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 2019-2020, 23rd edition, Derek French, Oxford University Press, 2019.**
- 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. Compare:

   (a) the formation of an unlimited partnership with that of a limited liability partnership;

   (14 marks)

   (b) the nature of the liability of a partner in an unlimited partnership with that of a member of a limited liability partnership.

   (11 marks)
   (Total: 25 marks)

2. Discuss whether it is true to say that a parent company can never be held responsible for its subsidiary's liabilities.

   (25 marks)

3. (a) Identify the limitations that a company's articles will usually place on the powers of a company's directors, or on the authority of those directors to bind the company and explain the legal effects of such limitations.

   (13 marks)

   (b) Explore the extent to which section 33 of the Companies Act 2006 enables shareholders to enforce the articles of association of a company.

   (12 marks)
   (Total: 25 marks)

4. Examine the powers of an administrator of a company, including the circumstances in which an administrator can seek to avoid transactions entered into by a company.

   (25 marks)

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

Question 1

Hiba is currently the sole director and shareholder of Goodlife Organics Ltd ('GOL'), a private limited company based in Bedford and incorporated three years ago. GOL runs an organic grocery business. It has two retail outlets in Bedford and Milton Keynes, which have proved very successful. GOL has unamended Model Articles for Private Companies. When Hiba set up the company, GOL took a small bank loan that is secured by a fixed charge over GOL's main place of business in Bedford.

GOL is now in a position to expand its business and is seeking additional finance for this. Nicholas is interested in investing in GOL, and two alternative investment options have been discussed with him. Under the first option, Nicholas would purchase new ordinary shares in GOL that would give him a 25%–30% share in the company. Under the second option, Nicholas would provide a loan to GOL with interest payable at 1.8%, although it has not been decided whether this loan would be secured.

(a) Advise Nicholas on the implications of the two investment options proposed.

(15 marks)

(b) If Nicholas were to grant a loan to GOL that is secured by a floating charge over GOL's undertaking, outline the steps to be taken to ensure that the charge is fully enforceable.

(10 marks)

(Total: 25 marks)

Turn over

Question 2

Danon, Lucy and Sona are the three directors and shareholders of Floyd Carpets Limited ('FCL'). FCL imports carpets and rugs from the Middle East and the Far East, and sells them on to a range of retail outlets across the south of England. Danon and Lucy each hold 144,400 (38%) of the 380,000 issued fully paid ordinary £1 shares; Sona holds the remaining 91,200 shares (24%). Recent accounts value FCL at £1.9 million, with distributable profits of £650,000. FCL has adopted the Model Articles for Private Companies, but has also excluded Model Article 14.

Sona, her husband and two of her three children are to emigrate to New Zealand in March 2020, so she has decided to dispose of her shares in FCL and to resign as a director. Ideally, she would like to give her shares to her eldest child, Amit (23), who is remaining in the UK for work.

Danon and Lucy are a little reluctant for Amit to become a shareholder in the company, so have been advised that, as an alternative to the transfer, FCL could buy back Sona's shares. A price per share of £2.50 (i.e. a total of £228,000) has been suggested.

In addition, Danon and Lucy would like to ensure that, in the future, they will have more control over outsiders joining the company as members.

(a) Assuming that Sona's shares are to be transferred to Amit, outline the procedure that Sona, Amit and FCL should follow, to effect that transfer.

(5 marks)

(b) Advise on the restrictions that could be added to the company's articles to control the admission of new members to the company in the future, and whether Danon and Lucy alone could successfully add such restrictions to the articles.

(8 marks)

(c) Assuming now that Sona's shares are to be bought back by FCL on the terms outlined above, advise the board of FCL on the legal issues arising from such a buy back.

(12 marks)

(Total: 25 marks)

Question 3

Hurstwood Kitchens Ltd ('Hurstwood') provides kitchen design and installation services in the Midlands. Stanley Ng and Kalvinder Singh are its shareholders and its only directors. The board holds regular management meetings – usually every fortnight. Hurstwood is currently highly profitable.

In recent months, a number of Hurstwood's customers have asked Hurstwood whether it could provide more advanced 3D imaging of the kitchen designs, a service it has not previously offered. The Hurstwood board is conscious that it needs to keep up with technological developments. After a long and difficult search, Stanley and Kalvinder have identified Joseph Clark, an IT specialist, as someone to appoint to provide this service. Stanley and Kalvinder wish to appoint Joseph as a third director of the company, with a three-year, fixed-term service contract, as the company's technology development director.

Joseph already owns, and runs from his home, a small IT consultancy business. He has told Stanley and Kalvinder that if he were to take up their offer, he would want to continue running this business. Moreover, Joseph has told them that he detests attending meetings, and so would expect to miss many of the board meetings.

Joseph is keen to take up the appointment, but he is seeking advice on the following issues:

- the procedure to be followed to appoint him and award his service contract;
- the duties he will be subject to when he is a director, especially bearing in mind his wish to continue running his own business and his aversion to attending board meetings.

Advise Joseph.

(25 marks)

Turn over

Question 4

Helen and Philip met at university in 2001. They began cohabiting in 2004. In 2006, they purchased two small restaurants, which they ran together as an unlimited partnership. In January 2016, on the advice of their accountant, they formed a limited company, Nomad Bistros Ltd ('Nomad'), to own and run the restaurants. They each own 50% of the company's shares and are its only directors.

From mid-2017 onwards, Helen found that Philip was devoting less and less time to the business, and that she was left in charge of day-to-day management. In late 2018, Helen discovered that Philip had, for the past two and a half years, been having an affair with Theresa, head chef at one of the restaurants. Helen also discovered that Philip had used over £12,000 of Nomad's money to help pay for a deposit on a new flat for Theresa. Helen stormed out of Nomad's head office and has not returned since.

Helen is considering making the following two claims: The first is under section 994 of the Companies Act 2006, to force Philip to sell her his shares in the company. The second is a derivative claim against Philip, to recover the £12,000 that he gave to Theresa.

Advise Helen on the likelihood of success of each of these claims.

(25 marks)

End of Examination Paper

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