

Fundamentals Level – Skills Module

Corporate and Business Law (Singapore)

Specimen Exam applicable from
December 2014



Time allowed: 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and MUST be attempted

Section B – ALL FIVE questions are compulsory and MUST be attempted

Do NOT open this paper until instructed by the supervisor.

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 (SGP)

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

Section A – ALL 45 questions are compulsory and MUST be attempted

Please use the space provided on the inside cover of the Candidate Answer Booklet to indicate your chosen answer to each multiple choice question.

1 Which of the following may imply terms into contracts?

- A Statute
- B Third parties
- C The parties to the contract

(1 mark)

2 There are a number of ways in which investors can take an interest in a company and such different interests have different rights attached to them.

Which of the following NORMALLY participate in surplus capital?

- A Preference shares
- B Ordinary shares
- C Debentures secured by a fixed charge
- D Debentures secured by a floating charge

(2 marks)

3 In the context of the Singapore legal system, which of the following courts DOES NOT hear cases on appeal?

- A High Court
- B Family Court
- C District Court

(1 mark)

4 A bank customer gave \$5,000 to a bank officer to thank them for approving their loan application. The bank customer actually did not qualify for the loan application. The bank officer accepted the money.

In the context of anti-corruption law, who has committed corruption offences?

- A The bank
- B The bank customer only
- C The bank officer only
- D Both the bank customer and the bank officer

(2 marks)

5 Which of the following is required to have the abbreviation 'Ltd' stated after its business name?

- A A limited partnership
- B A private limited company
- C A limited liability partnership

(1 mark)

6 Which of the following is protected by the tort of passing off?

- A** A person's right to personal safety
- B** A person's right to enjoyment of their land
- C** A person's right to their intellectual efforts

(1 mark)

7 A company's name is stated as Great Ltd.

Which of the following statements is correct?

- A** The company's shares are not freely transferable
- B** The company's shares may not be offered to the public
- C** The company's shares are freely transferable

(1 mark)

8 Section 254 Companies Act Cap 50 specifically provides a distinct ground for applying to have a company wound up on the ground that it is just and equitable to do so.

Which of the following parties may petition to court to have a company compulsorily wound up under that provision?

- A** Shareholders of the company
- B** The Minister for Finance
- C** The liquidator
- D** The judicial manager

(2 marks)

9 Mo has a significant holding in the shares of Nova Ltd. He wishes to use his shareholding to remove Owen from the board of directors but is not sure how to do so.

Which of the following must be used to remove a director from office?

- A** An ordinary resolution
- B** An ordinary resolution with special notice
- C** A special resolution
- D** A written resolution

(2 marks)

10 A written ordinary resolution requires the approval of which of the following?

- A** More than 50% of those actually voting
- B** More than 50% of those entitled to vote
- C** Unanimous approval of those entitled to vote

(1 mark)

11 Ace Pte Ltd intends to issue shares to raise capital.

Before Ace Pte Ltd exercises its power to issue shares, whose approval must first be obtained?

- A The directors
- B The creditors
- C The shareholders

(1 mark)

12 **In the context of an employment contract, the court does NOT consider which of the following interests when it applies the doctrine of restraint of trade?**

- A Of the employee to exercise their skills
- B Of the State in ensuring free flow of expertise
- C Of the employer to protect their business
- D Of the employee to enjoy their social rights

(2 marks)

13 **Which parties are bound by the terms of the tender when a party submits a tender?**

- A The person submitting the tender
- B The person requesting the tender
- C Both parties
- D Neither party

(2 marks)

14 **In the context of contract law, a bid at an auction is which of the following?**

- A An invitation to treat
- B An offer
- C A counter-offer
- D An acceptance

(2 marks)

15 **What is the effect of a finding of negligence in the law of tort?**

- A It requires the defendant to pay damages
- B It requires the defendant to stop the wrongful act
- C It allows the plaintiff to rescind the contract

(1 mark)

16 **In the context of the Singapore legal system, which of the following courts has criminal jurisdiction?**

- A District Court
- B Small Claims Tribunal
- C Family Court

(1 mark)

17 Imran claims that Zak owes him \$260,000 as a result of a breach of contract.

In which court will Imran start his action against Zak?

- A Magistrates' Court
- B District Court
- C High Court

(1 mark)

18 In the context of case law, which of the following applies to an *obiter dictum*?

- A It is binding on all future courts
- B It is binding on all lower courts
- C It is not binding on any courts
- D It is not binding outside the court it was issued in

(2 marks)

19 Bob took great care but still injured his back when he did a bungee jump.

Which of the following defences can the organiser of the bungee jump use?

- A Volenti non fit injuria
- B Res ipsa loquitur
- C Contributory negligence

(1 mark)

20 An auditor of Fortune Pte Ltd ('Fortune') is sued by Fortune's shareholder for the tort of negligence.

If the auditor wishes to escape liability, which of the following arguments may be used?

- A They do not know the shareholder
- B Their negligence did not cause loss to the shareholder
- C The loss caused is insignificant
- D The shareholder did not appoint them as auditor of Fortune

(2 marks)

21 Breach of which of the following terms does NOT allow the possibility of the aggrieved party terminating the contract?

- A A condition
- B A warranty
- C An innominate term

(1 mark)

22 Which of the following, in the context of entering into a contract, constitutes a binding offer to sell a unique item of furniture?

- A** Placing an advertisement in a newspaper with a price attached
- B** Placing it on display inside a shop with a price attached
- C** Telling someone the price you may be willing to accept for it
- D** Telling someone you will reduce the marked price on it by 10%

(2 marks)

23 Mark has received the agenda for the annual general meeting of Rova Ltd, a company he has shares in. The agenda contains a number of resolutions to be proposed at the meeting, but being a new member, Mark is not certain as to what is exactly involved.

In the context of company meetings, which of the following must be passed by a 75% majority to be effective?

- A** An ordinary resolution with special notice
- B** A special resolution
- C** A written resolution

(1 mark)

24 Section 254 Companies Act Cap 50 provides a number of distinct grounds for applying to have a company wound up on a compulsory basis.

Which of the following is NOT a ground for the compulsory winding up of a company under that provision?

- A** The company has no members
- B** The company is unable to pay its debts
- C** The company did not hold its statutory meeting
- D** The company has altered its primary business within the first 12 months of its incorporation

(2 marks)

25 In the context of statutory interpretation, which of the following requires judges to consider the wrong to which the legislation was intended to prevent?

- A** The mischief rule
- B** The literal rule
- C** The golden rule

(1 mark)

26 It is not unusual for some company investments to carry cumulative dividend rights.

Which of the following statements about the declaration of dividends is correct?

- A** They are not paid until profits reach a certain percentage
- B** They are paid out of capital
- C** They are paid when profits are available for that purpose

(1 mark)

27 Which of the following statements in relation to effective consideration is correct?

- A It must be both adequate and sufficient
- B It must be adequate but need not be sufficient
- C It must be sufficient but need not be adequate

(1 mark)

28 In the context of the Singapore legal system, which of the following defines the *ratio decidendi* of a judgement?

- A The decision in a previous case
- B The facts of the case
- C The legal reason for deciding the case
- D The future application of the case

(2 marks)

29 Which of the following statements relating to limited liability partnerships is correct?

- A They are limited to a maximum of 20 partners
- B They must have a minimum of two partners
- C They must have at least one limited partner

(1 mark)

30 Alex was convicted of insider trading in relation to the shares of Eminent Ltd. He was said to have made use of price-sensitive information about Eminent Ltd when it was not publicly available.

Which TWO of the following acts could he have done?

- (1) Procured another person to subscribe for shares of Eminent Ltd
- (2) Recorded the information in his computer hard drive
- (3) Communicated the information to his primary school son
- (4) Sold off Eminent Ltd's shares which he owned

- A (1) and (3)
- B (2) and (3)
- C (2) and (4)
- D (1) and (4)

(2 marks)

31 Which of the following can be accepted so as to form a binding contract?

- A A supply of information
- B A statement of intent
- C A quotation of price
- D An agreement to enter into a future contract

(2 marks)

32 Which TWO of the following statements in relation to the Application of English Law Act Cap 7A are correct?

- (1) It states which English statutes apply in Singapore
- (2) It states which English subsidiary legislation applies in Singapore
- (3) It explains how Singapore courts are to interpret English statutes
- (4) It states the extent to which English common law applies in Singapore

- A** (1) and (3)
- B** (1) and (4)
- C** (2) and (4)
- D** (3) and (4)

(2 marks)

33 Which of the following statements in relation to an innominate term is correct?

- A** An innominate term consists of only serious obligations
- B** Breach of an innominate term always allows the innocent party to terminate the contract
- C** An innominate term is similar to a condition
- D** Breach of an innominate term may lead to serious and less serious consequences

(2 marks)

34 Which of the following explains why a term is distinguished from a representation?

- A** The consequences of breach are different
- B** The amount of damages claimable is different
- C** The method of proof is different
- D** The party which has to prove the statement is different

(2 marks)

35 Which of the following is NOT a method by which a contract is discharged?

- A** Performance
- B** Termination
- C** Frustration
- D** Negotiation

(2 marks)

36 Which of the following statements relating to a private company is correct?

- A** They are limited to a maximum of 20 members
- B** They are limited to a maximum of 50 members
- C** They must have at least two members

(1 mark)

37 Which of the following statements relating to a company is NOT correct?

- A A company is in law a person
- B A company must state its objects in the memorandum of association
- C A company can sue and be sued
- D A company has perpetual succession

(2 marks)

38 Which of the following is NOT required to be stated in the memorandum of association of a company?

- A The name of the company
- B The names of the subscribers
- C The liability of the members is limited or unlimited
- D The business of the company

(2 marks)

39 Which of the following is NOT an example of a debenture?

- A Loan stock
- B Note
- C Cheque
- D Convertible bond

(2 marks)

40 Which of the following statements relating to reduction of capital is/are correct?

- (1) Reduction of capital may take place without the approval of the court
- (2) Reduction of capital always results in return of paid-up capital to the shareholders
- (3) Reduction of capital need not be expressly authorised by the company's articles of association

- A (3) only
- B (1) and (3) only
- C (2) and (3) only
- D (1), (2) and (3)

(2 marks)

41 Which of the following statements in relation to the appointment of the company auditor is correct?

- A They are appointed by the board of directors
- B They are appointed by the members in a general meeting
- C They are appointed by the chief executive officer of the company
- D They are appointed by the company secretary

(2 marks)

42 Who may apply to court for a judicial management order?

- A** The company
- B** An individual member of the company
- C** An individual director of the company
- D** The Minister for Finance

(2 marks)

43 In the context of insider trading, which of the following is NOT a 'connected person'?

- A** A secretary of the company
- B** A liquidator of the company
- C** A spouse of a director of the company

(1 mark)

44 Which of the following activities is considered a securities fraud?

- A** Creating a false appearance of active trading in securities
- B** Buying securities at a low price and selling them at a high price
- C** Buying a large volume of securities
- D** Selling a large volume of securities

(2 marks)

45 Which of the following about the role of the securities market is correct?

- A** It is to allow companies to raise capital
- B** It is to allow companies to compete with each other for customers
- C** It is to allow companies to be part of a corporate group

(1 mark)

Section B – ALL FIVE questions are compulsory and MUST be attempted

- 1 Ace Ltd ('Ace') operates a shipbuilding business which specialises in constructing and modifying ships to order. In 2011, Ace entered into an agreement with Bob to completely rebuild a ship to Bob's specification for a total contract price of \$7 million. However, after completion, Bob informed Ace that, due to the downturn in the world economy, he no longer needed the ship. Ace had already expended \$5 million on altering the ship, and immediately started an action against Bob for breach of contract.

However, in the week before the case was to be decided in court, Ace sold the ship for the same amount of money which they would have received from Bob.

Required:

- (a) **State the purposes of awarding damages for breach of contract.** (2 marks)
- (b) **State the duty to mitigate losses.** (2 marks)
- (c) **State the level of damages Ace Ltd can claim for breach of contract.** (2 marks)

(6 marks)

- 2 Clare, Dan and Eve formed a partnership 10 years ago, although Clare was a 'sleeping' partner and never had anything to do with running the business. Last year Dan retired from the partnership. Eve has subsequently entered into two large contracts. The first one was with a longstanding customer, Greg, who had dealt with the partnership for some five years. The second contract was with a new customer, Hugh. Both believed that Dan was still a partner in the business. Both contracts have gone badly wrong, leaving the partnership owing \$50,000 to both Greg and Hugh. Unfortunately, the business assets will only cover the first \$50 000 of the debt.

Required:

- (a) **State the liability of Clare as a sleeping partner.** (2 marks)
- (b) **Identify the liabilities of Dan as a retiring partner.** (2 marks)
- (c) **State from whom Greg can claim the outstanding debt.** (2 marks)

(6 marks)

- 3 In 2012 John was disqualified from acting as a company director for a period of five years because he was convicted of fraud.

However, he decided to continue to pursue his fraudulent business and, in order to avoid the consequences of the disqualification, he arranged for his accountant Kim to run the business on his instructions. Although Kim took no shares in the company, and was never officially appointed as a director, he nonetheless assumed the title of managing director. John's wife, Jane, was the sole shareholder and director of the company.

Required:

- (a) **Identify which of the following categories of directors apply to John and Kim:**
- (i) *De facto*;
 - (ii) *De jure*;
 - (iii) Non-executive;
 - (iv) Shadow.
- (b) **State the general law duties owed by non-executive directors to their company.** (2 marks)

(6 marks)

- 4 John set up Asia Tours Pte Ltd ('AT') and was its sole shareholder and director. John hired Charles to be a manager of AT. Charles was capable and AT did very well under Charles' management.

When Charles became John's son-in-law, John trusted him even more. As John was getting older, he decided to transfer 60% of his shares to Charles for a nominal sum of money and Charles became the sole director of AT. The oral understanding between them was that John would continue to receive dividends from AT, which would constitute John's retirement income.

Subsequently, the marriage of Charles and John's daughter deteriorated, and Charles' relationship with John soured. AT, which continued to make profits and which had been paying good dividends over the years, suddenly stopped paying dividends. All the profits of AT went towards Charles' huge salary and benefits. Charles refused to answer any queries from John about the company's financial situation.

Required:

- (a) Explain the difference between a personal action and a derivative action. (2 marks)
- (b) State the TWO options available to John under the Companies Act Cap 50, which will allow him to remedy the wrongs done to him personally. (4 marks)

(6 marks)

- 5 Fox Pte Ltd ('Fox') supplies component parts to Prosperity Pte Ltd ('Prosperity'). Prosperity has fallen on hard times and has not paid debts owing to Fox for the last few months. Jack, the managing director of Fox, is worried that Prosperity may not survive the current ordeal. Many creditors of Prosperity have resorted to legal proceedings to collect debts owing to them, and there are rumours that Generous Bank may call in the debts owed by Prosperity and appoint a receiver. Jack thinks Prosperity should be wound up.

Required:

- (a) State the difference between a creditors' voluntary winding up and a winding up by the court in terms of how the winding up is initiated. (2 marks)
- (b) Explain whether a creditors' voluntary winding up or a winding up by the court is more viable for Fox Pte Ltd. (4 marks)

(6 marks)

End of Question Paper

Answers

Section A

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

Section B

- 1 (a) Damages in contract are intended to compensate an injured party for any financial loss sustained as a consequence of another party's breach. The object is not to punish the party in breach, so the amount of damages awarded can never be greater than the actual loss suffered. The usual aim of the award of damages is to put the injured party in the same position they would have been in had the contract been properly performed (expectation loss).
- (b) The duty to mitigate losses ensures that the injured party is under a duty to take all reasonable steps to minimise their loss. As a result, the seller of goods, which are not accepted, has not only to try to sell the goods to someone else but is also required to get as good a price as they can when they sell them. If goods are not delivered under a contract, the buyer is entitled to go into the market and buy similar goods, paying the market price prevailing at the time. They can then claim the difference in price between what they paid and the original contract price as damages.

- (c) Applying the foregoing to the contract between Ace Ltd and Bob, it can be seen that Ace managed to recoup all the costs and potential profit it would have made on the contract with Bob, so is not in a position to claim any further damages from Bob.
- 2 (a) Her status as a sleeping partner gives Clare no additional protection from the unlimited liability which applies to all ordinary partners in an ordinary partnership. It simply means she has left her personal wealth open to claims over which she has no practical control through her own inaction.
- (b) He remains liable to existing customers until those customers are informed that he has left the partnership. He also remains liable to new customers who knew he was a partner, unless he has made public his withdrawal.
- (c) Greg can claim from all three parties: Clare, Dan and Eve.
- 3 (a) John acts behind the scenes and is operating as a shadow director. Kim has not been appointed as such but acts as a director, which makes him a *de facto* director.
- (b) As with all directors, non-executive directors owe fiduciary duties to their company. They include the duty to act *bona fide* in the company's interests, the duty to avoid conflict of interests, the duty of care, skill and diligence, the duty to act for proper purpose and the duty not to fetter their discretion.
- 4 (a) All members of companies have certain rights conferred on them by the Companies Act Cap 50, the articles or general law. These rights are personal rights of each member. When a member brings an action against the company to enforce their personal rights, they are bringing a personal action.
- Where a wrong has been done to the company, it is the company which should bring an action to vindicate the wrong. Where the company does not do so, a member may sue the wrongdoers in their own name to enforce the company's rights. Such an action is called a derivative action because they derive the right to sue from the company.
- (b) John may invoke either ss.216 or 254 Companies Act Cap 50.
- 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; or that some act or resolution unfairly discriminates or is prejudicial to them. The test of commercial unfairness is used to determine if there has been unfair treatment of John.
- Section 254(1)(i) Companies Act Cap 50 allows a member to wind up the company on the 'just and equitable' ground. John may show that AT is a quasi-partnership and the personal relationship between John and Charles involving mutual trust and confidence has broken down.
- 5 (a) A creditors' voluntary winding up is initiated by the insolvent company passing a special resolution to wind itself up. Winding up by the court is initiated by an application to court made by one of the persons listed under s.253 Companies Act Cap 50.
- (b) A creditors' voluntary winding up is outside Fox's control. Jack will need time to persuade Prosperity to initiate a creditors' voluntary winding up. It would appear from the facts that there other creditors already ahead of Fox in their debt collection. Time will therefore be of the essence. If Fox were to apply to court for winding up instead, and the court proceeds to make the winding up order, commencement of winding up will be retrospective from the date of Fox's application to court. Once winding up has commenced, all its attendant consequences follow. For instance, disposition of property after commencement of winding up is void (s.259 Companies Act Cap 50); execution against Prosperity which is not fully satisfied may be avoided (s.260 Companies Act Cap 50). These provisions which are triggered only upon commencement of winding up serve to preserve the pool of unsecured assets of the company, which is extremely important to an unsecured creditor like Fox.
- It would be more viable for Fox to initiate a winding up by the court so that commencement of winding up starts and as much unsecured assets are preserved within the company as possible.

Section A

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

Section B

- 1** (a) 1 mark for each relevant point made relating to damages, up to the maximum 2 marks.
(b) 1 mark for each relevant point made relating to the duty to mitigate losses, up to the maximum 2 marks.
(c) 1 mark for correct application and 1 mark for explanation.

- 2** (a) 1 mark for each relevant point made relating to the potential liability of Clare as a sleeping partner, up to the maximum 2 marks.
(b) 1 mark for each relevant point made relating to the potential liability of Dan as a retired partner, up to the maximum 2 marks.
(c) Full 2 marks only to be given to a fully correct answer. Partial answers to be given 1 mark.

- 3** (a) 2 marks each for correct application of the type of director to John and Kim.
(b) 1 mark for each duty, up to the maximum 2 marks.

- 4** (a) 1 mark if candidate states personal action is to vindicate personal rights. 1 mark if candidate states derivative action is to vindicate corporate rights.
(b) 1 mark for each relevant point made about each option, up to a maximum of 2 marks per option.

- 5** (a) 1 mark for stating correctly how each type of winding up is initiated.
(b) 1 mark for each relevant point about the two types of winding up, up to a maximum of 4 marks.