



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. Critically discuss the following statement:

In the case of *Adams v Cape Industries Plc* (1990), the courts established a restrictive approach to when the veil of incorporation can be pierced.

(25 marks)

2. Compare the protection offered to shareholders by Part 11 of the Companies Act 2006 with the protections offered to shareholders by section 994 of the same Act.

(25 marks)

3. Explain how the Companies Act 2006 regulates a company entering into a transaction in which one of its directors has an interest.

[NOTE TO CANDIDATES: Do not discuss loans to a director under section 197.]

(25 marks)

4. (a) Discuss the extent to which company directors' authority to allot shares is restricted under the Companies Act 2006.

(13 marks)

- (b) Explain the potential liability of a company director for the criminal offence of insider dealing under the Criminal Justice Act 1993.

(12 marks)

(Total: 25 marks)

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

Question 1

The KJ Project is a graphic design business, based in Hertfordshire. It is run and owned as an unlimited partnership by Kevin, John and Navpreet. They have a wide range of clients, including universities, manufacturing businesses and conference organisers in eastern England. Their principal work is the production of designs for marketing material, brochures, prospectuses and product catalogues.

There is a partnership agreement that includes a provision prohibiting a partner from incurring any debt on behalf of the partnership over £3,500 without the consent of the other partners. Profits and losses are shared equally.

Recently, a new state-of-the-art printer was delivered to the partnership, together with an invoice for £5,300. The printer has a facility to enable 3D printing, which is not something the partnership is currently involved in. John and Navpreet discovered that the order for the printer had been made by Kevin, using the partnership's headed paper. The partnership has had no previous dealings with the printer supplier.

In addition, the partnership is contemplating taking on another partner, Mina, who is a well-known graphic designer. She has indicated that she would be able to join the partnership and contribute capital in about three months' time. The current partners are, however, keen to add her name as soon as possible to their headed paper, website and marketing material, as she should enhance the partnership's reputation.

John has been considering retiring from the partnership, so he hopes to leave shortly after Mina joins. The partnership agreement contains a provision that the partnership will continue after the retirement of a partner.

(a) Advise on the partners' liabilities in respect of the printer.

(12 marks)

(b) Discuss whether Mina could be found liable for any debts of the partnership before she joins.

(6 marks)

(c) Advise John on how he can protect himself from liability arising after he has left the partnership.

(7 marks)

(Total: 25 marks)

Turn over

Question 2

Jason has been running a plant and flower retail business as a sole trader from premises near Bedford for the past six years. It is called 'Jason's Blooms'. He employs seven others in various roles. The business includes making flower bouquets and arrangements for special occasions such as weddings. As business has been successful and profits have been increasing over the last year, Jason has decided to expand and to incorporate through a private limited company.

Jason will be a director and the sole shareholder initially. One of his current employees will also be appointed as a director. The rest of the current workforce will be retained as employees of the company.

Jason is particularly concerned about the following two issues:

- Jason needs to increase the cool storage capacity for plants and flowers, so he has decided to rent a new large refrigeration unit from Coolways Limited. Coolways is offering rental for five years on attractive terms, but it has told Jason that he must sign the agreement for the unit immediately, as the offer is to end within a few days. Jason is worried about possible consequences, if he enters into this agreement before the company is formed.
- In addition, Jason is planning to call the company 'Jason's Blooms of Bedford Limited' but will continue to use 'Jason's Blooms' as the trading name. He would like to know whether he would be able to change the company name in the future.

Advise Jason on these two issues.

(25 marks)

Question 3

Hathersage Clothing Limited ('HC') went into insolvent liquidation in May 2019.

HC's main activity was the production and sale to retail outlets of vintage-style clothing. The business was set up in January 2010. Its audited accounts for the year ending 31 December 2017 showed that it was just solvent. It had made profit up to that date. However, HC's profits began to decline in early 2018. By early 2019, it had started making losses, and it continued to do so until it was put into liquidation. When the company went into liquidation in May 2019, it had a board of three directors: Simon; Alan who is a qualified accountant; Bridget, who is 19 but understands little of business and rarely attended board meetings.

It would appear that profits decreased as a result of unforeseen price increases in the fabrics that HC was buying for the clothing. It had always tried to use fairly traded cottons, but poor cotton harvests caused significant price increases that adversely affected HC's turnover.

In addition, in the summer of 2018, HC purchased a new software system for its online business. However, the software did not work properly, and HC was obliged to spend a significant amount on replacing it.

Lucy Oakenshaw, an insolvency practitioner, has been appointed liquidator. She has been given the following information on three issues:

- The directors of HC had not held a full board meeting since February 2019, despite the financial problems that HC was facing. In addition, several major suppliers had been threatening proceedings for non-payment of invoices since late 2018. Despite all this, the directors all still managed to take skiing holidays in March 2019.
- HC was granted an overdraft by Eastern Bank plc in May 2015, allowing borrowing up to £200,000. The overdraft facility is fully drawn and has been since the end of November 2018. In late December 2018, Eastern Bank required HC to grant it (the bank) a floating charge over HC's undertaking, as security for the continuing overdraft. The charge was appropriately registered.
- In January 2018, Bridget's father purchased one of HC's delivery vans from HC for £8,500. This van was shown to have a value of £15,000 in HC's accounts in January 2018.

Advise Lucy on any action she can take in respect of the three issues described above.

(25 marks)

Turn over

Question 4

Stella's Fitness Company Limited ('SFC') was incorporated in March 2011, with unamended Model Articles for Private Companies. It was founded by Stella Roberts and provides fitness classes and personal fitness programmes across south-east England. SFC now has five shareholders, including Stella, who are all also its directors.

On incorporation, HSG Bank plc provided an overdraft facility to SFC, secured by a fixed charge over the company's office premises. This charge was duly registered. At the same time, Douglas Heap, a successful entrepreneur and local philanthropist, provided an unsecured loan of £120,000 to SFC.

SFC has been very successful over the last four years and has recently secured a lucrative contract to provide fitness classes in gyms in central London. This is a very exciting opportunity that the board does not want to miss. However, although SFC has profit reserves that it can use, SFC will need some additional finance, to put in place suitable arrangements for the new classes. It has therefore asked Douglas Heap to increase his loan to £230,000. He has agreed in principle to do so, on condition that the company grants him a charge over the company's book debts to secure the additional loan of £110,000. Apparently, Douglas has been advised to seek a floating charge over the book debts rather than a fixed charge.

Finally, SFC is also considering providing a loan of £75,000 to Ben Fuller, the director who is to head up the expansion into London. This will enable him to live in London temporarily, while dealing with the new contract logistics.

- (a) Explain the nature of a floating charge, and why a floating charge is more appropriate than a fixed charge over the book debts.

(16 marks)

- (b) Advise SFC about making the proposed loan to Ben Fuller and on the possible consequences, if the appropriate procedure is not followed.

(9 marks)

(Total: 25 marks)

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