



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 2023

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.
- You can use your own unmarked copy of the following designated statute book: **Blackstone's Statutes on Company Law, 26th edition, Derek French, Oxford University Press, 2022**.
- 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.
 - (a) A 'promoter' of a company may incur personal liabilities in relation to the company before it is formed. Explain how these liabilities may arise and critically assess the protection the promoter may seek from such liabilities.

(12 marks)
 - (b) Critically assess the courts' restrictive approach to when the corporate veil can be pierced.

(13 marks)

(Total: 25 marks)

2. Critically analyse the relative advantages and disadvantages of fixed and floating charges from the point of view of both a private limited company and its creditors.

(25 marks)

3. Explain:
 - (a) how a shareholder can transfer their shares in a private limited company;

(7 marks)
 - (b) restrictions on share transfers that can be included in a company's articles and why such restrictions may be imposed;

(6 marks)
 - (c) how a person may become liable for insider dealing under the Criminal Justice Act 1993 and the possible penalties.

(12 marks)

(Total: 25 marks)

4. Critically evaluate the duties of a company director to promote the success of the company, exercise care, skill and diligence, and to avoid or declare any conflicts of interest they may have in relation to the company.

(25 marks)

SECTION B

Answer at least one question from this section

Question 1

Stefan and Ivana set up in business together about 18 months ago, providing physiotherapy services, in particular, to the over 60s. The business is called S&I Physio Services (SIPS). Both Stefan and Ivana are qualified physiotherapists, having worked previously in the NHS. They each contributed about £17,000 as capital to the business. In addition, Ivana owns a small unit that she leases to the business for a low annual rent.

The business has been prosperous from the start. Stefan and Ivana have shared all profits equally. Since their services are much in demand, they now wish to add occupational therapy to their offering. They have approached Mina, who is a qualified occupational therapist and has worked with them both before in their local NHS Trust. They have proposed that Mina joins the business, by making a capital contribution of around £12,000. She will also be entitled to receive a share of the profits.

Mina has come to see you, seeking advice on the implications of her admission to the partnership. In addition to the information above, she tells you that Stefan and Ivana agreed when they started the business that they will devote their full time and attention to the business and also only incur liability over £5,000 if both of them agree. Mina has indicated that she would be happy to abide by these terms.

She further understands that both Stefan and Ivana provide clinical physiotherapy treatment. In addition, Stefan is responsible for marketing the business, while Ivana oversees its more general administration and finances.

Stefan and Ivana have indicated that they would like Mina to formally join the business on 1 September 2023. However, they are in the process of updating their business stationery and marketing material and wish to add Mina's name and background information to these as soon as possible.

Advise Mina:

- (a) why the business relationship between Stefan, Ivana and Mina will be an unlimited liability partnership;

(10 marks)
- (b) on the nature of her liability once she becomes a partner;

(9 marks)
- (c) whether she could be held liable for partnership debts before she joins the partnership on 1 September, and what she could do to protect herself from such liability.

(6 marks)

(Total: 25 marks)

Turn over

Question 2

Kate and Francis are the shareholders and only directors of K & F Stylists Limited ('the Company'), a private limited company that runs a hair salon from premises in central Bedford. They each hold 50% of the Company's current share capital, which consists of a total of 500 ordinary shares of £1 each. Kate and Francis are also the Company's senior stylists. They both have service contracts that are terminable on three months' notice. The Company employs two other stylists, as well as a receptionist and two general assistants. The business is generally thriving, despite the current economic climate. The Company was incorporated in May 2014, with unamended Model Articles for Private Companies.

Some businesses in Bedford are however struggling. One of these is another salon, owned by Gregory. He has suggested that the Company buys his business, and that he becomes the third director of the Company, appointed with a service contract with an initial term of 30 months. He has proposed a purchase price of £100,000, to be paid partly in cash and partly by the issue to Gregory of shares in the Company. Kate and Francis are happy to progress with the purchase.

Finally, Gregory has requested that, on the advice of his solicitor, the Company's name be changed to K, F & G Limited. He has also requested that (i) Model Article 14 be removed from the Company's articles and (ii) weighted voting rights be added to the articles, in relation to any proposed removal of him as a director.

Advise Kate and Francis, as the current board of the Company, on the following issues:

- (a) the steps and documents needed to appoint Gregory as a director of the Company and to award his service contract;

(10 marks)
- (b) the steps and procedure to be undertaken to change the name of the Company as Gregory has requested;

(6 marks)
- (c) the nature of the articles of association generally and whether a shareholder of a Company can enforce them.

(9 marks)

(Total: 25 marks)

Question 3

Donnelly Packaging Limited (DPL) was incorporated in 2014, with unamended Model Articles for Private Companies. DPL manufactures fully recyclable and compostable products for the catering industry, including food and drink containers.

DPL has an issued share capital of 480,000 fully paid ordinary shares of £1 each, held by four shareholders. Three of these shareholders are also directors, who work full time for the company. The fourth shareholder is Lyle Taylor who owns 100,000 shares.

DPL's latest accounts showed £875,000 in distributable profits, and DPL has recently been valued at about £2.2 million.

DPL needs to expand its research and development department as the sector technology is constantly evolving. It is therefore looking for external investment from a venture capital firm to whom DPL would issue new preference shares with a cumulative dividend of 4%.

Unfortunately, Lyle Taylor does not agree with the above proposals. However, since he has insufficient voting power to block them, Lyle wishes to withdraw his investment by means of DPL buying back his shares for about £480,000. DPL has provisionally agreed to do this but is concerned about complying with any legal restrictions on a company buying its own shares.

Explain the limitations imposed on the company in relation to paying the dividends to the venture capital firm and buying back its own shares, and how DPL can comply with such limitations. Include relevant procedural steps in your answer.

(25 marks)

Turn over

Question 4

You have been instructed by Antonio Copeland, a creditor of Castle Hotels Limited (CHL) which owns a chain of six hotels in the Midlands. Antonio has given you the following information.

CHL has five directors, who were appointed in 2016 when the company was incorporated. It adopted unamended Model Articles for Private Companies at that time. CHL currently has eight shareholders.

On incorporation, CHL took a bank loan of £500,000, secured with a fixed charge that was duly registered. Two of the directors also provided personal guarantees for this loan. In addition, in 2019, Antonio Copeland lent £175,000 to CHL, secured by a floating charge over the company's book debts. This charge was also registered.

CHL's chief executive is an accountant with considerable business experience. One of the other directors is the head of catering for the chain but has little business experience. She focuses on training catering staff for the hotels. A third director, who had previously run their own hotel, has been absent from the business for over nine months.

Antonio is concerned about the solvency of CHL, as its accounts show that it made losses in the last two accounting periods. This is in part due to the pandemic and cost of living crisis. However, he has discovered that the chief executive has not only been taking extended holidays over the last year but has also recently secured additional loan finance from a new creditor by persuading them that business was progressing well. Until about 18 months ago, the board held monthly meetings that were minuted. However, there have been no board meetings for six months and company records have not been maintained. Antonio knows he is entitled to request company records from time to time as a term of the floating charge.

Antonio is now considering what action he could take in relation to the floating charge. The terms of his charge document seem to suggest he has the power to apply to put the company into administration.

Advise Antonio on whether, and if so how, he can seek to put the company into administration and what action an administrator could then take in relation to the CHL directors in the light of the above facts.

(25 marks)

End of the examination