17 January 2022
Level 6
COMPANY AND PARTNERSHIP LAW
Subject Code L6-1

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 2021 – 2022, 25th edition, Derek French, Oxford University Press, 2021.**
- 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.

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

1. (a) Critically analyse the role of a 'promoter' of a company, the liabilities they may incur in relation to the company before it is formed, and the protection they may seek from such liabilities.

(16 marks)

(b) Explain what should be considered when choosing the name of a new company prior to incorporation.

(9 marks)
(Total: 25 marks)

2. Critically evaluate the respective benefits for a company and for its creditors of fixed and floating charges over the company's assets.

(25 marks)

3. (a) Describe how a liquidator may be appointed when a company becomes insolvent.

(8 marks)

(b) Explain the powers of a liquidator, with particular reference to those related to the avoidance of transactions entered into by the company being wound up.

(17 marks)
(Total: 25 marks)

4. Analyse and compare the respective protections available to minority shareholders under section 994 and Part 11 of the Companies Act 2006.

(25 marks)

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

Question 1

The Lewis Wendle Partnership (LWP) currently has three partners, Vanya, Francis and Lou, who together run a landscaping and garden-maintenance business. They have clients across the west of England, who range from owners of stately homes to individuals with small townhouse gardens. The partnership was set up 12 years ago.

There is a partnership agreement that includes the following provisions:

- profits and losses are shared equally;
- the partnership will continue after the departure of any partner;
- all partners must consent to the incurring of any debt over £2,750 on behalf of the partnership.

Despite the recent pandemic, the partnership's business has been thriving and the partners are now looking to take on another partner. They have been in discussions with Piers Thomas, an experienced and quite well-known horticulturalist. He has indicated that he would be happy to join the partnership in early April 2022. The partners are, however, keen to put Piers' name on their website and other marketing material as soon as possible, to enhance the partnership's reputation.

Piers has, until now, run his own business as a sole trader and is uncertain of the implications of joining a 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 ride-on mower. Vanya and Lou discovered that the order for the mower had been made by Francis. The supplier was Dashers' Mowers Ltd, a new company with whom LWP has had no previous dealings.

(a) Advise who will be liable to pay for the mower.

(14 marks)

(b) Explain to Piers:

(i) whether he could incur liability for any debts of the partnership either before he joins, or after he leaves, the partnership;

(6 marks)

(ii) the protections that he could seek from such potential liabilities.

(5 marks)

(Total: 25 marks)

Turn over

Question 2

Dominic has been invited to invest in a limited company, Gee's Pallets Limited (GPL), which was incorporated about three years ago. It currently has two founding shareholders, who are also its current directors. It was initially funded by cash provided by the two founders and an unsecured overdraft facility from Bedford Bank. GPL adopted Model Articles for Private Companies but excluded Model Article 14.

GPL is thriving despite the recent pandemic and needs to expand its vehicle fleet. Dominic is keen to help finance GPL. Even though he has not yet finalised the form of his investment, Dominic is shortly to be appointed as GPL's third director.

Dominic is considering investing about £100,000. He will make this investment either through an unsecured loan to GPL or by purchasing new ordinary shares in GPL.

If Dominic makes a loan, he expects interest to be payable at about 1.5% per annum and for the loan to be repaid within ten years. If he takes shares in GPL, he anticipates that they would give him a 25% to 30% share in the company.

Advise Dominic on the following:

- the process for appointing him as a director of GPL;
- whether, once he has been appointed, he will be able to participate at the board meeting that eventually agrees on the terms of his financial investment in GPL;
- how his rights within GPL would differ if he lent the company the money, rather than buying GPL shares.

(25 marks)

Question 3

Helena owns 76%, Saskia owns 14%, and Gyorgy owns 10% of the shares of Pascoe Print Shops Limited (PPSL). The company was incorporated in 2009 and is based in Milton Keynes. PPSL has a number of print shops across Northamptonshire and Bedfordshire.

PPSL adopted the Model Articles for Private Companies. These are unamended, except for the inclusion of an additional article (numbered Special Article A) that provides that any majority shareholder, wishing to sell their shares, must first offer them to the remaining shareholders. It further provides that the offer price for such shares is to be determined by 'the accountants'.

A dispute has now arisen between the shareholders as to the meaning of 'the accountants'. Helena claims it was agreed to be the accountants retained as the company's auditors, while Saskia and Gyorgy claim it was to be a firm of independent accountants. Unfortunately, neither view was reflected in the wording of the articles.

Helena has recently told Saskia and Gyorgy that she is going to sell her shares to a friend of hers and not offer them to the other current shareholders. She is also threatening to hold a general meeting to remove Special Article A.

Advise Saskia and Gyorgy:

(a) whether they can enforce Special Article A against Helena, and how the courts would deal with the disagreement about the meaning of the term 'the accountants' in Special Article A;

(15 marks)

(b) on any means by which they might prevent Helena from removing Special Article A.

(10 marks)

[NOTE TO CANDIDATES: Do <u>NOT</u> discuss in your answers the remedies available under section 994 of the Companies Act 2006 or section 122(1)(g) of the Insolvency Act 1986.]

(Total: 25 marks)

Turn over

Question 4

Marco, a qualified accountant who has experience in company rescues, has recently been appointed to the board of Fraser Confectionery Limited (FCL), a company incorporated in 2000. It adopted the Model Articles for Private Companies in full in 2010.

In addition to Marco, FCL has five other directors, all of whom own shares in FCL. These five directors have all been in post since 2010. The chief executive is also an accountant with many years' business experience. Two of the other directors have little business experience and are mainly concerned with the development and manufacture of confectionery. Two of the directors gave personal guarantees in 2010 in relation to bank loans taken out by FCL.

Despite having thrived until 2019, FCL has been struggling over the last two years, a situation not helped by the recent pandemic. Marco was appointed to try to assist FCL's recovery. Since joining FCL, Marco has noticed that most of the directors have been less engaged with the running of the company than he had expected. Attendance at board meetings, even since Marco joined, has been sporadic.

The chief executive took a long vacation in the autumn of 2021. This was despite a number of suppliers threatening proceedings for non-payment of invoices over the summer of 2021. In addition, records of board meetings over the last 18 months are almost non-existent, and some of the decision-making appears to have been delegated to junior members of staff.

Advise Marco on the implications for the directors, if FCL were to go into insolvent liquidation.

(25 marks)

End of Examination Paper