are similar. Put simply, this means that, if the relevant facts of a case which appears before a court are similar to the relevant facts of a case which has been previously decided by a higher court, the lower court in the instant case will be bound to follow the legal principle which forms the basis of the decision arrived at by the higher court in the earlier case. The lower court is not free to apply a different legal principle.

It should, however, be noted that the theory of *stare decisis* only makes that part of the higher court's judgement which relates to the similar relevant facts binding on the lower court. Any part of the higher court's judgement which is not arrived at based on relevant facts similar to the case in the lower court is not binding on the lower court. In Singapore, a court is not bound by its own previous decision.

The rules of common law are 'unwritten' in the sense that they are not found in any statute. To determine what the common law is, one must refer to the law reports to find or deduce legal principles (in which the decisions of judges are reported).

2 (a) A condition

A condition is an essential term of the contract or a major obligation in the contract. It is a term which goes to the root of the contract.

If a condition is breached, the innocent party is entitled to terminate the contract. They are entitled to consider themselves discharged from further performance of their own obligations under the contract. In addition to terminating the contract, the innocent party may also sue for damages for any loss which they have suffered as a result of the breach of condition.

However, it is important to note that the innocent party does not have to terminate the contract when a condition is breached. If they wish the contract to continue, they can affirm the contract instead and sue for damages.

(b) A warranty

A warranty is a less important term of the contract. It is a minor term which does not go to the root of the contract.

If a warranty is breached, the innocent party is not entitled to terminate the contract and they are not entitled to consider themselves discharged from further performance. All the innocent party is entitled to do is to sue for damages. The contract remains in existence. If the innocent party tries to terminate the contract for breach of warranty, they will themselves be in breach of contract.

(c) An innominate term

Where the court finds that a contractual term is too complex to be classified simply as either a condition or a warranty, for example, where the term encompasses a whole variety of obligations, some of which are trivial while others are serious obligations, the court may classify the term as an innominate term.

When an innominate term is breached, the rights of the innocent party will depend on the consequences of the breach.

If the result of the breach of an innominate term is very serious and deprives the innocent party of substantially the whole benefit which they were intended to derive under the contract, then the innocent party will be entitled to terminate the contract and consider themselves discharged from further performance of the contract, as well as to sue for damages.

If, however, the effect of the breach of the innominate term is not so serious, then the innocent party will only be entitled to sue for damages but not to terminate the contract.

3 (a) Legal effect of memorandum and articles of association

The legal effect of a memorandum and articles of association is stated in s.39 Companies Act Cap 50, which states that a company's memorandum and articles when registered shall bind the company and its members to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the memorandum. The memorandum and articles thus constitute a contract between the company and its members and among the members *inter se*. It binds even new members entering the company after incorporation of the company.

Every member has a personal right to have the terms of the memorandum and articles observed. Non-compliance with the memorandum and articles amounts to a procedural irregularity. If a provision of a company's memorandum or articles of association is not observed, then, in the case of non-compliance by:

(i) a company, a member may be able to obtain a declaration or injunction requiring the company to comply; and
(ii) a member, another member of the company may be able to obtain declaratory relief, injunction or damages.

(b) Procedure to amend memorandum and articles of association

Provisions in the memorandum (s.26 Companies Act Cap 50) or articles of association (s.37 Companies Act Cap 50) may be amended by a special resolution, which is a resolution passed by at least three-fourths of the votes cast and where the requisite notice period has been given (s.184 Companies Act Cap 50). The notice period is 14 days for a private company (s.184(1)(a) Companies Act Cap 50) and 21 days (s.184(1)(b) Companies Act Cap 50) for a public company.

The rule that a provision in a memorandum of association may be amended by a special resolution is subject to two statutory exceptions. First, a provision in the memorandum which could not be amended before the Companies (Amendment) Act 2004 came into effect may be amended only if all the members of the company agree. Second, the power to amend a provision in the memorandum may be subject to an entrenching provision (s.26A Companies Act Cap 50).

The rule that a provision in the articles of association may be amended by a special resolution is subject to two statutory exceptions. First, the power to amend a provision in the articles of association may be subject to an entrenching provision (s.26A Companies Act Cap 50). Second, the power to amend a provision in the articles of association may be subject to any conditions in the company's memorandum and articles of association (s.37 Companies Act Cap 50).

In addition, when voting to amend the memorandum or articles of association, a member must vote '*bona fide* for the benefit of the company as a whole': *Allen* v *Gold Reefs of West Africa Ltd* (1900). An amendment of the memorandum and articles of association may sometimes be restrained under ss.74 or 216 Companies Act Cap 50.

4 (a) A debenture

According to Chitty J in *Levy* v *Abercorris Slate and Slab Co* (1887): 'a debenture means a document which either creates a debt or acknowledges it, and any document which fulfills either of these conditions is a 'debenture'.'

Section 4 Companies Act Cap 50 states that 'debenture' includes 'debenture stock, bonds, notes and any other securities of a corporation whether constituting a charge on the assets of a corporation or not.' These instruments tend to be medium to long-term debt securities created by a company. The definition expressly excludes from the term 'debenture' a cheque, letter of credit, order for the payment of money or bill of exchange, as well as a promissory note having a face value of not less than $100,000 and having a maturity period of not more than 12 months. The intention of this is to exclude such short-term money market instruments.

It should be noted that it is not essential for debentures to be secured by a charge at all.

(b) A company charge

A charge is a security interest in property which is created by contract but it does not transfer title to the creditor.

Section 4 Companies Act Cap 50 states a 'charge' includes 'a mortgage and any agreement to give or execute a mortgage or charge whether on demand or otherwise.'

According to Atkin J in *National Provincial and Union Bank of England* v *Charnley* (1924): 'Where in a transaction for value both parties evince an intention that property, existing or future, shall be made available as security for the payment of a debt, and that the creditor shall have a present right to have it made available, there is a charge, even though the present legal right which is contemplated can only be enforced at some future date, and though the creditor gets no legal right of property, either absolute or special, or any legal right to possession, but only gets a right to have the security made available by an order of the court. If those conditions exist, I think there is a charge.'

The great advantage of a charge is that it allows security to be taken over intangible assets such as shares and book debts, or over tangible assets where possession may not be practical, e.g. machinery which has to be operated by the party giving the security.

(c) Obligation to register and effect of non-registration

When a company creates certain types of charges (as listed under s.131 Companies Act Cap 50) over its property, it must register these charges with Accounting and Corporate Regulatory Authority (ACRA). This is in addition to the company's obligation to maintain its own register of charges. These charges have to be registered within 30 days of creation.

The instrument by which the charge is created or evidenced need not be lodged. Only a statement of the prescribed particulars needs to be lodged. It is incumbent on the company to lodge the required documents and particulars with ACRA. However, any other interested party may procure the lodgement of the necessary documents and particulars.

If a charge is not registered within 30 days of its creation, it becomes void against the liquidator and any creditor of the company (s.131 Companies Act Cap 50).

5 (a) An annual and an extraordinary general meeting

Every company must hold an annual general meeting (AGM) once every calendar year: s.175(1) Companies Act Cap 50. Exceptionally, a company need not hold an annual general meeting in the year of its incorporation or the following year, as long as its first AGM is held within 18 months of its incorporation: s.175(1) Companies Act Cap 50. Not more than 15 months may elapse between general meetings: s.175(2) Companies Act Cap 50. The responsibility for convening the AGM usually rests with the directors, but the court may, on the application of any member, order the AGM to be called: s.175(4)(b) Companies Act Cap 50. Private companies may dispense with AGMs if, at a general meeting of the company, a resolution to that effect is passed by all members entitled to vote at the meeting: s.175A Companies Act Cap 50.

Any general meeting other than the annual general meeting is an extraordinary general meeting: Art 43 of Table A. Two or more members holding not less than 10% of the company's issued share capital may call a meeting of the company: s.177(1) Companies Act Cap 50. General meetings may also be convened in accordance with the articles of association by the directors: Art 44 of Table A. The directors must also convene a general meeting if required to do so by requisition by the required threshold of members (meaning members holding not less than 10% of paid-up capital of the company as carries voting rights or in the case of a company without a share capital, by members representing 10% of the total voting rights): s.176(1) Companies Act Cap 50.

(b) An ordinary and a special resolution

Special resolutions are usually required for important matters, like amendments of the company's memorandum and articles of association or reduction of capital or winding up of the company. Unless the Companies Act specifies that a special resolution is needed, an ordinary resolution will suffice.

An ordinary resolution is a resolution passed by a simple majority of those present and voting. A special resolution must be passed by a three-fourths majority of those present and voting at a meeting of which:

(a) in the case of a private company, not less than 14 days' written notice; or
(b) in the case of a public company, not less than 21 days' written notice,

specifying the intention to propose the resolution as a special resolution has been duly given (s.184(1) Companies Act Cap 50).

6 (a) Judicial management

An alternative to liquidation would be to put the company into judicial management. Judicial management allows the company a period of time to re-organise its affairs and to try to re-structure the company, its operations and debts.

Section 227B Companies Act Cap 50 states the grounds on which the court may make a judicial management order. The judicial management order may be made to give the company an opportunity to undergo rehabilitation, to preserve at least part of the business as a going concern or to achieve a more advantageous realisation of the company's assets than would be effected on winding up. The judicial management order may also be given if it is likely to result in the approval under s.210 Companies Act Cap 50 of a compromise or scheme of arrangement between the company and its creditors.

Judicial management is useful in that it does not require 100% agreement amongst creditors. Furthermore, either the company or any creditor can initiate the process. Once a judicial management petition is filed, an immediate moratorium on any legal action against the company will be in place as a matter of operation of law.

Unfortunately, judicial management presents its own problems as well. There is generally a stigma on insolvency attached to judicial management, and this will usually result in adverse publicity for the company since it is often also viewed as a prelude to liquidation. Moreover, time and costs are sometimes wasted because the judicial manager usually takes over from the previous management and would require time to acquaint themselves with the affairs of the company.

(b) A scheme of arrangement

Creditors may reach an agreement with the debtor company with regards to its outstanding debts pursuant to s.210 Companies Act Cap 50. When the scheme of arrangement is approved by the court, a moratorium is put in place and all actions against the company are stayed.

Such a scheme is useful because, even though an independent financial/special advisor will usually be appointed to monitor the financial affairs of the company, the directors will still remain in effective management and control of the company. For publicly listed companies, the listing status of the company is maintained and trading continues with minimal disruption. This is very important in the case of public listed companies since there is minimal stigma or adverse publicity, hence, it will not unnecessarily alarm the shareholders and result in a scurry to sell off their shareholding in the company.

Additionally, 'vulnerable' transactions are not caught and investigations into the affairs of the company are usually unlikely. Most importantly, the moratorium is useful in allowing the company some breathing space to re-arrange its affairs.

However, because the directors remain in control of the company, there is only so much supervision which the advisor/accountant has over the company. The advisor/accountant has no statutory powers and hence can only exert limited control over the directors.

7 Insider dealing is regulated by ss.218 and 219 Securities and Futures Act Cap 289.

Section 218 Securities and Futures Act Cap 289 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:

1. he or she is an officer of the corporation;
2. he or she is a substantial shareholder of the corporation; or
3. he or she occupies a position which 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 Securities and Futures Act Cap 289, 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 ss.218 or 219 Securities and Futures Act Cap 289, he or she must possess information which a reasonable person would expect to have a 'material effect on price or value of securities'. Section 216 Securities and Futures Act Cap 289 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 Securities and Futures Act Cap 289 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 Securities and Futures Act Cap 289 provides that information is generally available if:

1. it consists of readily observable matter;
2. 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
3. it consists of deductions, conclusions or inferences made or drawn from readily observable matter or information which has been disseminated to investors.

The person concerned must not only possess information which 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 Securities and Futures Act Cap 289 are:

1. a person connected to the corporation possesses information which 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; and
3. the connected person used the information to trade, procure others to trade or communicate the information to others.

The elements of s.219 Securities and Futures Act Cap 289 are:

1. a person who is not connected to the corporation but possesses information which 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; and
3. this person used the information to trade, procure others to trade or communicate the information to others.

8 The issue is whether there is a contract for the sale of Alex's car. In order to have a contract which is legally enforceable, four elements must be present, namely: offer, acceptance, intention to create legal relations and consideration.

An offer can be defined as an expression of willingness to contract on certain terms, made with the intention that, upon acceptance by the offeree, a binding agreement is formed. This means that if Alex's faxed letter of 1 July showed that he was willing to enter into a contract with Bill on the terms that he had specified and he did this with the intention that if Bill agreed, both of them would be bound by those terms, then Alex would have made an offer.

Bill's reply to Alex's faxed offer of 1 July was not an unequivocal acceptance of Alex's offer. It could be construed as an enquiry, in which case, it was valid until 5 July.

Acceptance is a final and unqualified assent to the terms of the offer. Bill would have to accept Alex's offer before a contract is concluded. Bill purportedly accepted Alex's offer on 3 July. However, an acceptance is not effective until it is communicated to the offeror. Bill's acceptance reached Alex on 6 July but the offer had lapsed by then, which means there is no contract between Alex and Bill.

There is an exception to the rule that acceptance is effective when communicated to the offeror, namely, the postal rule. According to the postal rule, an acceptance which is posted takes effect when the acceptance is posted and not when the acceptance is actually received: *Adams* v *Lindsell* (1818). The effect of this rule is that acceptance is valid before it is actually communicated to the offeror. This is true even where the letter never reaches its destination. There are several conditions to be fulfilled before the postal rule can apply, First, the postal rule can apply only to letters which have been properly stamped and addressed. Second, it can only apply where it was reasonable to post the acceptance. Third, the postal rule cannot be applied where the terms of the offer itself exclude the operation of the postal rule. Based on the facts, Alex had specified a particular mode of acceptance. Although he had not specified this to be the only mode of acceptance, any other mode of acceptance which was less advantageous to the offeror would not be permissible: *Eliason* v *Henshaw* (1819). It would be unreasonable to use the post and thus the postal rule does not apply: *Henthorn* v *Fraser* (1892).

The offer was addressed to Bill and not to Clive. Even if an offer had been made to Clive, Clive could not impose a condition that silence was acceptance: *Felthouse* v *Bindley* (1862). The fact that Alex's email saying that he was not selling his car was not read by Clive was inconsequential.

In conclusion, no contract has been made either with Bill or Clive for the sale of Alex's car.

9 John has two options available to him under the Companies Act Cap 50.

Section 216 Companies Act Cap 50

John may invoke s.216 Companies Act Cap 50. The test of commercial unfairness is used to determine if there has been unfair treatment of the minority shareholder. An application may be made by John 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' being exercised in an unfair manner.

It would appear that Charles has pursued a course of conduct designed by him to advance his own interests when he gave himself a huge salary, benefits, travel expenses and entertainment allowances at the expense of John. The reduction of John's directors' fees to $5,000 per annum and non-declaration of dividends are arguably breaches of the parties' implied understanding to allow John to draw a retirement income from AT. There was probably an implied understanding that all the profits of the company would be distributed in one way or another but John is deprived of any share of the profits and all the profits are channelled towards paying Charles. It is also unfair to deprive a director and member of information relating to the company as the director/member has a right to know about the financial situation of the company.

If John succeeds under s.216 Companies Act Cap 50, he may ask the court to make an order for the company or Charles to purchase his shares in the company.

Section 254(1)(i) Companies Act Cap 50

John may apply to wind up the company pursuant to s.254(1)(i) Companies Act Cap 50 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 is a family business in which John has reposed trust and confidence in Charles, first as manager and later as his son-in-law.

(ii) An agreement that all or some of the shareholders shall participate in the conduct of the business. The implied understanding was that John was to remain a director and shareholder in order to draw a retirement income from directors' fees and dividends. The reduction of directors' fees, non-declaration of dividend and blackout of information suggest a breach of John's legitimate expectations.

(iii) A restriction upon the transfer of the member's interest in the company. In this case, after John has lost confidence in Charles, it will not be easy for him to take his stake and exit the company.

If John succeeds in his application under s.254 Companies Act Cap 50, the court will wind up the company.

10 A director owes several duties to the company under general law and the Companies Act Cap 50. Of these, the following duties may be applicable when Chan appoints LM as the main contract for the project.

Acting with due care, skill and diligence

Chan may have contravened s.157(1) Companies Act Cap 50 and breached the general law duty to exercise care, skill and diligence. Chan would have to meet the objective test spelt out by *Lim Weng Kee* v *PP* (2002) and possibly a higher subjective standard if Chan held himself out to possess special skill, knowledge and experience. It is likely that the objective standard required Chan to obtain multiple quotations before awarding the contract to LM. This is to ensure that LM is an appropriate and trustworthy contractor.

Acting *bona fide* in the interests of the company

Chan is unlikely to have contravened s.157(1) Companies Act Cap 50 and breached the general law duty to act *bona fide* in the interests of the company. The test is subjective in that the court looks at whether the director honestly believes the transaction to be in the interests of the company. Chan appeared to give proper consideration to the interests of Ace and honestly believes that LM will make a trustworthy and appropriate main contractor.

Conflict of interest

Directors generally have a duty not to place themselves in a position where their duty and interests conflict. If they do, this should be disclosed.

In order not to breach this duty, Chan needs to disclose to the board of Ace his interest in the contract. Since he will receive a commission from LM, it should amount to a 'material personal interest' for the purpose of s.156(1) Companies Act Cap 50 and the fact should be disclosed to the board of Ace. Disclosure in the manner set out under s.156(4) Companies Act Cap 50 is necessary. Chan is also required by general law to disclose his interest in the contract to the general meeting.

Chan also needs to make disclosure, pursuant to s.156(5) Companies Act Cap 50, to the board of Ace that he is a director of LM. Disclosure in the manner set out under s.156(6) Companies Act Cap 50 is necessary. The general law requirement is for the directors to make a similar disclosure to the general meeting of the company.

One way of getting round the need to disclose to the general meeting is if the company's articles of association provide that disclosure to the board pursuant to s.156 Companies Act Cap 50 is sufficient. In addition, the company's articles of association may provide that the director who is interested in the contract should not vote on any decisions concerning the contract, in which case Chan should not participate in the decision-making process concerning the award of the contract.

If Chan failed to make the relevant disclosure to Ace, he would have breached his duty not to put himself in a position of conflict.

Consequences

- If the breach of duty of care in awarding the contract has caused loss to Ace, Ace may claim compensation.
- Contravention of s.157(1) Companies Act Cap 50 has both criminal and civil consequences.
- Contravention of ss.156(1) and 156(5) has criminal consequences.
- Rescission may be difficult because the contract is not with Chan but LM. Rescission is possible only if LM is aware that Chan breached his fiduciary duty.
- If Chan has made a profit through a breach of fiduciary duty, he has to account for the profit, e.g. commission.

1 (a) A statute

5 marks if candidate sets out all of these steps, namely: reading of bill, debate at Second Reading, voting at Second Reading and Presidential assent.

2 to 4 marks if candidate sets out some of these steps, namely: reading of bill, debate at Second Reading, voting at Second Reading and Presidential assent.

1 mark if candidate knows that statute has to be passed by Parliament.

(b) Case law

4 to 5 marks if candidate explains well how case law develops, how *stare decisis* aids in the development of case law and where case law may be found.

2 to 3 marks if candidate explains fairly well how case law develops.

1 mark if candidate states briefly how case law develops.

2 (a) A condition

3 marks if candidate defines correctly a condition and explains clearly its legal effect.

2 marks if candidate only explains clearly legal effect of a condition.

1 mark if candidate only defines correctly a condition.

(b) A warranty

3 marks if candidate defines correctly a warranty and explains clearly its legal effect.

2 marks if candidate only explains clearly legal effect of a warranty.

1 mark if candidate only defines correctly a warranty.

(c) An innominate term

4 marks if candidate defines correctly an innominate term and explains clearly its legal effect.

3 marks if candidate either defines correctly an innominate term or explains clearly its legal effect.

1 to 2 marks if candidate indicates some understanding either of an innominate term or its legal effect.

3 (a) Legal effect of memorandum and articles of association

4 to 5 marks if candidate explains well the binding nature of the statutory contract on the company and its members AND the consequences of non-compliance by the company or member.

2 to 3 marks if candidate explains well either the binding nature of the statutory contract on the company and its members OR the consequences of non-compliance by the company or member.

1 mark if candidate indicates some understanding of either the binding nature of the statutory contract on the company and its members OR the consequences of non-compliance by the company or member.

(b) Procedure to amend memorandum and articles of association

2 to 2·5 marks if candidate gives a clear explanation of how memorandum of association may be amended.

2 to 2·5 marks if candidate gives a clear explanation of how articles of association may be amended.

1 mark if candidate indicates some understanding of how memorandum of association may be amended.

1 mark if candidate indicates some understanding of how articles of association may be amended.

1 mark if candidate only states a special resolution is required.

4 (a) A debenture

3 marks if candidate states accurately what a debenture is.

1 to 2 marks if candidate indicates some understanding of what a debenture is.

(b) A charge

3 marks if candidate states accurately what a charge is.

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

(c) Obligation to register and effect of non-registration

2 marks if candidate gives a clear description of the company's obligation to register charges.

2 marks if candidate explains clearly the effect of non-registration.

1 mark if candidate indicates some understanding of the company's obligation to register charges.

1 mark if candidate indicates some understanding of the effect of non-registration.

5 (a) Annual and extraordinary general meetings

2 to 3 marks if candidate gives a clear description of what an annual general meeting is and who may convene it.

2 to 3 marks if candidate gives a clear description of what an extraordinary general meeting is and who may convene it.

1 mark if candidate indicates some understanding of what an annual general meeting is.

1 mark if candidate indicates some understanding of what an extraordinary general meeting is.

(b) Ordinary and special resolutions

2 marks if candidate gives a clear description of how and when an ordinary resolution is passed.

2 marks if candidate gives a clear description of how and when a special resolution is passed.

1 mark if candidate indicates some understanding of what an ordinary resolution is.

1 mark if candidate indicates some understanding of what a special resolution is.

6 (a) Judicial management

1 to 2 marks if candidate explains what judicial management is.

1 to 1·5 marks if candidate gives one or two advantages of judicial management.

1 to 1·5 marks if candidate gives one or two disadvantages of judicial management.

(b) Scheme of arrangement

1 to 2 marks if candidate explains what a scheme of arrangement is.

1 to 1·5 marks if candidate gives one or two advantages of a scheme of arrangement.

1 to 1·5 marks if candidate gives one or two disadvantages of a scheme of arrangement.

7 2 marks for stating s.218 Securities and Futures Act ('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 information which is 'not generally available' is.

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

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

8 1 to 2 marks for discussing if Alex's letter of 1 July is an offer.

1 mark for discussing if Bill's telephone call of 1 July is an enquiry.

1 to 2 marks for discussing if Bill's acceptance took place on 3 July or 6 July.

1 to 2 marks for discussing if the postal rule applies.

1 to 2 marks for discussing if Clive's letter of 2 July was an offer.

1 mark for stating that silence does not amount to acceptance.

9 5 marks in total for discussion of s.216 Companies Act:

- 1 mark for identifying the issue of minority oppression.
- 1 mark if candidate states the test of commercial unfairness under s.216 Companies Act.
- 1 mark each for discussion of why it is commercially unfair to reduce directors' fees, not declare dividend and not disclose information.

5 marks in total for discussion of s.254 Companies Act:

- 1 mark for identifying the issue of winding up on just and equitable ground.
- 1 mark if candidate states the requirements of a quasi-partnership.
- 1 mark each for discussion of how reduction of directors' fees, non-declaration of dividends and non-disclosure of information satisfy the requirements of breakdown of trust and confidence in this quasi-partnership.

10 2 marks in total for discussing duty to act with care, skill and diligence:

- 1 mark for stating the test laid down in *Lim Weng Kee* v *PP*; and
- 1 mark for applying the test to the facts.

2 marks in total for discussing duty to act *bona fide* in the interests of the company:

- 1 mark for stating the test; and
- 1 mark for applying the test to the facts.

4 marks in total for discussing conflict of interest:

- 1 to 2 marks for discussing duty to disclose interest in contract to Ace's board and general meeting; and
- 1 to 2 marks for discussing duty to disclose Chan's directorship in LM to Ace's board and general meeting.

2 marks in total for discussing consequences:

- 1 mark for each consequence. Candidate needs only state a maximum of two consequences from the list of consequences set out in the answer guide.