

Fundamentals Level – Skills Module

# Corporate and Business Law (Hong Kong)

Tuesday 4 December 2007

**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 (HKCG)

**ALL TEN questions are compulsory and MUST be attempted**

- 1 In relation to the sources of law in the Hong Kong Special Administrative Region, discuss the following:  
'The doctrine of precedent has the advantages of maintaining the consistency and the flexibility of the case law system at the same time.'**
- (10 marks)**
- 2 In relation to contract law, explain the concepts of:**
- (a) Offer. (4 marks)
- (b) Invitation to treat. (4 marks)
- (c) The importance in distinguishing between an offer and an invitation to treat. (2 marks)
- (10 marks)**
- 3 In relation to agency law:**
- (a) Explain the term 'disclosed agent', and the role of the agent in the formation of a legal relationship for the principal. (5 marks)
- (b) Explain the creation of an agency relationship by ratification, and the conditions for the ratification to be validly made. (5 marks)
- (10 marks)**
- 4 In relation to the tort of negligence, explain the concept of 'duty of care'.**
- (10 marks)**
- 5 In relation to corporate governance:**
- (a) Explain the importance of corporate governance. (2 marks)
- (b) Explain non-executive directors and describe their responsibilities. (2 marks)
- (c) Explain the fiduciary duties of non-executive directors. (6 marks)
- (10 marks)**
- 6 In relation to company law, explain the following terms:**
- (a) Special resolution. (3 marks)
- (b) Special notice. (4 marks)
- (c) Special business. (3 marks)
- (10 marks)**

**7 In relation to company law:**

**(a) Explain and distinguish between fixed charges and floating charges.** (6 marks)

**(b) Explain the crystallisation of floating charges and state the circumstances under which the crystallisation takes place.** (4 marks)

**(10 marks)**

**8** Ben had carried on the business of garment trading as a sole trader ('the Business') before he invited Collins to join the Business two years ago. Ben and Collins signed an agreement for the purpose of governing their relationship when Collins joined the Business.

While the agreement was entitled the partnership agreement, it had all the characteristics of an employment contract. The agreement stated, among other things, that Collins had no right to share the profit and no power to control or manage the Business ('the Agreement').

Collins has allowed himself to be described as a partner of the Business on his business card. Relying on Collins's business card, which was given to David by Collins, David entered into a contract with the Business for selling garments to the Business on credit ('the Price') and is now suing the Business for payment of the Price.

**Required:**

**In relation to partnership law, advise Collins as to:**

**(a) Whether the Agreement is in truth a partnership agreement; and** (4 marks)

**(b) Whether he is liable for the payment of the Price.** (6 marks)

**(10 marks)**

**9** Cathy was a secretary of ABC Ltd. Last Monday, she was late for the office by five minutes after she got out of bed late that morning. It was the first time that Cathy did not arrive at the office on time. The regulation of the company requires the employees to report for their duties punctually.

To avoid problems, Cathy told the company that it was the traffic congestion that caused her to be late. This did not affect Cathy in the performance of her duties for the company. The company has discovered that Cathy's explanation of her lateness was a lie.

**Required:**

**In relation to the Employment Ordinance (Cap 57), advise the company as to whether there is any ground for the company to dismiss Cathy summarily.**

**(10 marks)**

- 10** Computer Ltd has been solely managed by Michael, who is the managing director of the company. Ever since the incorporation of Computer Ltd, Computer Ltd has received the financial support from Fashion Ltd, its holding company whenever Computer Ltd is in financial crisis.

Several months ago, Computer Ltd was insolvent. Upon the representation from Michael about the financial support from Fashion Ltd to Computer Ltd, Bank Ltd loaned to Computer Ltd the sum of HK\$5 million without security. Computer Ltd is now being wound up by its creditors. By reason of a sudden change in the structure of Fashion Ltd two months ago, Fashion Ltd has refused to give further financial support to Computer Ltd.

**Required:**

**In relation to company law, advise Bank Ltd as to whether Michael is liable for fraudulent trading under section 275(1) of Companies Ordinance (Cap 32).**

**(10 marks)**

**End of Question Paper**