



Hong Kong Institute of  
**Accredited Accounting Technicians**  
香港財務會計協會

# **Accredited Accounting Technician Examination**

## **Pilot Examination Paper**

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### **Paper 6 Fundamentals of Business Law**

### **Questions & Answers Booklet**

The Suggested Answers given in this booklet are purposely made to give more details for educational purpose.

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# **Accredited Accounting Technician Examination**

## **Pilot Examination Paper**

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### **Paper 6 Fundamentals of Business Law**

Time allowed – 3 hours

Section A: Multiple-choice Questions – Attempt all 20 Questions

Section B: Compulsory Questions – Attempt all 2 Questions

Section C: Optional Questions – Attempt any 2 out of 3 Questions

**DO NOT OPEN THIS QUESTION PAPER UNTIL  
INSTRUCTED TO DO SO BY THE SUPERVISOR**

**SECTION A (MULTIPLE-CHOICE QUESTIONS) (20 marks)**

Answer **ALL** questions in this section. Choose the best answer for each question. Marks will not be deducted for incorrect answers.

**(Questions A1 to A20 carry 1 mark each. Total: 20 marks)**

**A1.** Which of the following is **NOT** stated in the Basic Law of the Hong Kong Special Administrative Region?

- A The HKSAR exercises a high degree of autonomy.
- B The HKSAR enjoys an independent judicial power.
- C Hong Kong people enjoy a wide range of personal freedom.
- D The Chief Executive will be elected by universal suffrage by 2017.

**A2.** Who may introduce a bill to the Legislative Council?

- (1) The Government of the HKSAR
- (2) The Members of the Legislative Council
- (3) The HKSAR residents

- A (1) and (2) only.
- B (2) and (3) only.
- C (1) and (3) only.
- D (1), (2) and (3).

**A3.** Secretary for Justice is the head of \_\_\_\_\_.

- A the Department of Justice
- B the Legal Aid Department
- C the Court of Final Appeal
- D the High Court

**A4.** Which of the following is **NOT** an essential element in proving defamation?

- A The statement referred to the plaintiff.
- B The plaintiff has to prove damage occurred.
- C The statement was published to a third party.
- D The statement lowers the plaintiff in the estimation of right-thinking members of the society generally.

**A5.** Contractual acceptance **CANNOT** be effected by means of \_\_\_\_\_.

- A Post
- B e-mail
- C Silence
- D Conduct

- A6.** Which of the following regarding consideration in the context of the law of contract is **FALSE**?
- A Consideration must be real.
  - B Consideration must be of value.
  - C Consideration must be adequate.
  - D Consideration must be sufficient.
- A7.** Which of the following is **NOT** a type of misrepresentation?
- A Fraudulent misrepresentation.
  - B Negligent misrepresentation.
  - C Unconscionable misstatement.
  - D Innocent misrepresentation.
- A8.** Which of the following statements best describes the purpose of the Unconscionable Contracts Ordinance?
- A To protect consumers only.
  - B To ensure that all clauses in a contract must be in writing.
  - C To render some exclusion clauses automatically ineffective.
  - D To empower the court to give relief if it finds certain contracts to be unconscionable.
- A9.** Which of the following are “goods” under the Sale of Goods Ordinance?
- A Shares.
  - B A piece of music written by a composer.
  - C Software downloaded from the Internet.
  - D A VCD containing copyrighted music.
- A10.** A hire of goods contract is **NOT** governed by the Sale of Goods Ordinance because:
- A The transaction concerns future goods.
  - B There is no transfer of the title to the goods.
  - C The price is not stated in the contract.
  - D The contract does not involve possession of goods.
- A11.** In which of the following will an agency relationship normally be found?
- A A car dealer and its buyer.
  - B A partner and his other partners.
  - C A company and its creditor.
  - D An auctioneer who sells the goods and the buyer.

- A12.** The agency relationship may come to an end by \_\_\_\_\_.
- A Estoppel
  - B Ratification
  - C Breach of a minor term of the contract
  - D Insanity of the principal
- A13.** Which of the following statements concerning partnership is generally **TRUE**?
- A A partnership agreement can be created orally.
  - B A partnership cannot be formed without a formal partnership agreement.
  - C General partners have limited liability for the partnership's debts.
  - D The running of a partnership is monitored by the Companies Registrar.
- A14.** Wu, Sung, Tung & Co. is a firm in which Wu, Sung and Tung are three of the partners. Under a contract signed by Wu, the firm borrows \$1,000,000 from Au. If the debt is not paid, who will be liable?
- A Wu and Sung only.
  - B Sung and Tung only.
  - C Wu and Tung only.
  - D None of the above.
- A15.** One can normally find out the extent of liability of members in a registered company from its \_\_\_\_\_.
- A memorandum of association
  - B articles of association
  - C shareholder agreements
  - D register of members
- A16.** An auditor is \_\_\_\_\_.
- A normally an agent of the company
  - B normally a director of the company
  - C a qualified professional accountant
  - D an employee of the company
- A17.** The principal parties to a cheque are \_\_\_\_\_.
- A Drawer, bank, indorsee
  - B Drawer, bank, payee
  - C Indorser, indorsee, payee
  - D Drawer, indorsee, payee

- A18.** Chu draws an order cheque in favour of Lam with a “not negotiable” crossing. The cheque:
- A can be transferred by Lam.
  - B could not give a good title to Lam.
  - C cannot be a bearer cheque.
  - D is not valid between Chu and Lam
- A19.** A cheque drawn by Chan in favour of Tang is dishonoured. The possible reason could be:
- A Chan has countermanded payment.
  - B Tang has countermanded payment.
  - C The drawing bank has countermanded the cheque.
  - D The collecting bank has stopped the cheque.
- A20.** Wong receives an order bill for \$1,000,000. He owes Ma \$700,000 and wants to indorse the bill to Ma. How can he settle his debt with the bill?
- A He can indorse \$1,000,000 to Ma and asks Ma for \$300,000.
  - B He can split the bill into two different bills, one for \$700,000 and the other for \$300,000.
  - C He can indorse \$700,000 to Ma and keep \$300,000 for himself.
  - D He can indorse \$700,000 to Ma and must indorse the remaining \$300,000 to a different person.

**(Total: 20 marks)**

**[ END OF SECTION A ]**

**SECTION B (COMPULSORY QUESTIONS) (30 marks)**

Answer **ALL** questions in this section. Marks are indicated at the end of each question.

**B1. In the context of breach of contract, explain what is meant by:**

- (a) **nominal damages;** (3 marks)
- (b) **exemplary or punitive damages;** (3 marks)
- (c) **compensatory damages;** (3 marks)
- (d) **liquidated damages.** (6 marks)

**(Total: 15 marks)**

**B2.** “Noodle Restaurant” is a business selling Japanese noodles. The business is operated in the form of a partnership. Cheung wants to join the business as a new partner as well as a chef. But he knows that the firm’s business has not been good in recent years and is afraid of being liable to the debts of the partnership. His friends advise him to ask the existing partners to convert the partnership into a registered company before he joins.

**REQUIRED:**

**Advise and explain to Cheung as to:**

- (a) **his liability for the debts of the partnership as a new partner;** (6 marks)
- (b) **the contents of the documents that must be submitted to the Companies Registry in order to form a private registered company.** (9 marks)

**(Total: 15 marks)**

**[ END OF SECTION B ]**

**SECTION C (OPTIONAL QUESTIONS) (50 marks)**

Answer any **TWO** questions only in this section. Each question carries 25 marks.

- C1. Describe, with examples, the main sources of law under the Basic Law of the Hong Kong Special Administrative Region.**

**(Total: 25 marks)**

**C2.** Lam is the owner of a small store selling hats in Lantau. He placed a notice in front of his shop which reads: “Store for sale, HK\$1,000,000 for the shop premises and HK\$200,000 for all the hats therein. Can be bought separately.”

Mak saw the notice in front of the shop. He has a hat shop in Wan Chai and wants to buy all the hats in Lam’s store. He approached Lam and gave him a cheque of HK\$200,000 telling Lam that he wanted to buy all the hats. But Lam said the notice was wrong and that the price of the hats should be \$300,000.

**(a) REQUIRED:**

**Advise Mak whether or not at this stage of the negotiation he has a claim against Lam.**

**(13 marks)**

**(b)** Mak later agreed to buy both the shop premises and all the hats. He has two contracts with Lam.

**REQUIRED:**

**Explain to Mak:**

**(i) what formality would be required for these two contracts; and**

**(ii) whether they are governed by the Sale of Goods Ordinance.**

**(12 marks)**

**(Total: 25 marks)**

- C3. (a)** Chu, an accounting clerk, had a quarrel with his immediate supervisor, Wong. In an email to Wong with a bcc copy to the Finance Director of the company, he said Wong had been convicted of theft. This in fact was not true.

**REQUIRED:**

**Discuss the differences between the two types of defamation. What type of defamation has been committed by Chu?**

**(9 marks)**

- (b)** **Discuss the main differences between a cheque and a “bill of exchange”.**

**(16 marks)**

**(Total: 25 marks)**

**[ END OF EXAMINATION PAPER ]**



# **Suggested Answers**

## **Pilot Examination Paper**

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### **Paper 6**

### **Fundamentals of Business Law**

**SECTION A (MULTIPLE-CHOICE QUESTIONS) (20 marks)**

**(Questions A1 to A20 carry 1 mark each. Total: 20 marks)**

- A1. D
- A2. A
- A3. A
- A4. B
- A5. C
- A6. C
- A7. C
- A8. D
- A9. D
- A10. B
- A11. B
- A12. D
- A13. A
- A14. D
- A15. A
- A16. C
- A17. B
- A18. A
- A19. A
- A20. A

**(Total: 20 marks)**

**SECTION B (COMPULSORY QUESTIONS) (30 marks)**

- B1. (a)** The primary function of nominal damages for breach of contract is declaration of rights. Where the plaintiff has not suffered any damage, he is still entitled to damages known as nominal damages for the defendant's breach of contract. Such damages comprise a trivial sum of money. Their function is merely to declare that the plaintiff's rights have been infringed. This is a common law remedy. **(3 marks)**
- (b)** The primary function of exemplary or punitive damages for breach of contract is to punish the defendant for his wrongful conduct. Such damages comprise a sum of money exceeding the compensatory damages and is commonly awarded for tort. For breach of contract, the court is reluctant to award punitive damages, *Addis v Gramophone Co Ltd* (1909). **(3 marks)**
- (c)** The primary function of compensatory damages for breach of contract is compensation. The plaintiff will be awarded a sum of money which, theoretically, is equivalent to loss the plaintiff has sustained because of the defendant's breach of contract. This is usually a common law remedy. **(3 marks)**
- (d)** A contractual term may provide in advance that in the event of breach, the defaulting party will pay an agreed fixed sum. Such an amount is known as "liquidated damages" and it must be a genuine attempt to pre-estimate the loss that will be suffered in the event of breach. This type of remedy protects the promisee's expectations by enforcing the defendant's contractual promise to pay a sum of money.

On the other hand, if the court rules that the agreed sum is a penalty, it will not award the agreed sum and will itself consider the proper measure of damages.

In *Dunlop Pneumatic Tyre Co. Ltd. v New Garage and Motor Co. Ltd*, the court provides some rules for distinguishing a liquidated damages clause from a penalty:

- (1) A sum is a penalty if it is extravagant and excessive in comparison with the greatest possible loss which could have resulted from the breach.
- (2) If the breach consists of a failure to pay a sum of money and the fixed sum stipulated is greater than the sum which ought to have been paid; such a sum is likely to be a penalty.
- (3) It is presumed to be a penalty when a single lump sum is made payable on several events of different types, or where the damage is of different degrees, some of which may occasion serious and others trifling damage, there is a presumption that it is a penalty.

**(6 marks)**

**(Total: 15 marks)**

- B2. (a)** Section 19 of the Partnership Ordinance provides that a person who is admitted as a partner into an existing firm does not become liable to the creditors of the firm for anything done before he became a partner. Cheung is not liable to the existing creditors of the firm merely because he has become a partner.

But partners are personally liable for the debts and obligation of the partnership. The liability of a general partner for partnership debts is unlimited, although it is possible for one or more partners to limit their liability provided there remains at least one general partner. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner (s11 Partnership Ordinance). Cheung will be jointly liable with the other partners for all debts incurred after the date of his admission.

**(6 marks)**

- (b)** In order to apply for registration of a company under the Companies Ordinance, certain documents must be sent to the Companies Registrar. A fee prescribed in Schedule 8 of the Companies Ordinance must be paid. The documents to be sent to the Registrar are:

- (1) The memorandum of association. It is concerned with the company's external matters. It includes the company's name, domicile, objects (if any), liability and share capital. The document may be in English, Chinese, or both. But before proceeding to register a company, the promoters should firstly decide a suitable name for the company. The name must be different from the name of a company formed under an ordinance and an existing name in the Registrar's index of company names (which is available for inspection free of charge in the Public Search Section of the Companies Registry).
- (2) The articles of association. This deals with the internal matters of the company such as the issue of share capital, the transfer of shares, general meetings, duties of directors...etc. The articles regulate the relationship between the company and its members and the members *inter se*. The promoter can adopt Table A as the company's articles. The articles must be signed by the subscribers to the memorandum. The document may also be in English, Chinese, or both. The company can adopt all or part of Table A.

Being a private company, the articles of association of the new company must also include an article which restricts the right to transfer its shares, as required under s29(1) of the Companies Ordinance.

- (3) A "Statement of Compliance on Incorporation of a Company" (Form NC1A). A subscriber to the memorandum of association of the company or a director or the secretary named in the articles of association of the company, must submit to the Registrar of Companies a statement certifying that the company has complied with all or any of the requirements of the Companies Ordinance in respect of registration and of matters precedent and incidental thereto.

After checking the documents to ensure they comply with the requirements of the Companies Ordinance and that the company is being formed for a lawful purpose, the Registrar of Companies will issue a Certificate of Incorporation.

**(9 marks)**

**(Total: 15 marks)**

**SECTION C (OPTIONAL QUESTIONS) (50 marks)**

- C1.** After the handover on 1 July 1997, the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China is directly under the authority of the Central People's Government of the People's Republic of China. It is also vested with executive, legislative and independent judicial power, including that of final adjudication and enjoys a high degree of autonomy.

The main sources of law of the HKSAR are as follows:

- (1) The Basic Law of the HKSAR

The Basic Law sets out the functions, powers and procedures of the organs of government and is now the most important constitutional document and the highest form of law for Hong Kong. It came into effect on 1 July 1997. Under Article 5 of the Basic Law, the socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years. Under Article 8, the laws previously in force in Hong Kong shall be maintained, except for any that contravene the Basic Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region. Article 18 of the Basic Law provides that the sources of law of Hong Kong are the common law, the rules of equity, ordinances, subordinate legislation, customary law and the Basic Law itself. Except the Basic Law, the other sources of law are subject to amendment by the legislature of the HKSAR.

- (2) The National laws of the PRC included in Annex III of the Basic Law

Under Annex III of the Basic Law, some of the national laws are applied locally by way of promulgation or legislation by the HKSAR such as:

1. Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China
2. Resolution on the National Day of the People's Republic of China
3. Order on the National Emblem of the People's Republic of China Proclaimed by the Central People's Government
4. Declaration of the Government of the People's Republic of China on the Territorial Sea
5. Nationality Law of the People's Republic of China
6. Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities

(Candidates are expected to give one or two of the above examples.)

- (3) Case law

Common law and the rules of equity are to be found primarily in the judgments of the superior courts in Hong Kong and other common law jurisdictions. They are "judge-made" law or case law.

Common law originated in the common law courts in UK and the rules of equity were developed to supplement the common law by providing remedies that the common law courts could not provide. However, equity is to prevail over the common law whenever there is a conflict between them.

Reports of judgments handed down by judges have established in detail the legal principles regulating the relationship between state and citizen, and between citizen

and citizen. Because it is not written by the legislature but by judges, it is also referred to as “unwritten” law. Judges seek these principles out when trying a case and apply the precedents to the facts to come up with a judgment. There are now some hundreds of thousands of reported cases in common law jurisdictions which comprise the common law.

There are a number of differences between common law and equity. For example, common law remedies are granted as of right, whereas equitable remedies are discretionary. Thus, a number of basic principles such as “delay defeats equity” or “he who comes to equity must come with clean hands” have been embodied in the “maxims of equity”.

(4) Ordinances and subordinate legislation

Ordinances refer to the written laws approved by legislatures. These laws are commonly called “the Laws of Hong Kong”.

An ordinance originates as a bill and it must pass through a number of stages typically the three readings in the Legislative Council and be signed by the Chief Executive before it becomes an Ordinance in force in Hong Kong. For example, the Bills of Exchange Ordinance was enacted by the Legislative Council in 1885 and is contained as Chapter 19 in the Laws of Hong Kong.

A great deal of legislation called subsidiary legislation is made under delegated powers. Such legislation is made by bodies other than the Legislative Council under the authority of an Ordinance. For example, section 113 of the Bankruptcy Ordinance, Cap 6, delegates the power to make Bankruptcy Rules to the Chief Justice.

(5) Chinese customary law

Some aspects of Chinese customary law apply in Hong Kong. They include those laws applying in Hong Kong before the application of English law. They generally relate to marriage, divorce, inheritance, legitimacy, adoption and succession matters and is applied to certain areas in the New Territories. The Basic Law specifically recognises customary law as a source of law in HKSAR. Under section 13 of the New Territories Ordinance (Cap 97) the courts may recognise and enforce Chinese customs or customary rights in relation to land in the New Territories; and Chinese law and custom is recognised in the Legitimacy Ordinance (Cap 184).

**(Total: 25 marks)**

- C2. (a)** The main issue in this question is whether a contract exists between Lam and Mak and in particular, whether the notice constitutes an offer or not.

An offer is a proposal made by the offeror to the offeree with an intention that he will be bound by the specific terms if accepted. Whether or not an advertisement is an offer depends on whether they are bilateral or unilateral, that is, capable of acceptance by one or a limited number of persons, or open to all the world to accept.

In *Partridge v Crittenden* (1968), an advertisement in a magazine offering to sell some kind of protected birds was not “offering for sale”. But in the famous case of *Carlill v Carbolic Smokeball Co* (1893), an advertisement offering a reward of £100 to those who caught influenza after using the products in accordance with the instructions was construed as an offer. Such offer could be accepted by the world at large by performing according to the conditions laid down in the advertisement. In such case, there is no need for acceptance to be communicated to the offeror.

In this case, the notice outside the shop constitutes an invitation to treat. Lam was making an invitation to treat potential buyers. Acceptance by Mak of the invitation would not result in any legal consequences. Mak’s tendering of the cheque to Lam could be an offer to buy and a valid binding contract would only be formed if Lam accepted his offer.

**(13 marks)**

- (b) (i)** A “specialty contract” is a “contract under seal” or a “deed”. It is a formal contract. As a general rule, it has to be “signed, sealed and delivered”. Some contracts are required to be in the form of a deed. For example, under s4 of the Conveyancing and Property Ordinance, a legal estate in land may be created, extinguished or disposed of only by deed. In this case, the sale of shop premise involves disposal of legal estate in land and must be in the form of a deed.

On the other hand, there is no formal requirement for a simple contract. The agreement can be made by conduct, word of mouth or in writing. All simple contracts require to be supported by the presence of consideration. Otherwise they will be unenforceable. In this case, the agreement for sale of hats can be made in the form of simple contract.

**(6 marks)**

- (ii)** Under section 3(1) of the Sale of Goods Ordinance (SOGO), a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. Section 2 defines goods as all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Shop premises (land) are not “goods” within the definition of section 2 and therefore a contract for sale of the shop premises is not covered by SOGO.

On the other hand, hats are personal property and are “goods” within the definition of section 2 and therefore the contract for sale of hats is covered by SOGO.

**(6 marks)**

**(Total: 25 marks)**

- C3. (a)** Defamation consists of libel and slander. It is defamation of a person if without any lawful justification the statement injures the reputation of the person by exposing him to hatred, contempt or ridicule, or which tends to lower him in the esteem of right-thinking members of society.

Libel is usually written defamation and slander is usually oral. The main distinction is that libel consists of a defamatory statement in “permanent form” and which is “visible”. Defamatory statements published in newspapers, magazines or journals are examples of libel. However, for the purposes of the law of libel and slander, the broadcasting of words is treated as publication in permanent form, section 22 Defamation Ordinance. “Broadcast” or “broadcasting” means publication for general reception as part of any programme provided through a broadcasting station within Hong Kong by means of telecommunications. By sending the email to the Finance Director and falsely accusing Wong of a crime, Chu has probably committed a libel.

Anything which is temporary and audible only is slander. Defamatory statements made by word of mouth, gesture or sign language are slander and are considered to be in transient form.

Another difference between libel and slander are libel is both a tort and a crime. Any person who maliciously publishes any defamatory libel, knowing the same to be false, is liable to imprisonment for 2 years, and, in addition, to pay such fine as the court may award, section 5 Defamation Ordinance. Slander on the other hand is only a tort.

Libel is actionable per se and slander requires proof of special damage. There are, however, cases where special damage need not be proved. Words spoken and published which impute unchastity or adultery to any woman or girl do not require special damage to render them actionable, section 21 Defamation Ordinance. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it is not necessary to allege or prove special damage, section 23 Defamation Ordinance.

**(9 marks)**

- (b)** Under s3 of the Bills of Exchange Ordinance, a bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to the bearer. Under s 73 of the Bills of Exchange Ordinance, a cheque is a bill of exchange drawn on a banker payable on demand.

The main differences between a cheque and a bill of exchange are:

- (1) A cheque must be drawn on a banker, i.e. the drawee must be a banker; a bill can be drawn on any person other than the drawer.
- (2) A cheque must be payable on demand; a bill can be payable in one of three ways: on demand or at a fixed future time or at a determinable future time.
- (3) A cheque is not accepted and the party primarily liable is the drawer; a bill may be accepted and after acceptance the drawee is primarily liable. Thus, a bill can be dishonoured by non-acceptance.
- (4) Failure to present a cheque does not discharge the drawer unless such delay injures him; failure to present a bill for payment when it is due discharges the drawer and any indorsers.

- (5) A cheque can be crossed; a bill cannot be crossed.
- (6) A paying bank has the benefit of ss59, 60, 80 and 83 of the Bill of Exchange Ordinance when paying cheques; there are no statutory provisions to protect a bank paying a bill drawn on it.
- (7) A collecting bank has the benefit of ss84 and 86 of the Bill of Exchange Ordinance which protect it when it collects cheques for its customers; there are no statutory provisions to protect a bank collecting payment of bills.

**(16 marks)**

**(Total: 25 marks)**

**[ END OF SUGGESTED ANSWERS ]**