

Syllabus for Business Associations

1. **Outline and comparison of different types of business associations**
 - sole proprietorship
 - partnership
 - registered company
2. **Partnerships**
 - nature of partnerships – their legal status, powers and characteristics
 - creation of partnerships
 - rights and duties of the partners inter se – rights and obligations arising in contract; fiduciary duties of partners
 - rights and duties of the partners vis-a-vis third parties – liabilities of partners to third parties in contract and tort; authority of partners to bind the partnership in transactions with third parties
 - introduction to dissolution
3. **Formation of a company**
 - incorporation and registration
 - problems relating to incorporation
 - types of companies
4. **Nature of a company**
 - separate corporate personality
 - limited liability doctrine – liability of members limited by shares or limited by guarantee
 - doctrines of piercing or lifting the corporate veil
5. **Corporate constitution and authority: memorandum and articles of association**
 - contractual effect of the memorandum and articles
 - enforcement of the memorandum and articles
 - ability of companies to alter the memorandum and articles, and restrictions under the general law and the Companies Ordinance; enforceability of shareholder agreements to alter the articles
 - corporate liability
 - corporate capacity
6. **Membership**
 - subscribers to the memorandum
 - registration of members
 - membership in companies with share capital: issues and transfers of shares
 - rights of members

7. Management and control

- the board of directors
- the members' general meeting
- powers conferred by the Companies Ordinance
- powers conferred by the articles of association
- authority of directors to bind the company vis-a-vis third parties and agent authority and indoor management rule
- scope of control of the board by the members in general meeting

8. Duties of directors

- directors as fiduciaries
- acting bona fide in the interests of the company
- exercising powers for proper purposes
- avoiding conflicts of interest – conflict rule, profit rule, misappropriation rule
- acting with due care, skill and diligence – duties in equity and under the common law
- forgiveness and enforcement
- requirements of the Companies Ordinance

9. Shareholders and shareholder rights and remedies: shareholders control over the running of the company: memorandum and articles

- proper plaintiff and irregularity principles – rule in Foss v Harbottle
- derivative actions on behalf of the company – fraud on the company exception to the proper plaintiff principle; the statutory derivative action
- members' personal rights of action under the general law; equitable restrictions on the powers of the majority in general meeting
- statutory remedy in relation to unfairly prejudicial conduct
- winding up on the just and equitable grounds
- protection of class rights under the company's constitution and under the Companies Ordinance
- statutory injunctions

10. Corporate Insolvency and Liquidation

- Types of winding up: compulsory winding up by the court and members' or creditors' voluntary winding up
- Insolvency and other grounds for winding up
- Effect of a winding up order
- Process of winding up
- Functions and powers of the liquidator
- Assets available for distribution; re-opening of antecedent transactions
- Distributions and priorities
- Fraudulent/Unfair Preferences
- Dissolution

Recommended Reading List for Business Associations

Hong Kong Texts

Lo S and Qu C, *Law of Companies in Hong Kong*, 2nd ed, Sweet & Maxwell, 2015

Sihombing Judith, *Sihombing's Hong Kong company law: commentary on Caps 622 & 32*, Wolters Kluwer Hong Kong Limited.

General Texts

Davies P and Worthington S, *Gower and Davies' Principles of Modern Company Law*, 9th ed, Sweet and Maxwell, London, 2012

Dignam A, *Hicks and Goo's Cases and Materials on Company Law*, 7th ed, Oxford University Press, Oxford, 2011

Keay Andrew R. & Walton Peter, *Insolvency Law: corporate and personal*, Jordans, 2012.

Leung Alice et al, *The (New) Companies Ordinance (Cap 622): Commentary and Annotations*, (Sweet & Maxwell, 2014)

Morse G, *Partnership Law*, Oxford University Press, 2016

Sealy Len and Worthington Sarah, *Sealy & Worthington's Cases and Materials in Company Law*, Sweet & Maxwell, 10th ed, 2013

Sources

Partnership Ordinance (Cap.38)

Companies Ordinance (Cap.622) & Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

Bankruptcy Ordinance (Cap. 6)

Hong Kong cases