CHIEF EXAMINER REPORT

JANUARY 2024

LEVEL 6 UNIT 16 – The Practice of Company and Partnership Law

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the January 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

General feedback:

- Most candidates provided good answers to the questions, demonstrating sound application of the law to the facts provided. Some candidates did not consistently apply the law to the facts.
- Most candidates did explain the main issue arising, but sometimes did not deal with additional issues which were set out in the question.

Feedback on exam technique and guidance:

- Some candidates failed to answer all of the issues arising within a question. Candidates should ensure that they read the question carefully and ensure that their answer methodically addresses every single element/issue set out in the question.
- It is recommended that candidates plan their time in the assessment carefully, ensuring that they have attempted an answer to every single question on the paper.

Common errors and guidance:

- Company transactions – candidates should ensure that they understand the legislation relevant to loans to directors and substantial property transactions and are able to identify each in a given scenario and apply the law to the facts given.
- Business Media – candidates should ensure they understand the advantages and disadvantages of a limited company and are able to apply them to individual facts/circumstances of their client.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance is limited.

Section A

Question 1a	10 marks
Candidates generally performed very well on this question, with many candidates gaining high marks. Most candidates were able to identify the nature of the business structure, the issues surrounding the authority to bind a partner and the possible breaches of section 29 and 30 of the Partnership Act 1890.	
Suggested Points for Response:	

- The business is a partnership
- Two or more people working together with a view to making a profit (s1(1) PA)
- Liability of partners is joint PA 1890 and the Civil Liability (Contribution) Act 1978 (making partners severely liable).
- Authority to bind the firm arises under s5 of the Partnership Act 1890 (apparent authority), the four stage test and application:
  - Is it the type of business carried on by the firm? Yes it's the same just a different location
  - Would a partner usually have authority to bind the firm? Yes
  - Does the third party know or reasonably suspect that the partner did not have authority? No
  - Does the third party know or believe that the individual is not a partner? Not as far as we know

Vivek suspects that Michael has set up a business on the south coast, so:

- Possible breach of s29PA: must account to firm for any profits derived from use of partnership property or name
- Possible breach of s30PA: partner must not compete with the partnership business, if they do, they must account to the firm for all profits made. But question whether any business by Michael does actually compete, as it is so far away.
- Evidence is needed to prove breach of either provision.
- Liability may arise after he has ceased to be a partner under s9 PA 1890 and the Civil Liability (Contribution) Act 1978, and whilst he is held out to be a partner (s14 PA 1890).

Question 1b	15 marks
This question was generally answered well, with many candidates gaining high marks. Most candidates were able to identify serving notice as the best option to dissolve this partnership and many candidates applied the law to the facts correctly when reaching this conclusion. Many candidates explained the application of funds to pay debts (s44 of the Partnership Act 1890) and the procedure to notify creditors of the dissolution.	
Suggested Points for Response:	
• Appears to be no partnership agreement but check • If no agreement any partner can give notice to the other partner to dissolve the partnership under s 32 (c) PA 1890 • Partnership will be dissolved from the date of notice/brings the partnership to an immediate end • Any losses must, under s44, be paid first out of profits, then out of capital and, finally, by partners individually in proportion in which they share the profits. • Partners are subject to unlimited liability (s9) and so could be liable beyond the amount they invested • Once losses are paid then partners are paid for advances as distinguished from capital, any money left is divided between the partners in the proportion in which the profits are divisible. • After dissolution the partners must give notice of dissolution of the partnership to those who have dealt with the firm/notice in the London Gazette (s36 PA 1890)/notice in the local press – to make sure that third parties (particularly suppliers) are aware of the limit on the authority of the partners from dissolution) • Advice that application to Court to dissolve the Partnership would not be the preferred procedure due to cost/time • Reference to Insolvent Partnership Order 1994 / Partnership Voluntary Arrangement • After dissolution, the authority of the partners is limited to doing such things as are necessary for the winding up of the affairs of the partnership and completing unfinished transactions.	

Question 2a	6 marks
Most candidates were able to identify the relevant tax regimes applicable for the individuals involved depending on each type of business. More limited responses were not able to provide the detail of these regimes such as the relevant tax rates and applicable allowances. A few candidates incorrectly explained the tax regime that a limited companies are subject to.	
Suggested Points for Response:	
• Directors will pay income tax on the salary they receive • At the rate of 20%/40%/45% depending on whether they are a BRTP, HRTP or ARTP • As a partnership they would have paid income tax on the profits the partnership made at the same rates; but • Directors will also pay income tax on dividends at the rate of 8.75%/33.75%/39.35% depending on whether they are a BRTP, HRTP or ARTP • There is a dividend allowance of £1,000	

Question 2b	8 marks
Generally, candidates were able to identify and explain the advantages and disadvantages of using a limited company but many lacked application of the facts e.g. the additional financing options being useful because the client is seeking additional investment. Some candidates were unable to identify any disadvantages of using a limited company.	
Suggested Points for Response:	
• Advantages: limited liability, can provide more security options (floating charges), would be good because they are looking to raise extra finance. Companies can also raise equity finance, again good because looking to raise extra finance but would need to find an investor. • Disadvantages: more filing/disclosure burden so less privacy and more cost, more formalities to incorporate e.g forms to be filed at Companies House (IN01) or forms and procedure to follow to transfer a shelf company, need to have at least one director and one share must be issued, identify registered office, accounting reference date.	

Question 2c	15 marks
Candidates generally performed well on this question correctly identifying most of the steps and documents that need to be entered into to complete the conversion of a shelf company. The documents that were most often missed were updating the internal records such as the statutory books of the company and minutes of the meetings. Most candidates correctly identified the forms to be filed at Companies House.	
Suggested Points for Response:	
Board resolutions required to implement the following changes: • appoint of new directors (MA 17) • change name and registered office • transfer of the business • call a general meeting for change of name, and possibly for the substantial property transaction (SPT) (see below) • notice of GM - could be on short notice or circulation of WR • transfer of shares Shareholder approval will be needed for: • change of name by special resolution (SR) • possibly SPT by ordinary resolution (OR) • could be OR to appoint directors (instead of BR, not as well as) • Update company registers and write minutes • Submission of following to Companies House • AP01, TM01, NM01, SR or WR (if used) • BR to appoint a company secretary (if they want one) • Need to check that the company name is not already in use • Detail on the possible SPT, if Penny and/or Ishaan are appointed before the business is transferred • Business transfer agreement	

Question 3a	7 marks

Most candidates correctly identified the type of shareholder resolution required to approve a long-term service contract but some were unable to identify the correct shareholder resolution to approve a loan to a director (s197 Companies Act 2006). Some candidates failed to explain that a board resolution is required to call a general meeting or circulate a written resolution.

Suggested Points for Response:

- Board resolution to call general meeting/circulate WR to pass the shareholder resolutions identified below, board votes by majority (both directors will need to agree).
- S197(1) CA – OR to approve loan to a director because it is over £10,000, majority must approve (both shareholders).
- The proposed service contract is over 2 years and so must be approved by an OR, s188(1) and (2) majority must approve (both shareholders).
- Discussion of whether the loan would fall within s204 (most likely s204(1)(a)(ii)) but because it is over £50,000 this would not be the case.

Question 3b	7 marks

Candidates who were able to correctly identify the long term service contract (s188 Companies Act 2006) and the loan to a director (s197 Companies Act 2006) answered this question well by explaining the 15 day rule, the requirement for the director to disclose their interest in the loan and the effect of Model Article 14).

Suggested Points for Response:

- S197(3) CA – a memo (setting out the nature of the transaction, the amount of the loan and its purpose and the extent of the company's liability under any transaction connected with the loan) must be available at registered office for not less than 15 days ending with date of GM and at the meeting itself.
- S188(5) CA – a memo (setting out the proposed contract) must be available at registered office for not less than 15 days ending with date of GM and at the meeting itself.
- WR could be used instead of GM – then memo setting out same as above must be sent to very eligible member with the WR.

Question 3c	7 marks

The majority of candidates answered this question well in respect of the long term service contract but many were unable to explain the consequences of failing to obtain shareholder approval for the loan to a director.

Suggested Points for Response:

- If loan is made without OR then is it voidable by the company (s213(2)) and any directors involved are liable to account for any gain and indemnify the company for any loss (s213(3)).
- If the service contract is entered into without OR then the term is void and the contract is deemed to contain a term entitling FPGR to terminate at any time by the giving of reasonable notice (s189(a) and (b) CA.

Question 4a	15 marks
Most candidates were able to discuss the procedure required to allot ordinary shares and to appoint a director but some did not deal with authority to allot and/or pre-emption rights accurately. The majority of candidates dealt with the appointment of a director well. The question required a detailed explanation of the procedure from start to finish, most candidates dealt with this well but some focussed too heavily on one part of the procedure such as the general meeting and did not fully explain what comes before a general meeting i.e. board meeting is held to call a general meeting and so those candidates failed to pick up marks available for the procedure of a board meeting etc.	
Suggested Points for Response:	
• Board meeting (BM) to call general meeting (GM) to pass the shareholder resolutions identified below, board votes by majority, BM adjourns. • GM 14 clear days' notice s307(1)/360 Companies Act 2006 (CA) or short notice s307 (4)-(6)CA, majority in number of shareholders holding 90% must agree. • Directors could appoint Model Article (MA) 17(1)(b) in a BM, alternatively could be appointed at the general meeting by shareholder ordinary resolution (OR), MA 17(1)(a). • Directors must be authorised to allot shares (s549-551CA). • S550CA applies – directors have automatic authority to allot because WAM has only one class of shares (ordinary) and same (ordinary) class of shares being allotted to Magda. • Pre-emption rights under s561 will apply because the shares being issued are equity securities, so they need to be followed or disapplied by SR. • BM reconvenes, board resolves to allot shares. • S177CA Magda should declare her interest (good practice) but she is exempt s177(6). • Alternatively, could use WR procedure ss288-300.	

Question 4b	10 marks
Most candidates explained the procedure well but limited responses failed to explain the documents that the Bank would require the company to enter into. Some responses did not explain the implications if the company failed to repay the loan.	
Suggested Points for Response:	
• The documents required will be a loan agreement, debenture and mortgage. Board meeting to agree to execute these documents. The Company must register the security at Companies House within 28 days for the security to be valid against a liquidator/administrator. • If it is not registered at Companies House it will be void against the liquidator/administrator but the charge will still be valid so the Bank can rely on it if the Co fails to make the repayments. • Providing the charge is valid then the bank can take possession of the property and sell it. • Note that company has capacity to enter into these various transactions (s31 CA 2006). • Additional powers bank would enjoy if the freehold property's value were insufficient to repay the loan.	