18 January 2021
Level 6
COMPANY AND PARTNERSHIP LAW
Subject Code L6-1

CHARTERED INSTITUTE OF LEGAL EXECUTIVES

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. Analyse the circumstances in which the courts are prepared to pierce the veil of incorporation.

(25 marks)

2. Discuss the extent to which the duties set out in sections 171 to 177 of the Companies Act 2006 prevent directors from abusing their position as company managers and, further, briefly discuss the mechanisms by which those duties can be enforced.

(25 marks)

3. (a) Explain:

   - the limitations that a company's articles will usually place on the authority of the company's directors to bind the company;

   - the impact that section 40 of the Companies Act 2006 can have on the legal effect of such limitations.

(12 marks)

   (b) Evaluate how shareholders may enforce the articles of association of a company under section 33 of the Companies Act 2006.

(13 marks)
(Total: 25 marks)

4. (a) Discuss how an unlimited partnership may be formed without express written agreement of the partners.

(17 marks)

   (b) Explain the benefits of partners having a written partnership agreement, rather than relying on the provisions of the Partnership Act 1890 and give examples to illustrate the benefits.

(8 marks)
(Total: 25 marks)

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

Question 1

Dalton Shop Fitters Ltd ('DSF') is owned by Jack and his daughter, Lauren, who respectively own 45% and 55% of the shares in DSF. They are DSF's only directors. They had originally run the business as a partnership until October 2016, when they were advised by their solicitor to incorporate it. DSF adopted the Model Articles for Private Companies Limited by Shares, with the addition of a provision restricting transfer of shares to outsiders. The company designs and installs shop fittings and window displays. It has made steady profits since incorporation.

Lauren initially spent most of her time working for DSF but, since late 2019, she has devoted less and less time to the business. Consequently, Jack has been obliged to manage the company almost entirely on his own for the last couple of years. Until recently, he was unaware of the reasons for Lauren's absence. However, he has now discovered that Lauren has been using company money to fund a lavish lifestyle with her partner on the French Riviera.

As a result of Lauren's prolonged absences, Jack and his co-workers have been struggling to cope with the workload, with a consequent reduction in turnover. DSF only employs an additional three people. There had been four employees, but in May 2020, one of them left abruptly after an argument with Lauren over a private matter. Lauren physically threatened the employee during the dispute.

Lauren unexpectedly turned up at the office a week ago and accused Jack of ruining the business, as a result of which Jack walked out and has not returned. Jack has now decided to start proceedings against Lauren under section 994 of the Companies Act 2006 and to ask the court to order Lauren to sell her shares to him.

Advise Jack on the likelihood of success of his claim under section 994 and, if it is successful, what remedy the court is likely to make.

(25 marks)

Question 2

Treadstone Limited ('Treadstone') is a micro-distillery, based in the Mendip Hills in Somerset, producing gin and an exclusive range of fruit liqueurs and non-alcoholic syrups. It was formed in 2015, with unamended Model Articles for Private Companies Limited by Shares.

On incorporation, the company entered into an overdraft facility agreement with Clutton Bank that is secured by a fixed charge over Treadstone's premises. In addition, Treadstone was given an unsecured loan of £100,000 by Sally Price, the wife of one of its directors.

Treadstone has been successful since its formation, although it made quite small profits until late 2020, due to competition from many similar businesses. However, in December 2020, Treadstone secured a lucrative contract to supply a national chain of department stores with its products for a minimum of two years. Consequently, Treadstone needs quickly to expand its workforce and its production facilities.

Sally Price has offered to increase her loan by a further £100,000, but has been advised by her solicitors to insist on a fixed charge over Treadstone's book debts and a floating charge over the company's undertaking to secure both the original loan as well as the additional amount.

Advise Sally on:

(a) the nature of a floating charge, including any issues arising from the proposal for a fixed charge over book debts;

(10 marks)

(b) the benefits which Sally would enjoy, if the company were to go insolvent, as a result of the floating charge granted to her;

(7 marks)

(c) the consequences of granting the fixed and floating charges to Sally, if Treadstone were to go into liquidation within two years of the creation of the charge.

(8 marks)

(Total: 25 marks)

Question 3

Blackbriar Security Limited ('Blackbriar') is a family-run security systems installation business. Blackbriar has an issued share capital of £100,000 divided into 100,000 ordinary shares of £1 each, all of which are fully paid. Blackbriar has adopted the Model Articles for Private Companies Limited by Shares without amendment.

Its directors and shareholders are:

Name	Position	No. of Ordinary Shares
Anthony Blackbriar	CEO and Chair	30,000
Harriet Blackbriar	Sales Director	25,000
Kanan Gupta	Finance Director	25,000
Sonali Gupta	Human Resources Director	20,000

The Board has decided that it needs to expand its operations. In order to do so, it will need more capital to acquire new equipment and take on additional personnel.

Allied Investments LLP (AIL), a venture capital firm, is willing to invest in Blackbriar and has made the following proposals:

- it will subscribe in cash for 50,000 ordinary shares at £40 per share;
- it will invest a further £500,000, by subscribing in cash for 500,000 2% cumulative preference shares of £1 each;
- its own nominated director will be appointed to the Board of Blackbriar;
- a provision will be included in Blackbriar's articles to ensure that AIL's nominated director cannot be removed without AIL's consent.

Explain what shareholder resolutions would be required in order to implement AIL's proposals, and how any such resolutions might be validly passed.

(25 marks)

Question 4

Western Woodworks Ltd ('WW') is a Midlands-based company that designs and installs bespoke office and home furniture systems.

It embarked on a major expansion programme in June 2018. To fund this, it took a seven-year £800,000 loan from Daventry Bank ('the Bank'), which was secured by first fixed charges over WW's land and premises. These charges were validly registered. The Bank also required, and obtained, a personal guarantee for the loan from one of WW's directors. The loan was partly repaid in March 2020.

At the same time as it obtained the loan from the Bank, WW also entered into an unsecured loan agreement for £625,000 with the Chairperson of the board of directors, Frida Watts, repayable in September 2021. This loan was, however, repaid in full in August 2019, as a result of pressure from Frida, who was concerned that the expansion plans were not proving as profitable as had been anticipated and the company was beginning to face serious financial difficulties.

By March 2020, WW was struggling to pay debts as they became due, and in early July 2020, WW sold the design arm of its business to a local competitor for £43,000. WW's accounts to the end of May 2020 showed this to have a value of £112,000.

WW's financial position continued to worsen, with the result that at the end of December 2020, it was put into insolvent liquidation. One of WW's unsecured creditors, Charlotte Rock, has expressed concerns about the adequacy of funds to pay all WW's creditors.

Advise Charlotte, with reference to the relevant legislation, on:

(a) the order in which the liquidator will apply the assets of WW to pay its debts;

(8 marks)

(b) whether, in the light of the facts above, the liquidator could recover any money to help to pay unsecured creditors.

(17 marks)

[NOTE TO CANDIDATES: Do NOT address in your answer whether directors might be held personally liable to contribute to WW's assets.]

(Total: 25 marks)

End of Examination Paper