

**INSTITUTE OF LEGAL EXECUTIVES**  
**UNIT 1 – COMPANY & 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 2010-11, 14<sup>th</sup> edition, edited by Derek French, Oxford University Press.**
- Candidates must comply with the ILEX Examination Regulations.
- Full reasoning must be shown in answers. 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. A director has a fiduciary relationship with his company. Explain, with reference to statute and case law, the rules which regulate this fiduciary relationship.

**(25 marks)**

2. "Either the limited company was a legal entity or it was not. If it was, the business belonged to it and not to Mr Salomon. If it was not, there was no person and no thing to be an agent at all; and it is impossible to say at the same time that there is a company and there is not".

Lord Halsbury L.C. in *Salomon v Salomon & Co Ltd* [1897]

- (a) Explain the statement made by Lord Halsbury and analyse the approach taken by the courts in respect of the separate legal personality of the company.

**(15 marks)**

- (b) Explain the rules governing contracts purported to be made on behalf of a company before it has been incorporated under the Companies Act 2006.

**(10 marks)**

**(Total: 25 marks)**

3. Analyse the extent to which partners in an unlimited partnership may be bound by the actions of their fellow partners and the consequences of the partners being so bound.

**(25 marks)**

4. Explain with reference to statute and case law the nature of the security which a company can offer third parties in order to secure its borrowing and the protections that a third party should insist on when taking such security.

**(25 marks)**

**SECTION B**  
**(Answer at least ONE question from this section)**

**Question 1**

Northern Glaziers Limited ("Northern Glaziers") was incorporated in 2005 and is a manufacturer of aluminium glazing systems for commercial buildings. It currently has 16 individual shareholders and an issued share capital of £100,000. It has recently adopted the Model Articles for private companies limited by shares.

Damien Trune, one of the shareholders of Northern Glaziers, currently owns 12,000 ordinary shares in the company. Damien's daughter is getting married and as part of her wedding gift Damien would like to transfer half of his shareholding in Northern Glaziers to his daughter.

Northern Glaziers is keen to expand its current operations and wishes to acquire a new manufacturing facility in Preston, Lancashire.

In order to fund the expansion Northern Glaziers needs to raise £4,000,000. A large proportion of the funding can be obtained by way of a fixed term loan from First Bank plc, however the remaining £1,000,000 will need to be raised through equity finance.

The board of directors of Northern Glaziers would like to issue 5000 new ordinary shares of £1 each for a premium of £199 per share.

- (a) Advise Damien whether the board of directors of Northern Glaziers can refuse to register the transfer of shares from him to his daughter.

**(11 marks)**

- (b) Explain, with the aid of relevant statute and case law, the legal requirements to be considered by the directors of Northern Glaziers when issuing the 5000 new ordinary shares.

**(14 marks)**

**(Total: 25 marks)**

**Turn over**

## Question 2

Monika Varda has been appointed as the liquidator of Sadlers Building Supplies Limited ("Sadlers"), a medium size builders merchants based in Bedford. An order to wind Sadlers up was made on 19 May 2011 on the petition of Payter Aggregates Limited ("Payter").

Sadlers was a family company run by Chris Sadler and his sons Michael and James. Chris, Michael and James were the company's three directors. Chris had always worked in the building supplies trade and brought James up to follow in his footsteps; Michael trained as an accountant before he joined the board.

Monika's team has examined Sadlers' books and has put together the following chronology:

**19 November 2010:** A major customer of Sadlers, Bradley Developments Limited ("Bradley"), is placed in administration. Bradley owes Sadlers £87,975. As at that date the management accounts of Sadlers showed total net assets are £67,955. It quickly becomes clear that all of Bradley's assets will be used to pay its secured creditors. [Sadlers' financial situation deteriorates further after 19 May 2011 as other debtors delay payment or cease trading].

**22 November 2010:** The board minutes of Sadlers record a decision to continue trading in the expectation that the debtors will pay in due course.

**22 November 2010 – 19 May 2011** Numerous demands from trade creditors, some of whom are owed very substantial sums. Sadlers paid as many creditors as it could but considerable amounts went unpaid and have still not been paid when Sadlers is placed in liquidation.

**7 January 2011:** Michael resigns from the board saying that he is concerned that the directors may be liable for the debts of Sadlers if the company continues to trade.

**9 February 2011:** Statutory demand from Block Paving Limited ("Block") for £28,985.

**19 February 2011:** Sadlers pay Block's debt in full. Board minutes record that the payment was made in order to avoid Block presenting a petition for Sadlers winding up.

**2 April 2011:** Payter serves a statutory demand on Sadlers for £43,600 owed in respect of invoices dating between October 2010 and March 2011.

**1 May 2011:** Payter petitions for Sadlers winding up based on failure to satisfy the statutory demand.

Advise Monika on the legal proceedings (other than pursuing the outstanding debtors of Sadlers) she can take, and against whom, in order to boost the available funds for Sadlers creditors.

**(25 marks)**

### Question 3

Temple Bioscience Limited ("Temple") is a biotechnology company incorporated in 1999. It adopted the Model Articles for private companies limited by shares in January 2010. The company has four directors: Linda Katz (who is also the chairperson), Kasit Rochanakorn and Stephen Hale. The fourth director, Malcolm Wood, is a representative of ABC Ventures Limited ("ABC"), a private equity investor which owns 52% of the share capital of Temple.

Temple suffered a significant loss last year and could not pay any dividends. ABC is concerned about the value of its investment in Temple. ABC believes that widespread restructuring of the company is required in order to prevent any further reduction in its investment. Malcolm has identified that Kasit Rochanakorn is problematic. Two weeks ago he signed a contract to acquire a Sunseeker 30ft yacht costing £800,000 for and on behalf of Temple with Sunseeker Limited. This was despite the fact that the company's objects clearly state that the objects of the company are restricted to carrying on business solely as a biotechnology company.

ABC wishes to terminate Kasit's service contract and have him removed from the board, the rest of the board have agreed to this. Temple's lawyers are negotiating a settlement with Kasit in order to avoid any claims, however his service contract does not include any provision allowing ABC to force him off the board.

- (a) Advise, with reference to relevant statute and case law, whether it is possible to remove Kasit from the board of directors of Temple.

**(15 marks)**

- (b) Advise, with reference to relevant statute and case law, whether Temple is bound by the contract with Sunseeker Limited.

**(10 marks)**

**(Total: 25 marks)**

*Turn over*

#### Question 4

Vivienne Rogers is an enthusiastic gardener and three years ago set up her own landscape gardening business, operating as a sole trader. The business has been very successful and gross profits for the year end 31 December 2010 were £125,000.

In addition to Vivienne herself, she employs two other gardeners, Samira and Martin, to help in the business.

Vivienne's husband is about to retire and, although Vivienne does not want to give up the business that she has built up, she wants to be able to spend more time with him.

Her plan is that Samira and Martin should assume a more prominent role in the business (including, if necessary, having a financial stake). However, Vivienne still wants to participate in the running of the business (perhaps two days a week) and have a right of veto over major business decisions. Subject to that she is happy for Samira and Martin to be in charge of the day to day running of the business. However, the extent of Samira and Martin's involvement may be limited by their personal finances.

With a view to giving effect to her plan, Vivienne realizes that now is probably a good time to reassess her position as a sole trader and consider running the business as a company or in partnership with Samira and Martin.

Advise Vivienne of the advantages and disadvantages of running the business as either a private limited company or an unlimited partnership.

When advising Vivienne, please have regard to formation, management structure, liability for debts and raising finance.

**(25 marks)**

**End of Examination Paper**

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