11 June 2018
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 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. Critically discuss whether a parent company can be held responsible for liabilities incurred by one of its subsidiaries.

(25 marks)

2. (a) Analyse the liabilities that a promoter of a company may incur if she enters into contracts on behalf of the company before the company's formation, and how she might protect herself against any personal liability.

(15 marks)

(b) Analyse the effect of provisions in a company's articles which restrict the authority of its directors.

(10 marks)
(Total: 25 marks)

3. Examine the potential consequences for directors of a company, if the company is allowed to trade when its liabilities exceed its assets.

(25 marks)

4. (a) Briefly explain the difference between the liability of a partner in an unlimited partnership and that of a shareholder in a private limited company.

(9 marks)

(b) Explain whether someone can be held responsible for a partnership's debts:

- incurred before they join as a partner;
- after they have left the partnership.

(8 marks)

(c) Discuss how those in (b) above can protect themselves from any such liability.

(8 marks)
(Total: 25 marks)

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

Question 1

Two years ago, Sajida set up a company, Cotton Lane Fabrics Ltd ('Cotton Lane'), through which she runs a business selling fabrics and other sewing equipment. Cotton Lane employs three people. Sajida is currently sole shareholder and director. The company has unamended Model Articles for Private Companies.

Sajida is now keen to expand, and has approached her friend Paul, a respected local businessman, to ask if he would be interested in investing in the business. She has indicated that she would be willing either to issue ordinary shares to Paul that would give him a 25% share in Cotton Lane, or for Cotton Lane to take an unsecured loan from him with interest payable at 1.5%.

Paul would also be appointed as a director of the company, with a service contract with an initial fixed term of three years.

Paul runs his own small fashion design and manufacturing business. He regularly purchases fabrics and equipment from Cotton Lane. However, he also sells to his clients fabrics and sewing equipment that he has obtained from companies other than Cotton Lane. He has told Sajida that, if he were to take up her offer, he would continue running this business.

(a) Advise Paul on the advantages and disadvantages of the two investment options offered to him by Sajida.

(9 marks)

(b) Explain how Paul could be appointed as a director of the company and be granted the proposed service contract.

(7 marks)

(c) Assuming that Paul is appointed as a director of Cotton Lane, advise him on the implications of him continuing to run his own business, including buying materials from Cotton Lane and selling fabrics and sewing equipment to his own clients.

(9 marks)
(Total: 25 marks)

Question 2

Forsyth Wines Limited is a company based in West London, running a small chain of wine shops in Kew, Richmond and Wimbledon. The company has three shareholders, Katherine, Navreet and Vasileos, who each own 75%, 15% and 10% of the shares respectively.

The company has adopted the Model Articles for Private Companies unamended except for an additional regulation, numbered Regulation 20, which provides that: 'if Katherine wishes to sell her shares, she must first offer them to Navreet and Vasileos, at a price to be determined by the accountants'.

Unfortunately, the shareholders now disagree about the meaning of 'accountants' in Regulation 20. Katherine maintains that it means 'the accountants currently employed by the company as its auditors'. However, Navreet and Vasileos claim that when the company was formed, it was agreed that the shares would be valued by independent accountants, but this was not expressly reflected in the articles.

Katherine has been thinking about leaving the company and has just informed Navreet and Vasileos that she intends to sell her shares to Max, without offering them first to the other shareholders. She has also threatened to call a shareholders' meeting to remove Regulation 20 from the company's articles of association. Navreet and Vasileos have no intention of attending that meeting.

Advise Navreet and Vasileos:

(a) whether they can enforce Regulation 20 of the articles against Katherine, and how the courts would deal with the disagreement about the meaning of the term 'accountants' in the Regulation;

(15 marks)

(b) on any means by which they might prevent Katherine from removing Regulation 20 from the articles.

(10 marks)

DO NOT discuss, in your answers, the remedies available under section 994 Companies Act 2006 or section 122(1)(g) Insolvency Act 1986.

(Total: 25 marks)

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Question 3

Dunster Cabinets Limited ('Dunster') is a cabinet-maker and joinery company based in South Dorset. It was formed in October 2010, with unamended Model Articles for Private Companies.

At the time of its formation, Dunster was given an unsecured loan of £150,000 by a local philanthropist, Gavin Helston. Dunster also entered into an overdraft agreement with the Bridport Bank in November 2010. The bank took security for this facility in the form of a fixed charge over the company's freehold premises and registered it appropriately.

The company was successful until about nine months ago, when it saw business drop off as a result of a large DIY store opening locally.

However, Dunster has just secured a lucrative contract to build the kitchens and bathrooms in a new property development in Bournemouth. It will need to expand its premises before it can commence this work. Therefore, it has approached Gavin Helston to ask him to increase his loan to £250,000. Gavin has sought legal advice about this. His lawyers have suggested that he should insist that he is now given a fixed charge over the company's book debts, and a floating charge over the remainder of the company's undertaking, as security for both the original loan and the proposed additional loan.

Gavin is unclear what a floating charge is, or what his position would be if Dunster went into liquidation after it had granted him the fixed and floating charges suggested by his lawyers.

Advise Gavin.

(25 marks)

Question 4

Southdown Cars Limited (the 'Company') is a used car and vehicle repair business.

In August 2015, the Company took a five-year term loan of £750,000 from Brighton Bank plc (the 'Bank') to fund an expansion programme to open four new showrooms across West Sussex. The borrowing was secured by first fixed charges over the Company's land and its buildings and machinery. The charges were appropriately registered. One of the Company's directors also personally guaranteed the loan. It was then partly repaid at the end of July 2017.

Also in August 2015, Sam Braithwaite, the Chairman of the Company, made an unsecured interest-free loan to the Company of £1 million repayable on 1 June 2019. Expansion turned out to be much more expensive than the Company had originally anticipated and less profitable due to local competing businesses.

In September 2016, the directors of the Company repaid Sam Braithwaite the outstanding amount of his loan, after he had put some pressure on the Company for repayment.

By October 2017, the Company was in serious financial difficulties and unable to meet its debts as they became due.

In late January 2018, the Company sold a mobile tyre and exhaust service unit to one of its employees for £9,600. The unit was shown to have a value of £34,000 in the Company's accounts in December 2017.

The Company has now been put into insolvent liquidation. Melvin King, one of the Company's unsecured creditors, is aware of the difficulties the Company is facing and is concerned that there are insufficient funds to pay all the creditors.

Melvin would like to know in what order the liquidator will apply the assets of the Company in order to pay its debts, and whether, in the light of the facts above, there is any possibility of recovering any money for the unsecured creditors.

Advise Melvin.

[DO NOT address, in your answer, either the grounds for or the process of winding up the Company, or whether directors might be held personally responsible to contribute to the Company's assets**.]**

(25 marks)

End of Examination Paper

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