CHIEF EXAMINER REPORT

JANUARY 2026
LEVEL 6 UNIT 1– COMPANY & PARTNERSHIP LAW

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2026 examinations.

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

Candidates will have received credit, where applicable, for other points not addressed.

Chief Examiner Overview

Only three candidates sat the paper in this session so it is hard to give a meaningful evaluation of the performance.

Key points on how to improve performance and to succeed in the future are:

- Focus on what the question is asking and ensure you address each element carefully, working methodically through these, and through the legal issues thoroughly, applying them assiduously to the facts in the Part B questions
- Ensure you refer specifically to relevant statutory provisions and case law.
- Ensure in your revision you are clear on the distinction between different types of business media, and within a company, between the role of directors and shareholders.
- Careful review is needed of the module content and how to approach answers.

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 may be limited.

Section A

Question 1	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

Liability issues:

- Unlimited partnership: individual partners liable without limit for the debts and other liabilities of the partnership (s9 Partnership Act 1890 (PA 1890)).
- Private companies: shareholders' liability is limited to the amount, if any, outstanding on shares (CA 2006).
- Sole trader – unlimited liability.
- Linked to the above, private limited companies have separate legal personality (Salomon v Salomon & Co Ltd [1897]) distinct from their members: legal entities in own right so they can enter into contracts, sue and be sued and are liable without limit for their own debts and liabilities.

Comparison of regulation:

- Companies are highly regulated by statute – Companies Act 2006, Insolvency Act 1986, and associated regulations.
- For partnerships, the PA 1890 provides only a default set of rules in absence of agreement to contrary among partners (s24 PA 1890).
- Company formation – statute regulates a clear-cut form and procure. No such formalities for partnerships or sole traders exist:
- Companies are formed by a statutory process of registration of documents with Companies House.
- There are also ongoing requirements under the CA 2006 eg to file annual accounts and to register other documents at Companies House recording changes in the company's directors, share capital, etc.
- No formalities required for the formation of a partnership or a sole tradership; a partnership exists if it satisfies the statutory test of two or more persons carrying on business with a view of profit (s1 PA 1890). Partnerships should have partnership agreement which adds to costs. (Kahn v Miah)

Examples of advantages and disadvantages:

- Disadvantage: Unlimited partnership and sole trader: if the business fails the partners risk losing all property.
- In a partnership an individual would relinquish overall control potentially and would split profits.
- Partnership agreement advised to clarify respective roles and responsibilities. Adds to cost of set up
- Advantage of using private company : shareholders/members know how much they may lose.

- Companies are commercially flexible vehicles through which to conduct business without disadvantages of personal liability.
- Disadvantage: a limited company does not always provide such security for members. Eg banks may insist upon personal guarantees from directors.
- Lack of formality (and thus cost) of formation of partnerships and sole traderships can be a benefit. Cost of compliance with regulations can be relatively high for companies
- To be a co director, you must get identity verified. .
- The lack of required publication and disclosure of information can be a benefit for partnerships and sole traders.
- Documents filed at Companies House open to inspection by public; partnership is a private affair. This means that if secrecy is an issue for the members, partnership may be a more attractive option than a company .
- Any form of business media can employ workers.

Question 2(a)	17 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Partner is an agent of the partnership when acting on behalf of it (s5 PA 1890).
- Authority can be actual (express or implied) or apparent/ostensible.
- Examples of how express or implied authority can arise: express provision in a partnership agreement; activity accepted impliedly by other partners.
- Implications of a partner acting within their authority: the partnership is liable in contract.
- Actual authority can arise from express agreement, eg set out in a partnership deed; or from course of dealings (a form of implied authority). Reference to ss 6 and 7PA 1890.
- If a partner acts outside their actual authority, sections 5 and 8 must be applied.
- Each of the elements of section 5 PA should be discussed carefully, and case law referenced. (Eg Polkinghorne and Mercantile Credit).
- Consequently, liability can still fall on a partnership, because the partner's authority is 'apparent' to a third party under section 5 – as long as the third party did not know the person had no authority.
- Mention of s 10 PA 1890, to address tortious liability, which is joint and several under s 12.

Question 2(b)	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Retiring partner is not liable for debts incurred after leaving the partnership; only those incurred while they were still a partner (s17(2) PA).
- Also s36 PA applies – a person dealing with a firm is entitled to treat all apparent members as still part of partnership unless they have notice of any change.
- Section 36: actual notice of the change to parties who have previously dealt with the partnership
- Notice in the London Gazette to other potential third parties.

Question 3(a)	15 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Basic requirement for authority to allot (s549).
- Automatic authority for private companies with one class of share (s550).
- Section 551 authority and its elements (max number of shares and time limit).
- Need for shareholder approval by ordinary resolution.
- Pre-emption requirements under s561.
- Possible disapplication under s570 or 571.
- Requirement for shareholder approval by special resolution.
- Filing of resolutions at Companies House.

Question Q3(b)	10 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

The process

- Requirement of a stock transfer form (STF) (under Stock Transfer Act 1963) completed by transferor. Section 770 CA 2006.
- Delivery of the STF with a share certificate (if there is one) to the transferee.
- Transferee pays any consideration to transferor.
- Transferee is responsible for getting STF stamped and paying stamp duty at the appropriate rate.
- Once stamped, delivery of the STF by the transferee to the company with any share certificate. [Company issues new share certificate and adds new member (transferee) to register of members.]

The restrictions on transfer found in the articles

- Possible limited restriction: refusal by a company's directors to register a transfer under MA 26.
- Smaller companies may also include in the articles pre-emption requirement: shares to be first offered to existing shareholders before they are offered to an outsider.
- Possible requirement that a director must sell any shares in company to existing shareholders when they cease to be a director.

Question 4	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Discussion of the meaning of insolvency for the purposes of s214.
- A detailed analysis of section 214 (IA 1986), including the conditions for the section to apply: the company is insolvent; the person was a director at the relevant time; what the director knew or should have concluded and the tests applied to the director's knowledge.
- The sanction for breach of s214 – namely the order to contribute and the calculation of the contribution on a 'compensatory' basis (per Re Produce Marketing).
- A detailed analysis of section 213 (IA 1986), including the meaning of fraudulent trading and the requirement for intent to defraud.

- The most relevant directors' duties under CA 2006: s172 and the duty to promote the success of the company.
- Explanation of the duty and application in circumstances where the company has a duty to act in the interests of creditors, including mention of the Sequana case.
- Sanctions for breach of the s172 duty.
- Possible disqualification under the CDDA 1986, including the relevant grounds – eg where a director is found to act in breach of company or insolvency law.
- Potential outcomes of a disqualification: prohibition from being involved in the management of a company as they are considered 'unfit'.
- Possible compensation order under s15A CDDA.
- Up to date case law throughout to illustrate the application of the different provisions. Eg Re Produce Marketing Consortium (No 2) Ltd, Brooks v Armstrong and Grant v Ralls.
- Throughout there should be clear identification of the possible consequences of the above actions, including:
    - reference to any possible defences, such as the taking of every step to minimise loss to creditors under s214.
    - action that a liquidator or administrator could take.
    - for s214 for example, order by the court for a director to contribute to the assets of the company.

Section B

Question 1	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• The meaning of promoter and the case of Twycross. • Normally a person entering into contract on behalf of company acts as the company's agent, and so the company is liable. With a pre-incorporation contract, not so as there is no company in existence to act as principal. • There is potential personal liability of a person on entering into a pre-incorporation contract. • Discussion of s51 CA 2006 - person purporting to contract on behalf of company is personally liable, subject to any 'agreement to the contrary'. • Clarification of the meaning of 'agreement to the contrary' and reference to case law, such as Phonogram Ltd v Lane: any such 'agreement to the contrary' must be expressly and clearly included within the contract. The court will not *imply* such agreement to the contrary. Words added to a signature that a person is signing as agent for and on behalf of a company being formed are not sufficient to exclude liability. Rhea's protection: • First - as above, enter into an express agreement 'to the contrary' with the software company. • Or enter into a contract with the company she is forming once incorporated; the company promises to perform obligations under licence (with third party), and to indemnify Rhea against liability under initial contract. • A better option - a novation agreement: the company once formed agrees to perform on the same terms as in original contract, and the third party releases Rhea from previous personal liability. • But the software company may not agree to this. • Include a term in the original contract that Rhea's liability will cease at some point in future if company is incorporated and if company agrees to take over promoter's liability: this is close to 'agreement to the contrary' (in s51) although there is the disadvantage of creating (temporary) personal liability of promoter. • Finally, simply create a company as quickly as possible. Either a shelf company might be used or use the fast-track incorporation procedure at Companies House achieves now a similar effect. • Outline of duties under s 171 to 177 CA 2006, and key cases.	

Question 2(a)	9 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• The principle itself: derived from common law and the case of Trevor v Whitworth (1887): a company cannot return money to its shareholders, except after payment of all the company's creditors in a winding up or as permitted in the CA 2006. • The share capital is maintained to protect the interests of creditors. • Shareholders are not liable to contribute to the debts of a company apart from any amount unpaid on their shares. • Significant statutory regulation of the principle, imposing a number of restrictions. • Two or three examples of restrictions – see below	

Question 2(b)	16 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- S690 permits a company to buy back its own shares, subject to requirements.
- Requirements: shares to be fully paid (as they are here) and no restrictions in the articles - Model Articles contain no such restrictions.
- Company can use distributable profits or the proceeds of a fresh issue of shares. Sufficient profits here.
- Purchase will be off market, s694.
- A board meeting should approve the buy back and the contract subject to shareholder approval and convene the GM or propose a written shareholder resolution.
- A contract is required that must be approved by the shareholders by ordinary resolution, s 694 (in general meeting, on 14 clear days' notice, or by written resolution).
- Contract to be available for inspection 15 days before the GM, s696 (thus short notice of the GM is not possible) or sent with the written resolution to the members eligible to receive the written resolution.
- Carolyn cannot vote on the contract. Otherwise the resolution could be invalidated.
- Approval of the contract authorises the buy back (up to a limit of 5 years).
- Following completion and payment to Carolyn, the shares will be cancelled.
- Carolyn should return any share certificate to the company.

Question 3	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- The nature of fixed and floating charges, with reference to the Panama and Woolcombers cases.
- a floating charge can only be created by a company and is an equitable charge created over a generic class of assets (such as DEF's undertaking here): <u>Re Panama, New Zealand and Australian Royal Mail Co</u>.
- on creation, the floating charge does not attach to specific items within the class of assets. The charge attaches to particular assets only when it 'crystallises' into a fixed charge: <u>Illingworth v Holdsworth</u>.
- That until crystallisation, the chargor company is free to deal with the assets under the charge without reference to the chargee: <u>Re Yorkshire Woolcombers Association Ltd</u>.
- Discussion of the possible difficulties of creating a fixed charge over the company's book debts – ie the debts owed to the company and payments received in respect of such debts.
- Discussion of the case law on creation of charges over book debts: <u>Re Spectrum Plus Ltd</u> (2005), (and Siebe Gorman and Re New Bullas): whether there is the necessary control for the lender (Sean) over the charged assets to give rise to a fixed charge and whether the borrower is able to use the moneys received to carry on the business.
- in Spectrum the court overruling previous cases (<u>Siebe Gorman</u> (1979) and <u>Re New Bullas</u> (1994)): for a fixed charge to be created over book debts a lender must exert a high degree of control over the charged assets – for example requiring the borrower to pay sums received into a specified account, and from which the borrower could withdraw sums only with the consent of the lender. Likelihood that Sean will have little control over the charge or assets secured by it.
- Sean's protections: the charge will be a 'qualifying floating charge' giving the charge holder the right to appoint an administrator.
- a degree of priority over other, in particular unsecured, creditors regarding the proceeds of sale of the assets subject to the charge.
- this priority is restricted by rules (i) governing the registration and priority of different charges over the same asset, and (ii) designed to ensure a fairer treatment of unsecured

creditors. Sean's charges would rank behind the bank's existing fixed charge, as fixed charges generally rank in order of creation and above floating charges.

- Advice to register the charge with Companies House within the relevant time period after its creation. If not registered within the specified time limit (21 days of the creation of the charge: s859A(4) CA 2006), then it is void against an administrator or liquidator or any creditor of the company.
- However, even if the charge is properly registered, it takes effect subject to any earlier (and properly registered) equitable charge over the same asset.
- Unsecured creditors taking priority - preferential creditors: employees owed for example unpaid wages and accrued holiday remuneration (175 IA 1986); possible expenses of the winding up paid out of proceeds of sale of assets covered by a floating charge, s176ZA IA 1986.
- Risk of any floating charge being set aside under s245 IA 1986, when the company goes into insolvency, if the charge was given to secure a 'pre-existing debt' owed by the company. Here the original loan is a 'pre-existing debt'.
- New additional loan could also be treated as a pre-existing debt if that additional loan is made to the company before the floating charge is *actually* created: see <u>Re Shoe Lace Ltd</u> (1992). Sean should ensure that the new loan is only made *after* the floating charge has been created.
- Then the floating charge would be valid insofar as it provides security for the additional loan but would be potentially void insofar as it provides security for the existing loan of £180,000 – only in event of company's insolvency within a certain period.
- To be set aside under s245, the charge given to secure the earlier loan must be created within 12 months of the onset of insolvency in favour of an unconnected person (here Sean), and only if the company is unable to pay its debts at this time (or becomes unable as a result of creating the charge).
- Detail is not known about DEF's finances, but they seem profitable.

Question 4(a)	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Appointment by the board or in general meeting (by ordinary resolution), under MA 17.
- If by shareholders, convene a general meeting or use a written resolution.
- Enter name on register of directors.
- Notify Companies House on form AP01.
- Service contract: because it is for a fixed term over 2 years, shareholder approval required of the term, s188 CA 2006.
- Ordinary resolution by GM or written resolution.
- Memorandum of contract to be provided to shareholders. 15 days before if GM so no short notice.
- If approval not obtained, the term of 3 years is void, contract becomes terminable on reasonable notice, but contract still otherwise valid.
- Note of duty of director to disclose interest in transaction with company, s177.
- But even if Abdul is appointed before his service contract is approved, s177(6) (c) provides an exception to this.
- MA 14 still applies.

Question 4(b)	13 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• SPT because of s 190 CA 2006. • Transaction with a director that is more than 10% of Co's net assets. • Shareholder ordinary resolution therefore required. • Simple majority to pass it – could be passed by G and H only. Or G and K. • Board meeting to propose lease, approve in principle and call GM or written resolution. • Section 177 will apply – duty disclose interest in the contract for this lease but almost certainly s177(6)(b) would apply – other directors are aware of the transaction. • Must declare for example at the board meeting at which the contract is considered and approved - MA 14 also applies: she will not be counted in a quorum on the vote on the lease, nor can she vote it, unless an ordinary resolution is passed to waive MA 14 for this transaction for example.	