7 September 2020
Level 6
COMPANY AND PARTNERSHIP LAW
Subject Code L6-1

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. (a) Explain how a 'promoter' of a company can incur personal liabilities if they enter into contracts before the company is formed, and how they may protect themselves from such liabilities.

(14 marks)

(b) Analyse the nature of the contract created by section 33 Companies Act 2006 between a company and its members.

(11 marks)

(Total: 25 marks)

2. Evaluate the respective protections offered to a company's shareholders under Part 11 Companies Act 2006 and section 994 Companies Act 2006.

(25 marks)

3. Explain the relative advantages and disadvantages of fixed and floating charges from the point of view of a company's creditors.

(25 marks)

4. Although companies are subject to a number of restrictions that are designed to support the principle of maintenance of capital, these restrictions are themselves subject to a number of exceptions.

Discuss.

(25 marks)

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

Question 1

Plantadvantage Limited (PA) develops and manufactures high-end, organic, plant-based cosmetics and cleaning products. In 2017, PA developed and began producing packaging for its products, using recycled materials. It also began to sell the packaging to other cosmetics manufacturers. It was concerned to protect itself against any liabilities arising from this new venture, so it formed a wholly owned subsidiary company, Ecoproducts Ltd (EP), to manufacture and sell the new packaging. EP has a single director, Megan.

However, by January 2019, sales of the packaging were disappointing and EP found itself in financial difficulties. Megan felt that EP should cease trading. However, PA's board told Megan that EP must continue trading, and that the board was confident that EP would win further orders, given increasing concerns over the use of non-recycled packaging. Megan did as she was told.

In February 2019, Karl, PA's director responsible for health and safety matters for PA and all its subsidiaries, told PA's board that he thought that EP's manufacturing process was unsafe. That process had been negligently designed by EP's own staff. Karl said he thought there was a real danger that EP's production workers might be seriously injured, and that a more thorough review and redesign of the whole process was necessary. PA's board was concerned about the cost implications of this, and so chose to ignore Karl's report. Nothing was done to improve the safety of EP's manufacturing process. In June 2019, several of EP's employees were badly injured as a result of EP's unsafe manufacturing process.

In July, EP went into insolvent liquidation.

Advise the PA board whether it could incur any liability to pay, or to contribute to, any compensation awarded to the injured EP employees.

(25 marks)

Turn over

Question 2

Fahd and Gloria set up in business together about 12 months ago, repairing and restoring old pieces of furniture and other small items, having been inspired by the TV show, The Repair Shop. The business is called F&G Furniture Restoration. Both Fahd and Gloria contributed about £15,000 as capital to the business. In addition, Fahd leases to the business for a low annual rent a small industrial building that he owns – this had been left to him in his grandfather's will.

The business has been prosperous from the start, making good profits that Fahd and Gloria have so far shared equally. Indeed, Fahd and Gloria are so busy that they would like to take on a third partner, and they have approached Helen, who is a qualified ceramicist and painting restorer. She would thus fit well into the business.

Helen has come to see you, seeking advice on her admission to the partnership. She tells you that there is no written partnership agreement. Fahd and Gloria have told her that, in addition to their daily restoration work, Gloria has dealt with the publicity and marketing of the business, while Fahd has concentrated on the finances and premises upkeep. They have indicated that they would like Helen formally to join the business on 1 September 2020. However, as they will reach the first anniversary of the start of the business at the end of July 2020, they plan to update their business stationery and marketing material, with Helen's name included, on 1 August 2020.

Advise Helen:

(a) why the proposed business structure described above is an unlimited liability partnership;

(10 marks)

(b) about the nature of her liability once she becomes a partner;

(9 marks)

(c) whether she could be held liable for partnership debts before she joins the partnership on 1 September, and what she could do to protect herself from such liability.

(6 marks)

(Total: 25 marks)

Question 3

Kempston Billboards Limited ('the Company') provides advertising design and distribution services to a number of industry and business sectors in the south of England. For example, it designs advertising media for outlets on buses and in motorway service stations. The Company's articles of association follow the Model Articles for private companies (without amendment).

In November 2019, the Company decided to expand its operations. It purchased, for £650,000, a large new warehouse near the Company's existing premises. The vendor was Sonia. She is the civil partner of Amelia, a director of the Company. Amelia spoke strongly in favour of the purchase of the warehouse.

In addition, to support the expansion of its business, the Company decided to appoint Cameron as an additional director of the Company, with a fixed-term, three-year service contract.

Ryan, another of the Company's directors, now seeks your advice. He tells you that the Company no longer needs the new warehouse, as the planned expansion of the Company's operations has failed to generate much new business. Furthermore, following a drop in local business property prices, the warehouse is now worth only £450,000. The board was unaware of Amelia's relationship with Sonia when it agreed to purchase the warehouse.

In addition, the Company wishes to remove Cameron from the board of directors.

Shareholders in the Company were never consulted about any of the expansion plans nor about the appointment of Cameron.

Advise the Company in respect of:

(a) any action that can now be taken with regard to the purchase of the new warehouse from Sonia;

(15 marks)

(b) the removal of Cameron from the board.

(10 marks)

(Total: 25 marks)

Turn over

Question 4

Savignan Ltd ('Savignan') was incorporated in October 2012. It operates an interior decoration business for the hotel and events trade. In the last financial year, ending 31 March 2020, its turnover was £2.5 million. It has 38 employees. Savignan's biggest creditor is Kempston Bank ('the Bank'), with which Savignan has a term loan of £130,000. This is secured by fixed and floating charges over all its assets and undertaking, as well as by personal guarantees from Savignan's four directors. This loan is due for repayment in November 2020.

Savignan also has an overdraft facility up to £75,000 with the Bank. Savignan's other creditors, including trade creditors, amount to £832,000.

Unfortunately, in the last month, a major hotel client has withdrawn its business, with another threatening to do the same. As a result, Savignan 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 the overdraft and for the directors to inject new capital into the company.

The board of Savignan 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, if it could, outline the procedure that would be involved in the board doing so.

(25 marks)

End of Examination Paper

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