

Fundamentals Level – Skills Module

Corporate and Business Law (Hong Kong)

Tuesday 7 June 2011

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 (HKKG)

The ACCA logo consists 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 the Hong Kong Legal System:**
- (a) Explain the doctrine of precedent and the operation of the doctrine in the court system of the **Hong Kong Special Administrative Region ('HKSAR')** (6 marks)
 - (b) Explain the circumstances under which the doctrine of precedent is not applicable. (4 marks)
- (10 marks)**
- 2 In relation to contract law, explain the following:**
- (a) (i) Void contracts; (2 marks)
 - (ii) Voidable contracts; and (2 marks)
 - (iii) Unenforceable contracts. (2 marks)
 - (b) Past consideration is not valid consideration. (4 marks)
- (10 marks)**
- 3 In relation to agency law, explain the doctrine of apparent/ostensible authority.**
- (10 marks)**
- 4 In relation to partnership law, explain:**
- (a) the liabilities of general partners towards the debts and obligations of the partnership incurred while they are a partner; and (4 marks)
 - (b) what is a limited partnership. (6 marks)
- (10 marks)**
- 5 In relation to company law:**
- (a) Explain what is a fixed charge. (5 marks)
 - (b) Explain the advantages of holding a fixed charge. (3 marks)
 - (c) Explain the statutory requirement for the registration of a charge. (2 marks)
- (10 marks)**
- 6 In relation to the constitutional documents of a company:**
- (a) Explain the compulsory clauses in the memorandum of association. (6 marks)
 - (b) Explain the effect of the memorandum of association and articles of association, and the relationship between them. (4 marks)
- (10 marks)**

7 In relation to insider dealing:

(a) State the circumstances under which a person commits insider dealing. (6 marks)

(b) Explain the meaning of 'relevant information'. (4 marks)

(10 marks)

8 The employment contract of a company provides, among other things, that the employer can terminate the contract by four days' notice after one month probation period ('the Clause').

Required:

(a) In relation to employment law, advise the company as to the legal effect of the Clause. (5 marks)

Smith has been an employee of the company for two years. The company has just discovered that Smith had stolen the property of the company several times.

Required:

(b) In relation to employment law, advise the company as to whether any notice period is required for the company to terminate the employment contract between the company and Smith by reason of the misbehaviour of Smith. (5 marks)

(10 marks)

9 Andrew is an auditor. Last year, a bank paid him for a reference from him regarding the creditworthiness of a company. In the reference, Andrew negligently gave a reference stating that the creditworthiness of the company was good. Relying on the reference, the bank granted a loan to the company.

However, by reason of a global financial crisis, the company has just been wound up by the creditors and is unable to repay the loan to the bank.

Required:

In relation to professional negligence, advise Andrew as to whether he is liable for the loss suffered by the bank.

(10 marks)

10 Property Ltd is a company, which was incorporated in Hong Kong two years ago and adopts the current version of Table A of the Companies Ordinance (Cap 32) as its articles of association. The company does not state its object in its memorandum of association. The company now mainly engages in the car retailing business.

Elton is a minority shareholder of the company. Recently, he heard from other shareholders that the board of directors intends to pass a resolution to widen the scope of business of the company by making investment in the real property market. The purpose of the resolution is to increase the source of income and hence the profit of the company.

Elton and some other shareholders are not comfortable with such a decision of the board.

Required:

Advise Elton on the following:

(a) Whether he can commence a legal action to stop the board from exercising its power to pass the resolution.
(6 marks)

(b) Other than commencing a legal action, whether there is any other way through which the board of directors may be stopped from passing the resolution.
(4 marks)

(10 marks)

End of Question Paper