

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 6 – UNIT 16 – THE PRACTICE OF COMPANY AND PARTNERSHIP LAW

JUNE 2022

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2022 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

The stronger answers applied the law to the facts accurately, thoroughly and thoughtfully and candidates had clearly read the facts and the questions. There was little mere repetition of the legal points, but careful reference to what was relevant. There were also plenty of references to statutory provisions, and case law where relevant. Answers were clear, well-structured and demonstrated a good grasp of the relevant principles and concepts. Procedure was presented coherently and in a logical order.

The weaker answers tended to be more superficial, lacking in detail of both the law and the application to the facts. Some answers suggested that the question had not been read and/or appreciated properly and there was a mere statement of law, some of which might have been relevant.

An area that seemed to pose problems was in question 2, relating to transfer of shares. Many candidates confused the concept of transfer of shares with that of allotment or issue. Further, some answers indicated a fundamental lack of grasp of the distinction between company directors and shareholders, and the respective procedures. This is an area that needs careful review by many.

Candidates should therefore also review their understanding of the rules on authority to allot and statutory pre-emption rights and the distinction of these concepts from transfer of shares and any associated pre-emption rights.

As has been said in other reports, candidates are encouraged to check statutory provisions and ensure during revision that they are comfortable with what the sections say. For example, a common error is in the application of section 245 IA 1986 – floating charges only become invalid under this provision on insolvency when the charge is taken over a pre-existing debt. It is important to note this point.

To conclude, in addition to the suggestions made above, ensure familiarity with the case study, read the questions, pay careful attention to detail in the application to the facts, and give plenty of statutory references. Do also review how you plan your time, as there was evidence in some scripts of timing issues.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

There were some strong answers that addressed the facts and issues carefully and thoroughly with thought to how the processes worked. Most answers were good or very good, demonstrating a clear understanding of the issues. The weaker answers lacked structure, clarity and indicated poor understanding particularly of company procedures.

(b)

This was overall quite poorly answered. Candidates appeared not to read the question and just answered in general terms on tax rather than in relation to profits more specifically as asked.

Question 2(a)

Strong candidates worked methodically through the required process, with reference to statute as necessary. The weaker candidates' answers lacked either detail or an understanding of the relevant points (or both), muddling share issues/allotments with transfer, two very different concepts.

(b)

Similar points to 2(a). Candidates usually knew how to change the articles but often did not explain the changes being made, and also confused pre-emption rights on issue with those on transfer.

2(c)

This was the best of the three parts to this question. Most candidates correctly identified the issues, although the weaker ones gave less detail than they needed to, especially on procedure. There was some poor reading and appreciation of the facts.

Question 3 (a)

Generally a better answered question overall, although a number of the weaker answers merely repeated what the statute said without much application.



3(b)

Some good answers that applied the facts carefully and accurately. As before the weaker ones applied less and gave too little detail on the relevant provisions.

(c)

Much more comprehensive answers here, with stronger application of the facts.

Question 4(a)

Most picked up the key issues and applied to the facts. Strong answers gave plenty of relevant detail; the weaker answers were rather superficial.

(b)

This question suffered from timings issues. Also, most candidates failed to pick up one of the issues (s239 IA) and misapplied another statutory provision (S245 IA) – a common mistake.

SUGGESTED POINTS FOR RESPONSE

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Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Answer should include:</p> <ul style="list-style-type: none"> • board resolutions for the following proposals: <ul style="list-style-type: none"> ○ the new directors (MA 17) ○ the change of name and accounting reference date ○ the transfer of the business ○ the calling of a general meeting for the change of name and, possibly, for the SPT (see below) • shareholder approval needed for (i) the change of name by special resolution and (ii) possibly for the SPT by ordinary resolution (see below); and could be ordinary resolution for appointment of directors • updating of company registers and submission of forms and SR on change of name to Companies House • Forms and documents: AD01, TM01, NM01, AA01; notice of GM or written resolutions; draft service agreements; board minutes <p>Answer could include:</p> <ul style="list-style-type: none"> • need to check that company with same name does not exist 	20



	<ul style="list-style-type: none"> • detail on the possible substantial property transaction, if CB is appointed a director before the business is transferred • business transfer agreement • possibility of GM being held on short notice • changes to business stationery 	
Question Number	Suggested Points for Responses	Marks (Max)
1(b)	<p>Answer should include:</p> <ul style="list-style-type: none"> • corporation tax rates • income tax rates and bands • the different tax years • any relevant allowances (personal only); none for companies <p>Answer could include:</p> <ul style="list-style-type: none"> • a calculation to compare the different rates • possible mention of capital allowances • mention that if dividends are paid shareholders may have to pay income tax, if dividends exceed the annual allowance 	8
Question 1 Total:28 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<p>Answer should include:</p> <ul style="list-style-type: none"> • requirement for stock transfer form (STF) to be completed by Chloe • no stamp duty payable by Bryony as it is a gift • submission of STF to company by Bryony • registration of transfer and thus of Bryony as member on receipt of STF <p>Answer could include:</p> <ul style="list-style-type: none"> • Board resolution to approve transfer • Directors power to refuse to register transfer (MA 26(7)) • Stock transfer form should declare transfer was a gift 	8
Question Number	Suggested Points for Responses	Marks (Max)
2(b)	<p>Answer should include:</p> <ul style="list-style-type: none"> • a pre-emption provision requires shares to be offered to existing shareholders before transfer • such a provision to be included in the articles • this would require a special resolution of the shareholders (75% majority to approve the change to the articles. (s21 CA 2006) • registration of the special resolution and revised articles with Companies House 	6



	<p>Answer could include:</p> <ul style="list-style-type: none"> • need to send revised articles to all shareholders • new article may include valuation provisions and time limits for offer and acceptance • Possible shareholder agreement 	
Question Number	Suggested Points for Responses	Marks (Max)
2(c)	<p>Answer should include:</p> <ul style="list-style-type: none"> • directors' authority to allot is required (s549 CA 2006) • as company has only one class of shares, s550 applies and gives automatic authority • section 569 CA 2006 applies, requiring shares to be first offered to existing shareholders • s569 could be disapplied by SR (in GM or by written resolution) • board will need to approve allotment and call GM or propose WR • SR to be registered with Companies House • Allotment to be registered with form SH01 within a month of the allotment (s555) • Internal registration of the allotment (s554) <p>Answer could include:</p> <ul style="list-style-type: none"> • possible waiver by shareholders of pre-emption rights to avoid need for specific disapplication of s569 • note that company has no subsisting s551 authority • reference to section 562 	12
Question 3 Total:26 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<p>Answer should include:</p> <ul style="list-style-type: none"> • Section 1 Partnership Act 1890 the required elements for the existence of a partnership and relevant key case law • Application to the facts that indicate a partnership exists: including running a business for profit, capital input and the (equal) sharing of profits and responsibilities <p>Answer could include:</p> <ul style="list-style-type: none"> • Fact that there is no formal agreement does not mean there is no partnership • Reference to nature of unincorporated business and unlimited liability 	7



Question Number	Suggested Points for Responses	Marks (Max)
3(b)	<p>Answers should include:</p> <ul style="list-style-type: none"> • Outline of joint and several liability under s9, the PA 1890 • Section 17 – normally a P is not liable until they join • Discussion of section 14 PA 1890, in relation to holding out and its required elements • Partnership could be regarded as liable even though Max acting outside any authority as he appears to be a partner to third parties (s5 PA), but Sona should not be if she joins after Max leaves <p>Answers could include:</p> <ul style="list-style-type: none"> • Lack of formal agreement makes breach by Max more difficult to resolve. He can't really be expelled, for example • Max cannot be removed (s25) and no provision in the PA for requiring an indemnity from him for any losses 	10
Question Number	Suggested Points for Responses	Marks (Max)
(c)	<p>Answer should include:</p> <ul style="list-style-type: none"> • Reference to inadequate PA 1890 • Provision of certainty • Examples such as clarifying unequal sharing of profits, to avoid default PA provisions, including, but not limited to: <ul style="list-style-type: none"> ○ Can provide for restrictions on transaction values ○ Can provide for allowance of part-time involvement – S should insist on this ○ Should allow for expulsion of a partner by majority (to exclude s25 PA) <p>A number of suitable provisions could be discussed – flexibility in marking subject to good application.</p>	6
Question 3 Total: 23 marks		
Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<p>Answer should include:</p> <ul style="list-style-type: none"> • Need for board approval of the loan and the charge but not shareholders (as amount of loan is below limit in articles) • Loan and security agreement should be approved by the board and executed by company directors • Leonardo should sign the documentation • Reference to section 859A and form of registrable charge • Charge should be registered with Companies House within 21 days of creation with relevant form 	8



	<ul style="list-style-type: none"> Registration is not compulsory but advisable as it gives L protection from liquidators <p>Answer could include:</p> <ul style="list-style-type: none"> Charge will rank below prior charges on a winding up, provided earlier charges are properly registered Possible issue with the board meeting quorum 	
Question Number	Suggested Points for Responses	Marks (Max)
4(b)	<p>Answer should include:</p> <ul style="list-style-type: none"> Section 245 IA 1986 – possible invalid floating charge in relation to security over existing debt where charge granted in 12 months before onset of insolvency (ie the commencement of liquidation) Charge over the new part of the loan could be valid (subject to being a preference – see below) Company must have been unable to pay its debts as a result of the charge Section 239 IA – the charge for Leonardo could be a preference It is within the relevant time – ie within 2 years of the onset of insolvency (s240 IA) as the preference is to a person connected with the company (ie an associate of a director under s435 IA 1986). The new floating charge charge prefers Leonardo and puts assets potentially out of reach of other creditors Section 238 IA – possible transaction at undervalue. Vehicles sold for a lot less than worth. Transaction was made within the relevant time (in the 2 years before insolvency) Defence if the company entered into it in good faith For s238 and 239 IA transactions – liquidator can seek to have them set aside. <p>Answer could include:</p> <ul style="list-style-type: none"> Reference to possible wrongful trading on the part of the directors (s214 IA 1986) and possible breach of statutory duties Have they not taken every step to minimise potential loss to the company 	15
Question 4 Total:23 marks		

