



## **CHIEF EXAMINER REPORT**

**January 2025**

**LEVEL 6 UNIT 16 – COMPANY & PARTNERSHIP PRACTICE**

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 2025 examinations.

The 'suggested points for responses' sections set 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

On the very limited evidence available due to the small cohort size, there is nothing to suggest any concern.

Only four candidates sat the exam.

## Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates.

Therefore, no feedback on candidate performance has been included.

Question 1a	14 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>Any partner can give notice to the other partners to dissolve the partnership under s.32 (c) PA 1890</li> <li>Partnership will be dissolved from the date of the notice</li> <li>Any losses must, under s.44, be paid first out of profits, then out of capital and, finally, by partners individually in proportion in which they share profits.</li> <li>Partners are subject to unlimited liability (s.9) and so could be liable beyond the amount they invested</li> </ul>	

Question 1b	8 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>Gary working for competing business is a breach of fiduciary duties / s.30 PA 1890</li> <li>Gary must account to the firm for private profits / s.29, s.30</li> <li>Agreement (Doc 1 is a Partnership Agreement) expressly provides that majority of partners can expel</li> <li>New partner can be brought in if all partners agree / s.24(7)</li> </ul>	

Question 2a	7 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>credit any valid points e.g. loan must be repaid irrespective of performance but share capital does not have to be;</li> <li>Dividends on shares are only paid if there is profit to distribute but loan bears interest;</li> <li>Payment of interest on loan is tax deductible but dividends are not;</li> <li>Issue of shares means that Dipesh would also have a say in how Company is run (and would have rights eg under s994 Companies Act 2006) whereas Bank is less involved.</li> </ul>	

Question 2b	12 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>Procedure for the issue of ordinary and preference shares</li> <li>Procedure for the approval of loan and grant of security</li> </ul>	

- Allotment of shares - answer should include:
  - OR to allot shares, SR to disapply pre-emption rights
  - BR to call GM/circulate WR
  - GM / WR required
  - Creation of preference shares – amendment to Articles by SR
  - Discussion of post meeting matters - filing requirements for allotment and security
  - SH01 within 1 month
  - Amended Articles (new class rights)
  - Update Register of Members
- Loan and security - answer should include:
  - Board Resolutions required to approve loan and grant of security
  - Discussion of post meeting matters - filing requirements for security
  - Update Register of Charges
  - Form MR01, fee and security document to CH within 21 days of the date of creation of charge
  - HMLR registration of security over the building

Question 2c	7 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Explanation of the concept of fixed and floating charges</li> <li>• Reference to the concept of risk to the Lender of non-payment/default on the loan and the Lender's right to sell assets to satisfy the debt</li> <li>• This Company owns the outbuilding and machinery (likely to be subject to a fixed charge) and stock (likely to be subject to a floating charge)</li> </ul>	

Question 3a	5 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Temitayo is operating as a sole trader.</li> <li>• Advantages of sole trader – private, informal, no ongoing filing obligations/costs.</li> <li>• Disadvantages – unlimited liability, less financing options (can't offer shares to raise money), cannot grant floating charges for security.</li> </ul>	

Question 3b	17 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Unlimited partnership, Limited liability partnership (LLP) or private limited company (Co.) would be most suitable.</li> <li>• Advantages of an unlimited partnership – private, informal, no ongoing filing obligations/costs.</li> <li>• Advantages of LLP / Co. include – limited liability, can provide more security options (floating charges). Cos can also raise equity finance (Temitayo and Sara could both invest in shares).</li> <li>• Disadvantages of LLP / Co. include – more filing/disclosure burden so less privacy and more cost, more formalities to incorporate e.g. forms to be filed at Companies House.</li> </ul>	

- Formalities/documents
  - Unlimited partnership – need at least two partners (have that here if Temitayo wants Sara to invest) no other formalities required but rely on inadequacies of PA 1890. Better to enter into formal agreement.
  - LLP – need at least two members (have that here if Temitayo wants Sara to invest), an LLP agreement, register at Companies House and complete relevant Companies House forms
  - Co – need to register at Companies House and complete relevant Companies House forms (IN01), need to have at least one director and one share must be issued, identify registered office, accounting reference date, chose company name and register articles of association.

Question 3c	5 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Unlimited partnership and LLP – tax transparent, partners pay income tax on profit at relevant rate and capital gains tax on sale of any business assets.</li> <li>• Temitayo is likely to be B RTP (taxable income below £50,271) and so will pay income tax at the rate of 20%.</li> <li>• Companies – are liable for corporation tax on income profits and chargeable gains at relevant rate.</li> <li>• If Temitayo incorporates a company it will pay the small profits rate (19%) until profits are between £50,000 and £250,000 when it will be entitled to marginal relief. If it makes more than £250,000 profit it will pay 25%.</li> </ul>	

Question 4a	5 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Motorbike Spares is owed more than £750 so they can issue a formal written demand for the debt (a statutory demand)</li> <li>• if the debt remains unpaid 3 weeks after the demand and no arrangement has been made with the Co then the Co is deemed unable to pay its debts</li> <li>• Motorbike Spares can then present a petition to the court to put the Co into liquidation</li> </ul>	

Question 4b	13 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<p>Possible invalid floating charge (s245 IA)</p> <ul style="list-style-type: none"> <li>• A floating charge created at the relevant time before insolvency is invalid except to the extent it is given for new consideration. Likely invalid here as it was created in respect of an existing debt.</li> <li>• Relevant time is within 2 years of onset of insolvency - charge is in favour of a connected person (director's father).</li> <li>• If the Co goes into insolvent liquidation the charge will be unenforceable by George's father against the liquidator, he will be an unsecured creditor.</li> </ul> <p>Possible transaction at undervalue (s238 IA)</p> <ul style="list-style-type: none"> <li>• Relevant time (s240) within 2 years of onset of insolvency. Transaction was less than 2 years ago</li> <li>• Company was unable to pay its debts at the time of the transaction – it was in financial difficulty.</li> <li>• Definition of company's inability to pay its debts (s123 IA)</li> <li>• Car has been sold for £4,500 less than its market value – which is significantly less</li> <li>• Presumption of insolvency - the transaction is with a connected person (s240(2) IA) (director's brother).</li> <li>• Defence if the transaction was in good faith</li> <li>• Transaction can be avoided by the liquidator meaning the court may order Francesca's brother to return the car to the Co (s241)</li> </ul>	

Question 4c	7 marks
Attempts too limited to provide feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• [No liquidator's costs of preserving and realising assets subject to a fixed charge b/c no fixed charge]</li> <li>• Expenses of the winding up, any preferential debts e.g. unpaid wages up to £800 per employee, ring fenced fund, floating charge creditors (only George's father so may be avoided), unsecured creditors, interest on unsecured debts, shareholders rank last.</li> <li>• Motorbike Spares is an unsecured creditor, but may recover sums owed to it b/c no secured creditors and transactions above may be avoided - all unsecured creditors will benefit from ring-fenced fund.</li> </ul>	