Fundamentals Pilot Paper – Skills module

Corporate and Business Law (Singapore)

Time allowed
Reading and planning: 15 minutes
Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

Do NOT open this paper until instructed by the supervisor.

During reading and planning time only the question paper may be annotated. You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (SGP)

ALL TEN questions are compulsory and MUST be attempted

1 **In relation to the Singapore legal system, explain the following:**

(a) the common law doctrine of stare decisis; (5 marks)

(b) the rules of statutory interpretation. (5 marks)

(10 marks)

2 **Explain the circumstances in which a party to a contract is entitled to be discharged from his obligations under the contract, when there has been a breach of the contract.**

(10 marks)

3 **In relation to the tort of negligence, explain the duty of care for negligent misstatements.**

(10 marks)

4 **Compare and contrast a company and a limited liability partnership.**

(10 marks)

5 **In relation to company law, explain and distinguish between ordinary shares and preference shares.**

(10 marks)

6 **In relation to insolvency;**

(a) Explain what are the funds available for distribution to creditors in a corporate insolvency; (5 marks)

(b) Explain the priority according to which funds are distributed in a corporate insolvency. (5 marks)

(10 marks)

7 **Within the context of corporate governance, examine the role of, and relationship between executive directors, non-executive directors and independent directors.**

(10 marks)

8 Gadgets Galore is the sole agent of the "Acme" brand of washing machines. On 1 June, a Gadgets Galore salesman visited Home Superstore, a leading home appliances megastore, stating that Gadgets Galore had 20 of the latest Acme washing machine models for sale at $400 each, cash on delivery. The next day, Home Superstore replied by fax as follows: "We accept your offer subject to a 30-day credit period. Please advise us of the delivery date as soon as possible." On 3 June, Home Superstore decided to purchase another brand of washing machine from a competing supplier. They then sent a letter on 5 June to Gadgets Galore stating that they were no longer interested in buying the Acme machines. Gadgets Galore received this letter on 7 June. However, Gadgets Galore had earlier sent out a letter on 6 June advising Home Superstore that the Acme machines would be delivered to them on 11 June. This letter reached Home Superstore on 8 June.

Required:

Analyse the scenario from the perspective of contract law and discuss whether there is a binding contract between Gadgets Galore and Home Superstore.

(10 marks)

9 Lim was the director of Instyle Ltd. A foreign manufacturer gave Lim $50,000 in return for persuading the board of directors of Instyle Ltd to place an order for a large shipment of cotton fabric from it. After giving Lim the gratuitous payment, the manufacturer raised its contract price. Lim managed to influence the board of directors and Instyle Ltd subsequently entered into a contract to purchase 1,000 bolts of cotton fabric from the foreign manufacturer. At the same time, Instyle Ltd wanted to upgrade its computerised accounting system and asked for quotes from a number of software suppliers. When the board of directors met to decide which supplier to award the contract to, Lim told the other directors that he was abstaining from voting because his sister was one of the suppliers under consideration by the board. The board ultimately decided to award the contract to Lim's sister.

Required:

Discuss whether Lim was in breach of any of his duties as director.

(10 marks)

10 At a meeting of the board of directors of Big Sky Ltd in January, the financial controller revealed that the company had suffered massive unexpected financial losses as a result of a bad investment. Before it is announced the following day, a chain of events occurs:

(i) Siow, a director of Big Sky Ltd sold his Big Sky shares;

(ii) Siow told his friend Meng about the financial losses and Meng immediately sold his shares in Big Sky Ltd;

(iii) during lunch with his brother, Siow, without actually telling him about the company's financial situation, advised his brother, Heng, to dispose of his shares in Big Sky Ltd and Heng did so without asking any questions.

Required:

Consider the legal position of Siow, Meng and Heng under the law relating to insider dealing.

(10 marks)

End of Question Paper

Answers

1 **(a)** The early formulation of common law took place when there were few statutes or other forms of written law.

The doctrine of stare decisis is a common law doctrine. The common law system is a system of law that evolved from the common law courts in England. Common law jurisdictions are those that derive their legal systems from England. Common law also refers to the source of law that is contained in the decisions or judgments handed down by the common law courts over time. Historically, the common law came about because the courts applied the same legal principles to promote consistency and fairness throughout the whole of England. In another sense, common law is often referred to as "judge-made law", it is made up of that body of case law and precedents developed by the common law courts.

Stare decisis literally means "to stand by decisions". The courts looked to previous decisions for guidance in order to maintain consistency. In this way, the doctrine of stare decisis emerged in relation to common law. It refers to the principle by which previous decisions of superior courts are binding on future cases being decided by lower courts. The ratio decidendi of a case binds all lower courts in the same jurisdiction. However, a court is not bound by its own previous decisions, although a court will usually follow the precedent unless there are good reasons not to do so. The Singapore Court of Appeal is also not bound by its prior decisions.

(b) Statute law, or legislation, consists of the body of rules formally enacted by the legislative power of Parliament. Sometimes legislative powers are delegated to subordinate bodies. The statutes when enacted, take the form of Acts of Parliament.

Once a statute is passed by Parliament, it has to be followed and applied by the courts. This means that the courts have the task of applying statutes to specific problems. In order to reach a decision, the courts may need to interpret the words in a statute. In interpreting a statute, the objective of the court is to ascertain the intention of Parliament as expressed in the words used in the statute. Over the years, a number of rules of statutory interpretation have evolved.

According to the literal rule, the literal meaning of words in a statute are to be given effect. In this regard, the words should be read in their context and in the context of the statute as a whole. The ejusdem generis rule applies so that general words following specific words should be read as being in the same group as the specific words. The golden rule qualifies the literal approach in the sense that the literal rule is not to be applied where doing so will lead to absurdity or injustice. Finally, the mischief rule is applied in situations where there is an ambiguity in the meaning of the words in a statute. The court interprets statute by considering the meaning of the words guided by three questions:

- What was the common law before the making of statute?
- What was the mischief and defect for which the common law did not provide?
- What remedy Parliament had resolved and appointed to cure the defect?

2 A breach of contract occurs when a term of the contract has not been complied with. Upon a breach the innocent party is entitled to claim damages. However, a contracting party is entitled to a discharge only where there has been a fundamental breach, that is, a breach of a condition or a breach of an inominate term that gives rise to serious consequences that go to the very root of the contract. In contrast, a contracting party is not entitled to minor breaches such as that of a breach of a warranty.

A condition is an important or fundamental term of the contract. It is something which goes to the root of the contract. Breach of a condition gives the injured party the right either to terminate the contract and refuse to perform his part of it and to claim damages, or to go through with the agreement and sue for damages. In *Poussard* v *Spiers & Pond* (1876), the plaintiff had contracted with the defendants to sing in an opera they were producing. Due to illness she was unable to appear on the first night, or for some nights thereafter. When Mme Poussard recovered, the defendants refused her services as they had hired a replacement for the whole run of the opera. It was held that her failure to appear on the opening night had been a breach of a condition, and the defendants were at liberty to treat the contract as discharged.

A warranty is a subsidiary obligation of the contract and a breach of warranty does not give rise to the right to terminate the contract. The injured party has to complete their obligations under the contract, and can only sue for damages. As regards warranties, the classic case is *Bettini* v *Gye* (1876) in which the plaintiff had contracted with the defendants to complete a number of engagements. He had also agreed to be in London for rehearsals six days before his opening performance. Due to illness, however, he only arrived three days before the opening night, and the defendants refused his services. On this occasion it was held that there was only a breach of warranty. The defendants were entitled to damages, but could not treat the contract as discharged.

For innominate terms, the remedy depends on the consequence of the breach. The right to repudiate arises only if the consequences of the breach deprive the innocent party of "substantially the whole benefit of the contract". If, however, the innocent party does not lose "substantially the whole benefit of the contract", then he will not be permitted to repudiate but must settle for damages. The way in which the courts approach such terms is illustrated in *Cehave* v *Sterner (The Hansa Nord)* (1976). In this case, a contract for the sale of a cargo of citrus pulp pellets, to be used as animal feed, provided that they were to be delivered in good condition. On delivery, the buyers rejected the cargo as not complying with that provision, and claimed back the money they had paid to the sellers. Subsequently the same buyers obtained the pellets, when the cargo was sold off, and used them for their original purpose. It was held that since the breach had not been serious, the buyers had not been free to reject the cargo, and the sellers had acted lawfully in retaining the money paid.

3 Liability for negligent misstatements commonly arises in cases of professional advice. To succeed in such an action, the plaintiff must also establish a duty of care, breach of duty and resulting damage. A claim for negligent misstatement would invariably involve a claim for pure economic loss and the law of negligence previously recognised a duty of care only for loss which flows from physical damage to a person or his property. However, in the landmark case of *Hedley Byrne* v *Heller* (1964) the House of Lords allowed a claim for pure economic loss caused by a negligent statement without any need for physical damage. The House of Lords stated that in order to prove a duty of care for statements made, a "special relationship" or "proximity" between the advisor and the advisee is necessary. This special relationship arises where

- the advisor possesses or claims to posses special skill or information;
- the advisor knows or ought to have known that advisee would rely on the advice; and
- it is reasonable for the advisee to rely on the advice.

This rationale for the duty of care arises is based on a voluntary assumption of risk by the maker of the statement. In essence a reasonable man who knows his skill and judgment are being relied on has three options: He could keep silent, reply with a disclaimer of liability, or answer without qualification. If he chose the last option, the law regards him as having accepted responsibility to give his answer with care.

In *Caparo* v *Dickman* (1990), the House of Lords applied a three–stage test for determining the existence of a duty of care. The three-stage test can be summarized as follows:

- Proximity – whether the plaintiff and defendant are proximate to each other? Proximity is not clearly defined, but it is taken to refer to the "closeness" between the parties. A duty of care will be imposed if there is proximity between the parties.
- Forseeability – whether it is foreseeable that the plaintiff will suffer harm? This is an objective test and a duty of care will be imposed if it is reasonably foreseeable that the plaintiff will suffer harm.
- Policy – whether it is just and reasonable in the circumstances to impose a duty of care? No duty of care will be imposed, even if the proximity and foreseeability requirements are met, if there are public policy reasons that make it unreasonable to do so.

The question of the accountant's duty for negligent misstatements in auditing statutory accounts was discussed in *Caparo* v *Dickman*, where the plaintiffs owned shares in a public company whose accounts were audited by the defendants. The plaintiffs made a successful takeover bid for the company in reliance on the accuracy of the accounts. The plaintiffs sued the defendants for inaccurate and misleading accounts for the loss caused due to the overvaluation of the company. It was decided that the purpose of the statutory accounts was for shareholders as a whole to exercise informed control of the company. It was not to enable individual shareholders to buy shares for profit and hence the House of Lords decided that the defendants did not owe a duty of care to the plaintiffs (or to the public), who might rely on the accounts in deciding whether to buy shares. In contrast, if the *Hedley Byrne* 'special relationship' test had been applied, the auditors would have been liable.

4 The limited liability partnership (LLP) is a form of business organisation introduced by the Limited Liability Partnerships Act 2005 (LLP Act). An LLP is a business organisation comprising any two or more persons associated for carrying on a lawful business with a view to profit and is registered as such under the LLP Act. It is not a partnership and the Partnership Act does not apply to an LLP.

The LLP is created by registration under the LLP Act (section 14) whereas a company is incorporated by registration under the Companies Act. Like a company (*Salomon* v *Salomon*), the LLP is a legal entity separate from its partners – section 4(1) LLP Act. Being a separate legal entity, the LLP has its own legal rights and obligations. Like a company, an LLP enjoys perpetual succession and changes in the partners do not affect the LLP – sections 4(2) and 4(3) LLP Act. The partners in an LLP enjoy the protection of limited liability. Shareholders of a company and partners of an LLP are not liable for the debts of the LLP – sections 8(1) and 8(2) LLP Act. The company and the LLP, respectively, are liable for the debts of the business.

The LLP has to comply with the LLP Act in keeping accounts and financial records section 25(1) LLP Act. The LLP need not submit annual accounts, but has to submit an annual declaration of solvency or insolvency to the Accounting and Corporate Regulatory Authority (ACRA). A company is required to keep financial records (section 199(1) Companies Act) and lodge an annual return as well as periodic financial reports with ACRA Part V of Companies Act (Cap 50) 1994 Ed.

In terms of management, the partners of an LLP can decide by partnership agreement on the terms on which they will own and manage the LLP. Matters not covered in the partnership agreement will be governed by the provisions in the First Schedule of the LLP Act. In the case of a company, the management has to abide by the rules contained in the Companies Act, and in the memorandum and articles of the company. Similar to a company, the dissolution of an LLP is by winding up section 30 LLP Act.

A major difference between a company and an LLP is in the area of taxation. No tax is paid by the LLP, instead personal tax is paid on the share of profits by individual partners. In contrast, corporate tax is paid by the company on its profits and no tax is paid by shareholders on the dividends received.

5 The memorandum and articles of association of a company usually include a provision allowing for shares to be issued with different rights. Companies generally elect to issue shares of two classes: ordinary shares and preference shares.

Ordinary shares are generally shares which have the right to vote at a company's general meeting. Ordinary shares also typically carry the right to share equally in dividends that are declared with all other ordinary shareholders. Ordinary shares also commonly carry the right to repayment of capital or a pro rata share of capital on a winding up after all other claimants have been paid. They also have the right to share in surplus assets on a winding up. According to section 4(1)of the Companies Act [(Cap 50) 1994 Ed] any share that is not an ordinary share is a preference share.

In contrast, preference shares generally have no voting rights, unless dividends are in arrears, except on resolutions to reduce the company's capital or to wind up a company, or at class meeting affecting their rights. Preference shares generally carry the right to receive a fixed dividend provided there are profits available for distribution and a dividend is declared by the company. However, that in practice, preference shares tend to have voting rights. Preference shares have preferential rights to be repaid the principal on a winding up in priority to ordinary shareholders.

Preference shares may be cumulative or non-cumulative. Cumulative preference shares carry a right to cumulative dividends while non-cumulative preference shares do not.

They may also be categorised as participating or non-participating. Participating preference shares carry the right to participate in profits remaining after other shareholders have received dividends. This right to participate in surplus profits is in addition to the initial preferential right to dividends that are declared. Non-participating preference shares do not give such rights.

Finally, preference shares may be redeemable or non-redeemable. Redeemable preference shares are shares which give the holder the right to require the company to redeem his share at a fixed price on a fixed date: section 70(2) Companies Act. Until redemption, the shareholder is entitled to a preferential right to dividends.

6 **(a)** There are two categories of funds available for distribution to creditors in a corporate insolvency – assets owned by the company at the commencement of the winding up of the company, and assets which come into company ownership after the commencement of winding up.

As regards the first category, three classes of assets fall outside its ambit. The first is company assets over which secured creditors have valid charges. The second is assets which are held by the company on trust; these belong to beneficiaries of the trust. The third is assets which are subject to other claims such as goods under a retention of title by the seller and chattel which are the subject of leasing arrangements.

As for the second category, there are various ways in which assets may be received or gathered after the commencement of winding up. They include:

– funds received by the liquidator from contributories such as owners of partly-paid shares;
– compensation received from a director who has breached any wrongful or fraudulent trading provisions; and
– funds clawed back by the liquidator from voidable transactions such as where there had been unfair preference.

(b) Technically speaking, secured creditors do not have to compete for payment upon the winding up of a company as their security allows them to enforce their claim as against the assets secured. In a sense then, they would rank first in the winding up of the company.

Amongst the unsecured creditors, the order of priority is as follows:

- Statutorily preferred creditors under section 328(1) of the Companies Act, namely the claimants for:
  – Winding up costs and expenses;
  – Wages or salary under contract of employment up to prescribed limit ;
  – Retrenchment benefits, ex gratia payments under a contract of employment up to prescribed limit;
  – Compensation under Workmen's Compensation Act ;
  – Sums due to provident fund contribution or under any approved scheme of superannuation or retirement benefits;
  – Remuneration for vacation leave; and
  – Taxes
- Other unsecured creditors.

It should be noted, however, that where the assets of the company are insufficient to meet certain of the preferential claims under section 328(1), those claims will have priority over the claims of the holder of a floating charge: section 328(5).

Finally, if there is any surplus after creditors' debts have been paid, the shareholders will have the balance distributed amongst them.

7 Corporate governance refers to the way in which companies are managed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. The structure provides the means of attaining the company objectives and of monitoring performance.

Voluntary codes setting out defined rules and regulations play an important role in ensuring an effective corporate governance framework. In Singapore, the Singapore Exchange (SGX) Listing Manual requires listed companies to describe in the annual report, their corporate governance practices with reference to the Code on Corporate Governance. Compliance with the Code is not mandatory, but companies have either to confirm that they comply with the Code's provisions or, where it does not, to provide an explanation of their non-compliance.

The balance of authority and power amongst the executive directors, non-executive directors and independent directors on the boards of publicly listed companies is a key issue of corporate governance.

An executive director is one who is involved in the day-to-day running of the company and is usually an employee of the company. For example, each company would typically have a chief executive officer (CEO) or managing director - a director who is in overall in charge of the day-to-day management of the company. In addition, there could be other directors who also want to and have roles in the day-to-day management and they could occupy roles such as the chief financial officer or the human resource manager. The Code on Corporate Governance recommends that the maximum period for directors' employment contracts should be one year.

Non-executive directors do not have a full-time relationship with the company; they are not employees and only receive directors' fees. The role of the non-executive directors, at least in theory, is to bring outside experience and expertise to the board of directors. They are also expected to exert a measure of control over the executive directors to ensure that the latter do not run the company in their, rather than the company's, best interests. Non-executive directors are not always independent directors.

As regards independent directors, the Code of Governance considers the following directors as not independent:
- A director employed for the current and any of the past three financial years;
- A director who has an immediate family member who is or has, in the past three years, been employed by company as a senior executive whose remuneration is decided by the board;
- A director who (or who has immediate family members who) accepts compensation from company or its related companies other than compensation for board services for the current or past three years; and
- A director who (or who has an immediate family member who) ia a substantial shareholder of or partner (more than 5% stake) in, or is an executive officer of any for-profit organisation to which company made, or from which company received significant payments ($200,000) in the current or immediate past financial year.

As regards the structure of the board of directors the Code requires that boards have a strong independent element with at least one-third of the board being made up of independent directors. In addition, the Code recommends a clear division of responsibilities to ensure a balance of power and authority so that no one individual represents a considerable concentration of power. In this regard, the Code recommends a separation of the role of chairman of the board and chief executive of the company.

It is important to note that in general, there is no distinction in law between executive and non-executive directors and the latter are subject to the same controls and potential liabilities as are the former.

8 This question requires candidates to analyse the problem scenario from the perspective of contract law paying particular regards to the rules relating to offer and acceptance.

The offer was made when the Gadgets Galore salesman visited stating their terms of supply. Gadgets Galore's offer to sell was not accepted by Home Superstore on 2 June as the latter introduced a new term concerning a 30-day credit period, rather than cash on delivery. Instead, Home Superstore made a counter-offer which constitutes a new offer. With the counter offer, Gadgets Galore's original offer is terminated.

Whether there is a binding contract between the parties depends on:
- Whether Gadgets Galore's letter of 6 June is an acceptance of the counter offer or whether it is merely supplying information
- when Home Superstore's revocation took effect; and
- whether the postal rule for acceptance applies to acceptance of the new offer.

Given the context of Gadgets Galore's letter of 6 June advising about the delivery date, it is likely to be an acceptance of the counter offer and not merely supplying information.

Since a revocation of an offer is only effective when it is actually communicated (*Byrne* v *Van Tienhoven*), revocation only took effect on 7 June when Gadgets Galore received the letter.

If the postal rule in *Adams* v *Lindsell* (1818) applies to Gadgets Galore's acceptance letter, then the contract is concluded on 6 June when the letter was posted, before the revocation. However, in order for the postal rule to apply, several conditions must be satisfied such as that the letter was properly stamped and addressed and if acceptance by post had been prescribed or it was reasonable in the circumstances to accept by post. Here, given that the parties had used the fax and face to face negotiations for their initial dealings, it would have been more reasonable for Gadgets Galore to use a similar mode, especially since the counter offer requested a reply 'as soon as possible' (faster than post). If so, Gadget Galore's acceptance only took effect on 8 June when the letter was received by Home Superstore with the result that there is no binding contract between the parties due to the earlier revocation on 7 June.

9 A director of a company owes fiduciary duties to the company. For instance, a director must not make secret profits from his position as director. If he does, he is liable to account for the profit made. In *Furs* v *Tomkies* (1935) 54 CLR 583 (Australia), where a director accepted a bribe in consideration for transferring the company's business to a new party, the director was held to have been in breach of his fiduciary duty. He had succeeded in obtaining the bribe because he was the person responsible for negotiating contracts on behalf of the company. When he accepted the bribe, the buyer offered a lower price for the company's business and the company was thereby adversely affected. In addition section 168(1) prohibits a payment to a director in connection with the transfer of any property of the company, unless the particulars, including the amount have been disclosed to the members of the company and the payment has been approved by the company in a general meeting. Where a director is in breach of this section, sums received by the director are deemed to be held to be received by him in trust for the company.

The rule that a director should never allow his personal interest to come into conflict with his duties as director is applied strictly, even in a situation where the director may not have gained any real benefit from the conflict of interest. This is because the director has an overriding duty to act in the interests of the company. Section 159 requires directors to take into account the interests of the company's member in exercising their powers. The director's duty of good faith is reflected in section 157(1) Companies Act, which requires a director to act honestly and use reasonable diligence in the discharge of his duties.

Section 156(1) imposes a duty on directors to disclose any interest they may have in a transaction or proposed transaction with the company where the interest is a material interest. Section 156(8) goes further to require disclosure of the interest of a member of the director's family in any proposed contract. There is no exhaustive definition of family but the Act expressly includes the director's spouse, children and adopted children. It is widely accepted that the definition of family includes the director's parents and siblings as well. Failure to disclose would constitute an offence and a breach of his duty of disclosure. Formal disclosure of the nature of the director's interest in the transaction should be made to the board of directors.

Applying the law to the problem scenario, one can conclude as follows:

Lim took a gratuitous payment which brought him into conflict with his duty as director (which was to obtain the best price for the company) and allowed him to make a secret profit. Thus he is in breach of his fiduciary duties as a director and Instyle Ltd would be able to sue him to recover the amount of the gratuity and damages (the loss suffered by the company arising from the difference in price). He would be guilty of an offence under section 157(3).

On the facts in the question, in addition to disclosure at the board meeting, Lim has abstained from voting. By abstention, he may have removed any conflict of duty and interest and thus would not be in breach of his duties.

10 A person connected to a corporation and who has corporate information which is confidential and price-sensitive is prescribed by the Securities and Futures Act from:

- trading in the securities – sections 218(2)(a) and 219(2)(a);
- procuring another person to trade in the securities – sections 218(2)(b) and 219(2)(b); and
- communicating the information to another person – section s 218(3) and 219(3).

Section 215 provides that information is generally available (and therefore not confidential) if

- it consists of readily observable material; or
- it has been made known in a manner that would, or would be likely to bring it to the attention of investors and a reasonable time period has elapsed; or it consists of deductions, conclusions or inferences made or drawn from readily observable information that has been disseminated to investors.

A piece of information is price-sensitive if a reasonable person would expect information to have a material effect on the price or value of securities if the information would be likely to influence people who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the securities (section 216).

According to section 218(5), a person is connected to a corporation if:

- he is an officer (defined in section 218(6)) of the corporation;
- he is a substantial shareholder of the corporation; or

he occupies a position that may reasonably be expected to give him access to information that is not generally available and that would have a material effect on price or value of the securities, by virtue of any profession or business relationship between himself (or his employer or a corporation of which he is an officer) and that corporation; or his being an officer of a substantial shareholder in that corporation.

The trading offence is committed if a person connected to a corporation or an insider subscribes for, buys or sells the company's securities or enters into an agreement to do so.

The procuring offence is committed if a person connected to a corporation or an insider procures someone to subscribe for, buy or sell the company's securities or enters into an agreement to do so. Section 217(2) provides that a person who incites, induces, or encourages an act or omission by another person, is taken to procure the act or omission by the other person.

The communication offence is committed if a person connected to a corporation or an insider communicates information that is not generally available and would have a material effect on price or value of the securities to someone else and the connected person or insider knows or should know that the other person will be likely to subscribe for, buy or sell the company's securities or enter into an agreement to do so; or procure someone to subscribe for, buy or sell the company's securities or enter into an agreement to do so. The communication offence applies only where the company's securities are traded on the stock exchange.

An insider is a person who is not a person connected to a corporation but who possesses information that is not generally available and that would have a material effect on price or value of the securities within the meaning of section 219.

Applying the general law to the problem scenario, one can conclude as follows:

(i) Siow is a connected person as he is an 'officer' because he receives inside information from his position as a director of Big Sky Ltd. The information is not generally available as it relates to the financial losses suffered by Big Sky; information that has not been made known to shareholders; and which is likely to have a significant effect on the price of the securities. On that basis, Siow is clearly guilty of an offence under section 218(2)(a) when he sells his shares in Big Sky Ltd.

(ii) When Siow tells his friend Meng about the financial losses, he commits the second offence of communicating information that he has as a connected person. Meng then becomes an insider himself and is guilty of insider trading under section 219(2)(a) when he sells his shares in Big Sky Ltd.

(iii) When Siow advises his brother Heng to dispose of his Big Sky shares (which are traded on the stock exchange), he commits the third offence under section 218(3) of procuring another person to trade in price-affected securities in relation to inside information. Heng on the other hand, is probably not guilty of any offence for the reason that, although he has sold shares in Big Sky Ltd, it may be argued that he did not receive any information.

1	6–10	A thorough answer which explains common law as a source of law and how consistency is maintained by the doctrine of precedent. And also statute law as a source of law and the rules of statutory interpretation.
	0–5	A less complete answer, perhaps lacking in detail or unbalanced in that it does not deal with some aspects of the question.
2	8–10	Thorough explanation of the circumstances when a party may be discharged from a contract with reference to appropriate cases or examples.
	5–7	Reasonable treatment of the circumstances, or a less complete treatment of all the circumstances.
	0–4	Very unbalanced answer, focusing on only one aspect of the question and ignoring the others, or one which shows little understanding of the subject matter of the question.
3	8–10	Thorough explanation of the meaning of duty of care for negligent statements with appropriate references to cases.
	5–7	Reasonable duty of care but perhaps lacking in detail or cases authority.
	0–4	Very unbalanced answer, lacking in detailed understanding.
4	8–10	Answers will show a thorough understanding of the similarities and differences between an LLP and a company.
	5–7	A sound understanding of the area, although perhaps lacking in detail.
	2–4	Some understanding of the area but lacking in detail.
	0–1	Little or no knowledge of the area.
5	8–10	A good understanding of the difference between ordinary shares and preference shares as well as a treatment of the types of preferences shares.
	5–7	A sound understanding of the area, although perhaps lacking in detail.
	2–4	Some understanding of the area, but lacking in detail, perhaps failing to deal with one type of preference share.
	0–1	Little or no knowledge of the area.
6	8–10	A complete answer, demonstrating an understanding of what assets are available for distribution and must also be able to describe the priority in which payments are made.
	5–7	An understanding of the assets and priority, but perhaps lacking in detail.
	2–4	Some understanding of the area but lacking in detail.
	0–1	Very weak answer showing no, or very little, understanding of the question.
7	8–10	A good explanation of the roles of the three types of directors in particular in the context of corporate governance. Reference might well be made to the Singapore Code of Corporate Governance.
	5–7	A sound understanding of the area, although perhaps lacking in detail.
	2–4	Some understanding of the area, but lacking in detail, perhaps failing to deal with one category of priority.
	0–1	Little or no knowledge of the area.

8 8–10 A complete answer, highlighting and dealing with all of the issues presented in the problem scenario. It is most likely that cases will be referred to, and they will be credited.

5–7 An accurate recognition of the problems inherent in the question, together with an attempt to apply the appropriate legal rules to the situation.

2–4 An ability to recognise some, although not all, of the key issues and suggest appropriate legal responses to them. A recognition of the area of law but no attempt to apply that law.

0–1 Very weak answer showing no, or very little, understanding of the question.

9 8–10 A complete answer, highlighting and dealing with all of the issues presented in the problem scenario. It is most likely that cases and statutory provisions will be referred to, and they will be credited.

5–7 An accurate recognition of the problems inherent in the question, together with an attempt to apply the appropriate legal rules to the situation.

2–4 An ability to recognise some, although not all, of the key issues and suggest appropriate legal responses to them. A recognition of the area of law but no attempt to apply that law.

0–1 Very weak answer showing no, or very little, understanding of the question.

10 8–10 A good analysis of the scenario with a clear explanation of the law relating to the insider dealing, with detailed reference to statutory provisions.

5–7 Some understanding of the situation but perhaps lacking in detail or reference to the statutes.

0–4 Weak answer lacking in knowledge or application, with little or no reference to the statute.