



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 1 – COMPANY AND PARTNERSHIP LAW*

Time allowed: 3 hours plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Company Law 2020-2021, 24th edition, Derek French, Oxford University Press, 2020.**
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW** and the **LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

SECTION A
(Answer at least one question from this section)

1. Critically evaluate the distinctions, including the respective advantages and disadvantages, between running a business as:

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

(25 marks)

2. (a) Analyse the scope of a partner's authority to bind an unlimited partnership in contract.

(17 marks)

(b) Explain whether a person can be liable for a partnership's debts that were incurred:

- before that person joined as a partner;
- after that person left the partnership.

(8 marks)

(Total: 25 marks)

3. Critically assess the potential consequences for a limited company's directors if the company continues to trade even though its liabilities exceed its assets.

(25 marks)

4. Advise on:

(a) how shares in a private limited company can be transferred and the restrictions on share transfers that a company's articles may impose;

(12 marks)

(b) how a person may become liable for insider dealing under the Criminal Justice Act 1993, including the possible penalties.

(13 marks)

(Total: 25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Margo is the owner of a business that provides affordable shopping, delivery and home maintenance services for elderly and vulnerable people. The business, '@We Care', has been approved by her local authority and is popular and busy. Margo employs six others in various roles, including two drivers and an administrative assistant. As the business has been so successful and is now recognised throughout the local community, Margo needs to expand and has decided to incorporate the business through a private limited company, which she is planning to call '@We Care Limited'.

Margo will be a director and the sole shareholder initially. One of the current employees will be appointed as a second director. The rest of the current workforce will be retained as employees of the company.

Margo also needs to upgrade her software to cope with the increase in business. She has identified a suitable package, but would prefer that the three-year licence for this is entered into by the company. The software company is offering an attractive price, but this offer will expire before the company is incorporated. Margo is keen to get the licence in place as soon as possible, but is worried about signing the contract before the company exists. She suggests writing something along the lines of 'Signed by Margo on behalf of @We Care Limited' in the licence, but also stating that no personal liability will arise for her.

Advise Margo on the possible consequences for her if she enters into the software licence agreement before the company is formed, and on the options available to her to protect herself if she does so.

(25 marks)

Question 2

Rudi Used Vehicle Services Limited (RUV) was incorporated in 2016, with Model Articles for Private Companies, save that Model Article 14 was stated not to apply to RUV.

RUV has three directors, who are also shareholders. There is one additional shareholder, Geraldine Harmon. The company has an issued share capital of 450,000 fully paid ordinary £1 shares, of which Geraldine owns 90,000. The company's latest accounts showed £1.2 million in distributable profits, and RUV has recently been valued at about £3 million.

RUV has been looking for external investment. The board of RUV has recently proposed issuing new preference shares to a venture capital company and is also proposing to issue additional ordinary shares to one of the current director/shareholders.

Geraldine Harmon does not agree with these proposals. However, since she lacks the votes to block them, she has decided that she would like to withdraw from RUV, by selling her shares. RUV has offered to buy back her shares for £270,000.

Having studied company law a long time ago, Geraldine vaguely recollects that there are restrictions on a company buying its own shares, due to the principle of capital maintenance.

Explain to Geraldine:

(a) the principle of capital maintenance;

(9 marks)

(b) how the buyback of Geraldine's shares should be undertaken, to ensure that it does not breach the principle of capital maintenance explained in (a).

(16 marks)

(Total: 25 marks)

Question 3

Ecoworks Ltd ('Ecoworks') is a private limited company that was incorporated in May 2012. It is based in Oxfordshire and designs and produces eco-friendly fabrics for the sports and fashion accessories industry. It uses sustainably sourced raw materials and, in addition, has recently developed vegan materials, for which it is seeing rapidly increasing demand.

The company has unamended Model Articles for Private Companies.

In June 2012, Ecoworks was provided with an overdraft facility by the Burford Bank. The bank took security for this facility in the form of a fixed charge over Ecoworks' freehold premises and registered it appropriately. In addition, a local investor, Paul Fletcher, had made an unsecured loan of £200,000 to Ecoworks in May 2012.

Ecoworks has just secured a major new contract to supply vegan and eco-fabrics to a luxury car manufacturer. It will need to expand its premises before it can commence this work. The company has approached Paul Fletcher, to ask if he will increase his loan by £250,000. Paul has provisionally agreed to do so but having taken professional advice, wants to take some sort of security over the company's assets. His lawyers have suggested that he seek a fixed charge over the company's book debts, with a floating charge over the remainder of the company's undertaking. These would secure both his original loan and the proposed additional loan.

Paul is seeking further advice about the nature and implications for him of the proposed charges.

Advise Paul.

(25 marks)

Question 4

Tantalising Toys Limited (TTL) is a company that manufactures a range of toys, including jigsaw puzzles, board games and, for very young children, sustainably sourced safe wooden toys. It has adopted unamended Model Articles for Private Companies. In its latest filed accounts, TTL's net asset value was £750,000.

Katerina French holds 12% of TTL's shares. She has never been formally appointed as a director, but for the last five years has regularly attended and participated in board meetings. She has 18 years' experience in the toy manufacturing industry and has been able to provide invaluable advice to TTL.

TTL's board has been seeking new office premises recently. Katerina has proposed that the company lease from her a suitable property that she owns, for an initial premium payment of £80,000. The lease would be for 10 years at an annual rent of £20,000.

TTL is also proposing to appoint a new director, Abdul Hamid, with the offer of a three-year, fixed-term service contract.

Advise the TTL board on:

(a) the steps it needs to take to:

- appoint Abdul formally as a director;
- grant him the proposed service contract;

(14 marks)

(b) whether Katerina could be regarded as a director of TTL and, if so, the consequences of her granting the proposed lease to TTL.

(11 marks)

(Total: 25 marks)

End of Examination Paper