

Fundamentals Level – Skills Module

Corporate and Business Law (Hong Kong)

Monday 8 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 (HKG)

ACCA

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 Regarding the jurisdiction of courts in the Hong Kong Special Administrative Region, which of the following courts has criminal jurisdiction ONLY?

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

(1 mark)

2 In relation to a representation, which of the following is NOT a representation?

- A The price of the house is HK\$1 million
- B The house has a beautiful sea view
- C A movie star was once the owner of the house

(1 mark)

3 In the context of contract law, which of the following is NOT consideration?

- A A promise
- B Money
- C Love and affection
- D Forbearance to sue

(2 marks)

4 Which of the following about the doctrine of privity of contract is NOT true?

- A Parties to the contract are liable under the contract
- B Parties to the contract can enforce the contract against each other
- C Parties to the contract can acquire properties under the contract
- D Parties to the contract can sue the wife of other contracting party

(2 marks)

5 Which of the following laws will be used by the court in determining whether a contract is an employment contract?

- A Statutory law
- B Common law
- C Basic law

(1 mark)

6 An agency relationship may be created by the act of the parties or by the operation of law.

Which of the following is the creation of an agency relationship by the operation of law?

- A Agency by necessity
- B Express agreement between the parties
- C Ratification of the agent's act by the principal
- D Agency by estoppel

(2 marks)

7 A company is said to have a separate legal entity. However, in appropriate circumstance, the court may lift the corporate veil of the company.

Which of the following is NOT a ground for the court to lift the corporate veil?

- A When a company is formed only for entering into a contract
- B When it serves the public interest
- C When a company is formed for concealing criminal activities
- D The directors are dishonest and act outside their scope of power

(2 marks)

8 **Which of the following is a specialty contract?**

- A A contract for purchasing a bottle of water at a shop
- B A contract for constructing a wall
- C A contract for hiring a taxi
- D An assignment for purchasing of an apartment

(2 marks)

9 **In the context of company law, which of the following statements about a debenture are correct?**

- (1) It is a loan
- (2) A holder can get back the principal amount when the debenture matures
- (3) A holder has the right to claim for the surplus capital of the company
- (4) A holder has voting rights in the general meeting of the company

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

(2 marks)

10 Last month, Maria received business information relating to a company. Subsequent to that, she purchased the shares of the company.

Maria may potentially have committed insider dealing when which TWO of the following are true?

- (1) The information is about a decision by the company to wind up the company
- (2) Maria earned profit when she subsequently sold the shares
- (3) The company is a listed company
- (4) The information was from an office assistant of the company

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

(2 marks)

11 In the context of Companies Ordinance (Cap 622), which TWO of the following about the qualification of directors of a private company which is a member of a group which includes a listed company are true?

- (1) It may have one director who is a natural person
- (2) It may have one director which is a company
- (3) It may have two directors where both of them are companies
- (4) It may have two directors where one of them is a natural person

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

(2 marks)

12 For a company adopting schedule 1 of Companies Ordinance (Cap 622H) as its articles of association, which of the following about the appointment of the company secretary is true?

- A** They are appointed by the directors
- B** They are appointed by a special resolution at a general meeting of the company
- C** They are appointed by an ordinary resolution at a general meeting of the company

(1 mark)

13 Section 177 Companies (Miscellaneous And Winding Up Provisions) Ordinance (Cap 32) provides the grounds for a company to be wound up by the court.

Which of the following is NOT a ground provided for in the section?

- A** The company does not commence its business within a year after its incorporation
- B** The company has no member
- C** An ordinary resolution to wind up the company is made by the members
- D** The court opinions that it is just and equitable for the company be wound up

(2 marks)

14 Which of the following courts ONLY has a jury in a criminal trial?

- A The Magistrates' Court
- B The District Court
- C The Court of First Instance

(1 mark)

15 In relation to the tort of passing off, which of the following is NOT true?

- A It is about damages to the goodwill of a company
- B Intention to deceive the public is not required for committing it
- C An injunction is the usual remedy to be granted by the court

(1 mark)

16 In the context of tort, which of the following about causation is true?

- A It determines the types of damages to be compensated for
- B It determines the quantum of damages to be compensated for
- C It determines whether the defendant's acts should be excluded from the events contributing to the victim's damage

(1 mark)

17 In relation to an employment contract that has been continuous for 24 months or more, the Employment Ordinance (Cap 57) sets out remedies for an unreasonable dismissal.

Which of the following is NOT a remedy for unreasonable dismissal under the ordinance?

- A An order of reinstatement
- B An award of compensation not exceeding HK\$100,000
- C An order of re-engagement

(1 mark)

18 Which of the following is NOT true in relation to fraudulent trading?

- A It is both a crime and a civil wrong
- B It requires proof of dishonesty
- C It involves the cheating of the company's creditors
- D It only applies to directors

(2 marks)

19 Which of the following does NOT apply to criminal law?

- A It aims at protecting public interest
- B An offender is required to compensate for the loss to the victim
- C A criminal act can be a tortious act at the same time

(1 mark)

20 In relation to a voidable contract, which of the following is true?

- A** It is an illegal contract
- B** It is an unenforceable contract
- C** It is a true contract until it is declared void by the court
- D** It is a contract which has no legal effect

(2 marks)

21 In the context of Employment Ordinance (Cap 57), which of the following employment contracts is a continuous contract?

- A** A contract continuous for 3 weeks with 18 hours in each week
- B** A contract continuous for 3 weeks with 18 hours in any week
- C** A contract continuous for 4 weeks with 18 hours in each week
- D** A contract continuous for 4 weeks with 18 hours in any week

(2 marks)

22 In relation to Companies Ordinance (Cap 622), which of the following about the constitution of a company is true?

- A** The articles of association is the constitution of the company only
- B** The articles of association is not a contract between the members of the company
- C** The memorandum of association of the company is the constitution of the company only

(1 mark)

23 In the context of company law, which of the following statements about a share are correct?

- (1) It is the interest of a member in the company
 - (2) It does not consist of mutual obligations between members of a company
 - (3) It has no right to receive dividends
 - (4) It is a device for measuring the liabilities and profits of a member
- A** (1) and (2)
 - B** (2) and (3)
 - C** (3) and (4)
 - D** (1) and (4)

(2 marks)

24 In which year did the Basic Law take effect in the Hong Kong Special Administrative Region?

- A** 1996
- B** 1997
- C** 1998

(1 mark)

25 Workers who did not put on helmets in a construction site suffered injuries in the course of carrying out their duties and so sued the defendant for negligence.

Which TWO of following defences to negligence are available to the defendant?

- (1) The damage was caused partially by the workers' negligence
- (2) The defendant had told the workers to put on helmets
- (3) The defendant has purchased insurance for the workers
- (4) The victim has a particularly thin skull

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

(2 marks)

26 In relation to the distinction between employees and self-employed persons, which of the following is NOT true?

- A** Employees have protection under the Employment Ordinance (Cap 57)
- B** Self-employed persons need to pay salary tax
- C** Employers are liable for the tort committed by the employees

(1 mark)

27 A company may dispense with the holding of an annual general meeting according to s.613 Companies Ordinance (Cap 622).

Which of the following about s.613 Companies Ordinance is NOT true?

- A** It applies to all companies except public companies
- B** It applies to private companies
- C** It applies to companies limited by guarantee

(1 mark)

28 In relation to winding up, or liquidation, of a company, when does the life of the company come to an end?

- A** When a liquidator is appointed
- B** When a resolution to wind up the company is passed by the members
- C** When an order to dissolve the company is made by the court
- D** When a winding up order is made by the court

(2 marks)

29 In the context of contract law, which of the following CANNOT be an invitation to treat?

- A** Letters inviting course providers to submit tenders for a course
- B** Shop displays
- C** Advertisements with no further negotiations expected
- D** Catalogues and prospectuses

(2 marks)

30 In relation to an employment contract, which of the following about summary dismissal is NOT true?

- A** No notice or payment in lieu of notice is required for the dismissal
- B** The employee ends the contract when the employee is ill-treated by the employer
- C** It is a ground for dismissal when the employee refuses to obey the lawful and reasonable order from the employer
- D** The dismissed employee has no right to claim for a long service payment

(2 mark)

31 Which of the following is regarded as the constitution of the Hong Kong Special Administrative Region?

- A** United Nations (Anti-Terrorism Measure) Ordinance (Cap 575)
- B** Basic Law
- C** Organised and Serious Crime Ordinance (Cap 455)
- D** The Bill of Rights Ordinance (Cap 383)

(2 marks)

32 A company may be wound up voluntarily or compulsorily.

Which of the following about a voluntary winding up is NOT true?

- A** The company itself appoints the liquidator
- B** The court has the power to remove the liquidator
- C** The creditors and contributors of the company are involved in the administration of the winding up process
- D** The winding up process is not under the supervision of the court

(2 marks)

33 In relation to the Companies Ordinance (Cap 622), what is the minimum number of directors required in a public company?

- A** At least one director
- B** At least two directors
- C** At least three directors

(1 mark)

34 In relation to an employment contract, which of the following is NOT true?

- A** It is a contract of service
- B** It is a contract for services
- C** Decisions of the courts form part of an employment contract

(1 mark)

35 In relation to the decisions of the Court of Final Appeal of the Hong Kong Special Administrative Region, which of the following is NOT true?

- A** They bind all future courts
- B** They bind all lower courts
- C** They do not bind any courts

(1 mark)

36 Upon the breach of which of the following contractual terms will the innocent party have the right to claim for damages ONLY?

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

(1 mark)

37 In the context of employment law, which of the following forms of dismissal is NOT applicable in Hong Kong?

- A Constructive dismissal
- B Wrongful dismissal
- C Unlawful dismissal
- D Unfair dismissal

(2 marks)

38 In the context of company law, which of the following about the concept of 'limited liability' of a company is true?

- A The members' liabilities are unlimited
- B The company's liabilities are limited
- C The company's liabilities are unlimited

(1 mark)

39 Under the Basic Law of the Hong Kong Special Administrative Region (HKSAR), which of the following is NOT true?

- A It defines the rights of the citizens of both mainland China and the HKSAR
- B It protects the right of private ownership of properties
- C It ensures the equality of all residents of the HKSAR
- D It was enacted by the National People's Congress of the People's Republic of China

(2 marks)

40 In relation to implied terms of a contract, which of the following is true?

- A Implied terms and representations are the same
- B In general, express terms are to prevail when they conflict with implied terms
- C Statutory law is not a source of implied terms

(1 mark)

41 Thomson was an accountant before he died in a traffic accident caused by a careless driver. Before Thomson died, he gave HK\$20,000 per month to his wife as the family expenses and earned HK\$100,000 per month.

In relation to the law of tort, which of the following compensations do NOT need to be paid by the driver?

- A Hospital expenses of Thomson
- B The pain and suffering of Thomson before he died
- C The loss of family expenses to Thomson's wife
- D The loss of future earnings of Thomson

(2 marks)

42 In the context of agency law, which of the following as regards a contract entered into by an undisclosed agent with a third party is true?

- A** The principal shall be liable for the contract
- B** The third party thought that they dealt only with the principal
- C** The third party may choose to sue the principal or the agent for breach of the contract

(1 mark)

43 In relation to the formation of a contract, which of the following about an offer is NOT true?

- A** It may be made to the whole world
- B** It may specify a time for its acceptance
- C** It may specify the mode or manner of acceptance
- D** It may be accepted by a person having no knowledge of its existence

(2 marks)

44 Which of the following human rights is NOT protected in the Hong Kong Special Administrative Region?

- A** Right to life
- B** Freedom of expression
- C** Freedom from discrimination
- D** Freedom of association

(2 marks)

45 In relation to contract law, which of the following about the postal rule are true?

- (1) A contract is formed when the letter of acceptance is received by the offeror
- (2) A contract is formed when the letter of acceptance without a stamp is posted
- (3) The rule applies to the communication of both the offer and the acceptance of the offer
- (4) The postal rule dispenses with the need for the communication of the acceptance

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

(2 marks)

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

Please write your answers to all parts of these questions on the lined pages within the Candidate Answer Booklet.

- 1** Last week, Edwin went to a football stadium to watch a football match. Having bought the football match ticket at the entrance, Edwin went to the toilet in the stadium.

Right outside the toilet, Edwin saw a sign which read:

‘The stadium shall not be responsible for any loss or damages suffered by the spectators.’

By reason of the carelessness of the stadium, Edwin suffered personal injury when he was in the toilet.

Required:

(a) State TWO conditions necessary for the sign to be effective. (2 marks)

(b) Explain whether the stadium should be liable for the damage suffered by Edwin. (4 marks)

(6 marks)

- 2** Jacky was a partner in a partnership, which was formed three years ago for trading purposes.

Jacky retired from the partnership last month but he has not placed a retirement notice in the Government Gazette.

Prior to his retirement, Jacky borrowed a sum of money from a bank for the partnership.

After Jacky’s retirement, other partners have taken out other bank loans.

Up till now, the partnership has not repaid all the loans.

Required:

(a) Explain whether Jacky’s loan is binding on the partnership. (3 marks)

(b) Explain whether Jacky, as a retired partner, should be liable for his loan as well as the other loans. (3 marks)

(6 marks)

- 3** Lion Bank is considering lending a sum of money to a company by creating a charge over the company’s trading stock.

The bank has no intention of preventing the company from disposing of the trading stock before the charge attaches to the trading stock.

Required:

(a) Explain the initial step which Lion Bank should take to ensure that the trading stock is not already the subject matter of other charges which have already been created by the company. (3 marks)

(b) Identify the possible type of charge to be formed and describe its characteristics. (3 marks)

(6 marks)

4 Frankie and Geoffrey have been the directors of a bank for ten years. Both of them are also chartered certified accountants.

A month ago, they loaned the money of the bank to a person without checking and complying with statutory regulations applying to the loan. As a result, the bank cannot recover the loan and has suffered damages.

Required:

(a) In relation to Companies Ordinance (Cap 622), state the statutory standard of the duty of care and skill owed by directors to their company. (2 marks)

(b) Explain whether Frankie and Geoffrey are liable for breaching the duty of care they owe to their company. (4 marks)

(6 marks)

5 Being an employee of an estate agent company, Teddy was appointed by Victor as Victor's agent for selling his property.

At a dinner between Victor and Teddy, Victor promised to pay Teddy a sum of money if Teddy could get a purchaser to buy the property at a price higher than the market price of the property. The dinner was paid for by Victor, which was HK\$200.

Teddy received the money after he made the sale successfully. Teddy's employer had no knowledge about the sale and the payment of money from Victor.

Required:

In relation to s.9 Prevention of Bribery Ordinance (Cap 201):

(a) Identify the advantage received by Teddy. (2 marks)

(b) Explain whether Teddy has committed the offence of bribery. (4 marks)

(6 marks)

End of Question Paper