

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. **Development of companies**
 - the historical and economic background to the development of the registered company in Hong Kong

4. **Formation of a company**
 - incorporation and registration
 - problems relating to incorporation
 - types of companies

5. **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

6. **Corporate constitution: 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
 - corporate capacity

- 7. Membership**
- subscribers to the memorandum
 - registration of members
 - membership in companies with share capital: issues and transfers of shares
 - rights of members
- 8. 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
 - scope of control of the board by the members in general meeting
- 9. 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
 - requirements of the Companies Ordinance
- 10. Protection of minorities**
- 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

11. Winding up

- 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
- Dissolution

Reading List for Business Associations

Texts

Smart P, Lynch K, Tam A, *Hong Kong Company Law: Cases, Materials and Comments*, Butterworths, Hong Kong, 1997

Stott V, *Hong Kong Company Law*, 11th ed, Longman, Hong Kong, 2005

Loh S C and Wong W M F, *Company Law, Powers and Accountability*, Butterworths, Hong Kong, 2003

Hong Kong Company Law Handbook: Companies Ordinance, 8th edn, Butterworths, Hong Kong, 2006

References

Brewer J, *The Law and Practice of Hong Kong Private Companies*, Sweet and Maxwell, Hong Kong, 2005

Mayson S, French D, Ryan C, *Mayson, French & Ryan on Company Law*, 22nd ed, Blackstone, London, 2006

Davies P, *Gower and Davies' Principles of Modern Company Law*, 7th ed, Sweet and Maxwell, London, 2003

Hicks A and Goo S H, *Cases and Materials on Company Law*, 5th ed, Oxford University Press, Oxford, 2004

Banks L R, *Lindley and Banks on Partnership*, 18th ed, Sweet and Maxwell, London, 2002

Company Law in Hong Kong, looseleaf, Sweet and Maxell, Hong Kong

Hong Kong Company Law: Legislation and Commentary, looseleaf, Butterworths, Hong Kong

Sources

Partnership Ordinance (Cap.38)

Companies Ordinance (Cap.32)

Hong Kong cases