



**香港專業會計員協會**

**THE HONG KONG ASSOCIATION OF ACCOUNTING TECHNICIANS**

(Incorporated with Limited Liability)

Unit A, 17/F, Fortis Bank Tower, 77-79 Gloucester Road, Wanchai, Hong Kong.

# **Accounting Technician Examinations**

## **Pilot Examination Paper**

### **Level II**

### **Paper 6**

### **Hong Kong Business Law**

### **Questions Suggested Answers and Marking Scheme**

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

Published by HKAAT  
5/2001

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# **Accounting Technician Examinations**

## **Pilot Examination Paper**

### **Level II**

### **Paper 6**

## **Hong Kong Business Law**

Time allowed – 3 hours

Section A – 20 Multiple Choice Questions (compulsory)

Section B – 5 Short Questions (compulsory)

Section C – 5 Long Questions (attempt any 3)

**DO NOT OPEN THIS 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. Each question carries 1 mark.

1. Who is the first Chief Justice in the Hong Kong Special Administrative Region?
  - A Ms Elsie Leung
  - B Mr Tung Chee Hwa
  - C Mr Andrew Kwok-nang Li
  - D Mr Donald Tsang
  
2. 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 freedoms.
  - D All the national laws in mainland are not applicable to HKSAR.
  
3. Which of the following is NOT a power or function of the Legislative Council?
  - A To approve public expenditure.
  - B To draft a Bill.
  - C To examine and approve budgets introduced by the Government.
  - D To raise questions on the work of the Government.
  
4. Which of the following statements concerning the extent of protection under Control of Exemption Clauses Ordinance is TRUE?
  - A Some exclusion clauses are rendered automatically ineffective.
  - B The Ordinance protects consumers only.
  - C Exclusion clauses must be written in a contract and cannot be written in a non-contractual notice.
  - D The contra proferentem rule will be applied to restrict the effects of exclusion clauses.
  
5. Which of the following is FALSE regarding consideration in the context of the law of contract?
  - A Consideration must be adequate.
  - B Consideration must be real.
  - C Consideration must be of value.
  - D Consideration must be sufficient.
  
6. Which of the following is “goods” under the Sale of Goods Ordinance?
  - A Cats
  - B Shares in a company
  - C Copyright
  - D Land

7. A hire-purchase contract is not a contract for sale of goods because
- A the transaction concerns future goods.
  - B there is no immediate transfer of title.
  - C the price is not stated in the contract.
  - D a hire-purchase contract does not involve goods.
8. Under which of the following relationship will an agency NOT be found?
- A An auctioneer who sells the goods and the owner who instructs him to sell.
  - B A partner and his other partners.
  - C A bank and its customer.
  - D A car dealer and its buyer.
9. The agency relationship may come to an end by
- A mental incapacity of the agent.
  - B breach of a minor term of the contract.
  - C ratification.
  - D estoppel.
10. Which of the following is a form of bill of exchange?
- A Promissory note
  - B Bill of lading
  - C Bond
  - D Credit Card
11. The principal parties to a bill of exchange are
- A drawer, drawee, indorsee.
  - B drawer, drawee, payee.
  - C indorser, indorsee, payee.
  - D drawer, indorsee, payee.
12. Which of the following instructions is an example of an order bill?
- A “Pay bearer”
  - B “Pay Roe Lee”
  - C “Pay Roe Lee or bearer”
  - D None of the above
13. Which of the following statements concerning partnership is TRUE?
- A It is essential to have a partnership agreement between partners.
  - B A partnership relationship can be created by conduct.
  - C Partners have limited liability for the partnership’s debts.
  - D The running of a partnership is monitored by the Companies Registry.

14. Chan is the creditor of Lam, Leung & Co, a firm under which Lam and Leung are two of the partners. If the debt is not paid, against whom can Chan sue?
- (1) Lam
  - (2) Leung
  - (3) Lam, Leung & Co
- A (1) & (2) only  
B (3) only  
C (1), (2) & (3) only  
D (1) or (2) or (3)
15. Which of the following information need NOT be included in the memorandum of association?
- A The company's name  
B The objects of the company  
C The liability of the members  
D The authorised capital
16. A company's articles of association state that Lai would be the company's solicitor for life. The company employed Lai under a contract for two years. After the end of the two years, the company no longer employed Lai as its solicitor. What remedy may he seek against the company?
- A Lai cannot sue for breach of an implied contract.  
B Lai can sue for breach of memorandum of association.  
C Lai can sue for breach of articles of association.  
D None of the above.
17. A share of the registered company
- A is a real property.  
B gives its holder an equitable interest in the company property.  
C is a sum of money owed by the company to the holder.  
D is the interest of a shareholder in the company measured by a sum of money.
18. The term "premium" in relation to shares refers to
- A non-cash consideration.  
B the nominal value of the shares.  
C the value which is above the par value of the shares.  
D the difference between the market value of the shares and their paid-up value.
19. Which of the following statements concerning the company secretary of a private company is correct?
- A The company secretary must be one of the directors.  
B The company secretary must hold qualification shares.  
C The company secretary must hold a relevant professional qualification.  
D The company must notify the Companies Registry of the particulars of its secretary.

20. An auditor
- A generally is regarded as an agent of the company.
  - B generally is regarded as an officer of the company.
  - C must be a qualified professional accountant.
  - D is an employee of the company.

**(Total 20 marks)**

**[ END OF SECTION A ]**

**SECTION B (SHORT QUESTIONS) (20 marks)**

Answer **ALL** questions in this section. Each question carries 4 marks.

1. **Explain how the courts and the Legislative Council control delegated legislation.**  
(4 marks)
2. **Explain what is meant by “privity of contract” in contract law.**  
(4 marks)
3. **Give the statutory definition of a “bill of exchange” and a “cheque”.**  
(4 marks)
4. **Distinguish between “authorised capital” and “issued capital”.**  
(4 marks)
5. **Under what grounds may a person be disqualified from acting as a director under Part IVA of the Companies Ordinance?**  
(4 marks)

**(Total 20 marks)**

**[ END OF SECTION B ]**



**SECTION C (LONG QUESTIONS) (60 marks)**

Answer any **THREE** questions in this section. Each question carries 20 marks

1. (a) **Describe the roles that solicitors play in the legal system of the Hong Kong SAR.**  
(10 marks)

(b) Kwan, a solicitor, has acted for Ho, an accountant, for a number of years. Ho was recently sued by a client for negligently preparing a financial statement. Kwan told Ho that the legal costs in his case would amount to \$2 million. Kwan also suggested to Ho that he was interested in buying Ho's house in Repulse Bay. In order to meet his litigation expenses, Ho sold his house to Kwan at market value.

**REQUIRED:**

**Ho now wants to set aside the transaction with Kwan. Advise Ho.**

(10 marks)

**(Total 20 marks)**

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2. Lam is the owner of a small supermarket in Lantau. He recently discovered that many goods have been stolen from his supermarket. He placed a notice in front of his shop last Monday which read: "I will give \$10,000 to anyone who can provide information leading to the conviction of persons who steal goods from my supermarket."

Mak, a detective, saw the notice in front of the shop on Wednesday and began to investigate. By the following week he had the details of persons he suspected were the thieves. He contacted Lam and provided him with the information. Lam told Mak that he had withdrawn the reward notice the previous day and he refused to pay the reward.

**REQUIRED:**

(a) **How does the law of contract as a civil law differ from the law of theft which is an area of criminal law?**

(8 marks)

(b) **Advise Mak on whether or not he may claim the reward from Lam.**

(12 marks)

**(Total 20 marks)**

3. (a) **Explain the differences between a registered limited company and a partnership in terms of the nature of the relationship among its members or constituents.**  
(8 marks)

- (b) Ming Co Ltd employed Nick as its managing director under a contract containing a restrictive covenant. Under the covenant, after Nick's employment had ended, Nick could not solicit the customers of Ming Co Ltd.

At the end of his contract, Nick set up a company, Nell Co Ltd. The shareholders of Nell were Nick's wife and his brother. Nell carried on a business in competition with Ming Co Ltd.

**REQUIRED:**

**Advise Ming Co. Ltd.**

(12 marks)

**(Total 20 marks)**

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4. (a) **Discuss the rights of a shareholder who holds ordinary shares in the company.**  
(10 marks)

- (b) Millionaire Ltd, a private limited company, has not paid dividends to its shareholders for three years. Leung, a shareholder, wants to sell his shares and invest in something more profitable.

**REQUIRED:**

**Advise Leung whether he can freely transfer his shares to Ng, and how he could obtain information about the value of his shares so that he may sell at a reasonable price.**

(10 marks)

**(Total 20 marks)**

5. Adrian is a director of Beta Import Ltd which imports Soy Sauce from a manufacturer in the PRC. The soy sauce is resold to various stores and supermarkets in Hong Kong. Unknown to Beta Import, Adrian began to trade on his own account in competition with the company and used the company's trade information such as the names and addresses of customers and the price lists for his own purposes.

**REQUIRED:**

- (a) **Advise Beta Import Ltd as to whether there is any course of action against Adrian.**

(10 marks)

- (b) **Describe the procedures that would be required if Beta Import Ltd wants to remove Adrian as a director.**

(10 marks)

**(Total 20 marks)**

**[ END OF PILOT EXAMINATION PAPER ]**

# **Accounting Technician Examinations**

## **Pilot Examination Paper**

### **Level II**

#### **Paper 6**

#### **Hong Kong Business Law**

#### **Suggested Answers**

**and**

#### **Marking Scheme**

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

1. C
2. D
3. B
4. A
5. A
6. A
7. B
8. D
9. A
10. A
11. B
12. B
13. B
14. D
15. B
16. D
17. D
18. C
19. D
20. C

**(Total 20 marks)**

**SECTION B (SHORT QUESTIONS) (20 marks)**

1. If the delegated legislation is not created within the proper procedures which have been laid down by Legislative Council or if a body with delegated power goes beyond the power that the Legislative Council intends, it will be declared by the courts to have acted *ultra vires* and will be inoperative.

The Legislative Council also supervises delegated legislation. All delegated legislation is required to be laid on the table of the Legislative Council. Also where an Ordinance provides that any delegated legislation made under it is to be subject to approval by the Legislative Council, the Council may, by resolution, approve the delegated legislation or amend it.

(4 marks)

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2. Privity of contract is a doctrine which confines the rights and obligations created by a contract to the contracting parties only. Under this principle, a contract between A and B cannot confer any legally enforceable benefit on a “third party” (or a “stranger”) because the third party has not contributed consideration to the contract. Neither can A nor B impose any duties on the third party. Only a person who is a party to a contract can sue or be sued on it.

In other words, a person cannot enforce a promise if the consideration for it was supplied wholly by some other person. If X makes a promise to Y and Z to pay Y \$100 if Z does the same, Y cannot enforce Z’s promise since the consideration moves entirely from Z.

(4 marks)

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3. Under section 3 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. **[3 marks]**

Under section 73 of the Bills of Exchange Ordinance, a cheque is a bill of exchange drawn on a banker payable on demand. **[1 mark]**

(4 marks)

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4. The memorandum of association of a company limited by shares has a capital clause which specifies the total amount of capital of the company to be raised by issue of shares. This is the maximum share capital which the company is authorised to raise. The capital clause also states the division of the capital into shares of a fixed amount, e.g. the share capital of the company is \$100,000 divided into 100,000 shares of \$1 each. The authorised capital can be increased for example by passing an ordinary resolution (Articles 45 and 46 of Table A and section 53 Companies Ordinance.)

Issued capital reflects the actual number of shares issued to members and is the sum equal to the nominal value of all the issued shares where all the shares are fully paid. This is the sum which the company's creditors look for in the payment of their debts and provides some form of guarantee to them. The Companies Ordinance contains a number of provisions intended to maintain the level of issued capital of a company.

(4 marks)

- 
5. A person can be disqualified from acting as a director by the court under four principal grounds, Part IVA Companies Ordinance.

The court may make a disqualification order against a person where he is convicted of an indictable offence in connection with the promotion, formation, management or liquidation of a company; or in connection with the receivership or management of a company's property; or any other indictable offence his conviction for which necessarily involves a finding that he acted fraudulently or dishonestly, section 168E Companies Ordinance.

The court may also make a disqualification order against a person where it appears to it that he has been persistently in default in relation to provisions of the Companies Ordinance requiring any return, account or other document to be filed with, delivered or sent to the Registrar, section 168F Companies Ordinance.

The court may make a disqualification order against a person if, in the course of the winding up of a company, it appears that he has been guilty of an offence for which he is liable under section 275 of Companies Ordinance or has otherwise been guilty, while an officer, of any fraud in relation to the company or of any breach of his duty as such officer, section 168G Companies Ordinance.

The court may make a disqualification order against a person in any case where it is satisfied that he is or has been a director of a company which has at any time become insolvent whether while he was a director or subsequently; and that his conduct as a director of that company makes him unfit to be concerned in the management of a company.

(4 marks)

**(Total 20 marks)**

**SECTION C (LONG QUESTIONS) (60 marks)**

1. (a) Law is a subject difficult for layperson to understand. For example, in the commercial world, legal pitfalls may be the downfall of many businesses. People with legal training are needed to give advice and consultation to laypersons to ensure the smooth running of their business and society in general. There are two branches of the legal profession in Hong Kong, i.e. barrister and solicitor.

The lay client has direct access only to the solicitor. Solicitors provide a wide range of legal services including providing legal advice, preparation of litigation documents, negotiation and representation (right of audience) in the lower courts. They also do a lot of legal paperwork, e.g. in relation to the transfers of real property, drawing up contracts, drafting of wills and handling successions.

Solicitors are governed by Professional Rules. The relationship of solicitors with their client is fiduciary. The relationship is confidential and they must act in the client's interests. They must not act if the client's interests conflict with the interests of themselves or with another client. For example, in conveyancing, solicitors' firms may not normally act for both the vendor and the purchaser.

The Law Society of Hong Kong is the representative and regulatory body for solicitors of Hong Kong. In order to practice, all solicitors must be qualified in accordance with the Legal Practitioners Ordinance. Solicitors can form partnerships or act as a sole proprietor in their practice, and they must have professional indemnity insurance.

(10 marks)

- (b) The doctrine of undue influence can be applied to situations where the transaction in question was in favour of the wrongdoer in whom the trust and confidence was placed.

Undue influence can arise if, out of certain special relationships based on trust and confidence between the parties, it was fair to presume that the wrongdoer abused the relationship in exerting improper pressure on the complainant and procuring the complainant to enter the transaction. Examples of this have been the relationship between solicitor and client (Wright v Carter [1903]) and doctor and patient.

Once the presumption of undue influence arose, the complainant can seek to set aside the transaction. The reason for setting aside lies in the abuse of a position of trust and confidence.

It is for the alleged wrongdoer to rebut undue influence and show that the contract is valid. Since undue influence is presumed because Kwan is a solicitor, Kwan must prove that Ho entered into the transaction as the result of a free exercise of an independent will.

Rebuttal of the presumption would be satisfied by showing that in entering into the transaction, Ho was free from the influence of Kwan. For example, this would be so if the nature and legal effect of the transaction had been fully explained to him by an independent qualified legal adviser. It is not enough merely to show that Ho as an accountant understood the nature and effect of what he was doing.

(10 marks)

**(Total 20 marks)**



2. (a) Law of theft is an area of criminal law. In a theft case, like other criminal cases, the Government takes legal action against the accused who is suspected of committing the theft. The intention is to punish the accused if he is found guilty because committing a crime is conduct forbidden by the society and is against the interests of the community at large. The prosecutions are brought in the name of the Hong Kong Special Administrative Region. The Department of Justice with the Secretary of Justice as its head and a team of government counsel and prosecutors is responsible for doing the litigation work.

In most cases, the prosecution has to prove the guilty mind (*mens rea*) and the criminal act (*actus reus*), the two fundamental elements on which criminal liability is constructed. The accused is presumed innocent until proved guilty and the prosecution must prove the guilt beyond reasonable doubt. If the court is satisfied that theft was committed by the defendant, he is punished, and is usually fined and/or imprisoned. Otherwise, he will be acquitted.

Law of contract is an example of civil law which is concerned with regulating matters relating to private individuals or entities. Civil law involves regulating the private rights and obligations of parties arising from some legal relationship between them. The purpose of taking a civil action by the plaintiff is to determine the respective rights, duties and obligations of parties arising from their legal relationship, and to compensate the victim.

The litigant must prove his case on a balance of probabilities. The usual remedy is money compensation called damages. In Hong Kong, depending on the amount of claims, civil cases are heard in the District Court, Court of First Instance and various tribunals.

(8 marks)

- (b) The main issues in this question are whether a contract exists between Lam and Mak and, in particular, whether Lam can successfully revoke his offer.

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 an “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 an offer could be accepted by the world at large by performing according to the conditions laid down in the advertisement. In such a case, there is no need for acceptance to be communicated to the offeror.

In this case, if the notice constitutes an offer and not merely an invitation to treat, acceptance occurs when Mak performs the required act under the notice, i.e. by providing Lam with the information leading to the conviction of the thieves.

An offer remains open until terminated by revocation, rejection, counter-offer, lapse of time or death of the parties. However it may be withdrawn by the offeror at any time prior to acceptance with communication to the offeree because in principle there is no legal commitment until a contract has been concluded by acceptance. Communication of revocation need not be by the offeror or his agent, it may be by a reliable third party, Dickinson v Dodds [1876].

It is not clear whether Lam has sufficiently informed Mak of his revocation. If for example before Mak provided the information, Lam had already informed him of the withdrawal of offer, the revocation would appear to be valid. However, if the revocation was not publicised or was made after Mak provided the information, it would be ineffective and Mak would have a valid claim to the money offered.

(12 marks)

**(Total 20 marks)**

- 
3. (a) A registered company is created by registration at Companies Registries under the Companies Ordinance. Once incorporated, a company is in law a legal entity distinct from its members, Salomon v Salomon Ltd. A company can enter into contracts in its own right and can own its property. It has a proprietary interest in its property and not its shareholder. A change of membership or the death of a member is not a change in the company itself. It has perpetual succession. The relationship among the members is mainly governed by its own constitution (the memorandum of association and the articles of association) and the Companies Ordinance.

A partnership is defined as the relation which subsists between persons carrying on business in common with a view of profit. It is created by the express or implied agreement of the partners although no special form is being required. It is not a legal entity separate from its partners. The relationship among most of the partners is mainly contractual and is also governed by the Partnership Ordinance.

(8 marks)

- (b) A private limited company is in laws a legal entity distinct from its members, Salomon v Salomon Ltd. A company can enter into contracts in its own right and can own its property. It has a proprietary interest in its property and not its shareholder.

Sometimes the courts have been aware of abusing legal personality. There are cases where the courts lift the corporate veil to prevent the use of the company for fraudulent purposes or for evading a contractual obligation. The courts will regard the activity carried out by a company as that of the shareholders. In Gilford Motor Co Ltd v Horne [1933], the managing director, Mr Horne, had a contract of service containing a post-contract non-solicitation clause with the plaintiff company. After his employment, Mr Horne formed a company with his wife and another employee as shareholders and directors to solicit the customers of the plaintiff and to compete with the plaintiff. An injunction was granted against Mr Horne and the company from acting in breach of the covenant.

In the Court of Appeal Lord Hanworth MR said:

“I am quite satisfied that this company was formed as a device, a strategem, in order to mask the effective carrying on of a business of Mr. E.B.Horne. The purpose of it was to try to enable him under what is a cloak or a sham, to engage in business which .....was a business in respect of which he had a fear that the plaintiffs might intervene and object.”

In the present case, it was necessary first to determine whether, on the proper construction of the contract, the acts of the Nell Co Ltd put Nick in breach of his obligations. If so, the company formed by Nick was a mere cloak or sham, a mere device for masking the effective carrying on of a business of Nick.

If an injunction lay against Nick, it was proper that an injunction should lie also against Nell Co Ltd which was knowingly assisting Nick. The granting of an injunction against the sham company was necessary because the company was a separate entity from Nick.

(12 marks)

**(Total 20 marks)**

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4. (a) A shareholder is a member of the company. His relationship with the company is governed by the Companies Ordinance and the memorandum and articles of association of the company.

Under section 23 of the Companies Ordinance, the memorandum and articles shall, when registered, bind the company and the members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and articles.

A shareholder's rights depend on the type of shares he holds. Ordinary shares do not give their holders any special rights. If a company gives special rights on some of the shares it has issued, then the shares not conferring those rights will be classified as ordinary shares.

As a member of the company, a holder of ordinary shares has the right to attend general meetings and unless otherwise provided he can vote on matters concerning the company's business. He can therefore exercise his right to control the composition of the board of directors and the management of the company. For example, shareholders can by special resolution remove directors from the board, section 157B Companies Ordinance.

Shareholders can receive dividends out of distributable profits payable if and only when declared by the company. A holder of ordinary shares is not entitled to a fixed dividend. However, in a profitable year he may receive a high rate of dividend if the company makes a large dividend distribution.

A holder of ordinary shares is also entitled to receive surplus assets in a winding-up.

If pre-emption rights are provided by the articles of association, shareholders can object to the transfer of shares to a non-member by exercising such a right.

In most cases the company has no obligation to repay its shareholders the amount they invested. There are detailed rules regulating redemption or purchasing of a company's own shares.

An aggrieved shareholder has the right to complain to the court if directors are acting in a manner unfairly prejudicial to his interests, section 168A Companies Ordinance.

(10 marks)

- (b) If Leung wants to transfer his shares to Ng, he must find out whether there is any restriction on the sale of his shares.

Millionaire Ltd, being a private limited company, should under section 29(1) of the Companies Ordinance restrict the right to transfer its shares and prohibit any invitation to the public to subscribe for any shares or debentures of the company.

Leung should be advised to check the articles of the company which will contain a clause restricting the right to transfer shares. The restriction may either be an absolute discretion vested in the directors to refuse to register a transfer and/or a right of pre-emption (first refusal) granted to existing members when another member wishes to transfer his shares.

Leung also wants information about the value of the shares. As Millionaire Ltd is a private limited company and not a listed company, the values of the shares cannot be ascertained through market transactions. One way of valuing shares is by calculating the asset value of the company, and Leung has to access the company's accounting records. In some cases, the articles of the association of the company will provide a mechanism to determine the value of the shares, and Leung should first check the articles and follow such procedures if they are available.

On the other hand, under section 121 of the Companies Ordinance and Table A, the directors shall cause proper books of account to be kept and such books should give a true and fair view of the state of the company's affairs. The books of account shall generally be kept at the registered office of the company and shall always be open to the inspection of the directors. However, no member (not being a director) shall have any right to inspect any account or book or document of the company except as conferred by statute or authorised by the directors or by the company in a general meeting. Therefore Leung, not being a director, has no right of inspection to the accounting records.

Leung should therefore seek assistance from the company's directors. The directors, under Table A, can determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company shall be open to the inspection of members who are not directors. In practice, the directors are unlikely to provide such information when the relationship between the shareholder and the company goes sour.

(10 marks)

**(Total 20 marks)**

5. (a) A company director is under a fiduciary duty to his company which requires the directors to act in good faith for the benefit of the company, to properly exercise their powers as directors for proper purposes, and to avoid conflicts of interest.

In this case, by trading on his own account in competition with the company, Adrian has breached his duty to avoid conflicts of interest. In Bray v Ford [1896], Lord Herschell stated clearly that “it is an inflexible rule of a court of equity that a person in a fiduciary position... is not unless otherwise provided entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict”. In Aberdeen Railway v Blaikie Bros [1854], the plaintiff company contracted with a partnership. One of the undisclosed partners was also a director of the company. The firm was successful in avoiding the contract even though the terms were fair. A director can enter into a contract with the company if the articles of the company permit it or if full and material disclosure of the interest is disclosed and it is approved by the company in a general meeting. Otherwise the contract can be avoided by the company.

Beta Import can seek an injunction to prevent Adrian from further disclosing or using the company’s trade secrets or confidential information.

Further, if the profit has come to the director by virtue of his office as a director, the courts have taken a relatively uncompromising attitude towards the director’s liability in such circumstances. In Regal (Hastings) Ltd v Gulliver [1967], the House of Lords held that the directors who made a profit out of the opportunity and knowledge they gained as directors must account to the company for the profit they made.

(10 marks)

- (b) By section 157B of Companies Ordinance, a company may, by special resolution, remove a director before the expiration of his period of office, notwithstanding anything in its memorandum or articles or in any agreement between it and him.

Notice of an intended resolution to remove a director shall be given to the members not less than 21 days before the meeting. On receipt of this notice, the company shall immediately send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

Where notice is given of an intended resolution to remove a director and the director concerned makes representations in writing to the company and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so: (a) in any notice of the resolution given to members of the company state the fact of the representations having been made; and (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, and if a copy of the representations is not sent because it is received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

Copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred under section 157B of the Companies Ordinance are being abused to secure needless publicity for defamatory matter; the court may order the company’s costs on an application to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

At the general meeting, the company then passes a special resolution to remove the director. The special resolution and the appropriate form for changing directors must be registered with the Registrar of Companies within the prescribed period. The company's register of directors must be updated.

(10 marks)

**(Total 20 marks)**

– END –