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 2017-2018, 21st edition, Derek French, Oxford University Press, 2017.**
- 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**

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

1. Discuss the definition of a partnership in section 1 of the Partnership Act 1890.

   (25 marks)

2. Analyse the nature of a floating charge and the extent to which it provides protection for a creditor when a debtor defaults.

   (25 marks)

3. Compare the protection offered to shareholders under section 994 Companies Act 2006 with the protection offered to shareholders under Part 11 Companies Act 2006.

   (25 marks)

4. (a) Discuss the following statement:

   UK company law insists that most decisions must be taken by directors. It gives shareholders little power to interfere in the running of the company.

   (10 marks)

   (b) Explain to what extent the duties found in sections 171, 172 and 174 Companies Act 2006 require directors to act within a company's constitution, with competence and in the interest of shareholders.

   (15 marks)
   (Total: 25 marks)

Turn over

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

Question 1

Tofino Tours Ltd (TTL) is a company that provides bespoke packages for tours across northern Europe. The company is successful and hopes to expand further into southern Europe.

Jake Mason holds 10% of TTL's shares. He has never been formally appointed as a director, but for the last four years has regularly attended and participated in board meetings. He has over 20 years' experience in the travel and leisure industry, and has been able to provide invaluable advice to TTL.

TTL's board has recently learned that Jake is planning to set up his own business, which will be in direct competition with TTL. It would also appear that he is planning to use information about, and contacts in, the package holiday industry that he has acquired through his involvement with TTL. The board does not know how far he has got with his plans.

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

Advise the TTL board on:

(a) whether Jake could be regarded as a director of TTL, and whether he would, in consequence, be restricted from setting up in competition with TTL.

(14 marks)

(b) the steps it needs to take to appoint Chloe formally as a director and to grant her the proposed service contract;

(11 marks)

(Total: 25 marks)

Question 2

Spelsbury Office Furniture Ltd (SOF) designs, manufactures and installs bespoke office furniture systems across central and southern England.

In 2015, SOF developed and began producing tools for assembling furniture systems. It was concerned to protect itself against any liabilities arising from this new venture, so it formed a wholly owned subsidiary company, Furniture Machine Tools Ltd (FMT), to manufacture and sell the new tools. FMT has a single director, Hiba.

By 2017, however, sales of the tools were disappointing and FMT was suffering financial difficulties. In addition, a small number of FMT employees had suffered injuries during the process of manufacturing the tools.

Caitlin, SOF's director responsible for health and safety matters for SOF and its subsidiaries, investigated the accidents and concluded that there was a fault in the manufacturing process, which had led to the various injuries. Caitlin recommended a substantial and expensive overhaul of the manufacturing machinery. Hiba agreed with this, as she felt that if the overhaul did not take place, FMT should cease business. SOF's board, however, disagreed strongly with the proposals and stated that they wished FMT to continue in business. FMT followed SOF's board policy and subsequently went into insolvent liquidation.

Advise the SOF board whether SOF could incur any liability to contribute to any compensation awarded to the injured FMT employees.

(25 marks)

Turn over

Question 3

Grafford Ltd ('Grafford'), incorporated in October 2010, operates a drinks distribution business for the hotel and events trade. In the last financial year, ending 31 October 2017, its turnover was £3 million. It has 41 employees.

Grafford's biggest creditor is Kempston Bank ('the Bank'), with which Grafford has a term loan of £110,000. This is secured by fixed and floating charges over all its assets and undertaking, as well as by personal guarantees from Grafford's three directors. This loan is due for repayment in September 2018. The company also has an overdraft facility up to £50,000 with the Bank. Grafford's other creditors, including trade, amount to £820,000.

Unfortunately, in the last month, a major hotel client has withdrawn its business, with another threatening to do the same. As a result, Grafford is now facing cash flow shortages and is struggling to pay its debts on time. The Bank has become increasingly concerned about its own position and is pressing for repayment of its overdraft and for the directors to inject new capital into the company.

The board of Grafford met last week. It concluded that, despite these difficulties and with a little breathing space, the business could be saved. One proposal was to try to reschedule its debts with existing creditors. In addition, the directors are prepared to put in additional capital, but only if they are released from their personal guarantees to the Bank. The Bank has informed the board that it will not support the board's proposals, and the board now seeks your advice.

Advise the board whether, given the Bank's opposition, it could achieve its proposals by using a company voluntary arrangement, and outline the procedure that would be involved in the board doing so.

(25 marks)

Question 4

Dinh, Rachel and Zachary have been in business together as picture framers and art restorers since 2010. Their clients include a number of stately homes in the east of England. The business is run as an unlimited general partnership called The Restoration Partnership. There is no written partnership agreement between them.

Zachary decided that, as the partnership had been doing well recently, he would purchase for himself a brand new Range Rover for £65,000, with the latest high-tech gadgets included. He told the car dealer, with whom neither Zachary nor the partnership had had any prior dealings, that this would impress the clients and would enable him to go 'off-roading' at weekends. He signed the contract in the partnership's name.

Dinh and Rachel had no knowledge of the purchase, until the partnership subsequently received an invoice from the car dealership. Dinh and Rachel are refusing to pay it. They have also discovered that Zachary has been doing some work for clients without telling them. As a result of this behaviour, Dinh and Rachel would like to remove Zachary from the partnership.

Dinh and Rachel are also considering transferring the partnership business to a private limited company, in which they will be both directors and shareholders.

Advise Dinh and Rachel:

(a) whether the partnership will be liable to pay for the Range Rover;

(12 marks)

(b) whether they can expel Zachary from the partnership;

(5 marks)

(c) on the procedure required to incorporate the business as a private limited company.

(8 marks)
(Total: 25 marks)

End of Examination Paper

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