

The Institute of Legal Executives
LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW
COMPANY AND PARTNERSHIP LAW

Time allowed: 3 hours

Each question carries a total of 25 marks

Answer FOUR only of the following SEVEN questions. This paper is divided into two sections. You MUST attempt THREE questions from Section A (Company Law questions) and ONE question from Section B (Partnership Law questions).

Full reasoning must be shown in answers – a yes or no answer will earn no marks.

Authorities and decided cases should be cited where appropriate.

**Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Company Law 2006-2007, 10th edition, by Derek French, Oxford University Press.
Invigilators may carry out spot checks.**

SECTION A
(Answer 3 questions from this section)

1. Boothbury Ltd is a small family-owned company which is engaged in the import of fine wines. Article 41 of the company's Articles of Association requires any member who wishes to sell his shares in the company to offer them first to existing shareholders. Derek Boothbury, who holds 20% of the shares in Boothbury Ltd, has announced that he wishes to sell his shares in the company to Rachel, who owns and runs a competing fine wine importation business.

The Board of Directors of Boothbury Ltd, who between them own 65% of the remaining shares in Boothbury Ltd, are anxious that the shares owned by Derek should remain within the ownership of the Boothbury family. Karen Boothbury, who holds 5% of the shares in the company, is willing to purchase Derek's shares but needs financial help to do so.

The Board of Directors of Boothbury Ltd seek your advice as to whether:

- (a) Boothbury Ltd could provide financial help to Karen Boothbury for the purchase of Derek's shares, the form that the assistance may take and the procedures that would need to be followed;

AND

- (b) Karen and/or the company can force Derek to sell his shares to Karen;

AND

- (c) Boothbury Ltd itself would be permitted to purchase Derek's shares and as to the legal constraints, if any, if it is permitted to do so.

(25 marks)

P.T.O.

2. Fun Products Ltd, whose Articles of Association are in the form of Table A, has contracted to sell its loss-making cuddly toy manufacturing operations to Stuffy Toys Ltd for £700,000. Stuffy Toys Ltd is a company in which Lucinda, a director of Fun Products Ltd, owns 5% of the equity shares and her husband, Manfred, owns 18% of the equity shares.

The Board of Directors of Fun Products Ltd is proposing to use £300,000 of the sale proceeds to make ex gratia payments to those staff who have recently been made redundant as a result of the contract to sell the business. It proposes to use a further £100,000 to pay ex gratia bonuses to the remaining members of its workforce as they have not received a pay rise for three years due to the company's financial difficulties.

However, no dividend has been declared by the company for some time and some of the shareholders of Fun Products Ltd are unhappy with the Board's decision to expend £400,000 in this manner. Furthermore they have learnt of Lucinda and her husband's interest in Stuffy Toys Ltd.

The Board of Directors of Fun Products Ltd seeks your advice as to the legitimacy of their decisions in relation to the sale of the business and the proposed expenditure of £400,000 and as to whether the shareholders concerned can mount any legal challenge either on their own behalf or on behalf of the company.

Advise the Board of Directors of Fun Products Ltd.

(25 marks)

3. Examine, with reference to decided cases and statutory provisions, the extent to which it can be said that today it is not so much a question of whether the veil of incorporation will be lifted but more a question of whether the veil of incorporation will be lowered, particularly in cases involving a holding company and its subsidiary.

(25 marks)

4. Explain, with reference to decided cases and statutory provisions, why it is the view of all commentators that in general a creditor, given a choice between taking from a company a fixed charge or a floating charge as a security, should always opt for a fixed charge in preference to a floating charge.

(25 marks)

5. Timothy Pot, an insurance broker by day, is a shareholder of the Canon Pool and Snooker Club Ltd which operates as a private club. In addition he carries out the role of Club Treasurer. Article 38 of the company's Articles of Association provides:

"Timothy Pot is to be the Club Treasurer and is to receive the sum of £1,500 per annum for his services."

The club has recently expanded its facilities and its membership has increased dramatically. The Board of Directors has decided that the club should appoint a full time manager whose duties will include those currently being undertaken by Timothy Pot.

The Board has written to Timothy informing him that his services will no longer be required and that it proposes to remove Article 38 from the company's Articles of Association.

Timothy Pot is very unhappy with these developments and is also very concerned, as he has not received payment of the £1,500 for his services as Club Treasurer for the past year.

Advise Timothy Pot as to his legal position with respect to the above developments.

(25 marks)

P.T.O.

SECTION B
(Answer one question from this section)

6. Examine, with reference to decided cases and statutory provisions, the extent to which partners in an unlimited partnership are liable for the actions of a fellow partner.

(25 marks)

7. Angela, David, Joan and Ronald are the partners of a firm of surveyors, Crackit, Dobbs & Co, which is engaged in providing services to private purchasers of property. The partnership operates out of four offices, each run by one of the partners.

Angela, without the knowledge of David, Joan and Ronald, has been providing consultancy services on her own account to Mortar Brothers Ltd, a local building company. She has been assisting Mortar Brothers Ltd with its negotiations to purchase a number of brown-field sites for development as industrial parks and with the preparation of estimates for the cost of developing the sites. Furthermore Angela purchased property from one of Crackit, Dobbs & Co's clients and sold it on to Mortar Brothers Ltd, realising a £50,000 profit.

David has been offering, on his own account, a materials-sourcing service and project management service in relation to the building of extensions and loft conversions for the clients of Crackit, Dobbs & Co. In addition, as the most expert in computer technology, David was charged with the responsibility for arranging for the replacement of the firm's aging computers and specialist computer software. To this end he entered into a contract with Softkey Computers Ltd to provide new computers and install specialist computer software. It transpires that in fact David holds 30% of the shares in Softkey Computers Ltd.

The above facts have now become known and Joan and Ronald are extremely unhappy.

Advise Joan and Ronald as to the legal position with respect to the above events.

(25 marks)