



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

Professional Bridging Examination

Pilot Examination Paper

Paper IV **PBE Business Law and Taxation**

Questions & Answers **Booklet**

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

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Professional Bridging Examination

Paper IV PBE Business Law and Taxation

Pilot Paper (Questions)

Time Allowed	3 hours
Examination Assessment Allocation	
• Section A – All THREE questions are compulsory	40 Marks
• Section B – Answer 3 out of 4 questions	60 Marks

Table A: Personal allowances and deductions

	Year of assessment
	2006/07
Personal allowances	\$
Basic	100,000
Married person's	200,000
Single parent	100,000
<u>Child</u> 1 st to 9 th child (each)	40,000
<u>Dependent parent/grandparent (aged 60 or above)</u>	
Basic	30,000
Additional (for dependant residing with taxpayer)	30,000
<u>Dependent parent/grandparent (aged 55-59)</u>	
Basic	15,000
Additional (for dependant residing with taxpayer)	15,000
<u>Dependent brother/sister</u>	30,000
<u>Disabled dependant</u>	60,000
Deductions	
Self-education expenses	40,000
Home loan interest	100,000
Elderly residential care expenses	60,000
Contribution to recognised retirement scheme	12,000
Approved charitable donations	25%

Table B: Tax rates

Year of Assessment	
2006/07	
Salaries tax	%
<u>Standard</u>	16.0
<u>Progressive</u>	
\$1 - \$30,000	2.0
\$30,001 - \$60,000	7.0
\$60,001 - \$90,000	13.0
above \$90,000	19.0
Corporation profits	17.5

SECTION A (COMPULSORY) (Total: 40 marks)

Answer ALL questions in this section. Marks are indicated at the end of each question. Together they are worth 40% of the total marks for this examination.

CASE

Michael, who recently graduated from Kowloon University and obtained his bachelor's degree in accountancy, planned to take the professional examination in the coming December and to be an accountant in 3 years' time.

While Michael was at University, his father, Eric, was the sole proprietor of a French restaurant under the name "Fantastic French Restaurant" ("FFR") in Central. Eric was also FFR's head chef and had started to train Michael as a chef since Michael was 10 years old. Eric was very upset when he learned of Michael's plan not to inherit and manage his business, but to join a famous accountancy firm in Hong Kong. Eric tried to persuade Michael to join his business. However, Michael was reluctant to give up his dream of becoming an accountant in an international accountancy firm. Eric even promised to buy Michael his dream car, costing US\$1 million. Finally, Michael changed his mind and joined FFR. However Eric did not buy Michael his dream car.

Although Michael started working in FFR, Eric was very worried that Michael would change his mind and leave FFR. He therefore asked Michael to sign a written employment contract stating that Michael was appointed as the head chef and general manager of FFR for 50 years with a monthly salary of HK\$100,000.

After joining FFR, Michael realised that there was great potential in the French food industry in Hong Kong. After obtaining legal advice, Michael decided to convert FFR into a limited company. He also invited his friends, Betty and Catherine, to be shareholders of the proposed company, named "Fantastic French Restaurant Company Limited" ("FFRCL"). It was agreed that Michael would own 40% of the issued shares of the FFRCL, while Betty and Catherine would each own 30% of the issued shares. After the incorporation of FFRCL, Eric sold all of FFR's assets to FFRCL and retired. FFRCL adopted Table A as its articles of association and it was proposed that an objects clause should be included in its memorandum of association. Michael was also appointed as FFRCL's sole director and head chef. An employment contract was signed between Michael and FFRCL. Under the employment contract, one of Michael's main duties was to visit local seafood markets and order seafood for FFRCL.

On one visit to a local seafood market, Michael found some salmon on display with a price tag of HK\$10/kg. Michael immediately agreed to buy 100 kg. However, the seller, David, said that the price tag was wrong and refused to sell the salmon to Michael. Michael was very upset about that and insisted that a contract was formed when he agreed to buy the salmon. Finally, Michael decided to buy some cheaper salmon at another seafood market.

On the following day, Michael included a new French dish with salmon in the restaurant's food menu. The new dish was very popular and was immediately sold out. However, some customers who ordered the new dish were sent to hospital because of food poisoning. It was found that the cheap salmon was infected with bacteria because Michael forgot to store the salmon in a refrigerator. One of the customers, Ivan, decided to take legal action against Michael and FFRCL.

Required:

Question 1 (13 marks – approximately 23 minutes)

- (a) Advise Michael as to whether he and Eric have formed a contract in relation to Michael's dream car. (7 marks)
- (b) Advise Michael as to whether he and David have formed a contract in relation to the 100 kg of salmon. (6 marks)

Question 2 (10 marks – approximately 18 minutes)

- (a) Advise Michael of TWO advantages and TWO disadvantages of converting FFR into FFRCL. (4 marks)
- (b) Advise Michael about the legal effect of an objects clause in FFRCL's memorandum of association. Explain the legal effect if no objects clause is included in FFRCL's memorandum of association. (5 marks)
- (c) Draft an objects clause for FFRCL. (1 mark)

Question 3 (17 marks – approximately 30 minutes)

- (a) Advise Michael whether the Employment Ordinance applies to his written employment contract with FFR. (4 marks)
- (b) Advise Ivan whether he can take any legal action against the following parties:
- (i) Michael; (9 marks)
- (ii) Michael's employer, i.e. FFRCL. (4 marks)

* * * END OF SECTION A * * *

SECTION B (ANSWER THREE QUESTIONS ONLY) (Total: 60 marks)

Answer any **THREE** questions in this section. Each question carries 20 marks. Together they are worth 60% of the total marks for this examination.

Question 4 (20 marks – approximately 36 minutes)

(a) Explain the doctrine of precedent in the context of the Hong Kong legal system. (10 marks)

(b) Mr. Lee, aged 50, is employed as an accountant by ABC Ltd., and his only remuneration is a monthly salary of \$150,000. Mr. Lee contributed \$12,000 to an MPF in the year of assessment 2006/07. Mr. Lee got married three years ago and his wife gave birth to a baby two years ago. Since then, his wife quit her job and stayed at home to look after Mr. Lee's family. Mr. Lee maintains and is living with his family including his parents and grandfather. His parents and grandfather are all aged over 60. Mr. Lee mortgaged his flat to Kowloon Bank when he purchased the flat for his own use two years ago and the total interest payments for the mortgage in the year of assessment 2006/07 amounted to \$120,000. Mr. Lee took a part-time Master's course at Kowloon University in the year of assessment 2006/07. The tuition fee for the course was \$45,000.

Based on the above information, compute the tax liability for the year of assessment 2006/07 for Mr. Lee. (Please ignore provisional tax). (10 marks)

Question 5 (20 marks – approximately 36 minutes)

Peter was the owner of a timber estate. Last month, Peter decided to set up a limited company and sold all the timber to the company in consideration of the allotment to him of 10,000 fully paid \$1 shares. After the sale, Peter effected an insurance policy with ABC Insurance Company in his own name covering all the timber against fire. Two weeks later, all the timber was destroyed by fire. Peter made a claim under the insurance policy. The insurance company refused to pay any compensation and cited the principle that one must suffer damage in order to claim compensation under an insurance policy.

Required:

(a) Advise Peter as to whether ABC Insurance Company is liable to pay compensation under the insurance policy. (10 marks)

(b) Explain the legal procedures for setting up and registering a limited company in Hong Kong under the Companies Ordinance. (10 marks)

Question 6 (20 marks – approximately 36 minutes)

Elaine was recently appointed as a director of Best Friends Company Limited. She was told that there were two classes of shares in the company, class A & class B. Class A shares are ordinary shares while class B shares are 15% cumulative preference shares. Elaine did not understand the difference between the two classes of shares. She was also told that the company had created two different charges, one fixed charge over the company's machinery in Tsuen Wan and one floating charge over the company's book debts.

Required:

- (a) Explain to Elaine the distinctions between the company's class A shares and class B shares. (10 marks)
- (b) Explain to Elaine the distinctions between a fixed charge and floating charge. Are the registration requirements different between them? (10 marks)

Question 7 (20 marks – approximately 36 minutes)

Good Friends Company Limited has recently suffered financial difficulty. One of its shareholders, Eric, who owns 70% of the issued shares of the company, would like to wind up the company under the Companies Ordinance because he believes that it is impossible for him to run the business with the other shareholders. Albert, one of the suppliers of the company, has persistently demanded repayment of a debt of \$50,000 the company owes him. However, the company has failed to settle the debt and Albert decided to petition for an order to wind up the company.

Required:

- (a) Advise Eric as to the grounds under which he may seek to wind up the company under the Companies Ordinance. (12 marks)
- (b) Advise Albert as to the grounds under which he may seek to wind up the company under the Companies Ordinance. (8 marks)

* * * END OF EXAMINATION PAPER * * *

Answers

Paper IV
PBE Business Law
and Taxation
(Pilot Paper)

SECTION A (COMPULSORY) (Total: 40 marks)

Answer 1(a)

Candidates are expected to discuss the rules about intention to enter into contract.

Candidates are expected to state the rules about social agreement and commercial agreement

Agreements can be divided into two types for the purpose of ascertaining intention to form a contract. They are:-

- (i) social agreements; and
- (ii) commercial agreements.

Social agreements are agreements between family members and friends. For example, a father agrees to pay \$100 pocket money to his son if his son tidies up his room.

Commercial agreements are agreements between business parties for business purposes. For example, a company agrees to sell its premises in Central to another company.

(i) Social Agreements

The presumption in law is that while the parties may intend that the agreements be carried out, it is not intended that a court action will be brought if they are not. However, the parties may show that they do in fact intend for their agreement to have legal consequences. Then, the presumption above will not apply. The agreement will have legal effect.

Sun Er Jo v. Lo Ching [1996] 1 HKC 1

(ii) Commercial Agreements

It is presumed that such agreements are intended to have legal effect and to be enforced in a court of law. However, parties can state expressly that their commercial agreement is not intended to have legal consequences. The phrase, "subject to contract" is usually stated in these agreements.

Attorney General (HK) v. Humphrey's Estate (Queen's Gardens) Ltd [1987] 2 All ER 387

The agreement in our case is prima facie a social agreement only and it is for Michael to prove that there is an intention to enter into contract.

Answer 1(b)

Candidates are expected to discuss the rules about an invitation to treat and an offer.

An offer is an expression of willingness by a person to contract on certain terms. An offer must be clear and capable of acceptance by another person.

Once an offer is accepted, then provided that there is consideration, intention and capacity (all to be discussed later), a valid and binding contract comes into effect at the time of acceptance of the offer.

An offer may be made in any form preferred by the offeror (e.g. in writing, orally or electronically) but must be sufficient to communicate the offer to the offeree.

In addition, no offer is effective unless and until it is communicated to the offeree.

Invitations to treat are merely invitations to others to come forward and make an offer. *Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd.* [1953] All ER 482

Candidates are expected to point out that display of goods is an invitation to treat only and there was only an offer to buy. No legally binding contract was found.

Answer 2(a)

Candidates are expected to explain the advantages and disadvantages of converting a sole proprietorship into a limited company.

Advantages:

Separate legal entity; limited liability; perpetual succession, creating of floating charge.

Disadvantages:

Less flexible, more stringent rules, more disclosure requirements; appointment of auditor, higher maintenance costs.

Answer 2(b)

Candidates are expected to explain the rules about objects clause, i.e. the purpose of setting up the company, and the legal effect of transactions outside the objects clause.

Objects clause is a clause included in the Memorandum of Association of a company and it states the purpose of setting up the company.

Objects clause is now optional. S.5(1A)(b).

If a company with an objects clause tries to act outside the objects, a member can take injunction proceeding to stop the company from acting in breach of its objects clause. S.5B(2).

Any transaction in breach of an objects clause carried out by the company remains legally valid. S.5B(3).

If a company does not have an objects clause, it has all the rights and powers of a natural person. S.5A. Thus, it can lawfully do anything it wishes.

Answer 2(c)

Candidates are expected to draft an object clause: e.g. running a French restaurant or running a restaurant.

Answer 3(a)

Candidates are expected to explain the scope of the Employment Ordinance.

Candidates are expected to point out that the Employment Ordinance applies to every employee irrespective of his salary or occupation, with a few exceptions.

One relevant exception is:

- an employee who is a member of the family of the owner of the business and who lives in the same home as the owner.

S4 Employment Ordinance

Candidates are expected to point out that the Employment Ordinance may not be applicable to Michael's employment contract if he lives in the same home as the owner, i.e. Eric, his father.

Answer 3(b)(i)

Candidates are expected to point out that there was no contract between Michael and Ivan but Ivan may sue Michael under law of tort, for negligence.

Candidates are expected to explain the elements of negligence, including duty of care, breach of duty and damage.

A plaintiff (the injured party) who sues a defendant in negligence must prove the following:

- (i) The defendant owed the plaintiff a duty of care;
- (ii) The defendant's conduct was below the acceptable standard of care (there was a breach of the duty of care);
- (iii) The plaintiff suffered injury (damage) as a result of the defendant's poor conduct (causation) and there was a close connection between the defendant's conduct and the damage being claimed (remoteness of the damage)

In *Donoghue v. Stevenson* [1932] AC 562, the court described the duty of care. In this case, a person had purchased a bottle of ginger beer from a retailer for the plaintiff. The plaintiff had consumed part of the contents whereupon she discovered part of a decomposed snail in the bottle. The plaintiff claimed to have suffered nervous shock and a stomach illness as a result of drinking the contaminated liquid from the bottle. The bottle was made of dark glass, so it was not reasonable to expect the retailer or the plaintiff to detect the impurity. To recover damages from the manufacturer of the ginger beer in the tort of negligence, the plaintiff had to prove that the manufacturer owed her a duty of care.

Lord Atkin explained the duty of care in the judgement as -

"a duty to take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour..."persons who are so closely and directly affected by my acts that I ought to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."

This is the famous 'neighbour test' or 'reasonable foreseeability test' for the existence of the duty of care in tort. In short, it means that we owe a duty of care to people who it is reasonably foreseeable will be affected by our conduct.

Once a duty of care has been established, a plaintiff has to prove on the facts that there has been a breach of that duty by the defendant. For there to have been a breach of the duty of care, the defendant's actions must have fallen below the standard of care expected of him. Only if the defendant has failed to reach the standard of care, can he be said to have breached the duty of care.

Whether or not the standard of care has been breached is decided by means of the reasonable man test. The defendant is judged by the actions that could be expected of a reasonable man in his/her position. This is an objective rather than a subjective test.

The plaintiff must show that he suffered loss or damage. In addition, the loss or damage he suffered must be a result of the defendant's breach of duty – causation.

In this case, it seems that Michael who failed to store the salmon in a refrigerator acted below a reasonable man's standard and was in breach of his duty owed to his customer, Ivan. Ivan, who was sent to the hospital, suffered loss as a result of Michael's breach of duty. Therefore, Ivan is entitled to claim compensation for the loss he suffered under law of tort.

Answer 3(b)(ii)

Candidates are expected to explain the rules about vicarious liability.

In this case, there is a contract between FFRCL and its customers. Some implied terms are implied into this contract. FFRCL, in our case, was in breach of these implied terms.

Besides, the employer is vicariously liable for torts committed by the employee during the contract of employment and in the course of employment. (The word 'vicarious' means one who holds authority as the "delegate", or "substitute", for another.) However, an employer is not liable for the torts committed by an independent contractor. An employer is liable for the torts committed by his employees only if they are acting in the course of their employment.

In *Lam Min v. Yau On Construction Co.* [1981] HKLR 646, Lam was employed at a site which was only accessible by boat. There were no facilities for lunch at the site and it was customary for all the employees to travel to the mainland for lunch in a boat provided by the site owner. There was no charge for this service and Yau On extended the lunch break by 15 minutes for travelling time. Lam was killed when the site owner's vessel collided with a shrimp boat and sank.

It was held that Lam's journey was incidental to his employment and was in the course of Lam's employment.

In our case, Michael's negligence was committed when he was in the course of employment. Therefore, FFRCL, as the employer of Michael, was vicariously liable for Michael's negligence.

* * * END OF SECTION A * * *

SECTION B (ANSWER THREE QUESTIONS ONLY) (Total: 60 marks)

Answer 4(a)

Candidates are expected to explain the rules about rule of precedent.

Candidates are expected to briefly explain the ranking of the courts, ratio decidendi and obiter dicta.

The main idea of the rule of precedent is to maintain consistency.

The basis of the rule of precedent is that “like cases should be treated alike, and dissimilar cases should be treated differently”. To follow a decision previously made is the fundamental principle of precedent.

The operation of the rule of binding precedent is limited, however, to the ratio decidendi of previous case.

In every case resolved by the courts, a principle of law is applied to the legal problem which is raised by the findings of fact. The principle of law is applied in order to solve that problem and reach a decision. The reason for applying this principle of law which is explained in the judgement and is known as ratio decidendi.

Statements of law made by the judge hearing the case which are not based on the findings of fact or do not necessarily lead to the conclusion of the case are described as the obiter dictum of the judgement and have no binding effect over subsequent cases, though they may have persuasive power.

Vertical stare decisis: all courts must follow the previous decisions of courts which rank higher than themselves in the hierarchy, i.e. Court of First Instance is bound by the previous decisions of Court of Appeal and Court of Final Appeal, where Court of Appeal is bound by the previous decisions of Court of Final Appeal.

Horizontal stare decisis: generally, all courts must follow its own previous decision, except the Court of Final Appeal, where it is not bound by its own previous decision.

Answer 4(b)

Candidates are expected to compute the salaries tax liability of Mr. Lee.

Candidates are expected to point out the following.

Salaries tax computation for Mr. Lee for the year of assessment 2006/07:

	\$	\$
Salary (150,000 x 12)		1,800,000
Self-education expenses		40,000
Net assessable income		<u>1,760,000</u>
<u>Less: Deductions</u>		
Home loan interest	100,000	
Contribution to MPF	<u>12,000</u>	

		<u>112,000</u>
		1,648,000
<u>Less:</u> Allowances		
Married Person's allowance	200,000	
Dependent parent/ grandparent's allowance	180,000	
Child allowance	<u>40,000</u>	
		<u>420,000</u>
Net chargeable income		<u>1,228,000</u>
Tax thereon		
First \$30,000 @2%		600
Next \$30,000 @7%		2,100
Next \$30,000 @13%		3,900
Remainder @19%		
		<u>216,220</u>
Tax payable at progressive rate		<u>222,820</u>
<u>Less:</u> 50% tax deduction for Y/A 2006/07		
(subject to the maximum of \$15,000)		<u>15,000</u>
Tax payable thereon		<u>207,820</u>
[\$1,648,000@16% = \$263,680]		

Answer 5(a)

Candidates are expected to explain the rules about separate legal entities and the case *Macaura v. Northern Assurance* [1925] AC 619.

In law, registered companies are recognized as having their own legal personality and can exist separate and distinct from their members and managers. This basic legal idea was confirmed in *Salomon v. Salomon and Co. Ltd.* [1897] AC 22.

The case concerned a man who ran a shoe making business as a sole trader but then sought to convert the business into the form of a limited company. As the company is a separate legal entity to its owners, the company had to pay Mr. Salomon for the value of the business transferred to it from Mr. Salomon. The company paid him partly in shares in itself and partly by way of a secured loan from Mr. Salomon to it, which it promised to repay at a later date. Before the company had repaid its debt to Mr. Salomon, it went into insolvent liquidation. Mr. Salomon claimed all the assets of the company to repay the loan but the other creditors said it was all a fraud and that Mr. Salomon and the company were, in reality, the same. Thus, they said Mr. Salomon should not get priority to get his loan back. However, the court did not agree and held that once a company is legally incorporated, it must be treated like any other independent person with rights and liabilities appropriate to itself.

Another consequence of separate personality is that a company has the ability to own its own property. *Macaura v. Northern Assurance* [1925] AC 619.

In *Macaura v. Northern Assurance Ltd.* [1925], Macaura owned a forest. He sold the forest to a company but later insured the forest in his own name, not in the name of the company. The forest burned down. Macaura claimed on the insurance policy but the company refused to pay saying that as Macura did not own the trees when they were insured, he could not get any benefit under the policy. The court agreed saying that at the relevant time the company owned the trees and only the company could insure them.

Candidates are expected to apply Macaura to our case study and conclude that Peter and the company are separate legal entities. As the timber belongs to the company while the insurance policy is in the name of Peter, similar to Macaura, Peter is not entitled to claim any compensation.

Answer 5(b)

Candidates are expected to explain the procedures in setting up a company. Firstly one has to check whether the proposed name is the same as or too similar to those already appearing on the index of company names (s.20-22). Every company must have its own, unique name and no two companies can have the same name. The registrar will refuse to register a company that has the same name as an existing company. He may also refuse to register a company that chooses certain prohibited names or if the purposes for which the company is to be incorporated are unlawful.

Next one must prepare the Memorandum of Association (MA) (s.4-6) and Articles of Association (AA) (s.9-12).

The MA is the basic constitutional document of the company and must contain the following clauses - name, situation of the companies Registered Office in Hong Kong, statement that members liability is to be limited and the maximum amount capital that the company is authorised to issue (for example, 100 ordinary shares @ \$1 each).

Objects clause may be added to the MA.

The MA must be signed by subscribers of the company, who become the founders of the company.

The company may also submit a detailed set of internal rules called the AA. If it does not do so, a standard set of rules called Table A will apply.

Lastly, an Incorporation Form should be prepared (s.18(2) Companies Ordinance).

Within one month after incorporation, the company should apply for a business registration certificate under s.5 of the Business Registration Ordinance.

Answer 6(a)

Candidates are expected to explain the distinction between ordinary shares and preference shares.

Ordinary shareholders are eligible to receive dividend after the preference shares have been paid.

Preference share dividend must be paid when there is distributable profits while ordinary share dividend may not be paid.

The dividend of ordinary shares is not fixed and depends on the distributable profits of the company in a particular year.

Ordinary shares are non-cumulative, i.e. the dividend of a particular year must be declared in that year and cannot be carried forward to the following year.

Ordinary shares usually carry voting rights.

Preference Shares normally have a preferential right to a fixed dividend and/or to capital on a winding up depending on the articles of association of the company.

The right to dividend may be cumulative or non-cumulative.

The right to dividend is cumulative which means that if no dividend is declared in any year, the arrears must be carried forward and paid before a dividend is paid on ordinary shares.

Preference shares usually do not carry voting rights, depending on the articles of association of the company.

Preference shares are usually called non-participating shares as there is no right to participate in the surplus profits of the company after payment of the dividend to the ordinary shareholders.

Bonus should be given to any relevant point made.

Answer 6(b)

Candidates are expected to explain the distinction between fixed charges and floating charges.

In the case of *Illingsworth v. Houldsworth* [1904] the court described a fixed charge as one that fastens to ascertained and definite property or property capable of being ascertained and defined.

Once a fixed charge is created over a particular asset, the company may not sell the asset without the consent of the debenture holder.

Floating charges, on the other hand, are usually created over an entire class of assets such as book debts or stock.

The identity of individual items will change constantly and the charge attaches only when the charge crystallises; this is triggered by an event specified in the debenture document.

The classic definition of the floating charge was given in *Re Yorkshire Woolcombers Association* [1903] in which the court decided that a floating charge must have the following characteristics:

- (i) charge over a class of assets, present or future
- (ii) the class of assets would be bought or sold or changed in the normal course of business
- (iii) the parties to the charge both imagine that the company's ordinary business will continue in the usual way and that the charges assets will continue to be dealt with by the company

Charges, no matter whether they are fixed or floating, have to be registered under s.80(1) of the Companies Ordinance, as long as they fall within s.80(2), which include any charge on book debts of a company and any floating charge on the undertaking or property of a company.

Registration has to be made within 5 weeks after the date of its creation.

Answer 7(a)

Candidates are expected to explain the grounds under which a shareholder may petition to wind up a company.

Candidates are expected to point out that there are two types of winding up, i.e. compulsory winding up under s.177(1) and voluntary winding up under s.228(1) of the Companies Ordinance.

A company may be wound up by the court if:

- (i) the company has by special resolution resolved that the company be wound up by the court;
- (ii) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
- (iii) the company has no members;
- (iv) the company is unable to pay its debts;
- (v) the event, if any, occurs on the occurrence of which the memorandum or articles provide that the company is to be dissolved;
- (vi) the court is of opinion that it is just and equitable that the company should be wound up. S.177(1) CO.

A company may be wound up voluntarily:

- (i) when the period, if any, fixed for the duration of the company by the articles expires, or an event, if any, occurs on the occurrence of which the memorandum or articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
- (ii) if the company resolves by special resolution that the company be wound up voluntarily;
- (iii) if the company resolves by special resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.
- (iv) if the directors of the company or, in the case of a company having more than 2 directors, the majority of the directors, deliver to the Registrar a winding-up statement under s.228A(1).

Candidates are expected to point out that, Eric, as a shareholder, may apply to wind up the company by passing a special resolution under s.228(1)(b) or on the ground that it is just and equitable to wind up the company under s.177(1)(f).

In our case, Eric has two options:

- (i) Eric may find other shareholders to pass a special resolution under s.228(1)(b), if they jointly have not less than 75% of the issued shares of the company; or
- (ii) Eric may apply to the court on just and equitable ground to wind up the company under s.177(1)(f) if the disagreement between the shareholders is sufficiently serious to lead the court to conclude that it would be just and equitable to wind up the company.

Answer 7(b)

Candidates are expected to explain the grounds under which a creditor may petition to wind up a company.

Candidates are expected to discuss s.177(1)(d) and the definition of “unable to pay”.

The concept of statutory demand should be explained.

A company shall be deemed to be unable to pay its debts if a creditor, by assignment or otherwise, to whom the company is indebted in a sum then due equal to or exceeding the specified amount, has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due, and the company has for 3 weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor.

Candidates are expected to point out that, Albert, as a creditor of the company, may serve a statutory demand on the company, as the debt is liquidated and exceeds \$10,000. If the company fails to comply with the statutory demand after 3 weeks, Albert may petition to wind up the company under s.177(1)(d).

* * * END OF EXAMINATION PAPER * * *