Answers

1 The question tests the candidates' knowledge in the doctrine of precedent at common law.

Though Hong Kong has become part of the People's Republic of China after 1 July 1997, under the Basic Law, the case law is still part of the law of Hong Kong.

The case law system is based on the operation of the doctrine of precedent, which requires that 'like cases should be treated alike, and dissimilar cases should be treated differently'. The idea underlying the doctrine is that a judge should follow previous decisions of higher courts. In other words, under the doctrine, decisions of the higher courts are binding on the lower courts.

The object of the doctrine is to ensure consistency in the application of law. However, it is only the legal principles, i.e., the *ratio decidendi*, of the previous decisions that are binding.

Further, not all the previous decisions are binding; only those of the higher ranking courts in the hierarchy of the courts system establish binding precedents. In the Hong Kong Special Administrative Region, the highest-ranking court is the Court of Final Appeal ('CFA'). Its decisions bind on all the courts below. Following the CFA is the Court of Appeal ('CA'). Except for CFA, the decisions of the CA bind on all other courts. Below the CA is the Court of First Instance, and its decisions bind on all courts except the CFA and CA.

Nevertheless, the operation of the doctrine is subject to the following conditions. Judges may choose not to apply precedents to their cases if any of the conditions are satisfied. With these conditions, the case law system has an element of flexibility.

(a) Judges may distinguish the facts of their cases from those of the previous cases on the ground that there are material differences in the facts between them.

(b) Where statements of law by the judges of previous cases were made by them on the basis of hypothetical facts, the statements are only the judges' opinion, i.e., they are *obiter dicta* and not the *ratio decidendi* of the cases. The opinion does not bind the lower courts, though such opinion may be a persuasive precedent, especially when the opinion is from distinguished judges of high-ranking courts.

(c) Judges may not follow decisions of previous cases when the reasoning for the decisions of the previous cases to arrive at is unclear. This usually occurs when a case was heard in the appeal court by three judges where the judges gave an unanimous decision but with divergent reasoning.

(d) Decisions of previous cases will not be binding if they are in conflict with some fundamental principles of law.

(e) The decisions may also not be followed if the judges of those cases failed to consider law that is relevant to their cases. Such decisions are said to be given *per incuriam*.

(f) Further, such decisions are not binding if they have been overruled by a higher court.

By reasons of what has been said, it is fair to say that the doctrine of precedent has the advantages of maintaining the consistency and the flexibility of the case law system at the same time.

2 The question invites the candidates to demonstrate their knowledge of the difference in the legal effect between an offer and an invitation to treat.

It should be noted at the outset that for an agreement to be legally enforceable, there must be an offer, the acceptance of the offer, the passing of considerations between the contracting parties and the intention of the parties to enter into a legal relationship.

(a) The basic feature of an offer is that, the offeror, i.e., the party making the offer, expresses an intention to be bound by an agreement once the offer is accepted by the offeree, i.e., the party to whom the offer is made. The offer sets out all the terms upon which the offeror is willing to enter into the contractual relationship with the offeree. Hence, a legally binding contract is made once the offer is duly accepted by the offeree, and failure to perform any of the terms will result in a breach of the contract.

An offer may be made to a particular person, to a group of persons, or to the public at large. Where an offer is made to the public at large, it may be accepted by anyone: *Carlill* v *Carbolic Smoke Ball Co* (1893) UK. A tender from a trader is an example of an offer. The person to whom the tender is made is free to accept or not to accept the tender.

(b) An invitation to treat is not an offer; it is merely an invitation to others to make offers. It follows that an invitation to treat cannot be accepted for the purpose of forming a contract, and those making the invitations are therefore not bound to accept any offer made to them. Examples of invitations to treat are the display of goods in a shop window: *Fisher* v *Bell* (1961) UK and the display of goods on the shelf of a self-service shop: *Pharmaceutical Society of Great Britain* v *Boots Cash Chemists* (1853) UK.

A public advertisement is in general an invitation to treat: *Partridge* v *Crittenden* (1968) UK. However, such an advertisement could be an offer if the advertiser of an advertisement demonstrates an intention to be bound once the requirements stated in the advertisement are fulfilled: *Carbolic* case. In situations where a unilateral contract is envisaged, e.g., reward cases, advertisements in newspapers are also treated as offers.

(c) The importance in distinguishing offers from invitations to treat is that only the former can be accepted and form a contract, and the latter cannot.

3 The question invites the candidates to demonstrate their knowledge in agency law.

(a) In a legal relationship, an agent is the person who is authorised by the principal to enter into the legal relationship with a third party.

Disclosed agents are agents who disclose to the third parties the fact that they enter into the legal relationships, e.g., contracts, on behalf of their principals. It is unnecessary for the agents to inform the third parties about the exact identity of their principals. It suffices if the information from the agents to the third parties is adequate to let the third parties know that, in the contemplation of the third parties, the third parties enter into the contract with the principals and not with the agents: *Luxor International Travel Items Inc* v *Tsui Hing Fat trading as Kar Lai Industrial Co* (1993) HK.

Provided that the agents act within the authorities from their principals, the contracts so formed are binding on the principals. In other words, the principals may then sue and be sued by the third parties on the contracts.

Disclosed agents are therefore only middlemen to the contracts between their principals and the third parties. They disappear from the arena after the formation of the contracts. As such, the agents are not liable for the default of their principals in the performance of the contracts.

(b) Where persons having no authority or having acted outside the scope of the authorities from their principals when the persons entered into contracts, the principals are not liable for the contracts unless the principals choose to ratify the contracts.

The creation of agency relationship by ratification refers to the conferment of authorities by principals to their agents after the creation of, for example, contracts by the agents, who have entered into contract when they have no such authority or acted outside the scope of authorities originally given by their principals.

For ratification to be validly made, the principals ratifying the contracts must have the appropriate capacity to enter into the contracts. Hence, if the memorandum of a company provides that the company shall not enter into a contract of, for example, money lending, the ratification purportedly made by the company regarding a money lending contract by a director on behalf of the company shall have no legal effect.

Further, for ratification to be effective, the principal must have already been in existence by the time the contract in question was concluded. At common law, a company cannot ratify a pre-incorporated contract entered into by the promoter of the company: *Kelner* v *Baxter* (1866) UK.

4 The question tests the candidates' knowledge in the concept of the duty of care in the tort of negligence.

In the tort of negligence, one is required to '… take reasonable care to avoid acts or omissions which [one] can reasonably foresee would be likely to injure [one's] neighbour.': per Lord Atkin in *Donoghue* v *Stevenson* (1932) UK.

Negligence therefore involves the breach of a duty of care owned by the defendant to the plaintiff, who is in law the neighbour of the defendant. In deciding whether the defendant owes to the plaintiff a duty of care, the test adopted by the courts is an objective one, i.e., the reasonable man test. As such, the fact that the defendant did not actually consider the risk or the particular victim in question when the defendant performed the act in question does not affect the outcome of the issue of liability, i.e., whether the defendant was negligent. What matters most is what the defendant ought to have considered.

In addition, the following three conditions must also be satisfied for the existence of a duty of care:

(a) Foreseeability of harm;
(b) Proximity; and
(c) Fairness, justice and reasonableness: *Caparo Industries plc* v *Dickman* (1990) UK.

(a) Foreseeablility of harm
The plaintiff must be able to establish that they belong to that class of persons who are likely to be affected by the defendant's negligent act or omission in question.

Hence, in *Bourhill* v *Young* (1943) UK, it was held that the plaintiff in that case failed to show that the defendant owed her a duty of care when a collision occurred by reason of the defendant's negligent act of driving, when the plaintiff was about 54 feet away from the scene of the accident, when the plaintiff, though she heard the noise created by the collision, did not witness the accident and when the plaintiff alleged that she suffered nervous shock as a result of the sound of the collision.

'[The Defendant's] speed in no way endangered [the Plaintiff] … I am unable to see how [the Defendant] could reasonably anticipate that, if [the Defendant] came into collision with a vehicle coming across the tramcar … , the resultant noise would cause physical injury by shock to a person standing behind the tramcar.': per Lord Roussel in the *Bourhill* case.

(b) Proximity
Foreseeability of harm by itself cannot establish a duty of care. The plaintiff must also prove that the relationship between the plaintiff and the defendant is so close and direct that the defendant ought reasonably to have the plaintiff in contemplation when the defendant directs the defendant's mind to the acts or omissions, which affect the plaintiff.

So, a bystander who witnesses the drowning of a child in the sea and does not rescue the child is not liable for negligence. The fact that such a bystander should be blamed morally has nothing to do with the issue and does not create such a degree of proximity that a duty of care is rested upon the bystander to rescue the child.

However, school teachers will be liable for negligence if the drowning takes place during the school activities for which the school teachers are responsible. The reason being that the degree of proximity in the relationship between the teachers and the child in such a case is sufficient for imposing a duty of care upon the teachers to take proper securing measure to prevent the occurrence of such an accident.

(c) **Fairness, justice and reasonableness**
Having established the elements of foreseeablility of harm and proximity of relationship, the courts may still refuse to impose upon the defendant a duty of care if to do so is unfair, unjust or unreasonable.

5 The question invites the candidates to show their knowledge in corporate governance and non-executive directors of companies.

(a) The importance of corporate governance lies in that, with good corporate governance, companies may reduce agency costs and inefficiencies arising from conflicts of interest between controlling owners, management, and minority shareholders. Such companies will become more competitive in the global market. In relation to the development of the financial market of a country, good corporate governance may contribute positively to the financial market by building market confidence and encouraging more stable, long-term international investment flows in the country: *Hong Kong Financial System – A new Age*, Simon S.M. Ho, Robert Haney Scott & Kie Ann Wong.

(b) Non-executive directors are also directors of companies. Nevertheless, as opposed to executive directors, non-executive directors do not usually have a full-time relationship with the companies. The role of the non-executive directors, at least in theory, is to bring outside experience and expertise to the board of directors. They are also expected to exert a measure of control over the executive directors to ensure that the latter do not run the company in their, rather than the company's, best interests.

(c) The fiduciary duties of non-executive directors are the same as those of the executive directors: *Dorchester Finance Co Ltd* v *Stebbing* (1989) UK. See also *Re Boldwin Construction Co Ltd* (2001) HK. It follows that the law governing the duties of executive directors applies equally to non-executive directors.

In relation to the issue of conflict of interest, the following three aspects call for consideration.

Contract between the company and a member of the board
'… [directors] have duties to discharge of a fiduciary nature towards their principal. And it is a rule of universal application that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting or which possibly may conflict with the interests of those whom he is bound to protect ….'

Use of company's property or information
A director must not without the consent from the company use corporate property or information for his own profit. The principle holds true even if a director has ceased to be one but if the opportunity came to him when he was a director: *Industrial Development Consultants Ltd* v *Cooley* (1972) UK.

Declaration of interest
Under the Companies Ordinance (Cap 32) ('CO'), a director is under a statutory duty to declare the nature of his interest in the board meeting if he has an interest in a contract or proposed contract with the company: s.162(1) CO.

The interest may either be direct or indirect, and the disclosure has to be made at the first meeting at which the proposed contract is considered or when the director's interest first arises. 'Contract' in this context refers to a contract that has significance in relation to the business of the company.

6 The question tests the candidates' knowledge in matters relating to the meeting of a company.

(a) A special resolution of a company is a resolution passed by a majority of not less than three-quarters of those members of a company who are entitled to vote and do vote in a general meeting with the meeting being called by a notice of not less than 21 clear days. The intention to propose the resolution as a special resolution must be stated in the notice. The votes may be cast by the members either in person or by their proxies: s.116(1) Companies Ordinance (Cap 32) ('CO').

(b) A special notice is a notice served by members of a company to the company pursuant to s.132 of CO. Under the section, such a notice has to be served with the company by the members when the members request the company to consider in a general meeting the resolution of:

(i) Appointing an auditor other than a retiring auditor;
(ii) Filling a casual vacancy in the office of auditor;
(iii) Reappointing as auditor a person previously appointed by the directors to fill a casual vacancy; or
(iv) Removing an auditor before the expiration of the term of office of the auditor.

The members must serve the notice with the company at least 28 days before the meeting: s.116(c) CO.

(c) Special businesses are all business that are transacted at an extraordinary general meeting, and also all that are transacted at an annual general meeting, with the exception of declaring a dividend, the consideration of the profit and loss accounts, balance sheet, and the report of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration of, the auditors: article 54 of Table A CO.

7 The question invites the candidates to show their knowledge in charges created by companies and the concept of the crystallisation of floating charges.

It should be noted at the outset that both fixed charges and floating charges are assurances from a company to its creditors for the repayment of loans to the company.

(a) A fixed charge has the features of a normal mortgage. The essential feature of a fixed charge is that, if properly created, it attaches to the property from the moment of creation. Provided that the statutory requirement for its registration is made, the charge gives the holder of it an immediate security over the property in priority to subsequent claimants.

In other words, once a fixed charge is created, the company cannot deal with the property forming the subject matter of the charge without prior consent from the lender.

A floating charge is a charge with which a company offers such assets as the company's stock or book debts as security for the repayment of a loan.

A floating charge has been identified by Romer LJ in *Re Yorkshire Woolcombers Association* (1904) UK as having the following three characteristics:

(i) It is a charge on a class of assets present and future, e.g., if it applies to stock-in-trade or book debts, it comprises whatever assets of that class the company may own at the moment of crystallisation.
(ii) The class of assets will change from time to time in the ordinary course of the company's business.
(iii) The company may carry on its business and dispose of the assets in the course of business until the charge crystallises.

A floating charge therefore does not attach to the property until the charge crystallises, i.e., fixes onto the property. Until crystallisation of the charge, the company is free to dispose of the property subject to the charge. Hence, the person to whom the assets are transferred takes the assets free from the charge.

(b) Crystallisation means that the floating charge becomes attached to the assets over which it is created and the company loses the right to deal freely with the assets.

A floating charge crystallises in any of the following circumstances:

(i) The liquidation of the company.
(ii) The cessation of the company's business: *Re Woodroffe's (Musical Instruments) Limited* (1986).
(iii) If a receiver of the company's assets is appointed either by the court or under the terms of the debenture or other powers.
(iv) If an event occurs, which by the terms of the debenture causes the floating charge to crystallise.

8 The question invites the candidates to show their knowledge in the formation of a partnership and the liabilities of partners.

(a) Under s.3(1) of Partnership Ordinance (Cap 38) ('PO'), a partnership is defined as the relationship, which subsists between persons carrying on a business in common with a view of profits. Whether an individual was or was not a partner of a partnership is, however, a question of fact and is not dependent upon the label the parties choose to apply to them: *Willie Co* v *Lo Man & Welfare Co* (1957) HK.

The proper approach is therefore to look at the substance of the relationship between the parties. Where a relationship is plainly not a partnership, the parties cannot make it a partnership by simply calling it to be so: *All Link International Ltd* v *Ha Kai Cheong & Another* (2005) HK.

Given that the Agreement between Ben and Collins had all the characteristics of an employment contract and that, under the Agreement, Collins had no right to share the profit and no power to control or manage the Business, it cannot be said that Ben and Collins have carried on business in common with a view of profits. Accordingly, the Agreement is in truth not a partnership agreement and Collins is therefore not a true partner of the Business.

(b) Collins could be liable for the Price under s.16 PO. Under the section, every one who, by words spoken or written or by conduct, represents themselves or who knowingly suffer themselves to be represented, as a partner in a particular firm is liable as a partner to any one who has, on the faith of any such representation, given credit to the firm. Hence, under the section, a person is liable as a partner whether he or she makes the representation himself or herself, or whether the representation is made by someone else.

However, for a person to be liable under s16 PO, the claimant has to prove the existence of the following elements, namely, a holding out, i.e., a representation, which is sufficiently clear and unambiguous, reliance on the representation, and the provision of credit to the firm as the consequence: *Nationwide Building Society* v *Lewis* (1998) UK.

Since the contract was entered into by David when David relied upon the business card from Collins, which amounted to a representation from Collins, it seems quite clear that Collins did represent to David by his business card that he was a partner of the Business when the card described Collins as a partner of the Business. Accordingly, Collins is liable for the payment of the Price as a partner of the Business with the application of s.16 PO when credit was given by David to the Business as a result.

Accordingly, Collins may well be advised that, probably, he is liable for the payment of the Price.

9 The question invites the candidates to show their knowledge in the grounds for summary dismissal under s.9 of the Employment Ordinance (Cap 57) ('EO').

Under s.9(a)–(b) EO, employers may terminate employment contracts without notice or payment in lieu of notice, i.e., dismiss an employee summarily.

Pursuant to the section, employees may be dismissed summarily if, in relation to their employments, they:

(a) wilfully disobey lawful and reasonable orders; or
(b) misconduct themselves and with such conducts being inconsistent with the due and faithful discharge of their duties; or
(c) are guilty of fraud or dishonesty; or
(d) are habitually neglectful in their duties.

Under the section employers may also summarily dismiss their employees on any other ground on which they would be entitled to terminate the contracts in common law.

The facts of the problem scenario suggest that, on the face of the section, the company may summarily dismiss Cathy on the grounds, firstly, that Cathy was in breach of the company's regulation, which represents a lawful and reasonable order from the company, and, secondly, that Cathy was dishonest when she hid the real reason for her being late for the office.

In relation to the summary dismissal of an employee by reason of the employee's dishonesty, it has been held by the court that there are degrees of dishonesty and that it would be an over-generalisation to categorise any dishonest acts of employees as acts that automatically justified summary dismissal: *Tse Ka Wo* v *Hong Kong Quality Assurance Agency* [2004] 1 HKLRD 899.

In determining the issue, the test adopted by the court is whether the degree of dishonesty in question is such that it constitutes a repudiation of the employment contract and hence justifies a summary dismissal. Where the acts of employees do not amount to a serious breach of their employment contracts, the employers are not entitled to summarily dismiss the employees, and a summary dismissal under such circumstances is a wrongful one.

At issue is therefore whether the degree of dishonesty of Cathy is such that it constitutes a repudiation of her employment contract. Given that Cathy was just late for five minutes and that her lateness did not affect the performance of her duties in the company, the dishonesty probably does not go to such a degree of amounting to a serious breach of her employment contract.

In relation to the breach of the company's regulation by Cathy, there should be no doubt that the regulation, which represents an order from the company to the company's staff, is a lawful and reasonable one when the regulation only demands the staff to report for their duties on time.

The reason for Cathy being late for the office was that she got out of bed late that morning. Given that it was the first time that Cathy did not return to the office on time, it would be difficult to say that Cathy's disobedience of the regulation is a wilful one.

By reason of what has been said, the company may well be advised that, probably, there is no ground justifying the summary dismissal of Cathy by the company under s.9 EO.

10 Where in the course of the winding-up of a company, if it appears that any of the business of the company has been carried on with the intent to defraud creditors or for any fraudulent purpose, the court may declare that the persons who were knowingly parties to carrying on the business with the fraudulent intent are personally liable for all debts and other liabilities of the company: s.275(1) of the Companies Ordinance (Cap 32)('CO').

'Defraud' and 'fraudulent purpose' connote actual dishonesty: *Re Patrick and Lyon Ltd* (1933) UK. In *Aktieselskabet Dansk Skibsfinansiering* v *Brothers* (2000) HK ('the *Brothers* case'), the Court of Final Appeal held that though the further a person departs from objective standards of honesty, the more likely it becomes that the person is dishonest, the test for the existence of dishonesty is subjective in that the defendant must have been dishonest personally. What matters most is that the directors in question must honestly believe that there is a reasonable prospect for the company to repay the debts which it incurred.

The section only applies in the course of the winding-up of a company. In order to find that a person is liable under the section, the courts need to be satisfied that the person is so liable on the balance of probabilities, i.e., the standard of proof being adopted by the courts in civil proceedings.

To be liable under the section, a person must be knowingly a party to the carrying on of the particular transaction in question: *Rossleigh Ltd* v *Carlaw and Carlaw* (1985) UK. Being the managing director of Computer Ltd, who has been solely responsible for the management of the company, and being the one obtaining the unsecured loan from Bank Ltd for the company by making the representation in question to Bank Ltd, it is clear that Michael is the one who was knowingly a party to the carrying on of the company's business in question, i.e., the unsecured loan from Bank Ltd to the company.

The next issue is whether Michael was dishonest when he made the representation to Bank Ltd, which turns on the answer to the question of whether Michael had honestly believed that Fashion Ltd would keep on supporting the company financially by the time he made the representation.

Given that Fashion Ltd had always financially supported the company whenever the company had been in financial crisis before Michael made the representation, that the change in the structure of Fashion Ltd was a sudden one and that the change took place two months ago, i.e., after Michael made the representation to Bank Ltd, it is probable that Michael might genuinely believe that Fashion Ltd would continue to support the company financially in the future by the time Michael made the representation to Bank Ltd.

The advice to Bank Ltd is that, on the balance of probability, it is unlikely for Michael to be liable under s.275(1) CO.

1 The question tests the candidates' knowledge in the doctrine of precedent at common law.

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.

2 The question invites the candidates to demonstrate their knowledge of the difference in the legal effect between an offer and an invitation to treat.

(a)–(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.

(c) 0–2 At the top of this range are those providing a clear understanding and thorough treatment of the subject areas being examined.
Towards the bottom of this range will be those which are very weak or those showing some knowledge but with little detail.

3 The question invites the candidates to demonstrate their knowledge in agency law.

(a) and (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 showing little understanding of the topic being examined.

4 The question tests the candidates' knowledge in the concept of the common law duty of care.

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.

5 The question invites the candidates to show their knowledge in corporate governance and fiduciary duties of non-executive directors of companies.

(a) and (b) 0–2 At the top of this range are those providing a clear understanding and thorough treatment of the subject areas being examined.
Towards the bottom of this range will be those which are very weak or those showing some knowledge but with little detail.

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

6 The question tests the candidates' knowledge in matters relating to the meeting of a company.

(a) and (c)
- 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 Extremely poor answers that show either no or very little knowledge of the area.

(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 show their knowledge in the charges created by companies.

- 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.

8 The question invites the candidates to show their knowledge in the formation of a partnership and the liabilities of partners.

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

9 The question invites the candidates to show their knowledge in the grounds for summary dismissal under s.9 of the Employment Ordinance (Cap 57) ('EO').

- 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 fraudulent trading.

- 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.