16 January 2017
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 2016-2017, 20th edition, Derek French, Oxford University Press, 2016.**
- 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. (a) Explain the nature of the contract between a company and its members which arises from s.33 Companies Act 2006.

(10 marks)

(b) Discuss the extent to which the powers of a company's directors, and the directors' authority to bind the company, are limited by the company's articles of association.

(15 marks)
(Total: 25 marks)

2. Although companies are prohibited from buying back their own shares, there are a number of exceptions. These exceptions are, however, tightly regulated so as to uphold the basic principle that companies must maintain their share capital.

Discuss.

(25 marks)

3. Compare fixed and floating charges, including their relative advantages and disadvantages for both the chargor and the chargee.

(25 marks)

4. Explain:

(a) the circumstances in which a person, before she has become in fact a partner in a partnership, can be liable for debts of that partnership;

(5 marks)

(b) the circumstances in which an existing partner can bind the partnership in contract;

(12 marks)

(c) how a retiring partner can protect herself from liability for debts of the firm when she retires.

(8 marks)
(Total: 25 marks)

Turn over

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

Question 1

Anil Hassan and Dmytro Vasiliev have been running a music shop, Rapture Sounds, together for three years. Anil is the owner of the business and, up to now, Dmytro has been his employee.

Anil plans to open another shop in a nearby town and Dmytro is keen to invest part of a recent inheritance in the business, to assist with this expansion. Initially, they contemplated creating a partnership together to run the expanded business, but they now plan to form a private limited company to do so. They are concerned about issues of potential personal liability should the business not succeed. They plan to call the company Hassan Vasiliev Ltd, but they will continue to trade as Rapture Sounds.

They have provisionally agreed that Anil will take 60% of the shares in the company. This share reflects Anil's ownership of the existing shop. Dmytro will make a cash investment in return for 40% of the shares. They will participate equally in the day-to-day management. Both of them will be directors of the limited company, working full-time for the business. Given that he will have the smaller share in the company, Dmytro is keen to protect his position as a director of the company.

Advise on:

(a) the formalities involved in setting up a private company limited by shares, including those regarding the proposed company name and trading name, compared with an unlimited partnership;

(10 marks)

(b) Anil and Dmytro's potential liability for the debts of the business if they are shareholders and directors in a limited company;

(10 marks)

(c) how Dmytro could protect his position as a director through the company's constitution.

(5 marks)
(Total: 25 marks)

Question 2

Eleanor and Nigel, mother and son, respectively own 40% and 60% of the shares in Faraway Places Travel Ltd ('the company'), which arranges luxury holidays to the Far East. They have owned the business since 2002. Initially, they operated it as a partnership. In October 2009, they formed the company, which took over the business. The company's articles contain a restriction on the transfer of shares to outsiders. Despite the global financial crisis, the company continued to be profitable until about 18 months ago.

Unfortunately, since mid-2015, Nigel has devoted less and less time to the business. Eleanor does not know the reason for this, but she has had to carry out, on her own, almost all of the company's day-to-day management. As she has been unable to cope with this workload, turnover and profits have been falling. In addition, Eleanor has discovered that Nigel has used the company's money to purchase a £100,000 share in a superyacht moored in Amalfi, Italy. Finally, the marketing manager recently left the company abruptly, following an argument with Nigel over a private matter. Nigel hit the manager during this dispute. This has left Eleanor with an even heavier workload, and has resulted in further reductions in turnover.

Things came to a head about a week ago. Nigel arrived unexpectedly at the office, blamed Eleanor for the struggling business and threatened to remove her as director. Eleanor walked out, and has taken no part in the running of the company since. She now intends to commence proceedings under s.994 Companies Act 2006, and to ask the court to force Nigel to sell his shares in the company to her.

Advise Eleanor on the likelihood of success of her claim under s.994. Your answer should include advice on whether the court is likely to order Nigel to sell his shares to her and, if so, at what price.

(25 marks)

Turn over

Question 3

Printfine plc ('Printfine') supplies a range of traditional printing services. It has three directors, Graham Bolton, Tessa Francis and Navreet Olsen. Graham and Navreet are also shareholders. The board of directors holds weekly management meetings. All three directors have service contracts that are terminable on notice.

In recent months, a number of Printfine's customers have asked Printfine whether it could also provide more advanced 3D printing, a service it has not previously offered. Last month, Arco plc, a manufacturer of state-of-the-art 3D printers, contacted Printfine. It told Printfine that it had a surplus 3D printer, which it had been about to sell to one of Arco's customers, but the sale had fallen through because of the customer's insolvency. Arco offered to sell the printer to Printfine for a hugely discounted price. Printfine's board met to discuss this very attractive offer. Tessa, with Graham's support, persuaded Navreet that Printfine could not afford to purchase the 3D printer offered by Arco, and that 3D printing was so different from Printfine's existing line of business that it would be too risky, and too unprofitable, for Printfine to embark upon. They therefore declined Arco's offer, and have told Printfine's customers that it will not be providing 3D printing services.

It now transpires that Tessa subsequently purchased the printer from Arco herself. It seems that she has now begun providing 3D and other printing services to some of Printfine's customers. She is making a substantial personal profit by doing so, whilst Printfine's turnover and profits have begun to fall.

Navreet is understandably unhappy with the situation.

Advise Printfine:

(a) whether Tessa has breached her duties;

(19 marks)

(b) how Tessa may be removed from office as a director and whether she would be entitled to any compensation on removal.

(6 marks)
(Total: 25 marks)

Question 4

Daisy Cosmetics Ltd ('DC') went into insolvent liquidation in December 2016.

DC's main activity was the production and sale to retail outlets of luxury cosmetics using organic ingredients sourced principally from the south of France and from Greece. It commenced business in September 2005. Its audited accounts for the year ending 31 December 2014 showed that it was solvent. It had made a small profit for the 12 months prior to that date. It has a board of five directors.

Unfortunately, DC's profits began to decline in early 2015 and continued to do so until it was put into liquidation. It would appear that DC agreed to a number of substantial price increases demanded by its suppliers which, coupled with apparently overgenerous discounts to customers, caused a drop in profitability.

Samantha Painter, an insolvency practitioner with the accountancy firm Karl Willowes, has been appointed liquidator. She has found out the following information:

- In February 2015, DC sold a plant refrigeration unit to the spouse of one of its directors for £10,500. The unit was shown to have a value of £32,000 in DC's accounts in January 2015.

- DC's main debt consists of an overdraft facility taken in May 2010 with Southern Bank, which allowed DC to borrow up to £500,000. The overdraft facility is fully drawn and has been since the end of May 2016.

  In July 2016, Southern Bank insisted that DC grant it, the Bank, a floating charge over DC's undertaking as security for the continuing overdraft.

- Further, it would appear that the directors of DC have not held a full board meeting since August 2016, despite the apparent financial problems facing DC, including threatening demands from major suppliers. All the directors went on leave during August/September for about six weeks.

Advise Samantha whether she can take any action in respect of the events described above.

(25 marks)

End of Examination Paper

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