



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

June 2024

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.
- A basic calculator is provided should you require the use of one.
- You can use your own unmarked copy of the following designated statute: ***Blackstone's Statutes on Company Law, 27th edition, Derek French, Oxford University Press, 2023.***
- 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. Critically evaluate the respective advantages and disadvantages of running a business through each of the following types of business structure:

- an unlimited partnership;
- a limited liability partnership;
- a private limited company.

(25 marks)

2. (a) Critically evaluate the nature of the contract created by Section 33 of the Companies Act 2006 and the extent to which shareholders may enforce that contract.

(12 marks)

- (b) Explain how provisions in a company's articles of association might place limits on the authority of the company's directors to bind the company and the effect of statute and common law on such provisions.

(13 marks)

(Total: 25 marks)

3. Critically analyse the extent to which statutory restrictions imposed on companies support the principle of capital maintenance.

(25 marks)

4. Critically assess the relative advantages and disadvantages of fixed and floating charges from the points of view of both a private limited company and its creditors.

(25 marks)

SECTION B

Answer at least one question from this section.

Question 1

Orchid Designs Limited (ODL) was incorporated in 2012 under the Companies Act 2006. The company adopted the Model Articles for Private Companies but has excluded Model Article 14. The business of the company is the design and manufacture of high-quality bedding and bedroom accessories.

Its current directors and shareholders are:

Name	Position	Number of Ordinary Shares of £1 each
Diana Lake	Chief Executive Officer	80,000
Felix Walsh	Finance Director	40,000
Camilla Grant	Marketing Director	40,000
Sonali Khan	Director	40,000

The board of ODL is proposing some expansion plans as business has been buoyant over the last 18 months. The first of their plans is to acquire the entire issued share capital of Clarkes Interiors Ltd (CIL) for £500,000. The consideration for the purchase is to be satisfied by the issue to CIL's current shareholders of 50,000 new preference shares of 50p each in ODL. A recent search of ODL's register at Companies House showed no recorded shareholder resolutions.

In addition, CIL's current managing director, Klara Lewis, will be appointed as a director of ODL and granted a service agreement with ODL for a fixed term of three years. She will also subscribe for 20,000 new ordinary shares of £1 each in ODL for cash.

Advise the current board of ODL on the legal issues arising from:

- (a) the above proposals to allot the preference shares to the CIL shareholders and the ordinary shares to Klara Lewis;

(15 marks)

- (b) the appointment of Klara Lewis as director of ODL and the grant of the service contract to her.

(10 marks)

(Total: 25 marks)

Question 2

Sasha and Pedro met at university in 2010. They began cohabiting in 2013. In 2015, they purchased two small restaurants, which they ran together as an unlimited partnership. They expanded to a third restaurant in late 2018. In January 2019, on the advice of their accountant, they formed a limited company, S & P Bistros Ltd (S&P), to own and run the restaurants. S&P adopted the Model Articles for Private Companies, with the addition of a pre-emption provision on any transfer of shares, which required any shareholder to offer their shares to existing shareholders before transferring them to someone outside the company. Sasha and Pedro own 48% and 52% respectively of the company's shares and are its only directors.

From mid-2022 onwards, however, Sasha found that Pedro was devoting less and less time to the business and that she, Sasha, was left in charge of day-to-day management. The company's business has suffered as a result. Furthermore, in late 2023, Sasha discovered that Pedro had, for the past two and a half years, been having an affair with Fatima, head chef at one of the restaurants. Sasha also discovered that Pedro recently gave Fatima over £12,000 of S&P funds so that she could pay a deposit on a new flat for herself. Last week, after a confrontation with Pedro, Sasha stormed out of S&P's head office and has not returned to work since.

Sasha wishes to continue with the company and run the business, and is now considering making the following claims:

- Firstly, a claim under section 994 Companies Act 2006. She has told Pedro she will ask the court to order him to sell her his shares in the company.
- Secondly, to put further pressure on Pedro she may also bring a derivative claim against him to recover the amount of the deposit money he gave to Fatima.

Advise Sasha on the likelihood of success for each of the claims she is considering making.

(25 marks)

Question 3

The EF Theatre Group (EFTG) currently has three partners, Fu, Maya and Syeda, who together run a stage-management, set-design and set-building business. They have client theatres across the Midlands and east of England. The partnership was set up seven years ago.

There is a very short, written partnership agreement that merely states:

- profits are shared equally;
- all partners must work full time for the partnership; and
- all partners must consent to the incurring of any debt over £2,000 on behalf of the partnership.

In the last week, an invoice for £4,000, addressed to the partnership, was received at the partnership's main office for a high-quality 3D printer. Fu and Syeda discovered that the printer was ordered by Maya. The supplier was Dey Printers Ltd, a new company with whom EFTG has had no previous dealings.

The partners have also recently been discussing the need to expand and update their current set-design and set-building equipment. They wish to take on another partner to invest in and help to expand the business. They have been approached by Helen who has relevant experience in the theatre and who is likely to join the partnership in a couple of months' time.

If Helen does join, the partners think it might be appropriate to update their partnership agreement to make it more comprehensive. It would make sense, for example, to specify the management responsibilities of each partner. Fu is likely to take on the role of senior partner as he has most experience. Also, Syeda is contemplating moving to New Zealand in the next year so the partners want to clarify what would happen to the partnership if she were to leave.

Helen has indicated that she would be able to contribute up to £15,000 in additional capital and would like to receive about 20% of the profits. She is also offering to provide equipment for business use but wishes to work only four days a week for the partnership as she works one day a week for a local theatre as stage door manager.

Advise:

(a) who will be liable to pay the supplier for the 3D printer;

(11 marks)

(b) why it would be beneficial to draft a more comprehensive written partnership agreement between the current partners and Helen;

(8 marks)

(c) whether or not the equipment provided by Helen would be partnership property.

(6 marks)

(Total: 25 marks)

Question 4

Key Travel Limited (Key) was incorporated in 2005. It adopted the Model Articles for Private Companies in full in 2012.

Since 2018, it has had four directors, all of whom are also shareholders of Key. The chief executive has considerable prior experience as a finance director at a national travel company. Two of the other directors are mainly concerned with the development of package holiday deals and do not get involved in the finance and strategy side of the business.

Despite having thrived until 2020, Key inevitably struggled during the Covid pandemic. In early 2022, Gregory was appointed as an additional director of Key, to try to assist with Key's recovery. He is a qualified accountant and has experience in company rescues.

Although Key's business improved a little immediately following Gregory's appointment, he has noticed that the other directors have not been showing the level of commitment to the company that he would have expected. Few board meetings have been held since he joined and there is evidence that company records, both internally and at Companies House, are poorly maintained. Gregory has tried to push for more meetings to discuss the company's prospects but he has often met a wall of silence.

It also transpires that just before Gregory joined, the other directors increased their own salaries significantly, enabling them to take lengthy and expensive holidays in the last 12 months. This was despite a number of creditors threatening proceedings for non-payment of debts during the autumn of 2023. In addition, some of the decision making appears to have been delegated to junior and inexperienced members of staff. Finally, Key has a large bank loan, which has been guaranteed by two of the other directors.

On the basis of the information above, advise Gregory on the implications for all the directors (including himself) if Key were to go into insolvent liquidation.

(25 marks)

End of the examination

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