

WRITTEN QUESTIONS (Total: 100 marks)

Answer **ALL** questions in this section. Marks are indicated at the end of each question. Together they are worth 100% of the total marks for this examination.

Question 1 (15 marks – approximately 27 minutes)

Jason and Peter are former classmates at high school. Jason is studying for a degree at a higher institution in Hong Kong. Peter quit his studies after high school and works on a part-time basis.

One day, Peter visited Jason and saw Jason's portable computer. Out of greed, Peter stole the computer and sold it to their common friend Kevin.

Later, Jason found out that his computer had been sold to Kevin. Jason wants to get it back from Kevin. Peter has absconded and is missing.

Before absconding, Peter allowed his another friend (Vivian) to use his bank account. Vivian transferred money in and out of Peter's bank account from an unknown source. Vivian paid Peter several thousand dollars to use his bank account.

Required:

In relation to sale of goods law and anti-money laundering law:

- (a) **Analyse whether Jason and/ or Kevin would have the legal title and ownership of the computer.**
(10 marks)
- (b) **Analyse the potential legal liability of Peter for allowing Vivian to use his bank account.**
(5 marks)

Question 2 (20 marks – approximately 36 minutes)

A Limited and B Limited are private companies incorporated in Hong Kong. Both companies adopted Model Articles for Private Companies Limited by Shares as their articles. Benny is the sole director of A Limited.

B Limited is a supplier and trade creditor of A Limited. There is a HK\$500,000 trade debt owed by A Limited to B Limited. Due to the financial difficulties of A Limited, Benny suggested to B Limited that B Limited should lend a further HK\$500,000 cash to A Limited and in consideration of A Limited issuing 1,000,000 debentures, each at HK\$1 for a total amount of HK\$1,000,000 to be secured by a floating charge over its entire assets including but not limited to lands and buildings (the "Entire Assets") to B Limited.

The debenture provided a negative pledge clause and an automatic crystallisation clause to prohibit creating a further and subsequent charge over the Entire Assets of A Limited. The floating charge was duly registered. Six months later, A Limited has borrowed another HK\$10,000,000 from a bank and has secured that loan by a mortgage (a fixed charge) over its lands and buildings. The charge was also duly registered.

Within 12 months from the date of creation of the floating charge, A Limited was compulsorily wound up by a creditor.

Required:

In relation to company and winding-up laws:

(a) Explain the nature of a debenture and analyse the legal and registration requirements of the above two charges.

(5 marks)

(b) Analyse the nature of the above two charges and their priorities.

(15 marks)

Question 3 (20 marks – approximately 36 minutes)

Vincent is a newly qualified practising certified public accountant. He has been appointed as a consultant of a firm of practising certified public accountants (the "Firm") with no salary but on a fee sharing basis. He can decide the working place and hours.

Under the agreement between Vincent and the Firm, Vincent is authorised to sign accounts reports for clients in the Firm's name, and he must disclose his capacity as an agent and a consultant for the Firm.

Vincent negligently signed an accounts report of a company ("Company C") in the Firm's name. The accounts report stated that Company C's creditworthiness was good and had been used to support its application for a loan from a bank (the "Bank"). By relying on the accounts report, the Bank granted a loan to Company C. Company C was subsequently wound up. The Bank would like to sue for the misstatement in the accounts report.

Required:

In relation to employment law, agency law and tort of negligence:

- (a) Analyse the legal relationship between Vincent and the Firm (whether Vincent is an employee of the Firm). (5 marks)
- (b) Analyse whether the Firm is liable for the accounts report signed by Vincent. (5 marks)
- (c) Analyse whether your answer to (b) would be different if Vincent had been employed by the Firm as a salaried employee. (5 marks)
- (d) Analyse whether Vincent is liable to the Bank for the misstatement in the accounts report. (5 marks)

Question 4 (10 marks – approximately 18 minutes)

George is a director of a public company in Hong Kong ("Bidder Co."). Jimmy is a director of another public company in Hong Kong ("Target Co."). Both companies are listed on the Main Board of the Hong Kong Stock Exchange.

Target Co. has two classes of shares, one is ordinary shares and the other is preference shares. George told Jimmy that Bidder Co. plans to take over Target Co. George asked Jimmy to inform the board of directors of Target Co. about the proposed takeover.

Required:

In relation to the Codes on Takeovers and Mergers and Share Buy-backs:

Analyse Bidder Co. as to what offer(s) must be made by Bidder Co. to the shareholders of Target Co. for the proposed takeover.

(10 marks)

Question 5 (15 marks – approximately 27 minutes)

Clean Company ("Clean Co.") runs a laundry business. Boiler Company ("Boiler Co.") is a boiler manufacturer.

To expand its business, Clean Co. placed an order for a large boiler from Boiler Co. It was expressly stated in the contract that the boiler was ordered in contemplation of some lucrative dyeing contracts and time was of the essence. Boiler Co. was fully aware of the nature of Clean Co.'s business, and that it was intended that the boiler could be used as soon as possible.

The delivery of the boiler was delayed by six months after the agreed delivery scheduled date and Clean Co. claimed for loss of profit against Boiler Co.

Required:

In relation to law of contract and legal system:

(a) Analyse whether Clean Co. can claim for damages from Boiler Co.

(10 marks)

(b) Analyse which court or tribunal would hear the legal disputes between Clean Co. and Boiler Co. and the jurisdiction of this court or tribunal.

Note: You may assume that the claims may vary from the amount below HK\$75,000 to over HK\$3,000,000.

(5 marks)

Question 6 (20 marks – approximately 36 minutes)

Alvin, Beckham and Calvin were good friends and they have incorporated a private company in Hong Kong (the "Company"). The Company adopted Model Articles for Private Companies Limited by Shares as the articles.

It has been agreed that Alvin, Beckham and Calvin shall participate in the management of the Company. Alvin, Beckham and Calvin are the directors of the Company and each owns 2,000 issued shares in the Company. They each have a director's salary in the sum of HK\$50,000 per month. In addition, Alvin lent HK\$500,000 to the Company as shareholder's loan payable on demand.

Recently, Alvin, Beckham and Calvin had strong arguments over the management of a project. As a result, Alvin, Beckham and Calvin had been in a serious dispute. Beckham and Calvin decided that they were unable to work with Alvin. Alvin also demanded the repayment of the shareholder's loan. Beckham and Calvin refused to repay the loan to Alvin on the ground that the Company did not have sufficient cash.

Alvin was removed from the directorship by Beckham and Calvin. Alvin would like to bring an action against Beckham and Calvin.

Required:

In relation to company and winding-up laws:

(a) Analyse whether Alvin may apply for an unfair prejudicial remedy under the company law.

(10 marks)

(b) Analyse the ground(s) for winding up a company and whether Alvin may petition to wind up the Company under the winding-up law.

(10 marks)

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