

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 2011-2012, 15th edition, Derek French, Oxford University Press, August 2011.
- 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 PRACTICE**

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

1. a) Explain the legal duties of a promoter in relation to the company he is promoting and the remedies available to the company in the event of a breach of these duties.

(14 marks)

- b) Explain and analyse the legal significance of pre-incorporation contracts in relation to the promoter of a company.

(11 marks)

(Total: 25 marks)

2. Compare and contrast fixed and floating charges in respect both of their creation and the benefits they confer on the charge holder.

(25 marks)

3. Explain and briefly analyse how the insolvency law procedures of administration, company voluntary arrangement (CVA) and administrative receivership may be applied by a financially distressed company seeking to re-organise its affairs.

(25 marks)

4. Identify the different forms of business media that are available and analyse the factors that are relevant to a business person in choosing between those different forms.

(25 marks)

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

Question 1

Michael, Nicholas and Peter are all members of Pandora Ltd. Peter is also one of the directors of the company. The Articles of Pandora Ltd. include the following:

- 1.) Michael shall be employed as the company solicitor.
- 2.) If any member wishes to transfer his/her shares, he or she must first inform the existing members, who may acquire the shares at a fair price.
- 3.) On any resolution to remove Peter as a director of the company, he shall be entitled to 100 votes per share.
- 4.) All disputes between the company and its shareholders shall be referred to arbitration.

The following events have occurred:

- a) The company is unhappy with Michael's poor performance, and has decided to remove him from his position as company solicitor.

Advise Michael whether or not he can prevent his removal by the company.

(9 marks)

- b) Nicholas wishes to sell his shares to someone who is not currently a member of the company.

Advise Nicholas whether the members of the company can prevent him from doing so.

(8 marks)

- c) Peter has been told by the company's chairman that he is to be removed as a director, and that the company 'has no intention whatsoever of respecting his right to 100 votes per share'.

Advise Peter whether he can enforce this provision in the articles.

(8 marks)

(Total: 25 marks)

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Question 2

Elements plc is the parent company in a group of companies operating production and distribution of water-sports equipment.

Elements plc holds the majority of shares in Aqua Ltd, which supplies the water-sports equipment to local sellers. The remaining shares are held by two directors of Aqua Ltd, both of whom were appointed by Elements plc.

Swimmers Ltd is one Aqua Ltd's major suppliers and creditors. It has been striving to obtain payment for deliveries supplied to Aqua Ltd. However, it has recently learnt that Aqua Ltd has ceased trading. Moreover, it seems that in the last five months, materials delivered to Aqua Ltd, and orders received by Aqua Ltd, were all passed on to Waterfalls Ltd. Waterfalls Ltd is a wholly-owned subsidiary of Elements plc, and was only recently incorporated.

Advise Swimmers Ltd whether it can obtain payment from either Elements plc or Waterfalls Ltd in respect of the debts of Aqua Ltd.

(25 marks)

Question 3

Gina, Terry and John are the directors of Zero Ltd and each holds one of the company's shares.

During the last two years, Terry has become increasingly dissatisfied with the way in which the company is being run. In particular, he feels aggrieved because the company's premises in London were sold at a lower price than their market value. Gina and John failed to have the company's premises valued before their sale.

Furthermore, Terry feels that his views are no longer being taken into consideration by the other two directors, who automatically oppose any suggestions he makes in board meetings.

Gina and John, on the other hand, are themselves unhappy with Terry's own role in the company. Recently there have been complaints of sexual harassment against Terry by two of the company's female employees, as a result of which he was arrested by the police. Gina and John have now told Terry that it would be better if they were to buy his shares from him.

Advise Terry in relation to the legal remedies available to him, if any.

(Total: 25 marks)

Question 4

Stella, Benjamin and Amber are directors of Pantheon Ltd. Stella is the company's marketing director. However, her marketing strategy for the company seems to have been very poorly devised, as the company has recently suffered a sharp fall in sales and in profits. She has also recently failed to attend a number of board meetings.

Benjamin recently negotiated a number of contracts on behalf of the company. Although these contracts were not the best deals the company could get, Benjamin opted for them as they earned him a higher rate of commission. Benjamin was also given a valuable gold watch by John when Benjamin awarded a lucrative contract with Pantheon Ltd to John's company. Benjamin did not mention to Pantheon Ltd the gift of the watch.

Amber runs her own business, which is in direct competition with Pantheon Ltd. She has recently diverted to her own business several contracts that could have gone to Pantheon Ltd. She has never mentioned the existence of her business to the directors of Pantheon Ltd.

Consider:

- a) whether the directors may be in breach of their legal duties towards Pantheon Ltd and the remedies available to the company;
- b) how the directors of Pantheon Ltd might be relieved from liability for breaching their duties towards the company.

(25 marks)

End of Examination Paper

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