



## 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 2018-2019, 22nd edition, Derek French, Oxford University Press, 2018.**
- 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. (a) Section 33 of the Companies Act 2006 creates a contract between a company and its members. Discuss the nature of this contract.  

**(12 marks)**
- (b) Explain the liabilities that a 'promoter' of a company may incur and how s/he may be protected from such liabilities.  

**(13 marks)**  
**(Total: 25 marks)**
  
2. Explain how company law implements the principle of maintenance of share capital.  

**(25 marks)**
  
3. (a) Analyse how effectively the duties set out in sections 171 to 177 of the Companies Act 2006 prevent directors from exploiting their position as managers of a company.  

**(17 marks)**
- (b) Outline how a director may be removed from her position and how she may protect herself from such removal.  

**(8 marks)**  
**(Total: 25 marks)**
  
4. Examine the distinctions between fixed and floating charges including their relative advantages and disadvantages, for both chargor and chargee.  

**(25 marks)**

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

**Question 1**

Lewis Garden Services Ltd ('LGS') is owned by brother and sister Piers and Fiona, who respectively own 45% and 55% of the shares in LGS. They are LGS's only directors. They originally set up the business as a partnership in 2004, offering comprehensive garden design and maintenance. In September 2011, they incorporated the business. LGS adopted the Model Articles for Private Companies, with the addition of a provision restricting transfer of shares to outsiders.

Fiona initially spent most of her time working for the company, but since the summer of 2016 she has devoted less and less time to the business. Until recently, Piers was unclear about the reason for this, but he has been obliged to manage the company almost entirely on his own for the last couple of years. LGS only employs an additional three people. As a result of Fiona's prolonged absences, Piers and his co-workers have been struggling to keep up with the workload, with consequent reduction in income. Piers has now discovered that Fiona has been in a relationship with one of LGS's major clients, Ralph Curtis, who owns a large estate near Northampton and leads a lavish lifestyle. It transpires that Fiona has been accompanying him on luxury overseas trips. In addition, it appears that Fiona has been using company money to buy expensive clothes for herself and gifts for Ralph.

A week ago, Piers walked out after Fiona, who had made a rare appearance, accused him of running the business down. Piers has now decided to start proceedings against Fiona under section 994 of the Companies Act 2006.

Advise Piers on the likelihood of success of his claim under s.994 and, if successful, whether the court is likely to order Fiona to sell her shares to Piers.

**(25 marks)**

**Turn over**

## Question 2

Kamen and Malalai have been running a luxury travel business together, as a partnership, for six years. They have been trading under the name 'K & M Wonders Travel' and have two branches in Hertfordshire. The business has been very successful in the last couple of years, and they are keen to expand into north London and Buckinghamshire. A current employee, Grace, has indicated that she would be willing to invest up to £50,000 in the business, but she has said that she would expect to have the protection of limited liability.

Kamen and Malalai have themselves also recently become concerned about their own personal liability. This is because a similar local business was recently forced to close, due to clients taking proceedings over misleading statements made by that business about the quality of its holiday accommodation.

Consequently, Kamen and Malalai have decided to run their business through a limited company. They plan to change the name to 'World Wonders Travel', but are aware of another business nearby called 'World Wonder Remedies', which sells wholefood and natural remedies. They are concerned that this might be a problem.

With appropriate reference to the facts above, advise Kamen and Malalai on:

- (a) the advantages and disadvantages of incorporating the business as a private limited company as opposed to remaining as a partnership;

**(15 marks)**

- (b) the procedure for incorporating a private company limited by shares.

**(10 marks)**

**(Total: 25 marks)**

### Question 3

Fleetwood Office Systems Ltd ('FOS') designs, manufactures and installs office furniture for both the commercial and domestic markets. It was incorporated in 2010 under the Companies Act 2006. The company adopted the Model Articles for Private Companies without amendment.

No shareholder resolutions are currently recorded on FOS's file at Companies House. Its current directors and shareholders are:

<b>Name</b>	<b>Position</b>	<b>Ordinary Shares of 50p</b>
Yu Chen	Chief Executive Officer	20,000
Adam Hamid	Finance Director	10,000
Holly French	Marketing Director	10,000
Zak Potter	Director	10,000

Business has been flourishing recently and the board of FOS is proposing some expansion plans. The first of these is to acquire the entire issued share capital of Worton Bedrooms Ltd ('WB') for £240,000. WB offers bespoke bedroom design services. The consideration for the purchase is to be satisfied by the issue to the WB shareholders of 4,000 FOS ordinary shares of 50p.

In addition, the current Chief Executive of WB, Marc Salter, is to purchase for cash 2,000 new preference shares of 50p each in FOS.

Marc Salter will also be appointed a director of FOS and is to have a service agreement with FOS for a fixed term of three years.

Explain:

(a) what FOS shareholders' resolutions will be required in order to implement all the above proposals;

**(15 marks)**

(b) the procedure required to pass any resolutions identified in (a) above.

**(10 marks)**

**(Total: 25 marks)**

**Turn over**

#### **Question 4**

You have recently been contacted by a client, Clare.

Clare and Jessica have been running a business together for the past six years. They are both qualified personal trainers, who run a variety of fitness classes in their local area, as well as offering one-to-one fitness training sessions across Bedfordshire, Northamptonshire and Hertfordshire. They use the name 'J & C Training'.

It was originally Jessica's idea to set up the business and she contributed the initial capital to get it started. Both Clare and Jessica contribute equally to working in the business and they usually take management decisions together. Clare receives a 35% share of the profits each month. There is no written agreement between the two of them.

J & C Training has been very profitable, particularly since the London 2012 Olympics and increased national coverage on keeping active.

However, Jessica and Clare have had difficulties with their business relationship recently. Jessica wants to move to London to expand the business. She feels it is a good time to do so. Clare, however, has objected to Jessica's proposal. Clare believes the market is already saturated in London and feels the expansion would be an expensive waste of money.

Jessica has told Clare that, as she (Jessica) set up the business, she can decide its future alone, without Clare's agreement. She has also told Clare that if Clare does not stop objecting, she will either remove Clare from the business or terminate the business entirely.

Advise Clare by reference to partnership law.

**[Note to candidates: Do not consider possible issues of employment law in your answer to this question.]**

***(25 marks)***

**End of Examination Paper**

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