



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: Blackstones' Statutes on Company Law, 2013-14, 17th Edition, Derek French, Oxford University Press, 2013.**
- 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. A floating charge provides little protection to a creditor in the event of a debtor's default.

Critically discuss.

(25 marks)

2. Sections 213 and 214 of the Insolvency Act 1986 offer far more effective protection for creditors of insolvent companies than does the courts' occasional readiness to 'pierce the corporate veil'.

Critically discuss.

(25 marks)

3. (a) Explain, in company law, what is meant by a 'de facto director', and a 'shadow director'.

(15 marks)

- (b) Critically evaluate to what extent de facto directors and shadow directors each owe the same general duties under the Companies Act 2006, and to what extent they each have the same potential liability for wrongful trading.

(10 marks)

(Total: 25 marks)

4. Identify the circumstances in which a private company is able to redeem and buy-back its own shares, and discuss the protection which the law provides to a private company's shareholders and creditors in the event of a redemption or buy-back.

(25 marks)

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

Question 1

Alisha owns 25% of the shares, and Kamala owns 75% of the shares, in Bookmaster Ltd. Regulation 20 of the company's articles of association provides that if Kamala wishes to sell her shares, she shall offer them first to Alisha. Regulation 20 goes on to say that the price at which the shares shall be offered shall be determined by 'the accountants'.

Kamala claims this clearly means the accountants currently employed by the company as its auditors. Alisha, on the other hand, claims that it was actually agreed, when the company was formed, that the shares would be valued by independent accountants, and that the lawyers who drafted the articles simply failed to reflect this explicitly in the words of the articles.

Kamala has recently been approached by Simon, who has offered to purchase Kamala's shares at a very attractive price. Kamala has informed Alisha that she intends to sell her shares to Simon, and has no intention of offering her shares first to Alisha. She has also threatened to call a shareholders' meeting to remove Regulation 20 from the company's articles of association. Alisha has made clear to Kamala that she would refuse to attend any such meeting.

Save as provided in Regulation 20, the Company has adopted the Model Articles for Private Companies (without amendment).

Advise Alisha, without discussing the remedy of unfair prejudice under section 994 of the Companies Act 2006, whether:

- (a) she can enforce Regulation 20 of the articles against Kamala, and how the courts would deal with the disagreement between the shareholders about the meaning of the term 'accountants' in the Regulation.

(13 marks)

- (b) she can prevent Kamala from removing Regulation 20 from the articles, either by refusing to attend any shareholders' meeting Kamala might attempt to call to alter the articles, or by any other means.

(12 marks)

(Total: 25 marks)

Question 2

Steelmasters Plc has four directors; Alice, Belinda, Charles and David. Alice is the managing director. Belinda is Alice's daughter, and is currently studying at university. She has attended no board meetings in the past two years. Charles is a qualified surveyor. David is in charge of marketing.

Eight months ago, the board agreed to lend David £45,000 to purchase a yacht. David sometimes entertains potential customers of the company aboard the yacht. The shareholders were informed about the loan by letter.

Six months ago, Alice reported to the board that the company had been offered the opportunity to purchase a piece of land for £100,000, adjoining the company's existing factory premises. Alice argued that the company did not currently need any additional land. Charles and David agreed. Alice, with Charles' and David's knowledge, subsequently bought the land personally, for £95,000.

Three months later, Alice reported that the company might, in the future, need to expand its premises after all. Alice offered to sell to the company, for a price of £200,000, the land which she had recently bought adjoining the company's factory premises. The board agreed to accept Alice's offer. No independent valuation of the land was undertaken by the board. The board agreed not to mention the purchase to the shareholders, as 'it would only upset them'.

Edward, a shareholder in the company, has recently discovered the events described above. He wishes to know whether the company can take any action against any of the directors in respect of these events.

Advise Edward.

(25 marks)

Question 3

Bo, Jiang and Zheng have been in business together, as vets, since 2000. The business is run as an unlimited general partnership. There is no written partnership agreement between them.

Recently, Bo negligently mis-diagnosed the disease of a rare and valuable dog that was brought into the surgery, as a result of which the dog died. Its owners are threatening to claim compensation from the partnership. Moreover, the partnership's reputation and business have been badly damaged by Bo's action. Jiang and Zheng called a partners' meeting, at which they agreed that Bo should be asked to leave the partnership, as she was clearly incapable of doing her job properly. Bo has said she has no intention of leaving. Jiang and Zheng are also considering transferring the partnership business to a public limited company, and wonder what the procedure is for forming such a company.

Advise Jiang and Zheng:

- (a) whether they would be held personally liable to pay the dog owners for any successful claim the owners may bring in respect of the death of their dog, and whether they might have any claim against Bo for the harm her actions have caused to the partnership's reputation and business;

(9 marks)

- (b) whether they can expel Bo from the partnership;

(5 marks)

and

- (c) of the procedure for incorporating a public limited company, and of any restrictions on the name of such a company.

(11 marks)

(Total: 25 marks)

Question 4

Paul owns 40% of the shares, and Michael owns 60% of the shares, in B Ltd. Paul, Michael, and Michael's brother John are the company's only directors.

Until recently, Paul's daughter, Helena, was employed by the company. However, two months ago she was dismissed by Michael and John. Paul believes the dismissal was in breach of Helena's employment contract. Helena is now threatening to bring proceedings against the company.

When Paul raised the matter at the next board meeting, Michael and John reminded him that when Paul joined the company, it was agreed that he would be a 'sleeping investor' and would not interfere in the running of the company. They told Paul that they intended to remove him as a director of the company, and that, henceforth, all profits would be paid out as directors' salaries.

Advise Paul whether he would be likely to be successful if he were to bring a claim under section 994 Companies Act 2006 and, if so, what his likely remedy would be.

Would it make any difference to your answer if the company's articles contained a provision saying that no shareholder is entitled to bring proceedings under section 994?

(25 marks)

End of Examination Paper

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