
**1996 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD III: COMMERCIAL
AND COMPANY LAW**

Wednesday, 30 October 1996



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TEST PAPER

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Instructions to Candidates

- 1. The examination duration is three (3) hours, plus 30 minutes reading time.**
- 2. There are FOUR questions in this paper. EACH must be answered.**
- 3. This is an open-book examination.**
- 4. Each question has the value noted on the question paper. You are urged to apportion your time in accordance with the relative value of each question. No marks can be awarded to a question for which there is no attempted answer.**
- 5. Do not take either this question paper or any answer booklets with you when you leave the examination room.**

Overseas Lawyers Qualification Examination 1996

Head III : Commercial and Company Law

Question 1 (25 marks)

The HBPT Bank's in-house Counsel who is newly arrived from abroad asks you:

- a. Under what circumstances, can a guarantee be set aside under Hong Kong Law?
(10 marks)
and
- b. What is the current law on undue influence and a guarantee by a wife? (15 marks)

Please advise accordingly.

Question 2 (25 marks)

Oriental Trading Ltd is a private company, registered in Hong Kong. The articles of Oriental Trading Ltd are in the form of Table A of the Hong Kong Companies Ordinance.

The Directors of Oriental Trading Ltd placed some of the Company's funds into a unit trust managed by Persimon Ltd. It has transpired that due to Persimon Ltd's negligence, Oriental Trading Ltd has lost a significant proportion of the moneys invested in the unit trust. There is no reason to believe that the Directors of Oriental Trading Ltd were in any way negligent in choosing to invest through Persimon Ltd.

Mr Chan, the Managing Director of Oriental Trading Company, is an old friend of Mr Persimon, the Chairman of the Board of Persimon Ltd. Not wishing to offend his old friend, Mr Chan at a Board meeting of Oriental Trading Ltd cast a deciding vote defeating a resolution proposed by the other Directors to take legal action against Persimon.

The members of Oriental Trading Ltd, displeased with the decision of the Board of Directors, at a General Meeting purported to pass an ordinary resolution that Oriental Trading Ltd would forthwith commence legal proceedings against Persimon Ltd.

You are asked to give advice on the following questions giving reasons for your answers :

- (a) Is the General Meeting's ordinary resolution valid? (5 marks)
- (b) Would your answer to question (a) be different if:
 - i) the General Meeting purported to pass a special resolution? (5 marks)
 - ii) the General Meeting unanimously voted in favour of the resolution? (5 marks)
- (c) i) Can Mr Chan, the Managing Director of Oriental Trading Ltd, obtain an injunction from the Court restraining Oriental Trading Ltd from commencing legal proceedings against Persimon Ltd? (5 marks)
 - ii) Would your answer to question (c)(i) be different if in making the application, Mr Chan revealed in his affidavit in support thereof his close relationship with Mr Persimon? (5 marks)

Question 3 (25 marks)

Ding Bank Ltd lent HK\$256 million to Evaporite Holdings Ltd in 1992. This loan was secured by a first general floating charge over the company's undertaking. The instrument containing the charge (which was duly registered in the Companies Registry) contained, inter alia, the following provisions:

- (a) A negative pledge clause,
- (b) Causing the charge to crystallise one week prior to any breach of the negative pledge clause,
- (c) Enabling the bank to give notice of crystallisation.

In 1993 Evaporite Holdings acquired interests in two buildings. The first, an office building in Quarry Bay, was purchased outright. The second building, a warehouse, was purchased subject to an existing charge in favour of Nanying Bank. Evaporite failed to register the existing charge.

In June 1995, unknown to Ding Bank, Evaporite granted a fixed charge over the office building in favour of Hung Bank which was registered in both the companies and land registry.

Throughout 1996 the financial position of Evaporite appears to have deteriorated causing concern to Ding Bank Ltd.

Advise Ding Bank who wish to give notice of crystallisation of their charge as soon as possible and before any move is made for the winding-up of Evaporite on the effects of these events on the priority of their charge.

Question 4 (25 marks)

Mr Wong Wing Lee is a director and shareholder in Golden Lion Ltd a public company listed on the HKSE. He is also a director and shareholder in several private companies. He is desirous of increasing his shareholding in all of these companies (public and private). He seeks your firm's advice with particular reference to any obligations he may incur before and during negotiation with other shareholders to purchase their shares and also in relation to purchases on the stock exchange.

You are asked to write a memorandum outlining the relevant HK law and codes.