CILEX

CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma

Unit 1 – Company and Partnership Law

Question Paper

January 2023

Time allowed: 3 hours and 15 minutes (includes 15 minutes' reading time)

Instructions and information

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.

You are allowed to make notes on your scrap paper during the examination.

- You can use your own unmarked copy of the following designated statute book – ***Blackstone's Statutes on Company Law, 26th edition, Derek French, Oxford University Press, 2022.***
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

Turn over

SECTION A
(Answer at least one question from this section)

1. (a) Section 33 of the Companies Act 2006 creates a contract between a company and its members. Critically analyse the nature of this contract and the extent to which shareholders may enforce it.

(12 marks)

(b) Critically evaluate the effect of statute and common law on the limitations that a company's articles can place on the powers and authority of the company's directors to bind the company.

(13 marks)

(Total: 25 marks)

2. Critically assess how the restrictions imposed on companies support the principle of capital maintenance.

(25 marks)

3. Critically assess the powers of a liquidator of a company, including those through which a liquidator can seek to avoid transactions entered into by a company.

(25 marks)

4. (a) Explain the formation of a limited liability partnership compared to that of an unlimited liability partnership.

(10 marks)

(b) Critically analyse the scope of a partner's authority to bind an unlimited liability partnership in contract.

(15 marks)

(Total: 25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Martha has been running a mobile sandwich delivery service as a sole trader for the past five years. She is based in premises near Bedford, and supplies lunchtime food to other businesses and offices in the surrounding area. Since the pandemic restrictions were lifted and people have returned to office working, customer demand has boomed, and Martha is keen to expand her business. A friend of Martha's has suggested that now could be a good time to incorporate the business through a private limited company, as this would give Martha complete protection from future liabilities of the business.

Martha consequently seeks your advice. She anticipates that if she does incorporate her business, she will become a director and the sole shareholder of the company. One of her current employees will also be appointed as a director, whilst her three other current employees will become employees of the company. Her bank has agreed, in principle, to transfer the business's overdraft to the company.

In order to progress the expansion, Martha needs to lease an additional vehicle. Due to the nature of the business, the vehicles she uses must have both refrigeration and food heating capacity. A local business, Food Truck Leases (**FTL**), has offered Martha a very attractive deal, through which she could lease, for five years, at a very competitive rate, a vehicle that would be ideal for her needs. However, the offer is only available for another couple of days, and FTL is insisting Martha signs the lease agreement immediately.

Advise Martha on the following issues:

(a) the possible consequences if she enters into the agreement with FTL before her company is formed, and whether she could take any steps to avoid these consequences;

(14 marks)

(b) the extent to which her friend is correct when he says Martha will be completely protected from future business liabilities following incorporation.

(11 marks)

(Total: 25 marks)

Turn over

Question 2

Cool Weaves Limited (**CWL**) is owned by two sisters, Sam and Rachel. They respectively own 48% and 52% of the shares in CWL. They are its only directors. The business was originally set up as a partnership in 2009, designing and making exclusive knitwear and woven household accessories, with a focus on recycled materials. Sam and Rachel incorporated the business in March 2017. CWL adopted Model Articles for Private Limited Companies, with the addition of a pre-emption provision on transfer of shares. This required any shareholder to offer their shares to existing shareholders before transferring them to someone outside the company.

Although Rachel was dedicated to the company and its business in the early years, since early 2020 she has devoted less and less time to the business. Sam was, until recently, unclear about the reason for this, despite trying to talk to Rachel. As a result, Sam has been obliged to manage the company almost entirely on her own. CWL only employs an additional four people. CWL was able to continue with design and some production despite the pandemic, but because of Rachel's unexplained absences, Sam, along with the other employees, has struggled to keep up with the workload. Company income has suffered as a result.

Sam has recently discovered that Rachel has been in a relationship for some time with Karina Mehta, a director of one of CWL's major clients, and appears to have been using CWL's money to help fund the building of a luxury home for Rachel and Karina. This includes £20,000 as a deposit for the construction of a swimming pool.

A couple of days ago, Rachel suddenly turned up at the company offices and accused Sam of running the business down. Rachel also started verbally abusing one of the employees over an entirely private matter. Sam consequently walked out and has now decided to start proceedings against Rachel, both under section 994 of the Companies Act 2006 and through a derivative claim in relation to the £20,000 Rachel gave to Karina. Sam does however wish to continue with the business and feels it would be best if she could buy out Rachel's share.

Advise Sam on the likelihood of success of each of her claims, and what remedy or remedies the court is likely to award.

(25 marks)

Question 3

Ergochairs Limited (EL) designs and manufactures office chairs and desks for both the commercial and domestic markets. It was incorporated in 2010 under the Companies Act 2006. The company adopted the Model Articles for Private Limited Companies but excluded Model Article 14.

Its current directors and shareholders are:

Name	**Position**	**Number of Ordinary Shares of 50p**
Chi Shao	Chief Executive Officer	40,000
Scarlett Pearce	Finance Director	20,000
Jenna Walsh	Marketing Director	20,000
Isaac Cohen	Director	20,000

Business has been flourishing recently and the board of EL is proposing some expansion plans. The first of these is to acquire the entire issued share capital of Aston Office Systems Ltd (**AOS**) for £400,000. The consideration for the purchase is to be satisfied by the issue to the AOS shareholders of 25,000 EL ordinary shares of 50p each. A recent search of EL's register at Companies House showed no recorded shareholder resolutions.

In addition, AOS's current managing director, Penny Holt, will also be appointed as a director of EL and granted a service agreement with EL for a fixed term of three years. She will also subscribe for 2,000 ordinary shares of 50p each in EL for cash.

Advise EL on the legal issues arising from the above proposals, including the procedure required to implement them.

(25 marks)

Turn over

Question 4

Anaya is the managing director of Vitruvius Limited (**VL**), which provides advice services on building conservation and renovations. She is also VL's majority shareholder, holding 90% of its shares. Her father, also a director, holds the remaining 10%. Anaya is a qualified architect with a Master's qualification in building conservation. VL employs six people full time and has unamended Model Articles for Private Limited Companies.

The business has prospered recently and is now looking for a loan of about £60,000 from its bank, Morton Bank (**Morton)**, to fund a small expansion project. Morton has agreed in principle to grant the loan but wishes to take a floating charge over either VL's undertaking or its book debts and is insisting that such charge must be registered.

Anaya and her father are hoping that VL can be expanded further in due course, with new investment and the appointment of additional directors. In the meantime, they have agreed that, once they have obtained the loan from Morton, they would like to place a restriction on directors' powers to borrow over £50,000 without prior approval of the shareholders.

Advise Anaya on:

(a) what she and her father must do to obtain the loan from Morton and, following that, to implement the requirement for shareholder approval of borrowings over £50,000.;

(10 marks)

(b) the nature, and implications for VL, of the floating charge and why Morton is insisting that the charge is registered.

(15 marks)

(Total: 25 marks)

End of Examination Paper