

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 the question paper fully.** However, you may make notes on the 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. The 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 2010-2011, Derek French, Oxford University Press.**
- Candidates must comply with the ILEX 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 ball point 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 ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL**

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

1. Analyse, with reference to statutory provisions and decided case law:
- (a) The differences between the function and responsibilities of an administrator and an administrative receiver, and
(9 marks)

- (b) The differences between a fixed charge and a floating charge.
(16 marks)

(Total: 25 marks)

2. The doctrine of capital maintenance is said to be one of the fundamental principles of company law.

Explain this doctrine and analyse, with reference to statutory provisions and decided case law, the circumstances in which a reduction in capital may legitimately be made by a private limited company.

(25 marks)

3. Discuss the nature of a limited liability partnership and compare its advantages and disadvantages with those of a partnership under the Partnership Act 1890 and a private limited company.

(25 marks)

4. Examine, with reference to decided cases and statutory provisions, the extent to which it is true to say that a transaction will only be binding on a company if the transaction is both within the contractual capacity of the company and within the express powers of the director who entered into the transaction on its behalf.

(25 marks)

SECTION B

(Answer at least one question from this section)

Question 1

Titanic Limited ("the Company") went into liquidation on 10th December 2010. The liquidator is currently investigating the affairs of the Company. The total value of the Company's debts in the liquidation are estimated at £275,000.

It seems that the Company has been facing significant financial difficulties for some time. The accounts for the Company for the last three years show consistent losses. In February 2010 the Company's overdraft facility was reduced because the lender had concerns about the Company's credit worthiness. As a result the directors remortgaged their homes to enable them to inject cash into the business to keep it afloat. However during September and October 2010 the Company lost contracts with three of its major customers.

In March 2010 a fleet of vans was sold to Bismarck Limited for £14,000. One of the directors of Bismarck Limited is also a director of the Company. The vans were bought by the Company in November 2009 at a cost of £36,000.

In October 2010 after pressure from one of the Company's major suppliers, Mary Rose Limited, the Company settled three of their four overdue invoices totalling £19,400.

Advise the liquidator:

On any potential action which he may bring in respect of the above transactions and against the directors to contribute to the assets of the Company.

(25 marks)

Question 2

Fragrant Bouquets is a floristry business run by three partners, Aysha, Baljit and Clare. The partners are old friends who decided to set up in partnership ten years ago. Aysha and Clare both contributed £25,000 to the business and Baljit contributed £50,000. The partnership rent commercial premises from which they run their shop. However, because the premises lack storage facilities Aysha has allowed the partnership to use her garage for storing non-perishable items. Because Aysha, Baljit and Clare have known each other since childhood they felt it would not be necessary to sign a partnership agreement.

You have been consulted by Aysha as she has encountered some problems relating to the partnership. Baljit is demanding that she receives half of the profits this year as she contributed 50% of the partnership's capital. Also Baljit has told Aysha that she should leave the business side of things to her (Baljit) and Clare, and concentrate on flower arranging, because Aysha does not have any business qualifications.

Aysha is also concerned about continuing to let the partnership use the garage. Clare was renewing the partnership's insurance policies recently and she commented that she would extend the cover to include "our garage".

In view of the problems that have arisen recently Aysha is considering leaving the partnership but is unsure how to communicate her resignation and what she might need to do to protect herself from liability for any debts of the partnership on her resignation.

Advise Aysha on the following issues:

- (a) Can Baljit demand 50% of the partnership profits and exclude Aysha from the management of the partnership?

(5 marks)

- (b) Whether the garage would be considered to be partnership property?

(10 marks)

- (c) In the event that Aysha decides to leave the partnership, how should she communicate her resignation, and what steps should she take to protect herself from liability in connection with the partnership?

(10 marks)

(Total: 25 marks)

Question 3

Until recently, Miquita, Nathan and Olga were the three directors of Here Now Limited ("the Company"). They were also the shareholders of the Company, each holding 33.3% of the issued share capital.

Olga has recently started to disagree with the other directors on a number of issues concerning the direction in which the Company is going and their plans for expansion of the Company. Miquita and Nathan have now passed, at a general meeting, a resolution to remove Olga from her position as director. At the same time they decided to issue shares to Nathan's partner Quentin. As a result Miquita, Nathan and Olga each hold 20% of the issued share capital and Quentin holds 40%.

Yesterday at a general meeting, the remaining directors announced that they would not recommend the payment of a dividend this year. However they recently approved a 50% increase in directors' bonuses.

Advise Olga on:

- (a) her removal as a director **(6 marks)**
- (b) the new issue of shares **(6 marks)**
- (c) whether she can insist that a dividend be paid **(5 marks)**
- (d) any possible course of action she may be able to take to remedy these matters **(8 marks)**

(Total: 25 marks)

Question 4

With your assistance, Erika, Fred and Gulbir are in the process of incorporating a private limited company, Vegan Delights Limited ("Newco"), to manufacture a range of convenience foods and confectionary which are suitable for vegans. It is intended that all three will become directors of Newco.

They have found a potential supplier of soya milk, a key ingredient in a number of products in their planned range. The supplier has offered them a 40% discount on their first order on the condition that it is placed by the end of the week. They are very keen to take advantage of this offer.

They have developed a unique recipe for vegan chocolate bars which will be produced by Newco. However Fred and Gulbir suspect that Erika may be negotiating with other parties to provide them with details of the recipe.

Advise Fred and Gulbir on the consequences if Erika, Fred and Gulbir entered into a contract with the supplier before Newco were incorporated and what action they might have against Erika if she has provided other parties with details of their recipe.

(25 marks)

End of Examination Paper

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