



THE CHARTERED 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, 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. The courts will pierce the corporate veil between a parent company and subsidiary whenever it is in the interests of justice to do so.

Critically discuss.

(25 marks)

2. In what circumstances will the courts give permission to a shareholder to continue a derivative claim brought by the shareholder in respect of a director's breach of her duty of care and skill?

(25 marks)

3. Although both company law and partnership law are committed to the principle of 'majority rule', s994 Companies Act 2006 provides much greater protection to minority shareholders than the Partnership Act 1890 gives to individual partners.

Critically discuss.

(25 marks)

4. (a) Compare and contrast fixed and floating charges;

(15 marks)

(b) To what extent can a company give a fixed charge over its book debts?

(10 marks)

(Total: 25 marks)

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

Question 1

In 2011, Chandra purchased a large, disused school for £200,000. He intends to convert the property into a hotel, which he will then manage. He will need substantial capital in order to pursue his plans, and his old friend Meera has indicated that she is willing to join the business, investing £100,000 and helping to run the hotel. Chandra has not yet decided whether to run the business as a partnership with Meera, or to form a private limited company in which Meera would become a minority shareholder.

- (a) Compare the processes for the formation of (i) a private limited company and (ii) an ordinary (unlimited) partnership;

(8 marks)

- (b) Explain how Chandra and Meera's potential liability for the debts of the business would differ if they were shareholders in a limited company compared to being partners in an ordinary (unlimited) partnership;

(8 marks)

- (c) Assume that Chandra has decided to form a company to run the business, and to sell the disused school which he bought in 2011 to the company for £300,000.

Explain how the law governing promoters would apply to such a sale.

(9 marks)

(Total: 25 marks)

Turn over

Question 2

Ten years ago, Sarah formed Realales Ltd, a small company manufacturing real-ale products. The company's constitution specifies that the company manufacture and sell only real-ale products (which are defined as excluding lager).

Two years ago, Sarah persuaded Julia, who was in charge of manufacturing at the brewery, to take on a larger role in the company. Julia invested £50,000 in the company, and received a 30% shareholding in return. Two additional regulations were also added to the Articles. The first says that Julia is entitled to be a director for life. The second says that if Sarah wishes to sell her shares, she shall first offer them to Julia. Sarah still owns the remaining 70% of the company's shares, and Sarah and Julia are the company's only directors.

At a recent board meeting, Sarah told Julia that she had been approached by the owners of a local hotel which wants Realales to supply them with a large quantity of lager. Julia argued that the company was prevented by its objects clause from entering into such a transaction, but Sarah replied that the deal was too good to miss. Sarah also informed Julia that she (Sarah) had been approached by Microbrewers Plc, which was offering to buy Sarah's shares in Realales for a very generous price. Sarah told Julia she intends to sell her shares to Microbrewers, without first offering them to Julia. Sarah also told her that once Microbrewers has acquired Sarah's shares, it intends to remove Julia as a director of the company.

Advise Julia whether she can:

- (a) prevent Realales from entering into the contract to sell lager to the local hotel;
(9 marks)
- (b) force Sarah to offer her shares to Julia before selling them to Microbrewers and, if so, whom she (Julia) would sue;
(7 marks)
- (c) prevent her removal as a director by Microbrewers if it succeeded in acquiring Sarah's shares in Realales.
(9 marks)

(Total: 25 marks)

Question 3

Chen is a 10% shareholder in Gamegirls Ltd, a company designing computer games. He has never in fact been formally appointed to be a director of Gamegirls, but for the past 5 years has regularly attended, and participated fully in, board meetings.

Recently, Gamegirls' board met and agreed to purchase, from Motormart Plc, a fleet of new company vehicles, for a price of £150,000. Chen was present at the meeting and spoke strongly in favour of the deal. Chen owns 25% of the shares in Motormart.

Gamegirls has just lost a large contract, and now regrets having entered into the contract with Motormart. Gamegirls' board has also now learnt that Chen has decided to set up his own company which will be in direct competition with Gamegirls, although the board is unsure what steps, if any, Chen has so far taken to implement this plan.

Advise the directors of Gamegirls whether Gamegirls can avoid the contract with Motormart, and whether Gamegirls can take any action against Chen with respect to the above facts.

(25 marks)

Turn over

Question 4

Joshua is a director of Music Makers Ltd, a company manufacturing violins. The company has been trading at a loss for some time, and its liabilities have steadily increased. In August 2012, in order to raise some working capital, Joshua arranged for some spare land owned by the company adjacent to its premises to be sold, for £200,000. The purchaser immediately obtained planning permission to build houses on the land, increasing the value of the land to approximately £1 million.

In January 2013, Natasha, Music Makers' main supplier of raw materials, contacted the company and said she was reluctant to supply any further materials to the company as she had heard the company was in financial difficulties. Joshua persuaded Natasha to continue supplying the company, telling her that 'you have my personal reassurance that the company is in sound financial health'.

By May 2013 it had become clear that the company's fortunes had deteriorated further. Natasha had not been paid for any of the materials she had supplied since January, and was threatening to sue both the company and Joshua personally.

Joshua has been discussing matters with his brother, Charlie. Charlie asserts that Joshua, as a director of Music Makers, is entitled to 'put the company into administration', and to appoint Charlie to be the administrator of the company. Charlie asserts this will ensure that neither Natasha (nor any other creditor) will ever be able to bring any proceedings against Music Makers, or against Joshua personally. Moreover, Charlie also asserts that, as administrator, he will be able to take steps to recover for Music Makers the land it sold in August 2012.

Advise Joshua with respect to Charlie's assertions.

(25 marks)

End of Examination Paper

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