



THE CHARTERED 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, 2012-2013 16th Edition, Derek French, Oxford University Press 2012.**
- Candidates must comply with the CILEX 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 CILEX 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. Compare the advantages and disadvantages of conducting a business through the vehicle of a private company limited by shares with conducting a business through other legal vehicles.

(25 marks)

2. The authority of a company's directors to bind the company depends entirely upon the terms of the company's articles of association.

Discuss.

(25 marks)

3. Compare and contrast the protection afforded to a shareholder by section 33 Companies Act 2006 with the protection afforded to a shareholder by section 994 Companies Act 2006.

(25 marks)

4. (a) Analyse the position of a promoter of a company in respect of contracts entered into on behalf of the company prior to the date of the company's formation, and the steps a promoter might take to protect herself against any personal liability.

(9 marks)

- (b) Analyse the legal significance of any restriction on a company's objects in the company's articles of association.

(16 marks)

(Total: 25 marks)

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

Question 1

Quickmoney Plc was incorporated on 1 December 2010. Its business consists of making short-term loans at high interest rates to people with low-income who struggle to obtain credit elsewhere. Quickmoney has three directors, Alice, Benedict and Clarissa. Alice and Clarissa have both worked in the financial services sector for many years, and have both served as directors of large financial institutions. Benedict is 18 years old, has no experience of financial services, and was only offered a position on the board because his father is a personal friend of Alice.

In July 2011, Alice was approached by Delia, the Chief Executive of Fast-Track Loans Plc, a company which lends money at high rates of interest to companies on the verge of insolvency. Delia explained that Fast-Track Loans was keen to expand its business, but lacked capital. She proposed that Quickmoney should invest £500,000 in Fast-Track Loans for a 25% shareholding. Delia convinced Alice that whilst the loans that Fast-Track Loans made were often risky, the high interest rates that could be charged more than compensated for such risks.

Alice discussed Delia's proposal at Quickmoney's next board meeting. She told the board that whilst the venture sounded attractive, Quickmoney didn't really have the capital to make such an investment at present. She also argued that it involved a line of business quite different from that which Quickmoney had pursued so far, and was too risky. Benedict and Clarissa agreed with Alice, although Benedict admitted he couldn't really understand the discussion. The board resolved that Quickmoney would not pursue Delia's proposal.

However, Alice said that she intended to invest her own money in Fast-Track Loans, and all three directors resolved that Quickmoney had no objection to her doing so. Alice made the investment in Fast-Track Loans.

Fiona, a shareholder in Quickmoney, has recently discovered the above, and estimates that Alice's investment in Fast-Track Loans is already worth many times what Alice paid for it.

Advise the board of Quickmoney whether any of Quickmoney's three directors have breached their duties to the company.

(25 marks)

Turn over

Question 2

In January 2010, Megaholdings Plc formulated a scheme to sell mobile telephones. The price that customers would pay for the mobiles would be high, but these customers would be entitled later to reclaim 75% of that price provided they applied within three days of the second anniversary of purchasing the mobile. The profitability of the scheme depended upon many customers failing to reclaim the cost of the purchase, either at all or in accordance with the strict time-limit for doing so. Megaholdings calculated that the scheme was potentially very profitable, but also very risky. It therefore decided to form a subsidiary company, Hi-Tech Ltd, to operate the scheme.

Customers purchasing the mobile phones would buy them directly from Hi-Tech Ltd. Megaholdings subscribed for one £1 share in Hi-Tech, but also lent Hi-Tech £200,000. Hi-Tech had three directors, Lei, Terence and Wendy. It purchased most of the mobiles it sold on to its customers from Smartphones Plc.

For the first two years of the scheme, Hi-Tech was very profitable, with all profits being paid out as dividends to Megaholdings. After two years, however, it became clear that the vast majority of customers would indeed seek to reclaim the purchase price for their mobiles, and would comply with the strict time limits for doing so. This rendered the scheme wholly unprofitable. Megaholdings instructed the directors of Hi-Tech Ltd to continue trading for as long as possible. Wherever possible, claims for repayment were to be disputed with customers, and all repayments were to be delayed. Lei objected to this strategy. However, rather than challenging Megaholdings' instruction, Lei simply resigned from Hi-Tech's board.

Hi-Tech continued to trade. In July 2012, Megaholdings demanded repayment of its loan of £200,000 to Hi-Tech, which Hi-Tech immediately repaid. In August 2012, a liquidator was appointed to wind up Hi-Tech. Few of Hi-Tech's customers will recover the refunds of 75% of the purchase price of their mobiles to which they are entitled.

Advise:

- (a) Customers of Hi-Tech whether they could take proceedings against Megaholdings to recover the 75% refunds to which they are entitled?

(12 marks)

- (b) The liquidator of Hi-Tech whether she can recover the loan repaid to Megaholdings?

(5 marks)

- (c) The liquidator of Hi-Tech whether she can take proceedings for wrongful trading against Lei, Terence, Wendy or Megaholdings?

(8 marks)

(Total: 25 marks)

Question 3

In 2005, Amin and Patsy set up in partnership together providing advice to property developers. In 2009, Richard, who had experience of obtaining finance for property development, was employed by Amin and Patsy to provide financial advice to their clients. In October 2011, the partnership suffered from a problem of cash-flow. To help, Richard agreed to lend the partnership the sum of £50,000. The interest rate was specified as being 3% of the profits of the partnership. The parties had intended to record these terms in writing, but under the pressure of work forgot to do so.

In January 2012, Richard complained that he felt some of the firm's clients didn't take him seriously because of his 'lowly status' within the firm. Amin and Patsy said they sympathised with Richard's problem. They agreed henceforth to refer to Richard as a salaried partner, and the firm's notepaper was changed accordingly. Richard was also allowed to attend the weekly partnership meeting of the firm, although he felt that Amin and Patsy rarely listened to his opinions. Richard's salary remained unchanged.

In February 2012, Amin was disappointed to discover that Benjamin, who had previously been a lucrative client of the firm, had engaged 'another adviser' in connection with his plan to develop a hotel and golf-course. In July, Amin was outraged to discover that this 'other adviser' was a registered company wholly owned and managed by Richard. Amin believes that the fee paid by Benjamin to Richard's company exceeded £20,000. In addition, Amin discovered that Richard's company is also operating a very profitable business providing advice on appeals against refusal of planning permission (although Amin and Patsy have in fact never been interested in providing such advice themselves). When Amin challenged Richard, Richard told him that it was none of Amin or Patsy's business what he did in his spare time. He then stormed out of Amin's office, declaring 'this is the end', and has had no further involvement with Amin and Patsy. In the meantime, the partnership's fortunes have declined massively. Creditors, including some from as early as August 2011, have still not been paid, and many are threatening to sue Richard.

Advise Richard whether:

- (a) he could be held liable to creditors of the firm in respect of debts incurred since August 2011;

(17 marks)

- (b) he could, as a matter of partnership law, be held liable to account to Amin and Patsy, in respect both of the profit earned on the contract with Benjamin and on his operation of a business providing advice on appeals against refusal of planning permission.

(8 marks)

(Total: 25 marks)

Turn over

Question 4

Greyling Ltd was incorporated in November 2009, and runs a chain of shops selling electrical goods. It has four directors, Abhati, Beatrice, Chloe and Devina. The company's issued share capital consists of 400 ordinary shares, of which each director owns 100. The company has Model Articles for private companies limited by shares.

In recent months, Greyling's sales and profits have fallen sharply. Abhati, Beatrice and Chloe believe the company's problem is that it is too small to compete with larger retail chains. To address this, they wish to expand the company. Devina is opposed to this, and now wants to leave Greyling and recover her investment. Abhati and Beatrice have said that they would be willing for the company to buy back her shares, at a price of £250,000, and Devina is willing to accept this price. Chloe, however, thinks this price is too high, and is threatening to refuse to vote in favour of any such arrangement. If Devina's shares are to be purchased, it is proposed that £50,000 of the purchase price should be paid out of accumulated distributable profits in the company, and the balance out of capital.

To achieve their expansion plans, Abhati, Beatrice and Chloe have agreed with Miao, a successful entrepreneur and provider of venture capital, that Miao will invest £500,000 in non-voting preference shares in the company. Miao is insisting that she be given a right to become and to remain a director of the company for so long as she is a shareholder, so that she can 'keep an eye on her investment'.

Advise Greyling of any legal issues that are raised by the above proposals.

(25 marks)

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