

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, authority and attribution**
 - contractual effect of the company's constitution
 - enforcement of the company's constitution
 - ability of companies to alter the articles of association, and restrictions under the general law and the Companies Ordinance; enforceability of shareholder agreements to alter the articles
 - corporate liability
 - corporate capacity
 - corporate attribution
6. **Membership**
 - founder members
 - 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 authorisation and enforcement
- requirements of the Companies Ordinance

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

- 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 (including but not limited to Transactions at an Undervalue (s265D of Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO")), Unfair Preferences (s266 of CWUMPO) and Floating Charge (s267 of CWUMPO))
- Assets available for distribution; re-opening of antecedent transactions
- Distributions and priorities
- Dissolution

Recommended Reading List for Business Associations

Hong Kong Texts

Lo Stefan and Qu Charles, *Law of Companies in Hong Kong*, 3rd ed, Sweet & Maxwell, 2018

Kingsley Ong & Leung Alice, *The (New) Companies Ordinance (Cap 622): Commentary and Annotations*, Sweet & Maxwell, 2021

Sihombing Judith, *Sihombing's Hong Kong company law: commentary on Caps 622 & 32*, 2nd ed. Wolters Kluwer Hong Kong Limited, 2016.

UK/General Texts

Davies Paul and Worthington Sarah, *Gower: Principles of Modern Company Law*, 11th ed, Sweet and Maxwell, London, 2021

Sealy Len and Worthington Sarah, *Sealy & Worthington's Cases and Materials in Company Law*, Sweet & Maxwell, 11th ed, 2016

Keay Andrew & Walton Peter, *Insolvency Law: corporate and personal*, 4th ed., Jordans, 2017

Morse G & Thomas Braithwaite, *Partnership Law and LLP*, Oxford University Press, 2020

Sources

Companies Ordinance (Cap. 622)

Partnership Ordinance (Cap.38)

Limited Partnership Ordinance (Cap. 37)

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

Bankruptcy Ordinance (Cap. 6)

Hong Kong cases

UK cases