

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, 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 PRACTICE**

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

1. (a) Critically analyse the purpose of administration proceedings introduced by the Enterprise Act 2002.

(12 marks)

- (b) Explain the differences between a fixed charge and a floating charge in respect of both their creation and their effect in the context of liquidation.

(13 marks)

(Total: 25 marks)

2. Discuss whether the existing safeguards under the Companies Act 2006 on the maintenance of capital provide adequate protection to creditors.

(25 marks)

3. Explain the advantages of incorporation and analyse the circumstances under common law in which the 'veil of incorporation' will be lifted.

(25 marks)

4. (a) Explain the circumstances in which directors of a company may bind the company to a contract with a third party.

(15 marks)

- (b) What relevance does the capacity of the company have to the company's shareholders, to the liability of the directors to the company, or to third parties dealing with the company?

(10 marks)

(Total: 25 marks)

SECTION B**(Answer at least one question from this section)****Question 1**

Hamish and George are both directors of FlywithUs Ltd, a small tour operator. Recently the company has been facing financial difficulties. Although Hamish suggests that the company should enter into a Company Voluntary Arrangement, George insists that he has a plan which will effectively allow the company to trade out of its financial trouble.

George suggests that he is going to buy one of the jet aircrafts that the company owns, so as to provide funds to the company. The actual value of the jet is £245,000, but George is prepared to pay only £130,000. Moreover, George insists that part of these purchase monies should be used by the company to pay off a £3,000 loan that he advanced to the company 5 months ago. Hamish is concerned about the lawfulness of George's plan. However, he really dreads the prospect of liquidation and decides to accept George's proposals.

Advise George and Hamish with regard to any legal consequences of following George's proposals.

(25 marks)**Question 2**

Rupinder has just developed a new medical product that can cure baldness and wishes to set up a business venture. Rupinder's mother wants to invest £30,000 into the business, but does not want to be involved in the management of the business nor its day to day operations.

In addition, Max and Damien, Rupinder's friends from college, are keen to invest £5,000 each in the new business. However, in the current economic climate they are concerned about limiting their liability in the event of the business's failure.

(a) Advise Rupinder with regard to the formalities of setting up different forms of partnership, namely under the Partnership Act 1890 or Limited Liability Partnership Act 2000.

(7 marks)

(b) Advise Max, Damien and Rupinder's mother with regard to their rights to participate in the management of the partnership, their potential liability for the debts and obligations of the partnership, and any options they might have to exit the partnership structure.

(Give your advice for **both** types of partnership.)

(18 marks)**(Total: 25 marks)****Turn over**

Question 3

Emma, Tina and Billy are the directors of MediaWorld plc. Emma is the managing director.

Emma entered into a contract on behalf of MediaWorld with BestPC Ltd. which undertook to supply a quantity of computers to MediaWorld. Although she was paid significant commission by BestPC for securing the deal, Emma did not mention this to anyone else.

Tina has been asked by Emma to purchase 50 printers for MediaWorld. Unknown to the other directors, Tina runs her own company that sells printers and she gives the MediaWorld lucrative contract to it. Tina does not mention this to the directors of MediaWorld.

Billy has responsibility for MediaWorld's marketing strategy and he has taken a number of decisions without consulting his fellow directors. It was recently revealed that his decisions were wrong and resulted in a loss of profits. When Billy's actions were questioned by the board of MediaWorld, he argued that he rarely attends board meetings, and hence it was the lack of information that led to his erroneous decisions.

Advise Emma, Tina and Billy as to any liability each may incur with regard to a breach of their legal duties towards MediaWorld plc.

(25 marks)

Question 4

Beth, a fashion designer, wished to transfer her clothing business to a private limited company that she intended to incorporate, to be called AFL Ltd. Beth delivered all the necessary documents to the Registrar of Companies and received a Certificate of Incorporation (dated 24th February) on 1st March.

On 14th February Beth agreed, in a letter which she signed "for and on behalf of AFL Ltd, Beth, Director", to purchase, from Kempstons Ltd, a quantity of materials that she would need for her new collection.

At the first board meeting of AFL Ltd, the contract with Kempstons Ltd was approved and AFL Ltd received delivery of the first consignment of materials. However, the board has now decided to cancel the contract.

Beth also transferred some land to AFL Ltd for £250,000. It was later discovered by the board of AFL Ltd that she made a profit of £25,000 from that sale.

- (a) Advise Beth with regard to her liability, if any, to Kempstons Ltd.
(9 marks)
- (b) How would your answer differ if, in the letter of 14th February, Beth expressly excluded her personal liability?
(8 marks)
- (c) Advise AFL Ltd as to any remedies it may have against Beth in respect of the profit she received on the sale of the land.
(8 marks)

(Total: 25 marks)

End of Examination Paper

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