Answers

1 The question invites the candidates to show their knowledge in the operation of the doctrine of precedent in the court system of the Hong Kong Special Administrative Region ('HKSAR') and the circumstances under which the doctrine is not applicable.

(a) The doctrine of precedent requires that 'like cases should be treated alike and dissimilar cases should be treated differently'. The aim of the doctrine is to ensure consistency in the application of law. In point of time, the doctrine takes effect both backwards and forwards. While judges are bound by decisions of the courts in the past, their decisions may also bind on judges in the future.

Besides, only the reasoning of the decisions, i.e., the *ratio decidendi*, has binding effect. Furthermore, not all the previous decisions are binding, only those being made by the higher-ranking courts in the court system bind on the lower courts. In the HKSAR, the highest ranking court is the Court of Final Appeal ('CFA'). The decisions of the CFA bind on all the courts below it. Following the CFA is the Court of Appeal ('CA'). Except for the CFA, decisions of the CA bind on all the other courts. Further down the ladder is the Court of First Instance ('CFI'), whose decisions bind on all the lower courts, except the CFA and the CA.

(b) As mentioned before, the operation of the doctrine ensures consistency in the application of law; the exceptions to the doctrine, however, give the case law system an element of flexibility. The operation of the doctrine is subject to the following:

(i) Judges may distinguish the facts of their cases from those of the previous cases on the ground that there is or are material differences in the facts among them.

(ii) Where statements of law by judges of previous cases were made by the judges on the basis of hypothetical facts, these statements are only the judges' opinion, i.e., they are only *obiter dicta* and not the *ratio decidendi* of the cases. Judges in the future are not bound to apply the statements of law in the cases before them. Nevertheless, the opinion could be persuasive precedent, especially when such opinions are from distinguished judges of those higher-ranking courts.

(iii) Judges may not follow previous decisions when the reasonings for those decisions are unclear. This usually takes place when a case was heard in the appeal court by three judges and the judges gave a unanimous decision but with divergent reasonings.

(iv) Previous decisions may also not be binding if the judges of those cases failed to consider laws that are relevant to the cases before them. Such decisions are said to be given *per incuriam*.

(v) Lastly, previous decisions are not binding if they have been overruled by the higher courts.

2 The question invites the candidates to show their knowledge in some fundamental concepts of contract law.

(a) (i) Void contract

A void contract is treated by law as no contract at all. While the parties to it did intend to enter into a contractual relationship, they fail to do so when the formation of the contract does not comply with the legal requirements.

A void contract has no legal effect. The parties to it are not bound to fulfil their respective obligations under the contract. As an example, a contract being designed to violate the criminal law is a void contract.

(ii) Voidable contract

A voidable contract is one which is legally enforceable before it is terminated or avoided by the innocent contract party by exercising the party's right, which is conferred to him by law. The act through which the innocent party avoids a voidable contract is called rescission.

Hence, the parties to the contract are bound by the contract until the moment the contract is rescinded. For example, a contract being entered into by duress is voidable at the option of the innocent party.

(iii) Unenforceable contract

An unenforceable contract is a valid contract except that it is not enforceable through the court. A party to the contract cannot compel the other party performing his contractual obligation by legal action. Contracts falling under this heading are usually those the creation of which require the compliance of certain formality under the law.

An example of an unenforceable contract is a contract for sale and purchase of interest in land: s.3 Conveyancing and Property Ordinance (Cap 219). Such a contract is unenforceable unless it is in writing.

(b) Consideration is an essential element for the formation of a valid contract. Consideration in law is something that '… may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.': *Currie* v *Misa* (1875).

There are two rules for consideration. Firstly, consideration must be valuable and sufficient but need not be adequate. Secondly, consideration must move from the promisee.

To be consideration, the act or promise of one party and the act or promise of the other must constitute one single transaction.

If one party makes a promise in return for an act or promise, which has already been performed unilaterally ('the second act or promise'), the two promises are not a response to one another and do not support a contract. The second act or promise is a past consideration and is insufficient as far as the formation of a contract is concerned.

3 The question tests the candidates' knowledge in the doctrine of apparent or ostensible authority.

Apparent authority refers to the authority of an agent as it appears to a third party. It is based on the behaviour or conduct of the principal to the third party, i.e., the representation from the principal.

The principal is liable to the third party for his agent's act even though his agent does not have actual authority from the principal to perform the act, when the principal represents himself in such a way that he intends the third party to act upon the representation and the third party in fact acts upon the representation and suffers loss as a result. For this reason, the doctrine may also be referred to as agency by *estoppel*.

It should be noted that while the doctrine renders a principal liable for his agent's act to a third party, the third party is not liable to the principal unless the principal chooses to ratify the act of his agent in question.

It follows that the following requirements have to be satisfied for the doctrine to apply.

Firstly, there is a representation being intentionally made by the principal.

Secondly, there is reliance of, and action on, the representation by the third party.

Representation intentionally made by the principal

The representation may be expressly made by or implied from the behaviour of the principal. It may be oral or in writing.

The principal is not liable to a third party if the representation in question is by his agent but not by the principal or someone who has the authority from the principal: *Armagas* v *Mundogas* (1986) UK.

Where the third party and the principal have previous dealings, the conduct of the principal in the past has been held to be a representation for the purpose of the doctrine. *Summers* v *Salomon* (1857) UK.

Reliance of and action on the representation by the third party

A principal will not be liable for the loss suffered by a third party if the third party does not rely on the representation.

The question arises as to whether the third party is under a duty to make enquiry from the principal as to the authority of his agent. While a third party is not bound by law to make such an enquiry, the court has held that where a third party knows that a contract is one which a director of a company does not normally have authority to enter into for the company, the third party's claim against the company for liability under the contract will fail. *Houghton and Co* v *Nothard, Lowe and Wills Ltd* (1928) UK.

In light of the court's decision in the *Houghton* case, where the third party is suspicious as to whether it is within the normal or usual authority of an agent to do the act in question, the third party has to make such an enquiry as necessary from the agent's principal. In any event, a principal is not liable under the doctrine if the third party has knowledge that the agent has no actual authority from his principal to do the act in question.

4 The question invites the candidates to show their knowledge in the liabilities of general partners and the properties of a partnership.

(a) A general partner or an equity partner is a partner who takes part in the management of the business of the partnership. Unless the partners agree otherwise, all partners of a partnership are general partners.

In relation to the outsiders, every partner is liable jointly with other partners for all debts and obligations of the firm incurred while he is a partner: s.11 Partnership Ordinance (Cap 38) ('PO').

So under PO, a creditor has to make a choice as to whether to sue a partner or sue the partnership, i.e., all the partners. Where the creditor sues just one partner, the judgement against the partner is a bar to an action against other partners.

However, the effect of PO over the liabilities of a partner has been changed by the Civil Liability (Contribution) Ordinance (Cap 377) ('CLO'). Under s.5 CLO, in an action for debt, if a judgement is obtained against a partner but the partner cannot settle the debt, either partly or wholly, the creditor may still sue other partners in order that the judgement debt can be satisfied.

(b) Under s.3(2) Limited Partnership Ordinance (Cap 37) ('LPO'), a limited partnership is a partnership which must have at least one general partner and at least one person called a limited partner.

A limited partner is one who shall, at the time of entering into the limited partnership, contribute to the firm a sum, as capital or property, valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed: s.3(2) LPO.

During the continuance of the partnership, a limited partner is not allowed, either directly or indirectly, to draw out or receive back any part of his contribution, and if he does so, he shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back: s.3(3) LPO. Subject to LPO, a limited partnership is the same as an ordinary partnership in law: s.6 LPO.

5 The question invites the candidates to demonstrate their knowledge in fixed charges.

(a) To begin with, a company may create fixed and floating charges. Both of them are security transactions in that they are assurances from a company to its creditor for the repayment of a loan borrowed by the company.

A fixed charge has been described as a charge which is fixed ascertained and identified or specified property of the company. For example, land or machines are usually used as subject matters of a fixed charge. Nevertheless, the property may also include those capable of being ascertained and defined: see *Illingworth* v *Houldsworth* [1904] AC 355. So a particular amount of debt which will become due sometime in the future can be the subject matter of a fixed charge.

Once a fixed charge is created, the company cannot dispose of the property free of the charge unless the company has the consent from the charge holder, i.e., the creditor.

A fixed charge may either be a legal or equitable one. A legal charge may be created by a deed. Where the subject matter of the charge is a real property, the charge must be created by a deed: s.44(1) Conveyancing and Property Ordinance (Cap 219) ('CPO'). An equitable charge may be created by a deed or by the mere act of depositing the documents of title with the creditor. Where the property being charged has yet to exist in the future, e.g., a debt becomes due in the future, it must be an equitable charge.

Where a legal charge or equitable charge are created by deed on a real property, the charge holder has the power to appoint a receiver to do all things necessary to realise the property: s.50(1) and Sch 4 of CPO.

(b) The following are the advantages for holding a fixed charge:

First, holders of fixed charges are in better positions than those of floating charges in that they already have the knowledge of the exact value of the security with which they may make use of for the repayment of the loans when the company is unable to repay the loans. Holders of floating charges, on the other hand, will have to take the risk that by the time the crystallisation of the charge occurs, the class of assets may have no value at all.

Second, upon the liquidation of the company, holders of fixed charges have the first priority to make use of the security for the repayment of the loans. For floating charge holders, their rights for repayments are subject to the payment of some preferential payments of the company. Such preferential debts include payments of the liquidator's fees, certain government debts and payment to the employees of the company for settling the employees' outstanding salaries: s.265 Companies Ordinance (Cap 32) ('CO').

(c) Pursuant to s.80 CO, every charge created by a company to which the section applies must be registered with the company registry. Particulars of the charges, together with the instrument creating the charge, must be delivered to the Registrar within five weeks after their creation. Failure to do so will render the charges void against the liquidator and every creditor of the company.

6 The question invites the candidates to demonstrate their knowledge in the constitutional documents of a company.

(a) The following are the compulsory clauses of the memorandum of association:

Name Clause

If a company is limited by shares, by guarantee or by both together, the name of the company must be ended with the word 'limited': s.5(1)(a)(b) CO.

In addition, the name of the company cannot be the same as that of other companies appearing in the Registrar's index of company names or as the name of those companies being established under any ordinance: s.20 CO.

Further, the name may not be one which in the opinion of the Chief Executive constitutes a criminal offence or be offensive or contrary to the public interest.

Consent from the Chief Executive is required for names which appear to have been connected in any way to the Government or any Government Department or which include such words as Trust, Trustee, etc: s.22B CO.

Registered Office Clause

Under this clause, a company has to state that the registered office of the company shall be situated in Hong Kong.

Object Clause

The object for the formation of a company is stated in this clause. It governs the areas of business that the company is engaged in. However, the clause is not compulsory except for companies intending to apply for a licence to dispose with the word 'limited': s.5(1A) CO.

Limited Liability Clause

The clause states that the liability of the company is limited: s.5(2) CO. The word 'limited' only refers to the liabilities of the members of the company. It has no bearing with the liability of the company. The liability of a company is always unlimited.

Authorised Capital Clause

A company has to state the maximum amount of share capital to be raised by the company and the division of the capital into shares of a fixed amount: s.5(4) CO.

(b) Both the memorandum of association and articles of association are the constitutional documents of a company, but governing different affairs of the company. The memorandum and articles focus on the external and internal matters of the company respectively. Hence, for example, from the memorandum, the public can have the knowledge relating to the authorised capital of the company and from the articles, the shareholders can know of their rights over the running of the business of the company by, say, the procedure of calling a shareholders' meeting and voting in the meeting, etc.

Nevertheless, the two documents are not of the same status. When there is a conflict between the two, it is the provisions of the memorandum which are to prevail.

Under s.23 Companies Ordinance (Cap 32)('CO'), once the documents are registered with the Company Registry, they have the effect of binding on the company and its members to the same extent as if they have been signed by each of the members. The members of the company are required to observe the duties imposed upon them by the documents.

In effect, the section turns the documents into, firstly, contracts between the company and each of its members and, secondly, contracts among each of the members themselves.

7 The question invites the candidates to demonstrate their knowledge in insider dealing.

(a) Pursuant to s.270 Securities and Futures Ordinance ('SFO'), in relation to a listed corporation, a person commits insider dealing under the following circumstances:

First, when a person connected with the company ('the connected person') either deals, or discloses relevant information knowing, or having reasonable cause to believe, that the recipient of the information would deal.

Second, when a person contemplating or has contemplated a take-over, either deals or counsels or procures another to deal, or discloses information knowing, or having reasonable cause to believe, that the recipient of the information would so deal.

Third, when a person receives relevant information from the connected person or the person contemplating or has completed a take-over deals or counsels or procures another person to deal.

Connected persons include directors, employees, shareholders holding five per cent or more of nominal value, which include the partners of those shareholders, and persons who may reasonably be expected to have access to relevant information by reason of their professional or business relationship with the company: s.247 SFO.

(b) In relation to a company, relevant information refers to specific information about the company, a shareholder or officer of the company, or the listed securities of the company or their derivatives, which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would, if it were generally known to them, be likely to affect the price of the listed securities materially: s.245 SFO (Cap 571).

8 The question invites the candidates to show their knowledge in the termination of an employment contract by notice and by summary dismissal.

(a) It should be noted at the outset that while Employment Ordinance (Cap 57)('EO')EO does not provide for a definition as to what an employment contract is, it does provide for a minimum protection for the benefit enjoyed by the employees under the contract.

Under s.70 EO, the terms of an employment contract cannot have the effect of attenuating the rights and benefits of employees. Any term in the contract which attempts to deny or reduce the employees' rights and benefits specified in the EO shall be void, i.e., has no legal effect.

Where an employee is employed on a period of probation, the contract may only be terminated by giving at least seven days' notice after the first month of probation: s.6(3A) EO.

Since the Clause has the effect of giving the company the right to terminate an employment contract by four days' notice after the probation period, which is shorter than the requirement under s.6(3A) EO, the Clause is void and has no legal effect.

(b) Under s.9 EO, an employer may summarily dismiss an employee without notice or payment in lieu of notice if the employee, in relation to his employment:

- Willfully disobeys a lawful and reasonable order;
- Misconducts himself;
- Is guilty of fraud or dishonesty; or
- Is habitually neglectful in his duties.

In relation to misconduct, it refers to the conduct of an employee, which is inconsistent with the employee's proper discharge of the duties for which the employee was engaged. There is no fixed rule of law defining the degree of misconduct justifying dismissal. Nevertheless, it includes the commission by the employee of an offence of character, which makes it unsafe for the employer to retain the employee.

From the facts of the scenario, it seems quite obvious that the commission of theft by Smith is misconduct in the sense that it would be unsafe for the company to maintain the employment relationship with Smith when the company has to take the risk of losing the company's property and suffers loss.

In fact, taking away the company's property without the knowledge of the company is by itself a conduct reflecting dishonesty on the part of Smith.

By reason of what has been said, it is clear that s.9 EO applies and the company can dismiss Smith summarily. Hence, no notice period is required for the company to terminate Smith's employment contract.

9 The question invites the candidates to show their knowledge in professional negligence and the concept of causation.

The following two issues have to be considered before any advice can be given.

Firstly, whether Andrew owed a duty of care to the bank.

Secondly, assuming that Andrew did owe to the bank a duty of care, one still has to consider whether his negligence in giving the opinion in the reference was a cause to the loss suffered by the bank.

The first issue: duty of care

For the existence of a duty of care by auditors regarding the negligent misstatements made by them, '... the appropriate test ... [is] ... whether ... [the auditors] knew or reasonably should have foreseen at the time the accounts were audited that a person might rely on those accounts for the purpose of deciding whether or not to take over the company and therefore should suffer loss if the accounts were inaccurate. Such an approach does place a limitation on those entitled to contend that there has been a breach of duty owed to them.

First of all, they must have relied on the accounts and, second, they must have done so in circumstances where the auditors either knew that they would or ought to have known that they might. If the situation is one where it would not be reasonable for the accounts to be relied on, then, in the absence of express knowledge, the auditor would be under no duty ...': *JEB Fasteners Ltd* v *Marks Bloom & Co* (1983) UK, per Woolf J.

In *Hedley Byrne and Co Ltd* v *Heller and Partners Ltd* (1963) UK, HB had a client who happened to be a customer of HP. HB extended credit to the client after seeking for a reference from HP about the creditworthiness of the client. The court held that HP owed to HB a duty of care even though there was no contractual or fiduciary relationship between them.

From the facts of the problem scenario, it is clear that the bank did rely on the reference when the bank granted the loan to the company. Besides, since Andrew was hired by the bank for the purpose of compiling the reference, there existed a contractual relationship between them regarding the compilation. As such, it is clear that Andrew must have known that the bank would rely on the reference to grant the loan in question. In fact, the facts of the problem scenario are similar to those of the *Hedley* case, except that in the *Hedley* case, there was no contractual relationship between HP and HB and that there was an exemption in the *Hedley* case.

The second issue: causation

Persons committing tort are not necessarily liable for the damages suffered by the victims unless there exists a causal linkage between the tort committed and the damages suffered.

The concept of causation in tort relates to the question of whether the defendant's acts or omissions to act should be excluded from the events that contribute to the damages suffered by the victims. If the defendant's acts or omissions to act do not contribute to the damages, the defendant will not be liable for such damages.

Where the damages in question might have been the result of more than one cause, the defendant will only be liable for the damages if the defendant's act is a cause which materially increases the risk of the damages suffered by the victims.

The courts have adopted the 'but for test' to determine the issue of causation. Under the test, the question asked by the courts is whether the victims would have suffered from the damages if it had not been for the defendant's act. If the answer to the question is positive, the defendant's act is a cause of the victims' damages.

So, at issue is whether the bank would have suffered from the loss if it had not been for the negligent misstatement by Andrew in the reference. From the facts of the problem scenario, it is the global financial crisis that caused the winding up of the company, which made the company unable to repay the loan. Hence, it is quite clear that Andrew will not be liable for the loss to the bank.

10 The question invites the candidates to show their knowledge in the division of power between the board of directors and the shareholders in general meetings.

(a) Since the company adopts Table A as its articles of association, Article 82 of Table A is therefore applicable in considering the affairs of the company. Article 82 provides that the directors could exercise all powers of the company not required by the ordinance or the articles to be exercised by the company in general meetings. So, Article 82 gives the board the power in the management of the company.

In considering whether the power has been properly exercised by the directors, the courts will consider the purposes to which a decision of the directors relates.

In *Tang Kam-yip* v *Yau Kung School* (1986) HK, the company in question adopted an article giving the directors the power to manage the school. It was held by the court that the appointments by the directors to admit more members to the company was unrelated to the management of the company and hence invalid.

It follows that, pursuant to Article 82, unless the act of the directors is outside the scope of power being conferred to the directors, the shareholders can do nothing legally to stop the directors.

Since the company does not state its object in the memorandum, therefore, subject to the requirement of the law, the company can engage in whatever business the company wants. Since the purpose of the resolution is to increase the profit of the company and hence for the interest of the company, i.e., the interest of the shareholders, it is therefore quite clear that the decision of the board is within the scope of directors' power to manage the company.

Accordingly, Elton may well be advised that, probably, he cannot commence legal action to stop the board from passing the resolution in question.

(b) Prior to the taking effect of the amendment to Article 82 on 13 February 2004, the directors were not required to follow the directions of the shareholders in general meetings of the company.

However, after the amendment came into effect, the directors are now required to follow directions from the shareholders when the directions are expressed in the form of special resolutions being passed by the shareholders in general meetings.

A special resolution is a resolution passed by a majority of not less than three-quarters of such members as are entitled to, and do, vote in person, or by proxy, at a general meeting of which not less than 21 days' notice specifying the intention to propose the resolution has been duly given: s.116 CO.

Shareholders of a company may request for an extraordinary general meeting to be held for the purpose of passing a special resolution. However, the members must hold at least 5% of the paid-up capital of the company, which carries the right to vote at general meetings: s.113(1) CO. It should be noted that this section shall prevail over the articles of a company.

By reason of what has been said, provided that the condition in s.113 CO is satisfied, Elton may well be advised to call for an extraordinary general meeting to pass a special resolution demanding the board not to pass the resolution in question.

1 The question invites the candidates to show their knowledge in the operation of the doctrine of precedent in the court system of the Hong Kong Special Administrative Region ('HKSAR') and the circumstances under which the doctrine is not applicable.

(a) 5–6 Answers provide a clear understanding and thorough treatment of the subject areas being examined.

3–4 Less thorough treatment of the question. Towards the bottom of this range are those answers which have only a very brief explanation.

0–2 Very weak answers with inadequate information or answers show little understanding of the topic being examined.

(b) 3–4 At the top of this range are those providing a clear understanding and thorough treatment of the subject area being examined.

Towards the bottom of this range will be those showing some knowledge but with little detail.

0–2 Extremely poor answers that show either no or very little knowledge of the area.

2 The question invites the candidates to show their knowledge in some fundamental concepts of contract law.

(a) **(i)–(iii)** 0–2 At the top of this range are those providing a clear understanding and thorough treatment of the subject area being examined.

Towards the bottom of this range will be those showing some knowledge.

(b) 3–4 At the top of this range are those providing a clear understanding and thorough treatment of the subject area being examined.

Towards the bottom of this range will be those showing some knowledge but with little detail.

0–2 Extremely poor answers that show either no or very little knowledge of the area.

3 The question tests the candidates' knowledge in the doctrine of apparent or ostensible authority.

8–10 Answers provide a thorough treatment of the question.

5–7 Answers show an understanding of the question area but with little explanation.

2–4 Answers show some knowledge.

0–1 Extremely poor answers that show either no or very little knowledge of the area.

4 The question invites the candidates to show their knowledge in the liabilities of general partners and a limited partnership.

(a) 3–4 At the top of this range are those providing a clear understanding and thorough treatment of the subject area being examined.

Towards the bottom of this range will be those showing some knowledge but with little detail.

0–2 Extremely poor answers that show either no or very little knowledge of the area.

(b) 5–6 Answers provide a clear understanding and thorough treatment of the subject areas being examined.

3–4 Less thorough treatment of the question. Towards the bottom of this range are those answers which have only a very brief explanation.

0–2 Very weak answers with inadequate information or answers showing little understanding of the topic being examined.

5 The question invites the candidates to demonstrate their knowledge in fixed charges.

(a) 4–5 Answers provide a clear understanding and thorough treatment of the subject areas being examined.

2–3 Less thorough treatment of the question.

Towards the bottom of this range are those answers which have only a very brief explanation of the subject areas being examined.

0–1 Very weak answers with inadequate information or answers show little understanding of the topic being examined.

(b) 2–3 At the top of this range are those providing a clear understanding and thorough treatment of the subject area being examined.

Towards the bottom of this range will be those showing some knowledge but with little detail.

0–1 Very weak answers with inadequate information or answers show little understanding of the topic being examined.

(c) 0–2 At the top of this range are those providing a clear understanding and thorough treatment of the subject area being examined.

Towards the bottom of this range will be those showing some knowledge.

6 The question invites the candidates to demonstrate their knowledge in the constitutional documents of a company.

(a) 5–6 Answers provide a clear understanding and thorough treatment of the subject areas being examined.

3–4 Less thorough treatment of the question. Towards the bottom of this range are those answers which have only a very brief explanation.

0–2 Very weak answers with inadequate information or answers show little understanding of the topic being examined.

(b) 3–4 At the top of this range are those providing a clear understanding and thorough treatment of the subject area being examined.

Towards the bottom of this range will be those showing some knowledge but with little detail.

0–2 Extremely poor answers that show either no or very little knowledge of the area.

7 The question invites the candidates to demonstrate their knowledge in insider dealing.

(a) 5–6 Answers provide a clear understanding and thorough treatment of the subject areas being examined.

3–4 Less thorough treatment of the question. Towards the bottom of this range are those answers which have only a very brief explanation.

0–2 Very weak answers with inadequate information or answers show little understanding of the topic being examined.

(b) 3–4 At the top of this range are those providing a clear understanding and thorough treatment of the subject area being examined.

Towards the bottom of this range will be those showing some knowledge but with little detail.

0–2 Extremely poor answers that show either no or very little knowledge of the area.

8 The question invites the candidates to show their knowledge in the termination of an employment contract by notice and by summary dismissal.

(a)–(b) 4–5 Answers provide a clear understanding and thorough treatment of the subject areas being examined.

2–3 Less thorough treatment of the question. Towards the bottom of this range are those answers which have only a very brief explanation of the subject areas being examined.

0–1 Very weak answers with inadequate information or answers show little understanding of the topic being examined.

9 The question invites the candidates to show their knowledge in professional negligence and the concept of causation.

8–10 Answers provide a thorough treatment of the question.

5–7 Answers show an understanding of the question area but with little explanation.

2–4 Answers show some knowledge.

0–1 Extremely poor answers that show either no or very little knowledge of the area.

10 The question invites the candidates to show their knowledge in the division of power between the board of directors and the shareholders in general meetings.

(a) 5–6 Answers provide a clear understanding and thorough treatment of the subject areas being examined.

3–4 Less thorough treatment of the question. Towards the bottom of this range are those answers which have only a very brief explanation.

0–2 Very weak answers with inadequate information or answers show little understanding of the topic being examined.

(b) 3–4 At the top of this range are those providing a clear understanding and thorough treatment of the subject area being examined.

Towards the bottom of this range will be those showing some knowledge but with little detail.

0–2 Extremely poor answers that show either no or very little knowledge of the area.