CHIEF EXAMINER REPORT

JUNE 2025

LEVEL 6 UNIT 1 – Company and 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 June 2025 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 two candidates sat the paper in this session. The stronger answers showed that on the whole the questions had been read carefully and each element addressed accurately, clearly and with insight or evaluation, and with plenty of references to case law and statute, as expected. The weaker answers lacked a grasp of the issues and what the question was answering. Candidates are reminded not to copy out statutory provisions without any commentary, analysis or references to case law. Candidates are advised to carefully review the module and how to approach the 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(a)	10 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• No statutory formalities required for the formation of a partnership, nor requirement for an agreement • A partnership exists if it satisfies the statutory test of two or more persons carrying on business in common with a view of profit (s1 PA 1890). • Meaning of 'business' • With a view of profit: uncertainty in law on this. Receipt of profits is prima facie evidence of being partner. Cox v Hickman. There must be a profit motive • Varieties of co-ownership – eg joint tenancies – also are not a partnership • One off venture/commencement of business – eg Mann v D'Arcy; Khan v Miah • Brief conclusion	

Question 1(b)	9 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Incoming partner: not liable for debts before they join (s17(1) PA), unless they are held out (knowingly) or hold self out to be a partner in a transaction (s14 PA). Third party/creditor must show reliance on such representations. • 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 1(c)	6 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• If no agreement, limiting default provisions of PA apply • Agreement therefore can: • Provide clarity and certainty in the event of dispute for example • Define roles of partners; profit sharing ratios and requirements to contribute to the business and to capital • Define how the management works –meetings for example • Provide for how disputes can be resolved • Define partnership property. • Exclude PA s25 (unanimity required to expel a partner) and provide for majority decision • Can provide for continuation of partnership on retirement of a partner – less disruptive • Brief conclusion	

Question 2	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Nature of separate legal personality • Salomon v Salomon • Company is responsible for its own debts • Case law to include Adams v Cape, Prest and Nutritek • Detailed discussion of the grounds including shams/facades; statutory provisions and agency • Insufficient grounds such as the interests of justice or separate economic entity • Possible liability in tort and the circumstances required to exist: Chandler v Cape and Vedanta • Conclusion	

Question 3	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Background to duties and common law equitable principles • Reference to section 170 CA 2006 • S171, Duty to act within powers and associated case law • S172, Duty to promote the success of the company and associated case law • The different stakeholders for consideration under s172 • Mention of Sequana case • S173, Duty to exercise independent judgment and associated case law • S174, Duty to exercise reasonable skill and expertise and associated case law • S175, Duty to avoid conflicts of interest and associated case law • Where a director benefits, there is no need to show that company was deprived of that benefit • S176, Duty not to accept benefits and associated case law • Directors should account for profits gained • Service contracts may provide for consequences of breach • Company is the party to sue for breach (Foss v Harbottle) • A mention of derivative claims • Conclusion	

Question 4	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: Re Panama, New Zealand and Australian Royal Mail Co.
- 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: Illingworth v Holdsworth.
- That until crystallisation, the chargor company is free to deal with the assets under the charge without reference to the chargee: Re Yorkshire Woolcombers Association Ltd.
- 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: Re Spectrum Plus Ltd (2005), (and Siebe Gorman and Re New Bullas), and issues of degree of control
- The respective priorities of the charges on a winding up, 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
- The benefits of registration within the specified time limit (21 days of the creation of the charge: s859A(4) CA 2006); otherwise charge is void against an administrator or liquidator or any creditor of the company
- Section 245 Insolvency Act 1986 (IA 1986) – potential for invalidity (at the point of a company's insolvency) of a floating charge where it is taken in respect of an existing debt
- Some analysis of the foregoing facts to show the relative advantages and disadvantages of the two types of charge for companies and creditors
- Brief conclusion

Section B

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

- Section 994 CA 2006: member can petition court in relation to unfair prejudice suffered from act or omission of company or conduct of co affairs.
- Must show conduct of affairs of the company or omission unfairly prejudicial to interests as a member.
- Distinguish between matters concerning running of company and merely 'private'. Most conduct here (absences and misuse of funds) concerns company
- Marius must show his interest as a member is being prejudiced. (Gamlestaden)
- Could amount to mismanagement of the company
- Courts are clear that this includes member's formal rights, such as those found in the company's constitution, or in the Companies Act.
- But member's interests are broader than strict formal rights: in quasi-partnerships, member's interests can arise from informal understandings between members. Here they have been running business together for nearly 14 years.
- Ebrahimi v Westbourne Galleries Ltd [1973]. Defined quasi-partnership. Close personal relationship between members, some or all the members expected to participate in management, and restrictions on transfer of shares to outsiders.
- Marius and Dinara have a close relationship as father and daughter and have run the business together.
- Likely remedies: order to buy out Dinara (assuming Dinara is reluctant to sell), although often order is for majority shareholder to buy out minority.
- Likely success under s994 as several instances of prejudice of member's interests
- Derivative claim under Chapter 11 CA 2006 (eg s260)
- Grounds narrower than s994
- Act or omission involving negligence, default, breach of duty, or breach of trust by director
- Court must give permission to continue action; s263 gives factors for granting permission
- There are 3 mandatory bars to permission – breach of duty authorised or ratified by members and where majority of members have right to deny minority from pursuing claim
- Where court concludes that a hypothetical director, acting in accordance with duty to promote success of company, would not continue the claim.
- Courts have said no claim only if 'no reasonable director' would pursue it. Iesini; Cullen Investments v Brown (2015).
- Less likely success as narrower grounds applied by the courts
- Possible order to buy out shares, but usually for the majority holder to buy out the minority
- Discussion of valuation of shares to be sold under s994 order
- Conclusion

Question 2	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Discussion of limited liability and its meaning and the protection for E that it affords
- Possible limitations or disadvantages of incorporation – eg separate legal personality, lifting the veil and increased disclosure
- 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.
- Therefore there is potential personal liability of a promoter on entering into a pre-incorporation contract
- Discussion of s51 CA 2006 - promoter 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.

Esther's protection:

- 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 Esther 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 Esther from previous personal liability.
- But the software company may not agree to this.
- Include a term in the original contract that Esther'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.
- Conclusion

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

- Contract is based on the articles of association
- Section 33 states that the provisions of the constitution bind the company and members as if they were covenants
- Hickman v Kent or Romney Marsh Sheepbreeders; Pender v Lushington
- Unusual contract; eg it is not rectifiable as with a 'normal' contract (Scott v Frank F Scott), even if the articles do not express the parties' true intention
- Courts interpret the articles using the reasonable person test (AG of Belize v Belize Telecom Ltd)
- Either party may enforce the contract
- Enforcement is limited to provisions concerning membership (Eley v Positive Government Security)
- And not for example relating to directorship (Beattie v E&F Beattie)
- But some case law has, arguably, allowed the enforcement of 'outsider rights' (eg Salmon v Quin and Axtens)
- Enforcement is subject to a 6-year limitation period
- Conclusion

Question 3(b)	10 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

- Attempt to refuse to attend the shareholders' meeting called to change the articles. s318 CA 2006 provides that the quorum for a shareholders' meeting is 2 persons. No contrary provision here.
- Argue that the resolution to remove Article 18 is not passed 'bona fide for the benefit of the company as a whole'. Allen v Gold Reefs [1900]. Test is a subjective one: the question is whether the shareholders themselves subjectively believed the alteration was for the benefit of the company (not whether the judge herself believed it to be so); see eg Greenhalgh v Arderne Cinemas [1950].
- Argue that the right R and I enjoy by virtue of Article 18 is a 'class right'. Class rights were defined in Cumbrian Newspapers Group Ltd v Cumberland and Westmorland Herald [1986] as any right which is enjoyed by only some of the shareholders in a company, and which those members hold in their capacity as shareholders. Cumbrian Newspapers: not necessary that it be 'attached' to the shares; it could be a class right even if it was personal to the current shareholder and would not pass to someone buying their shares.
- It seems likely this is a class right, so by virtue of s630 CA 2006, the right could only be altered if such alteration were first approved by a ¾ majority of the holders of that class right (R and I).

Question 4(a)	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Annina is a qualifying floating charge holder if the terms say so • Can apply to appoint an administrator but must give 2 business days' notice • Court will appoint administrator who will then take over the management of the company with a view to rescuing it in the first instance • Reference to Sch B1 of the Insolvency Act • Throughout there should be clear application to the facts • Conclusion	

Question 4(b)	17 marks
Data too limited for valid feedback.	
Suggested Points for Response:	

• Discussion of sections 246ZB and 246ZA IA
• Since 2015, an administrator has been able to take action under ss246ZA and 246ZB against company directors on an insolvent administration
• Application with reference to, for example, lack of board meeting records; vacation during time of financial difficulties; inexperienced directors.
• Appears to be an adoption of a rather 'head in the sand' mentality
• Discussion of the meaning of insolvency for the purposes of s246ZB
• A detailed analysis of section 246ZB (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 – with reference to the levels of skills imposed on example the CEO
• The sanction for breach of s246ZB – namely the order to contribute and the calculation of the contribution on a 'compensatory' basis (per Re Produce Marketing).
• Analysis of section 246ZA (IA 1986), including the meaning of fraudulent trading and the requirement for intent to defraud – harder to prove.
• CEO has secured additional lending by stating the business is doing OK. This could be dishonesty – proof will be necessary of this. But this could also fall under s246ZB.
• 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 application to the facts and 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 s246ZB
  ○ action that a liquidator or administrator could take
  ○ for s246ZB for example, order by the court for a director to contribute to the assets of the company.	