



## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 16 – PRACTICE OF COMPANY & PARTNERSHIP LAW \*

**Time allowed: 3 hours plus 15 minutes reading time**

#### Instructions to Candidates

- You have been provided with a clean copy of the case study materials for you to use in this examination.
- You have **FIFTEEN** minutes to read through this question paper and the case study materials 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 paper or in your answer booklet during this time if you wish.
- **All questions are compulsory. You must answer ALL the questions.**
- 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 2012-13, 16<sup>th</sup> 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**

## Question 1

### Re: Roberts, McGregor & Bennett, trading as "The Wine Cellar" (the 'Partnership')

Advise Mr John Roberts ('JR') with regard to the following issues, including (as appropriate) by reference to the Partnership Agreement (**Document 3** of the case study materials) and applicable statute:

- (a) The order placed by Caroline Bennett is in excess of £12,600. JR and Malcolm McGregor capped her authority for expenditure at £2,000 in January 2013.

Will the partners be bound by the order placed by Caroline at the Birmingham trade fair?

**(12 marks)**

(b)

- (i) What procedure must JR follow to be able to retire, and withdraw his capital, from the Partnership?
- (ii) JR and Roux de Smit plan to establish a new company to act as a wine importer. Will JR, as a result of his having been a member of the Partnership, be subject to any restriction on his ability to pursue the proposed new business venture once he has retired from the Partnership?

**(10 marks)**

- (c) JR now knows that French Food Limited ("FFL") will go into insolvent liquidation next week, but Nicole Paradis has offered to ensure that FFL pays the £5,000 in full to the Partnership by the end of this week.

What, if any, are the consequences should the Partnership accept the payment from FFL?

**(8 marks)**

**(Total: 30 marks)**

## Question 2

### Re: Cape Fruit Imports Limited

Assuming Kempston Shelf Co 02257 Limited will change its name to Cape Fruit Imports Limited and will be the vehicle for JR and Roux de Smit's business venture, with both of them as shareholders and directors, advise Roux de Smit with regard to:

- (a) the documents and formalities required to comply with the Companies Act 2006 in respect of his appointment as a director of Cape Fruit Imports Limited;

**(10 marks)**

- (b) what steps may be taken to protect the position of Roux de Smit, as a director of Cape Fruit Imports Limited.

**(13 marks)**

**(Total: 23 marks)**

## Question 3

JR has received confirmation from Whitby Bank plc ("the Bank") that it will offer two loans - one to JR and one to Roux de Smit - once Cape Fruit Imports Limited is established. These loans will be as follows:

**Loan A:** £23,000 to Roux de Smit to establish a residence that he can use when staying in the UK.

**Loan B:** £3,500 to JR, to attend a forthcoming fruit conference in order to develop contacts for the new company's business.

The Bank will be seeking guarantees from Cape Fruit Imports Limited for the amount of each of Loan A and B.

Advise the Bank with regard to:

- (a) any legal restrictions on Cape Fruit Imports Limited providing the guarantees the Bank has asked for in respect of both (i) Loan A and (ii) Loan B, and the procedures that Cape Fruit Imports Limited will accordingly be required to follow to ensure such guarantees are valid;

**(12 marks)**

- (b) the steps that the Bank itself should take to ensure that the guarantees in respect of the loans, are valid.

Explain why the steps you describe are necessary.

**(10 marks)**

**(Total: 22 marks)**

**Turn over**

#### Question 4

Assume now that both Roux de Smit and John Roberts have been appointed directors of Cape Fruit Imports Limited ('the company').

Both JR and Roux will invest £20,000 each in cash in return for 20,000 ordinary shares of £1 each in the company. A number of estate owners from the Western Cape will also invest, but take preference shares with a limit on the amount that can be received in a distribution but with a cumulative fixed dividend of 1.2% for a period of 5 years. These preference shares will be sold for £2 each, and £2,000,000 will be invested by the estate owners.

Advise Roux de Smit with regard to:

- (a) the necessary permissions required in order to allot the ordinary and preference shares he and the other shareholders are to receive in the company;

**(18 marks)**

- (b) his potential liability for the debts of the company.

**(7 marks)**

**(Total: 25 marks)**

**(Total: 100 marks)**

**End of Examination Paper**