

ACCA

CORPORATE AND BUSINESS LAW (LW) (ENG)

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BPP Learning Media is an **ACCA Approved Content Provider** for the ACCA qualification. This means we work closely with ACCA to ensure our products fully prepare you for your ACCA exams.

In this Practice & Revision Kit, which has been reviewed by the **ACCA examining team**, we:

- Discuss the **best strategies** for revising and taking your ACCA exams
- Ensure you are well **prepared** for your exam
- Provide you with **lots of great guidance** on tackling questions
- Provide you with **two** mock exams

Our **Passcards** also support the Corporate and Business Law syllabus.

FOR EXAMS FROM 1 SEPTEMBER 2019 TO 31 AUGUST 2020

First edition 2008

Twelfth edition February 2019

ISBN 9781 5097 2397 3
(previous ISBN 9781 5097 1665 4)
e-ISBN 9781 5097 2424 6

British Library Cataloguing-in-Publication Data

A catalogue record for this book
is available from the British Library

Published by

BPP Learning Media Ltd
BPP House, Aldine Place
142–144 Uxbridge Road
London W12 8AA

www bpp com/learningmedia

Printed in the United Kingdom

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Question index

The headings in this checklist/index indicate the main topics of questions. Multiple Task Questions (MTQs) will cover material within the relevant part of the syllabus.

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Helping you with your revision

BPP Learning Media – ACCA Approved Content Provider

As an ACCA **Approved Content Provider**, BPP Learning Media gives you the **opportunity** to use revision materials reviewed by the ACCA examining team. By incorporating the ACCA examining team's comments and suggestions regarding the depth and breadth of syllabus coverage, the BPP Learning Media Practice & Revision Kit provides excellent, **ACCA-approved** support for your revision.

These materials are reviewed by the ACCA examining team. The objective of the review is to ensure that the material properly covers the syllabus and study guide outcomes, used by the examining team in setting the exams, in the appropriate breadth and depth. The review does not ensure that every eventuality, combination or application of examinable topics is addressed by the ACCA Approved Content. Nor does the review comprise a detailed technical check of the content as the Approved Content Provider has its own quality assurance processes in place in this respect.

Tackling revision and the exam

Using feedback obtained from the ACCA examining team review:

- We look at the dos and don'ts of revising for, and taking, ACCA exams
- We focus on Corporate and Business Law (LW); we discuss revising the syllabus and what to do (and what not to do) in the exam

Selecting questions

We provide signposts to help you plan your revision.

- A full **question index**

Attempting mock exams

There are two mock exams that provide practice at coping with the pressures of the exam day. We strongly recommend that you attempt them under exam conditions because they reflect the question styles and syllabus coverage of the exam.

Revising Corporate and Business Law

Topics to revise

All questions are compulsory so you must revise the **whole** syllabus. Since the exam includes 45 multiple choice questions in Section A, you should expect questions to cover a large part of the syllabus. Selective revision **will limit** the number of questions you can answer and hence reduce your chances of passing. It is better to go into the exam knowing a reasonable amount about most of the syllabus rather than concentrating on a few topics to the exclusion of the rest.

Question practice

Practising as many exam-style questions as possible will be the key to passing this exam. You must do questions under **timed conditions**.

Avoid looking at the answers until you have finished a question bank. Your biggest problem with the multiple task questions (MTQ) may be knowing how to start, and this needs practice.

Also ensure that you attempt both mock exams under exam conditions.

Passing the LW exam

Displaying the right qualities

- You will be required to identify the requirements of multiple choice questions quickly, so that you can make your answers confidently within the available time.
- You will be required to interpret scenarios and apply your knowledge to them.
- You must therefore be able to apply your skills in a practical context.

Avoiding weaknesses

- There is no choice in this exam, all questions have to be answered. You must therefore study the entire syllabus, there are no shortcuts.
- The ability to answer multiple choice questions improves with practice. Try to get as much practice with these questions as you can.
- The multiple task questions (MTQs) will be based on simple scenarios, so be prepared to think carefully and apply the law appropriately.
- Attempt all parts of the MTQs.

Gaining the easy marks

Some MCQs are easier than others and will take less time to process. Answer those that you feel fairly confident about as quickly as you can. Come back later to those you find more difficult. This could be a way of making use of the time in the examination most efficiently and effectively. Many MCQs will not involve calculations. Make sure that you understand the wording of MCQs before selecting your answer.

Computer-based exams

Computer-based exams (CBEs) are available for the English and Global variants of this exam. They must be taken at an ACCA CBE Licensed Centre.

How does CBE work?

- Questions are displayed on a monitor.
- Candidates enter their answer directly onto the computer.
- Candidates have two hours to complete the examination.
- When the candidate has completed their examination, the final percentage score is calculated and displayed on screen.
- Candidates are provided with a Provisional Result Notification showing their results before leaving the examination room.
- The CBE Licensed Centre uploads the results to the ACCA (as proof of the candidate's performance) within 72 hours.
- Candidates can check their exam status on the ACCA website by logging into myACCA.

Benefits

- **Flexibility** as a CBE can be sat at any time.
- **Results** can also be taken at any time and there is no restriction on the number of times a candidate can sit a CBE.
- **Instant feedback** as the computer displays the results at the end of the CBE.
- Results are notified to ACCA **within 72 hours**.

CBE question types

- Multiple choice – choose one answer from three or four options
- Multiple response – select one or more responses by clicking the appropriate tick boxes
- Multiple response matching – select a response to a number of related part questions by choosing one option from a selection

Tackling multiple choice questions

The MCQs in your exam contain three or four possible answers. You have to **choose the option that best answers the question**. The incorrect options are called distractors. There is a skill in answering MCQs quickly and correctly. By practising MCQs you can develop this skill, giving you a better chance of passing the exam.

You may wish to follow the approach outlined below, or you may prefer to adapt it.

Step 1 Skim read all the MCQs and identify what appear to be the easier questions.

Step 2 Attempt each question – **starting with the easier questions** identified in Step 1. Read the question **thoroughly**. You may prefer to work out the answer before looking at the options, or you may prefer to look at the options at the beginning. Adopt the method that works best for you.

Step 3 Read all the options and see if one matches your own answer.

Step 4 You may find that none of the options matches your answer.

- Re-read the question to ensure that you understand it and are answering the requirement
- Eliminate any obviously wrong answers
- Consider which of the remaining answers is the most likely to be correct and select the option

Step 5 If you are still unsure make a note and continue to the next question.

Step 6 Revisit unanswered questions. When you come back to a question after a break you often find you are able to answer it correctly straight away. If you are still unsure have a guess. You are not penalised for incorrect answers, so **never leave a question unanswered!**

After extensive practice and revision of MCQs, you may find that you recognise a question when you sit the exam. Be aware that the detail and/or requirement may be different. If the question seems familiar read the requirement and options carefully – do not assume that it is identical.

Exam information

Format of the exam

All questions are compulsory.

45 multiple choice questions in Section A, each worth 1 or 2 marks. A total of 70 marks are available.

5 multiple task questions in Section B, each worth 6 marks. A total of 30 marks are available.

Time allowed: 2 hours

Additional information

The study guide provides more detailed guidance on the syllabus and can be found by visiting the exam resource finder on the ACCA website: www.accaglobal.com/gb/en.html

Useful websites

The websites below provide additional sources of information of relevance to your studies of *Corporate and Business Law*.

- www.accaglobal.com
ACCA's website. The students' section of the website is invaluable for detailed information about the qualification, past issues of *Student Accountant* (including technical articles) and a free downloadable Student Planner App.
- www.bpp.com
Our website provides information about BPP products and services, with a link to the ACCA website.
- www.ft.com
This website provides information about current international business. You can search for information and articles on specific industry groups as well as individual companies.
- www.lawsociety.org.uk
Law Society
- www.bbc.co.uk
The website of the BBC carries general business information as well as programme-related content.

Questions

1 Law and the legal system

28 mins

1.1 Which of the following is the prosecutor in a criminal law case?

- The State
- The accused
- The victim

(1 mark)

1.2 Which of the following describes the standard of proof in a civil law case?

- Beyond reasonable doubt
- Balance of probability
- Beyond all probability

(1 mark)

1.3 Which of the following is a remedy available under the civil law?

- A fine
- Imprisonment
- Damages

(1 mark)

1.4 All criminal law cases begin in which of the following courts?

- The County Court
- The Magistrates' Court
- The Crown Court

(1 mark)

1.5 The Queen's Bench, Family and Chancery are all division of which court?

- Crown Court
- Supreme Court
- High Court

(1 mark)

1.6 Which of the following statements concerning cases brought before a Magistrates' Courts is correct?

- The case is decided by the Magistrate rather than a jury
- Only criminal cases are heard at a Magistrates' Court
- Appeals are made directly to the Court of Appeal

(1 mark)

1.7 Which of the following offences would only be heard at a Magistrates' Court?

- An indictable offence
- A summary offence
- A 'triable either way' offence

(1 mark)

1.8 Which type of law is concerned with the function and operation of local authorities?

- Public Law
- Private Law
- Common Law
- Equity

(2 marks)

1.9 Which **TWO** of the following terms are associated with criminal law rather than civil law?

- Punishment
- Public law
- Compensation
- Claimant

(2 marks)

1.10 Which **TWO** of the following are the parties involved in a civil law case?

- Accused
- Defendant
- Claimant
- Prosecution

(2 marks)

1.11 In the civil law system, cases are allocated to one of three 'tracks' for processing.

Which of the following is **NOT** a 'track' in the civil law system?

- Fast
- Medium
- Small
- Multi

(2 marks)

1.12 In the criminal law system, an immediate appeal regarding a decision by a Magistrates' Court could be heard by which of the following courts?

- The County Court
- The Crown Court
- The Court of Appeal
- The Supreme Court

(2 marks)

1.13 Which of the following courts only has civil jurisdiction?

- The County Court
- The Magistrates' Court
- The Court of Appeal
- The Privy Council

(2 marks)

1.14 The Chancery Division of the High Court hears cases involving which of the following matters?

- Contract law
- Trusts and mortgages
- Matrimonial cases
- Adoption of children

(2 marks)

1.15 Which **TWO** of the following are types of offences heard by a Magistrates' Court?

- Indictable
- Summary
- Triable either way
- Hybrid

(2 marks)

(Total = 23 marks)

2 Sources of law

28 mins

2.1 Which of the following is a statement by a judge that is the basis for their decision and is what becomes binding on future judges?

- Obiter dicta*
- Per incuriam*
- Ratio decidendi*

(1 mark)

2.2 Which of the following types of court decision occurs when a court higher in the hierarchy overturns the verdict of a lower court in the same case?

- Reversing
- Overruling
- Distinguishing

(1 mark)

2.3 Which of the following statements in relation to legislation is correct?

- Legislation may modify or replace existing statutes
- Legislation may not overrule or modify existing case law
- Legislation may prevent a subsequent Parliament from changing the law

(1 mark)

2.4 Which of the following types of legislation affects specific individuals or groups?

- Enabling
- Public
- Private

(1 mark)

2.5 Which rule of statutory interpretation states that words in a statute should be given their plain, ordinary meaning unless this would give rise to a manifest absurdity or inconsistency with the rest of the statute?

- Golden rule
- Mischief rule
- Contextual rule

(1 mark)

2.6 Which of the following is an intrinsic aid to statutory interpretation?

- Hansard
- The long title of the Act
- Law commission reports

(1 mark)

2.7 Which of the following is the final appeal court for human rights issues for persons living in the UK?

- Supreme Court
- European Court of Human Rights
- European Court of Justice

(1 mark)

2.8 The decisions of which of the following courts is binding on the Court of Appeal?

- The County Court
- The Crown Court
- The High Court
- The Court of Appeal

(2 marks)

2.9 Which of the following statements concerning the principle of binding precedent is **NOT** correct?

- Mistakes by judges are eliminated
- General legal principles are established
- The law is based on actual, rather than theoretical, cases
- The law is flexible and can develop with changing circumstances

(2 marks)

2.10 Which **TWO** of the following are stages that a Bill passes through before becoming legislation?

- Report stage
- Committee stage
- Fourth reading
- Approval stage

(2 marks)

2.11 Some statutory instruments require a resolution of Parliament to come into effect, but others must be laid before Parliament for a particular period of time before coming in effect.

How many days must statutory instruments be laid before Parliament before coming into effect?

- 10
- 20
- 30
- 40

(2 marks)

2.12 Which rule or approach to statutory interpretation considers what the legislation is trying to achieve?

- Contextual rule
- Literal rule
- Purposive approach
- Golden rule

(2 marks)

2.13 Presumptions of statutory interpretation provide judges with rules to use when interpreting legislation.

Which of the following statements in relation to the presumptions of statutory interpretation is correct?

- A statute may not deprive a person of their property
- A statute does not have retrospective effect
- A statute binds the Crown
- A statute has effect outside the UK

(2 marks)

2.14 Which of the following is an extrinsic aid to statutory interpretation?

- Hansard
- The long title of the Act
- The preamble of the Act
- Side notes to the statute

(2 marks)

2.15 Which **TWO** of the following statements in relation to the impact of UK Human Rights legislation are correct?

- All new primary legislation must be compatible with the European Convention on Human Rights
- The courts may strike out secondary legislation that is incompatible with the European Convention on Human Rights
- Courts must interpret legislation in such a way that is compatible with the European Convention on Human Rights
- Courts are not required to take the decisions of the European Court of Justice when making their decisions

(2 marks)

(Total = 23 marks)

3 Formation of contract I

28 mins

3.1 Which of the following contracts must be in the form of a deed?

- A conveyance (a transfer of a legal estate in land)
- A transfer of shares
- A consumer credit contract

(1 mark)

3.2 In relation to contract law, which of the following describes an offer?

- A statement of possible terms
- Displaying goods for sale in a supermarket
- A verbal promise to be bound on specific terms

(1 mark)

3.3 In a sale by auction that is stated to be 'without reserve', at which point is an offer made?

- When the auctioneer presents the goods being sold
- When a bid is made
- When the auctioneer's hammer falls

(1 mark)

3.4 In relation to contract law, how long will an offer remain open if no time period is set for its expiry?

- One day
- One month
- For a reasonable time

(1 mark)

3.5 Which of the following will terminate an offer?

- Posting a letter of revocation
- A request for information
- Death of the offeree

(1 mark)

3.6 Which of the following is **NOT** a valid method of acceptance?

- The offeree's express words
- The offeree's conduct
- Silence of the offeree

(1 mark)

3.7 Which of the following statements regarding the postal rule is correct?

- Acceptance is effective once the letter of acceptance is written
- Acceptance is effective once the letter of acceptance is posted
- Acceptance is effective once the letter of acceptance is delivered

(1 mark)

3.8 Which of the following is an example of a standard form contract?

- A verbal agreement between two private individuals
- A contract for the sale of a house between two private individuals
- A contract for the supply of electricity between a utility company and a private individual
- A contract of employment between a private individual and a small local shop

(2 marks)

3.9 Which of the following statements concerning the law and contracts is correct?

- The law seeks to ensure equal bargaining power between parties
- The law will only interfere in contracts where one party abuses a stronger bargaining position
- The law does not interfere in the formation of contracts
- The law seeks to maintain the bargaining power of parties in a contract

(2 marks)

3.10 Which **TWO** of the following are examples of valid offers?

- A person verbally stating to another person that they would like to sell their computer to them for £500 today
- A newspaper advert that states a shop is selling shoes for £20
- A person handing their shopping to a supermarket checkout operator
- A business that circulates its price list to customers

(2 marks)

3.11 Which of the following is an example of a valid offer?

- A display of goods for sale
- An Internet shop that advertises products for sale
- A newspaper advert that includes a specific statement, made to the world at large, offering a reward for the return of a particular item
- An invitation for potential suppliers to tender for the provision of services

(2 marks)

3.12 Which of the following statements regarding counter-offers is correct?

- Counter-offers may be accepted by the original offeror
- Counter-offers do not terminate the original offer
- A statement that enquires whether alternative terms would be acceptable is a counter-offer
- A counter-offer is made by the original offeror to the original offeree

(2 marks)

3.13 In which of the following situations will an offer be terminated?

- When a letter of revocation is posted
- When a third party, who is sufficiently reliable, verbally notifies the offeree of the offeror's revocation
- When an offeree enquires whether the offeror will accept payment by credit card rather than cash
- When an offeror dies, the offeree is unaware of the death and the contract is not of a personal nature

(2 marks)

3.14 Which of the following would be regarded as valid, binding acceptance?

- A counter-offer
- Acceptance 'subject to contract'
- A tender to perform one task
- Posting a letter of acceptance

(2 marks)

3.15 Which **TWO** of the following statements regarding acceptance of an offer are correct?

- Acceptance does not need to be communicated in a unilateral contract
- If two identical offers between two parties cross in the post, then one will be regarded as acceptance of the other
- Under the postal rule, a letter of acceptance that has been posted does not have to be received by the offeror to be valid acceptance
- If no method of communicating acceptance is stated in the offer, then acceptance must be made by post

(2 marks)

(Total = 23 marks)

4 Formation of contract II**28 mins**

4.1 Which of the following is executed consideration?

- Providing goods in return for payment at the same time
- A promise of payment in return for the provision of goods at a later date
- A promise to pay for work already carried out

(1 mark)

4.2 Which of the following describes how courts deal with the adequacy of consideration?

- Courts will seek to ensure that consideration from each party is of equal value
- Courts will seek to ensure no party makes excess profit
- Courts will not interfere in a contract to rectify a bad bargain

(1 mark)

4.3 Which of the following statements regarding the adequacy and sufficiency of consideration is correct?

- Consideration does not need to have a value to be sufficient
- Consideration is sufficient if it has some economic value
- Consideration does not need to be sufficient but must be adequate

(1 mark)

4.4 Which of the following is true regarding privity of contract?

- Third parties to a contract generally have enforceable rights under it
- Only parties to a contract generally have enforceable rights under it
- Privity of contract only relates to rights under a contract, not obligations

(1 mark)

4.5 Which of the following is **NOT** an exception to the rule of privity of contract?

- A third party to a contract can sue for losses they incur under a contract if the losses are foreseeable
- A third party to a contract can bring an action under it if an implied trust has been created
- A third party to a contract can enforce rights under it if it is equitable for them to do so

(1 mark)

4.6 Which of the following statements regarding intention to create legal relations is correct?

- Social arrangements are generally intended to be legally binding
- Commercial arrangements are generally not intended to be legally binding
- A contract will be legally binding if both parties intended it to be so

(1 mark)

4.7 Which of the following indicates that the parties intend to be legally bound?

- A letter of comfort
- An agreement between a husband and wife to transfer property between them
- An agreement 'binding in honour only'

(1 mark)

4.8 Which of the following is a correct rule for valid consideration?

- Consideration must pass from the promisee
- Consideration must be adequate
- Past consideration is generally valid consideration
- Executory consideration is generally not valid consideration

(2 marks)

4.9 Which of the following statements is true of consideration?

- Past consideration is sufficient to create liability on a bill of exchange
- Suffering some loss or detriment is not valid consideration
- Consideration can be in the form of any act, even if that act is impossible to perform
- Performance of an illegal act is valid consideration

(2 marks)

4.10 Where a party accepts part payment for a debt, they may at a later date request payment of the amount outstanding unless the other party provided extra consideration when making the part payment.

Which **TWO** of the following are valid extra consideration for part payment of a debt?

- Payment in the form of goods rather than cash
- Payment by a third party rather than the debtor
- An intention by the debtor to be legally bound by the part payment
- A guarantee by the debtor to make the payment on the date agreed in the contract

(2 marks)

4.11 Which of the following statements regarding consideration is correct?

- Performance of an existing legal obligation is valid consideration for the promise of additional reward
- Performance of an existing contractual duty is sufficient consideration for the promise of additional reward
- Performance of an existing contractual duty to a third party is sufficient consideration for the promise of additional reward
- Performance of an extra service in addition to an existing contractual duty is not sufficient consideration for the promise of additional reward

(2 marks)

4.12 Which of the following statements concerning privity of contract is correct?

- Privity of contract means only parties to a contract may sue on it
- Privity of contract is not subject to regulation by statute
- There are no exceptions to the rule of privity of contract
- Privity of contract is only enforceable on commercial contracts

(2 marks)

4.13 The Contracts (Rights of Third Parties) Act 1999 sets out the circumstances where a third party has a right to enforce rights they may have under a contract.

Which of the following statements concerning the Contracts (Rights of Third Parties) Act 1999 is correct?

- The third party need not be expressly identified in the contract
- The third party need not be in existence when the contract was formed
- The Act confers rights to third parties under a company's constitution
- The Act confers rights to third parties under employment contracts

(2 marks)

4.14 Which of the following is true regarding presumptions of intention to create legal relations?

- Parties in social, domestic and family agreements never intend to be legally bound
- Parties in commercial agreements never intend to be legally bound
- The presumption in all agreements is that the parties intend to be legally bound
- Any presumptions in regards to the intention of parties to be legally bound may be refuted and the burden of proof is on the party seeking to escape liability

(2 marks)

4.15 Which **TWO** of the following social, domestic and family contracts would be presumed by the courts as intended to be legally binding?

- An agreement where a father offers to pay his daughter a monthly allowance if she continues her education
- An agreement between friends to enter a newspaper competition together and share any prizes between them
- An agreement between a husband and wife who have separated for one to rent the family home from the other
- An agreement by a son to pay his mother housekeeping money while he stays at home **(2 marks)**

(Total = 23 marks)

5 Content of contracts

28 mins

5.1 Which of the following actions can a party take where a term of a contract proves untrue?

- Sue for breach of contract
- Sue for misrepresentation
- Sue for wrongful contract

(1 mark)

5.2 Which of the following statements is true regarding representations?

- A representation is not a term of a contract
- A representation does not induce the formation of a contract
- A representation is a statement made after a contract was formed

(1 mark)

5.3 Which of the following statements regarding implied terms is correct?

- Terms may be implied into a contract by statute
- The courts do not interfere in contracts by implying terms
- Terms implied into contracts by custom may not be overridden by express terms to the contrary

(1 mark)

5.4 In relation to contract law, which of the following describes a warranty?

- A term vital to the contract, that if breached, entitles the injured party to treat the contract as discharged
- A term subsidiary to the main purpose of the contract, that if breached, entitles the injured party to claim damages
- A term that is not expressly stated by the parties

(1 mark)

5.5 Which of the following statements concerning the Consumer Rights Act 2015 is correct?

- The Act applies to consumer contracts but not to consumer notices
- Businesses are not protected by the Act
- All terms in a consumer contract should be set out in plain, intelligible language

(1 mark)

5.6 In relation to exclusion clauses, which of the following describes the contra proferentem rule?

- Exclusion clauses are valid unless unreasonable
- Any ambiguity in exclusion clauses are interpreted against the person seeking to rely on them
- Exclusion clauses must be validly incorporated into the contract

(1 mark)

5.7 In relation to exclusion clauses, which of the following describes the main purpose rule?

- The purpose of an exclusion clause is not to prevent the main purpose of the contract
- The main purpose of an exclusion clause is to help a weaker party avoid unfair contractual obligations
- The main purpose of an exclusion clause is to give business efficacy to a contract

(1 mark)

5.8 At which point in a contractual arrangement is a representation made?

- When the offeree submits their acceptance to the offeror
- During pre-contract negotiations
- When the offeror submits their offer to the offeree
- Once both parties have provided consideration under their agreement

(2 marks)

5.9 How are express terms incorporated into a contract?

- By a decision of the courts
- By statute law
- By the parties themselves
- By what is customary in the particular trade

(2 marks)

5.10 Which **TWO** of the following statements regarding contractual terms are correct?

- The principle of freedom of contract states that parties may include in their contract any terms that they see fit
- To be valid, a contract must be complete in its terms
- Third parties may not determine an essential term of the contract
- Where a term is classified as a condition, the only remedy to an injured party if it is breached is to claim damages

(2 marks)

5.11 An innominate term is one that could either be classified as a condition or a warranty.

How is the classification of an innominate term as a condition or a warranty determined?

- By the operation of statute law
- By the offeror
- By the courts
- By the offeree

(2 marks)

5.12 Which of the following statements concerning exclusion clauses is correct?

- Exclusion clauses can be incorporated into a contract after the contract is formed
- Exclusion clauses are interpreted by the courts strictly
- Exclusion clauses are not regulated by statute
- Exclusion clauses may not exclude liability for negligence

(2 marks)

5.13 Which of the following exclusion clauses is void under the Unfair Contract Terms Act 1977?

- A clause that excludes the condition that the seller has a right to sell the goods
- A clause that excludes liability for loss of profit due to negligence
- A clause that excludes liability for breach of contract
- Any exclusion clause in a contract of insurance

(2 marks)

5.14 Which of the following statements concerning the Consumer Rights Act 2015 is correct?

- The Act only applies to business-to-consumer contracts
- The Act only applies to terms that have been individually negotiated
- The Act requires particularly onerous terms to be equally visible as other terms
- The Act only applies to contracts that have been verbally agreed

(2 marks)

5.15 Which of the following statements concerning the Unfair Contract Terms Act 1977 is correct?

- The Act only applies to business-to-business contracts
- The Act does not apply to terms that have been individually negotiated
- The Act applies to contracts regarding a transfer of an interest in land
- The Act automatically voids all clauses that restrict liability for loss or damage due to negligence

(2 marks)

(Total = 23 marks)

6 Breach of contract and remedies

28 mins

6.1 Which of the following statements is **NOT** a lawful excuse for failing to perform contractual obligations?

- Actual performance is impossible
- Both parties agreed to non-performance
- Performing the contract will cause the party concerned financial hardship

(1 mark)

6.2 At which point does anticipatory breach of contract occur?

- At the time performance is due
- Before the time performance is due
- After the time performance is due

(1 mark)

6.3 Which of the following correctly describes the type of repudiatory breach known as renunciation?

- One party states that they have no intention to perform their obligations
- One party prevents themselves from performing their obligations
- One party is prevented from performing their obligations by external circumstances

(1 mark)

6.4 In relation to the award of damages in contract law, which of the following describes damages paid to protect the claimant's reliance interest?

- What is needed to put the claimant into the position they would have been in if the contract had been performed
- What is needed to put the claimant into the position they would have been in if they had not relied on the contract
- What is needed to recover the price of goods or services provided under the contract

(1 mark)

6.5 In relation to contract law, which of the following describes liquidated damages?

- A genuine pre-estimate of losses payable in the event of breach of contract
- A specific sum payable in the event of a breach of contract to punish a party for their breach
- A sum equal to the amount of work done plus an element of profit that is payable in the event of a breach of contract

(1 mark)

6.6 In which of the following circumstances would an award of specific performance be made?

- In breach of contract in an employment contract
- In breach of contract in a contract for personal services
- In breach of contract in a contract involving the sale of property

(1 mark)

6.7 Which of the following is an example of an equitable remedy for breach of contract?

- Injunction
- Action for the price
- Quantum meruit*

(1 mark)

6.8 Which of the following is true concerning the rights of an innocent party where repudiatory breach of contract has occurred?

- If the innocent party chooses to terminate the contract they are not required to notify the other party
- The innocent party can claim damages for any losses but not treat the contract as discharged
- The innocent party cannot refuse to pay for partial or defective performance already received
- The innocent party may affirm the contract and continue with their obligations

(2 marks)

6.9 Which of the following is **NOT** a lawful excuse for failing to perform contractual obligations?

- Performance is rejected by the other party
- Performance is made impossible by the other party
- Performance is rendered more expensive than agreed due to external circumstances
- Non-performance was agreed between the parties

(2 marks)

6.10 Which **TWO** of the following are tests that should be met when determining whether damages are too remote to be claimed?

- Losses must be connected in some way to the breach of contract
- Losses must arise naturally from the breach of contract
- Losses related to exceptional circumstances are too remote to be claimed
- Losses arising outside the normal course of events will be compensated if the circumstances are within the defendant's knowledge when they formed to contract

(2 marks)

6.11 In relation to the law of contract, which of the following statements in relation to damages is correct?

- Damages are not payable in relation to mental distress
- Damages to rectify a defect are still payable even if they are wholly disproportionate to the size of the breach
- An innocent party is required to take reasonable steps to mitigate their losses
- Damages in the form of a penalty clause are valid and enforceable

(2 marks)

6.12 Which of the following statements in relation to liquidated damages is correct?

- Liquidated damage clauses are void and unenforceable in contract law
- Liquidated damage clauses must be highlighted in the contract
- The purpose of liquidated damage clauses is to deter potential breaches of contract
- Liquidated damages are only payable where a condition of a contract is breached

(2 marks)

6.13 Which of the following is true regarding injunctions?

- Injunctions are a common law remedy
- A court has no discretion as to whether or not to award an injunction
- Injunctions require a defendant to observe a negative restriction of a contract
- Injunctions may be awarded in conjunction with an award for damages

(2 marks)

6.14 Rescission is an equitable remedy, and where available, makes the contract voidable. There are a number of conditions attached to the award of rescission.

Which of the following is a condition that must be met for an award of rescission to be made?

- The innocent party, only, must be able to be restored to their pre-contract position
- The right to rescind the contract must be exercised within 30 days of it being awarded
- Rescission must take place after the contract is affirmed
- Innocent third parties must not have acquired rights under the subject matter of the contract

(2 marks)

6.15 For an order for specific performance to be made, which **TWO** of the following criteria must be met?

- Damages must be inadequate compensation
- Consideration must have passed between the parties
- The parties must both agree to the award
- The contract must require performance over a long period of time

(2 marks)

(Total = 23 marks)

7 The law of torts and professional negligence

28 mins

7.1 Which of the following statements concerning tort is correct?

- Breach of contract is a tort
- Torts are crimes
- A tort is a civil wrong and the victim sues for compensation or an injunction

(1 mark)

7.2 Which of the following describes the tort of 'passing-off'?

- The use of a business name or trademark that misleads the consumer to believe that one business is that of another
- Misleading a consumer to take actions that are to their detriment
- A consumer deliberately wearing a product that purports to be made by one brand but which is actually a fake

(1 mark)

7.3 In which of the following circumstances will a defendant be liable to pay compensation under the tort of negligence?

- They breached a duty of care to the claimant
- They breached a duty of care to the claimant and as a consequence the claimant suffered loss, injury or damage
- Their actions caused the claimant to suffer some loss, injury or damage

(1 mark)

7.4 In the tort of negligence, what is the legal effect of *res ipsa loquitur*?

- The claimant must prove that the defendant was negligent
- The defendant must prove that they were not negligent
- The claimant must prove that they acted reasonably

(1 mark)

7.5 In which of the following circumstances would an employer be vicariously liable for the acts of an employee?

- Where the loss or damage was caused by the employee when performing the duties they were employed to do
- Where the loss or damage was caused by the employee, but they were not on company business at the time of the incident
- Where the employee has a valid defence to liability and the injured party has no other course of action available to them

(1 mark)

7.6 In the tort of negligence, what is the effect of *volenti non fit injuria*?

- The defendant is liable for the claimant's injury unless proved otherwise
- The claimant accepted the risk of injury and the defendant is not liable for the claimant's losses
- Neither the claimant nor the defendant is responsible for the claimant's injury

(1 mark)

7.7 Which of the following statements describes whom a company's auditor owes a duty of care to?

- The public at large who read the company accounts
- The company's shareholders who read the company accounts and increase their stake in the business
- The company only

(1 mark)

7.8 Which of the following statements regarding tort is correct?

- The only remedy for a victim of a tort is damages
- No contractual relationship need exist between claimant and defendant for the defendant to be liable to the claimant in tort
- Actions in tort are heard in the criminal court system
- In tort, the burden of proof is always on the defendant to prove that they were not negligent

(2 marks)

7.9 To establish a case of 'passing-off', what must the claimant prove?

- The consumer purchased fake goods
- The defendant is using a similar business model to the claimant
- The name of the defendant's business is similar enough to the claimant's to mislead the consumer
- There is some similarity between the name of the defendant's business and that of the claimant

(2 marks)

7.10 Which **TWO** of the following are questions that are asked to establish whether the defendant owed the claimant a duty of care?

- Was the harm obvious to a reasonable person?
- Was there a relationship of proximity between the parties?
- Did the claimant accept the risk of injury?
- Is it fair, just and reasonable to impose a duty of care on the defendant?

(2 marks)

7.11 When considering whether a defendant has breached their duty of care, a number of factors are considered.

Which of the following statements concerning breach of duty of care is correct?

- Where there is a high probability of injury, the claimant should have taken extra care
- A social benefit to a defendant's actions is no excuse for breaching the level of care expected
- Defendants are not expected to ensure that all possible precautions against risk are taken if the cost of the precautions outweigh the risk
- A professional is expected to demonstrate the same level of care and skill as a reasonable person performing the same task

(2 marks)

7.12 Which of the following circumstances will prevent causality being established in a claim of negligence?

- An act of the claimant that is reasonable and within the normal course of things
- Acts of a third party that occur after the claimant's injury
- Foreseeable natural events
- Multiple possible reasons for the injury with no one act being established as the cause

(2 marks)

7.13 In regards to professional negligence, which of the following statements are true or false?

| | True | False |
|---|-----------------------|-----------------------|
| Pure financial losses caused by negligent misstatements are not recoverable | <input type="radio"/> | <input type="radio"/> |

| | | |
|---|-----------------------|-----------------------|
| Auditors do not owe a duty of care to members of the public who rely on published accounts for investment decisions | <input type="radio"/> | <input type="radio"/> |
|---|-----------------------|-----------------------|

(2 marks)

7.14 In which of the following circumstances will an accountant owe a duty of care?

| | Duty of care owed | No duty of care owed |
|--|-----------------------|-----------------------|
| Where they prepare a statement for general public circulation where it is unknown who may rely on the information and for what purpose | <input type="radio"/> | <input type="radio"/> |
| Where they produce information for a particular person, in the knowledge that the person will rely on the information when making a decision about a transaction | <input type="radio"/> | <input type="radio"/> |

(2 marks)

7.15 Which **TWO** of the following parties does an auditor owe a duty of care to when auditing the accounts of a subsidiary company?

- The parent company
- The shareholders of the parent company
- The subsidiary company
- A rival company considering a takeover of the subsidiary company

(2 marks)

(Total = 23 marks)

8 MTQ Bank 1**36 mins**

8.1 On Friday 10 December the following notice is placed in the window of Ann's art gallery: 'Two copies of a very rare Blake print – £15,000 each'.

Chas and Dave are very keen to acquire the prints but think that the price is too high. They each offer Ann £12,000 for a copy but she refuses to sell the prints at that price, although she says she will accept £13,500. She also says she will keep her offer to them open until 12 o'clock on the following Monday, 13 December, if they each pay her £100. Chas and Dave agree and each hands over £100. On the Saturday before the deadline Chas and Dave have to leave the country on business but before they do so each posts a letter stating that he agrees to buy one of the prints at the agreed price of £13,500. Chas's letter arrives at 9.30 on the Monday morning but Dave's letter is delayed and arrives on the morning of Tuesday 14 December.

(a) Which **TWO** of the following statements concerning offers are correct?

- An offer is a definite promise to be bound on specific terms
- An offer can include uncertain terms
- An offer can be made to a specific class of person
- An offer should be made verbally in order to be valid

(2 marks)

(b) Which of the following correctly describes the nature of the notice in Ann's window?

- An invitation to treat
- An offer
- An invitation to tender
- An intention to create legal relations

(2 marks)

(c) Which of the following parties does Ann have a binding contract with?

| | Binding contract | No binding contract |
|------|-----------------------|-----------------------|
| Chas | <input type="radio"/> | <input type="radio"/> |
| Dave | <input type="radio"/> | <input type="radio"/> |

(2 marks)**(Total = 6 marks)**

8.2 Ace Ltd placed the following notice in the January edition of its company journal to request help in solving a problem with one of its computer products – the Brag: '£10,000 reward to any employee who can design a solution to the Brag problem before 1 April'.

Cid, who was married to an employee of Ace Ltd, read the journal and thought that he could solve the problem, so started work on it. Ed, employed by Ace Ltd, also saw the advert and decided to work on it. Ed solved the problem, but before he could notify Ace Ltd, the company decided to cancel the Brag product and placed a note in the March edition of its journal cancelling the reward.

(a) The offer of a reward creates which type of contract?

- Unilateral contract
- Contract by deed
- Bilateral contract
- Contract by estoppel

(2 marks)

(b) Which of the following statements is correct?

- Cid may claim for the work he did to solve the Brag problem because his wife is an employee of Ace Ltd
- Cid may claim for the work he did to solve the Brag problem because the offer was made to the world at large
- Cid may not claim for the work he did to solve the Brag problem because the offer was not made to him
- Cid may not claim for the work he did to solve the Brag problem because the offer was cancelled before he could notify Ace Ltd

(2 marks)

(c) Which of the following statements is correct?

- Ed may claim for the work he did to solve the Brag problem because he started work before Ace Ltd revoked its offer
- Ed may claim for the work he did to solve the Brag problem because he is an employee of Ace Ltd
- Ed may not claim for the work he did to solve the Brag problem because Ace Ltd lawfully revoked its offer
- Ed may not claim for the work he did to solve the Brag problem because the work he did is worth less than the reward offered

(2 marks)

(Total = 6 marks)

8.3 Zri operates a business as a designer of internet web pages for a variety of business clients. Unfortunately he has had some difficulty in recovering his full fees from a number of clients as follows:

Ad, a self-employed car mechanic, without contacting Zri, simply sent him a cheque for half of his fees stating that he could not pay any more and that the cheque was in full settlement of his outstanding debt. Zri rang Ad about this and reluctantly agreed to wave half the fees.

Bi, a newly qualified accountant, told Zri that although she could only raise the cash to pay half of the outstanding fees she would, as an alternative to paying the other half, do all of Zri's accountancy work for the coming year. Zri reluctantly agreed to this proposal.

Cas, a self-employed musician, told Zri that she could not pay any of the money she owed him. However, her father offered to pay Zri, but could only manage half of the total amount owed. Once again Zri reluctantly agreed to accept the father's payment of the reduced sum.

Dex, the owner of a nursery, told Zri that she could not afford to pay any of Zri's bill but that she would provide a week's childcare to Zri for free. Zri currently does not have any children.

(a) Which of the following correctly describes the principle of promissory estoppel?

- A promise made under contract law cannot be retracted if the person to whom the promise was made relies on it
- An promise made under contract law cannot be retracted under any circumstances
- A promise made under contract law is legally enforceable
- A promise made under contract law is sufficient consideration

(2 marks)

(b) Can Zri recover his outstanding amounts from the following parties?

| | Debt is recoverable | Debt is not recoverable |
|-----|-----------------------|-------------------------|
| Ad | <input type="radio"/> | <input type="radio"/> |
| Bi | <input type="radio"/> | <input type="radio"/> |
| Cas | <input type="radio"/> | <input type="radio"/> |
| Dex | <input type="radio"/> | <input type="radio"/> |

(4 marks)
(Total = 6 marks)

8.4 Andy's company operates a fleet of haulage trucks that transport goods to commercial depots and warehouses all around the country. Andy himself often works as a truck driver, delivering goods. At the depot of one of Andy's clients, Hazelwood Ltd, the following notice is in place.

'For commercial delivery use only. The use of these facilities is strictly at your own risk and Hazelwood Ltd accepts no liability whatsoever for any damage or injury sustained by either those using this facility or their vehicles or property, no matter how caused.'

Andy was aware of the notice, but had never paid much attention to it. However, one day, after delivering some goods to Hazelwood Ltd, he returned to his truck to find that it had been badly damaged by a towing vehicle driven by an employee of Hazelwood Ltd. Whilst on his way to the office to complain, he was hit by the same towing vehicle. As a result, not only was his truck severely damaged, but he suffered a broken leg and was off work for eight weeks.

Hazelwood Ltd has accepted that its employee was negligent on both counts but denies any liability, relying on the exclusion clause.

(a) Which **TWO** of the following are characteristics of valid exclusion clauses?

- Excludes all liability on a contract altogether
- Restricts liability on a contract by limiting damages
- Excludes onerous conditions in the contract
- Excludes certain contract terms from applying in certain situations

(2 marks)

(b) Will Andy receive damages from Hazelwood Ltd in respect of the following:

Will receive damages Will not receive damages

| | | |
|-------------------------|-----------------------|-----------------------|
| The damage to his truck | <input type="radio"/> | <input type="radio"/> |
| The injury to his leg | <input type="radio"/> | <input type="radio"/> |

(4 marks)
(Total = 6 marks)

8.5 Roger regularly takes part in a sport that involves fighting with wooden sticks. He has been successful in many fights but recently took part in one in which he lost to Jack. The fight took place under the necessary safety regulations and was stopped before Roger was hurt too badly. However, soon after the fight, it was clear that he had received severe head injuries and he now has difficulty talking.

Lulu used a public toilet at her local train station. Unfortunately the lock was defective and she was stuck inside. In a hurry to escape, she attempted to climb out of the window (despite a warning notice not to do so) and fell to the ground outside, injuring her head.

(a) Which **TWO** of the following must a claimant prove to be owed a duty of care in a negligence claim?

- The harm was an obvious consequence of the defendant's actions
- There was a relationship of proximity between the parties
- It is fair, just and reasonable to impose a duty of care
- The defendant has sufficient funds to pay damages for the harm caused

(2 marks)

(b) Which of the following statements about Roger is correct?

- Roger cannot claim damages from the fight organiser because the organiser can claim the defence of *volenti non fit injuria*
- Roger can claim damages from the fight organiser because the defence of *volenti non fit injuria* does not apply to dangerous sports
- Roger can claim damages from the fight organiser because he did not expressly consent to the risk of head injury
- Roger cannot claim damages from the fight organiser because the injuries suffered were in reasonable contemplation

(2 marks)

(c) Which of the following statements about Lulu is correct?

- Lulu has no right to damages in respect of her head injury because there was no contract in place between herself and the train station
- Lulu has no right to claim damages in respect of her head injury because she voluntarily accepted the risk of injury by climbing out of the window
- Lulu has a right to claim damages for the full amount of the harm caused to her in respect to her head injury
- Lulu has a right to claim damages in respect to her head injury but the amount she is entitled to will be reduced because she was partly to blame for it

(2 marks)
(Total = 6 marks)

(Total = 30 marks)

9 Contract of employment

28 mins

9.1 Which of the following describes the type of contract that an employee has?

- A contract of service
- A contract for services
- A contract of agency

(1 mark)

9.2 Which of the following factors indicates that a person is self-employed rather than an employee?

- The person owns their own tools
- The person is paid a salary net of tax
- The person may not delegate their obligations to someone else

(1 mark)

9.3 Which of the following is a consequence of being self-employed rather than employed?

- In the event of the employer's bankruptcy, the person has preferential rights as a creditor
- The person can register for and charge VAT
- The person is entitled to remedies for unfair dismissal

(1 mark)

9.4 Which of the following statements concerning employment contracts is correct?

- Employment contracts must be in writing
- Consideration is not required in an employment contract
- Employment contracts may include terms implied by custom and practice of the industry

(1 mark)

9.5 Which of the following is a common law duty of an employee?

- Obedience to all employer instructions
- To hold a reasonable level of qualifications
- To take reasonable care and skill in performing their work

(1 mark)

9.6 Which of the following is **NOT** a common law duty of an employer?

- To pay reasonable remuneration
- To provide health insurance
- To pay the employee if no work is available

(1 mark)

9.7 In which of the following situations is an employee entitled to time off work on full pay?

- A employee who wishes to leave the employer and look for another job
- A trade union member wishing to attend a trade union meeting
- A trade union official wishing to carry out trade union duties

(1 mark)

9.8 With regard to the tests applied by the courts to determine whether a person is an employee or self-employed, which of the following describes the focus of the integration test?

- Does the employer have control over how the person does their work?
- Is the employee so skilled that they cannot be controlled in the performance of their duties?
- Does the person work on their own account?
- How long has the person worked for the employer?

(2 marks)

9.9 Which of the following individuals can be considered an employee?

- David – who invoices his employer and is paid gross
- Sally – who may delegate her work to others
- Rob – who is provided with his work tools by his employer
- Jane – who chooses the hours that she works

(2 marks)

9.10 Which **TWO** of the following are consequences of being an employee rather than self-employed?

- The person does not have protection from unfair dismissal
- The employer is vicariously liable for the tortious acts of the employee performed in the course of employment
- PAYE tax is deducted by the employer from the employee's salary
- The person is a non-preferential creditor in the event of the liquidation of the employer **(2 marks)**

9.11 Which of the following statements concerning statutory employment protection is **NOT** correct?

- The employed are entitled to protection from unfair dismissal
- The self-employed are entitled to a minimum notice period
- The employed are entitled to a minimum wage
- The self-employed are entitled to protection of their health and safety **(2 marks)**

9.12 Within how many months following the commencement of employment must the employer provide an employee with a written statement of prescribed particulars?

- One month
- Two months
- Three months
- Six months **(2 marks)**

9.13 Which of the following is **NOT** a right granted to employees in relation to new children?

- Maternity pay
- Paternity pay
- Adoption leave
- Workplace childcare **(2 marks)**

9.14 Which of the following is **NOT** a right granted to a pregnant employee?

- Time-off for ante-natal care
- Protection from unfair dismissal
- Statutory maternity leave
- Flexible working on return to work **(2 marks)**

9.15 Which **TWO** of the following are statutory rights that an employer owes their employees?

- An itemised pay slip
- A minimum hourly wage
- Paid parental leave for parents of children up to the age of 18
- A maximum working week of 45 hours **(2 marks)**

(Total = 23 marks)

10 Dismissal and redundancy

28 mins

10.1 What is the minimum period of notice that an employee with ten years of continuous service is entitled to?

- One week
- Two weeks
- Ten weeks

(1 mark)

10.2 Which of the following types of dismissal occurs when no notice is given to the employee?

- Constructive dismissal
- Summary dismissal
- Unfair dismissal

(1 mark)

10.3 An employee can seek damages for wrongful dismissal in which of the following circumstances?

- When they are dismissed unfairly but with the correct notice period
- When they are dismissed fairly with the correct notice period
- When they are summarily dismissed without justification

(1 mark)

10.4 Which of the following statements regarding wrongful dismissal is correct?

- A wrongfully dismissed employee is expected to mitigate their loss by seeking alternative employment
- Damages for wrongful dismissal include lost salary plus a sum for mental distress
- Cases for wrongful dismissal are heard by the criminal courts

(1 mark)

10.5 Which of the following is an exception to the rule that an employee must have a minimum period of continuous service to be protected from unfair dismissal?

- Pregnancy of the employee
- Disability of the employee
- Trade union membership of the employee

(1 mark)

10.6 Which of the following statements regarding compensation for unfair dismissal is correct?

- A compensatory award is not subject to a statutory maximum
- A basic award is determined by the age, salary and length of service of the employee and is subject to a statutory maximum
- An additional award may be granted for any reason at the tribunal's discretion

(1 mark)

10.7 In order to be entitled to redundancy pay, how long must an employee be continuously employed?

- 1 year
- 1.5 years
- 2 years

(1 mark)

10.8 If an employee has ten years of continuous service with an employer, what is the minimum notice period that they need to give the employer if they decide to leave?

- One week
- Ten days
- One month
- Ten weeks

(2 marks)

10.9 Which of the following statements describes constructive dismissal?

- The employer dismissing the employee without the correct notice period and justification
- The employer dismissing the employee without any notice
- The employee resigns after they are required to work 40 hours per week when they are contracted to work 30
- The employee resigns after they are not awarded a discretionary bonus

(2 marks)

10.10 Which **TWO** of the following are justifiable reasons for summary dismissal?

- Misconduct
- Gross negligence
- Lateness
- Failure to follow a dress code

(2 marks)

10.11 Which of the following remedies are available to the employee in the event that they are wrongfully dismissed?

- Damages
- Re-engagement
- Re-instatement
- Statutory compensation

(2 marks)

10.12 In order to proceed with a claim for unfair dismissal, the employee must show that they were dismissed.

Which of the following is **NOT** counted as dismissal for unfair dismissal purposes?

- Employee resigning
- Constructive dismissal
- Expiry of a fixed-term contract without renewal
- Summary dismissal

(2 marks)

10.13 For unfair dismissal purposes, which of the following is a fair reason for dismissal?

- Pregnancy
- Trade union membership
- Lack of capability or qualifications
- Taking steps to avert a danger to health and safety at work

(2 marks)

10.14 Which of the following statements regarding compensation for unfair dismissal is **NOT** correct?

- Compensation may be reduced if it is just and equitable to do so
- Compensation may be reduced if it is greater than lost earnings
- Compensation may be reduced if the employee contributed to their own dismissal
- Compensation may be reduced if the employee unreasonably refused an offer of reinstatement

(2 marks)

10.15 Which **TWO** of the following are circumstances where an employee will **NOT** be entitled to claim a redundancy payment?

- They could have been dismissed for misconduct before the redundancy notice
- Their claim is not made within three months of the redundancy notice
- They are involved in strike action after the redundancy notice is served
- They unreasonably refuse a renewal to their contract

(2 marks)

(Total = 23 marks)

11 MTQ Bank 2

36 mins

11.1 Gem Ltd has a number of different types of worker that perform services for it.

The 'professionals' are highly skilled individuals who perform services for clients of Gem Ltd at a range of different locations owned by the company. Clients have the right to choose which professional they see and at what time.

The 'techies' are skilled technical workers that develop and maintain Gem Ltd's information systems. They are not told what work needs to be done, but are expected to identify and solve problems that arise. The order in which jobs are done and how the jobs are done is a decision for each 'techie'.

The 'mechanics' are skilled workers who maintain the fleet of Gem Ltd's company vehicles. They are provided with the tools they need to do their job and are provided with a list of work that needs doing each day.

The 'temps' are unskilled workers who perform a variety of administration roles within the company. All 'temps' are hired on temporary contracts up to six months in duration. They must attend work at a specific office and are required to perform tasks as directed by a manager.

(a) Which **TWO** of the following are consequences of being an employee rather than an independent contractor?

- Maternity and paternity rights
- Rights as a preferential creditor if the employer goes into liquidation
- Vicarious liability of the employer for actions of the worker is limited
- No deduction of PAYE tax from payments to the worker

(2 marks)

(b) Which of the following parties are employees or independent contractors?

| | Employee | Independent contractor |
|--------------|-----------------------|------------------------|
| Professional | <input type="radio"/> | <input type="radio"/> |
| Techie | <input type="radio"/> | <input type="radio"/> |
| Mechanic | <input type="radio"/> | <input type="radio"/> |
| Temp | <input type="radio"/> | <input type="radio"/> |

(4 marks)
(Total = 6 marks)

11.2 Fine Ltd specialises in providing software to the financial services industry. It has two offices, one in Edinburgh and the other, its main office, in London. In January 20X3, Gus was employed as a software designer attached to the Edinburgh office. However, in May 20X4, Gus was informed that he was to be transferred to the head office in London, which is more than 350 miles from his usual workplace.

Gus refused to accept the transfer on the basis that he had been employed to work in Edinburgh not London. Consequently, on 1 June 20X4 he wrote to Fine Ltd terminating his contract with them.

(a) Which **TWO** of the following must be proved in order for a claim of constructive dismissal to succeed?

- The employee breaching an essential term of the employment contract
- The employer repudiating an essential term of the employment contract
- The resignation of the employee
- The employer being unwilling to continue employing the employee

(2 marks)

(b) Identify whether the following statements concerning Gus are true or false.

| | True | False |
|---------------------------------------|-----------------------|-----------------------|
| Gus has been constructively dismissed | <input type="radio"/> | <input type="radio"/> |
| Gus can claim wrongful dismissal | <input type="radio"/> | <input type="radio"/> |
| Gus can claim unfair dismissal | <input type="radio"/> | <input type="radio"/> |
| Gus can claim redundancy | <input type="radio"/> | <input type="radio"/> |

(4 marks)
(Total = 6 marks)

11.3 Fawn Ltd manufactures clothes and sells them through its own retail shop. Grace, who is 33 years old, has been employed by Fawn Ltd for three years as manager of the shop. Grace has just been told that her services are no longer required, as Fawn Ltd has decided to close its store and concentrate solely on manufacturing.

(a) Which of the following statements concerning Grace is correct?

- Grace has been wrongfully dismissed
- Grace has been unfairly dismissed
- Grace has been fairly dismissed
- Grace has been constructively dismissed

(2 marks)

(b) If Fawn Ltd decides to offer Grace alternative employment, which of the following **TWO** statements are correct?

- Employment must be in the same capacity as the old employment
- Employment may be lower in status than the old employment
- Employment does not have to be in the same location as the old employment
- Employment must be on the same terms as the old employment

(2 marks)

(c) If Grace does not accept an offer of alternative employment, which of the following statements is correct?

- Grace will not be entitled to any financial compensation
- Grace will be entitled to financial compensation of three weeks' salary up to a statutory maximum
- Grace will be entitled to financial compensation of four weeks' salary up to a statutory maximum
- Grace will be entitled to financial compensation of five weeks' salary up to a statutory maximum

(2 marks)
(Total = 6 marks)

11.4 Dan operated a business for many years. Until recently, Eve and Fred both worked for Dan and were described as self-employed and paid tax as self-employed persons. Dan provided all of the computer equipment and software they needed to perform their jobs. Eve was required to work solely on the projects Dan provided, and she had to attend Dan's premises every day from 9am until 5pm.

Fred usually worked at home and was allowed to work on other projects. Fred could even arrange for his work for Dan to be done by someone else if he was too busy to do it personally.

After three years of employment, and as a result of a downturn in his business sector, Dan has told Eve and Fred that there will be no more work for them and that they will not receive any further payment or compensation from him for their loss of work.

(a) Which **TWO** of the following are tests used by the court when deciding if an individual is employed or self-employed?

- Integration
- Financial
- Control
- Reasonableness

(2 marks)

(b) Identify whether Fred and Eve are entitled to any compensation for the loss of their jobs.

Entitled to compensation Not entitled to compensation

| | | |
|------|-----------------------|---|
| Fred | <input type="radio"/> | ○ |
| Eve | <input type="radio"/> | ○ |

(4 marks)

(Total = 6 marks)

11.5 Impact College Ltd provides private tuition. The college is managed by Jack, who also has responsibility for personnel matters. Fred, Gale, Hannah and Igor are lecturers currently employed by Impact College Ltd.

Fred has been employed as the staff trade union representative for the past three years and has had several confrontations with Jack as to the working conditions of the college's employees. Gale has been off work twice in the past four years on maternity leave, and to Jack's stated annoyance, is pregnant once again. Hannah was hired a year ago but has annoyed Jack by frequently bringing health and safety issues to his attention. Igor has been employed on a two-year fixed-term contract which is about to end and will not be renewed because Impact College no longer requires an employee with his skills.

It has transpired that Fred, Gale, and Hannah are amongst ten members of staff selected for dismissal by the college and they have evidence that Jack has pursued a personal vendetta against them.

(a) Which **TWO** of the following are fair reasons for an employer dismissing an employee?

- Capability
- Redundancy
- Taking part in official strike action
- Pregnancy

(2 marks)

(b) Which of the following parties have a valid claim to have been unfairly dismissed?

Unfairly dismissed Not unfairly dismissed

| | | |
|--------|-----------------------|---|
| Fred | <input type="radio"/> | ○ |
| Gale | <input type="radio"/> | ○ |
| Hannah | <input type="radio"/> | ○ |
| Igor | <input type="radio"/> | ○ |

(4 marks)

(Total = 6 marks)

(Total = 30 marks)

12 Agency law

28 mins

12.1 The purpose of an agency relationship is to form a business contract between which of the following parties?

- Agent and principal
- Agent and third party
- Principal and third party

(1 mark)

12.2 In order to form an agency relationship by express agreement, what form should the agreement take?

- Oral agreement only
- Written agreement only
- Either oral or written agreement

(1 mark)

12.3 'Holding out' is a key element of which form of agency?

- Agency by implied agreement
- Agency by estoppel
- Agency by necessity

(1 mark)

12.4 Which type of agent authority is derived from what is usual or customary in the circumstances?

- Express authority
- Ostensible authority
- Implied authority

(1 mark)

12.5 When combined, which types of agent authority are known as an agent's actual authority?

- Express and implied authority
- Implied and ostensible authority
- Express and apparent authority

(1 mark)

12.6 Unless circumstances indicate otherwise, which party is **NOT** liable under a contract properly formed under an agency agreement?

- Agent
- Principal
- Third party

(1 mark)

12.7 Which of the following statements regarding agency law is correct?

- An agent may not enforce a contract that they helped to form
- A principal may sue their agent if the third party is in breach of contract
- A third party and principal do not need to be in direct contact for a binding contract between them to be formed

(1 mark)

12.8 Which type of agent runs an accountancy practice?

- Company director
- Partner
- Commercial agent
- Promoter

(2 marks)

12.9 Which of the following statements concerning a principal ratifying a contract formed by an agent is correct?

- The principal need not have existed when the contract was made
- The principal need not have had legal capacity when the contract was made
- The principal must communicate their ratification of the contract clearly to the third party
- At least half of the provisions of the contract must be ratified

(2 marks)

12.10 Which **TWO** types of agency are formed without the agent's consent?

- Agency by implied agreement
- Agency by express agreement
- Agency by estoppel
- Agency by ratification

(2 marks)

12.11 In agency law, which of the following statements relates to agency by estoppel, and which relates to agency by necessity?

| | Agency by estoppel | Agency by necessity |
|--|-----------------------|-----------------------|
| There is no agency agreement but the principal states publicly that a person is their agent | <input type="radio"/> | <input type="radio"/> |
| There is no agency agreement but the principal looks after another person's property when they cannot be contacted | <input type="radio"/> | <input type="radio"/> |

(2 marks)

12.12 Which of the following is included in an agent's ostensible authority?

- The authority that the third party expects the agent to have
- The authority that the agent states that they have
- The authority that is usual in the circumstances and what the principal impliedly gives the agent
- The authority that the principal expressly gives the agent

(2 marks)

12.13 In which of the following circumstances will an agent's apparent authority arise?

- When the principal tells the agent orally what the limit of their authority is
- What a third party determines the agent's authority is from what is usual in the circumstances
- When, without the principal being aware, an agent tells a third party what their authority is
- Where a principal has represented a person to third parties as being their agent, despite not actually appointing the person as such

(2 marks)

12.14 In which of the following circumstances will an agency relationship **NOT** be terminated?

- Bankruptcy of principal
- Death of principal
- Insanity of principal
- Performance by the principal of their contractual obligations

(2 marks)

12.15 In which **TWO** of the following situations will an agent be liable on a contract?

- Where it is usual business practice for the agent to be liable
- Where the agent acts on their own behalf even though they purport to be acting for the principal
- Where the principal intends for the agent to take personal liability
- Where the third party agrees with the principal that the agent will be liable

(2 marks)

(Total = 23 marks)

13 Partnerships

28 mins

13.1 Which of the following statements regarding partnerships is correct?

- A partnership must exist for more than a single business transaction
- The business must be profitable
- A partner can be an individual living person or a registered company

(1 mark)

13.2 In which form of partnership is there a partner that invests in the partnership but does not take part in the day-to-day running of the business?

- Unlimited liability partnership
- Limited partnership
- Limited Liability Partnership

(1 mark)

13.3 As a minimum, which of the following formalities is necessary to form an unlimited liability partnership?

- A written partnership agreement
- A decision by the partners to set up business together
- Registration of the partnership at Companies House

(1 mark)

13.4 A partner's actual authority to bind the partnership in a contract is determined by which of the following?

- The perception third parties have of the purpose of the partnership
- What is agreed between the partners
- The actual purpose of the partnership

(1 mark)

13.5 Which of the following statements concerning retiring partners is correct?

- Retiring partners are not liable for any partnership debts after they leave
- Retiring partners are liable only for existing partnership debts when they leave, unless third parties are notified that they have retired
- Retiring partners are responsible for existing partnerships debts when they leave and partnership debts incurred after their retirement, unless third parties are notified of their retirement

(1 mark)

13.6 Under the Partnership Act 1890, which of the following events will cause a partnership to be terminated?

- Loss of 50% of the partnership's capital
- The partnership incurring losses for three consecutive years
- Bankruptcy of a partner

(1 mark)

13.7 When a partnership is terminated, which of the following is paid off first from the funds raised from the sale of assets?

- External debts
- Loans from partners
- Partners' capital contributions

(1 mark)

13.8 Which of the following statements regarding Limited Liability Partnerships is correct?

- A written partnership agreement is required to form the partnership
- The partnership dissolves when a partner leaves
- The partnership must have two designated members who are responsible for the publicity requirements of the partnership
- The partnership is exempt from audit

(2 marks)

13.9 Which of the following is true regarding Limited Liability Partnerships?

- The partnership is liable for its own debts
- The partnership does not need to file accounts with the Registrar of Companies
- One partner may not take part in the day-to-day running of the partnership
- Where the partnership cannot pay its own debts, the partners are jointly liable up to an amount they have guaranteed

(2 marks)

13.10 When forming an unlimited liability partnership, a partnership agreement may be written.

Which **TWO** statements regarding written partnership agreements are correct?

- Terms in the agreement override terms implied by the Partnership Act 1890
- Written partnership agreements are required by law where there are more than 20 partners in the partnership
- Written partnership agreements must be in the form of a deed
- Written partnership agreements are not required on formation and may be created at any point in the life of the partnership

(2 marks)

13.11 Which of the following is true concerning partnerships and legal charges?

- Partnerships can grant fixed charges only
- Partnerships can grant floating charges only
- Partnerships can grant both fixed and floating charges
- Partnerships cannot grant fixed or floating charges

(2 marks)

13.12 Which of the following debts will a new partner in a partnership be liable for?

| | Liable | Not liable |
|--|-----------------------|-----------------------|
| Existing partnership debts on the day they are admitted to the partnership | <input type="radio"/> | <input type="radio"/> |
| All partnership debts incurred after their admission to membership | <input type="radio"/> | <input type="radio"/> |

(2 marks)

13.13 Which of the following is necessary to terminate a Limited Liability Partnership?

- Formal liquidation
- A court order
- An order from the Registrar of Companies
- A deed signed by the partners

(2 marks)

13.14 When an unlimited liability partnership is terminated, which of the following is paid off last out of funds realised from the partnership assets?

- Partners' share of partnership profits
- Partners' capital contribution
- Partnership loans
- External debts

(2 marks)

13.15 Under the Partnership Act 1890, which **TWO** of the following events will terminate an unlimited liability partnership?

- Notice by a partner
- The end of an agreed fixed period of time for the partnership
- Absence of a partner
- Disagreement between the partners

(2 marks)

(Total = 23 marks)

14 Corporations and legal personality

28 mins

14.1 Which of the following is a benefit of running a business as a sole trader?

- No formal procedures to set up the business
- The business is highly dependent on the owner
- An absence of economies of scale

(1 mark)

14.2 Which of the following statements regarding sole traders is correct?

- The business is legally distinct from the owner
- All of a sole trader's profits accrue to the owner
- Sole traders do not need to register for VAT

(1 mark)

14.3 In a company limited by shares, what is the limit of a member's liability?

- The amount they guaranteed to pay in the event of the company being liquidated
- The amount of share capital they have purchased, including any amounts outstanding on the shares that they own
- Nothing, the company is liable for its own debts

(1 mark)

14.4 Which type of company does **NOT** have share capital?

- An unlimited liability company
- A public company
- A company limited by guarantee

(1 mark)

14.5 How much is the minimum issued share capital of a public company?

- £12,500
- £25,000
- £50,000

(1 mark)

14.6 Which of the following is an effect of a company's separate legal personality?

- Members and directors of a company are protected from the force of the law
- The company is liable for its own debts
- Members have no liability in the event of the company being insolvent

(1 mark)

14.7 In which of the following situations will the courts lift the veil of incorporation?

- Where a director commits fraudulent trading
- Where a member of a solvent company fails to pay the company what is outstanding on their share capital
- Where an employee commits a tort in the course of their employment

(1 mark)

14.8 Which of the following indicates that a business is being run as a sole trader?

- The business does not employ any employees
- It does not file accounts with the Registrar of Companies
- The business is run by one person who is not legally distinct from the business
- Share capital of the business is not sold on a recognised stock exchange

(2 marks)

14.9 A group of friends wish to set up a business. They wish to limit their liability for the business' debts to an amount that they agree to when the business is formed.

Which of the following businesses is most suitable to the needs of the group?

- An unlimited company
- A company limited by shares
- A partnership
- A corporation sole

(2 marks)

14.10 Which **TWO** of the following are true regarding public companies?

- A public company must have a minimum of two members
- A public company must have a minimum of two directors
- A public company cannot be an unlimited liability company
- A public company must have 'ltd' at the end of its name

(2 marks)

14.11 Which of the following is **NOT** a criterion that a company must meet if it is to qualify for the small companies' regime?

- Balance sheet total of not more than £5.1 million
- Net profit of no more than £1.0 million
- Turnover of not more than £10.2 million
- An average of 50 or fewer employees

(2 marks)

14.12 Which term is used to describe the type of company that has its shares traded on a public stock exchange?

- Listed company
- Public company
- Private company
- Unlimited company

(2 marks)

14.13 Which of the following statements regarding parent companies is **NOT** correct?

- A company is a parent company if it holds the majority of the voting rights in another company
- A company is a parent company if it has the right to exercise dominant influence over another company
- A company is a parent company if it holds debentures in another company
- A company is a parent company of any subsidiaries that its subsidiary company controls

(2 marks)

14.14 Which of the following statements in regards to a company's legal personality is correct?

- Separate legal personality exempts members from liability if the company is liquidated
- Separate legal personality only applies to private limited companies
- Separate legal personality does not apply to unlimited liability companies
- Separate legal personality can be ignored in certain circumstances

(2 marks)

14.15 In which **TWO** of the following circumstances may the veil of incorporation be lifted?

- To allow directors of insolvent companies to be found liable for the debts of the company
- To treat a group company as a single economic entity
- To allow an auditor access to company records
- To allow a private company to re-register as a public company

(2 marks)

(Total = 23 marks)

15 Company formation

28 mins

15.1 Which of the following describes the general duty of a promoter?

- Reasonable skill and care
- Competence and accuracy
- Due diligence

(1 mark)

15.2 Which of the following statements concerning pre-incorporation contracts is correct?

- Pre-incorporation contracts must be ratified by the company
- Pre-incorporation contracts cannot be ratified by the company
- Pre-incorporation contracts can be ratified by the company if the third party agrees

(1 mark)

15.3 Which of the following parties is **NOT** liable on a pre-incorporation contract?

- The company
- The promoter
- The third party

(1 mark)

15.4 Which of the following criteria must a public company meet before it can trade?

- It must obtain a trading certificate from the Registrar of Companies
- Its shares must be listed on a stock exchange
- It must have appointed an auditor

(1 mark)

15.5 Which of the following criteria must a private company meet before it can trade?

- It must have obtained a trading certificate from the Registrar of Companies
- It must have obtained a certificate of incorporation from the Registrar of Companies
- The members must have agreed to set up the company

(1 mark)

15.6 Which of the following company books is a public company **NOT** legally required to keep?

- Register of people with significant control
- Register of debentureholders
- Register of disclosed interests in shares

(1 mark)

15.7 Which of the following is true regarding a register of directors?

- The register must include shadow directors
- The register must be made available for inspection by company members for a fee
- The register must include a service address for each director

(1 mark)

15.8 The role of which of the following parties is to form a company?

- Subscriber
- Member
- Director
- Promoter

(2 marks)

15.9 Which of the following statements concerning promoters is correct?

- An accountant who acts in a professional capacity in the formation of a company is a promoter
- A promoter may not make a profit as a result of their position
- A promoter that acts as an agent for others must not put themselves into a position where their own interests clash with that of the company they are forming
- A promoter may not own shares in the company that they are forming

(2 marks)

15.10 Which **TWO** of the following are methods that a promoter can use to avoid liability on pre-incorporation contracts?

- Signing the pre-incorporation contract 'on behalf of the company'
- Executing the pre-incorporation contract as a deed
- Buying an 'off-the-shelf' company
- Novating the contract

(2 marks)

15.11 To register a company, a number of documents must be submitted to the Registrar of Companies.

Which of the following is **NOT** a document that needs to be sent to the Registrar to register a company?

- Articles of association
- Memorandum of association
- Statement of compliance
- Statement of proposed officers

(2 marks)

15.12 A promoter sent the documents needed to register a company to the Registrar of Companies on 1/1/X1. The Registrar received the documents on 4/1/X1. The certificate of incorporation is dated 6/1/X1 and it is received by the promoter on 8/1/X1.

On which date was the company incorporated?

- 1/1/X1
- 4/1/X1
- 6/1/X1
- 8/1/X1

(2 marks)

15.13 In which of the following circumstances must a public company re-register as a private company?

- If the market value of its shares falls below the nominal value of the shares
- If it makes trading losses for three consecutive years
- If it fails to pay its corporation tax liability
- If its share capital falls below £50,000

(2 marks)

15.14 Which of the following roles is **NOT** performed by the Registrar of Companies?

- Issuing each company's Certificate of Incorporation
- Registering companies that will be sold 'off-the-shelf'
- Filing a copy of each company's Register of Members
- Filing copies of each company's special resolutions

(2 marks)

15.15 Which **TWO** of the following correctly describe the requirements for private and public companies to keep accounting records?

- Private companies must keep their accounting records for three years
- Private companies must keep their accounting records for six years
- Public companies must keep their accounting records for six years
- Public companies must keep their accounting records for seven years

(2 marks)

(Total = 23 marks)

16 Constitution of a company

28 mins

16.1 Which of the following parties signs a company's memorandum of association?

- The promoter
- The directors
- The subscribers

(1 mark)

16.2 Which of the following is true of model articles of association?

- Model articles of association describe how the company is to be managed and administered
- A company must only use the model articles of association that are relevant to its type of company
- The content of model articles of association cannot be amended by the members

(1 mark)

16.3 Which of the following is **NOT** something that would be found within model articles of association?

- Clauses relating to the rights of members
- Clauses relating to the transfer of shares
- Clauses relating to the mission statement of the company

(1 mark)

16.4 Which of the following statements regarding changing a company's articles of association is correct?

- A company may only change its articles once in a financial year
- A company requires a special or written resolution with a 75% majority to change its articles
- A company must send copies of the amended articles to the Registrar of Companies within 28 days of the amendment taking place

(1 mark)

16.5 Which of the following changes to a company's articles of association is void?

- Changes that allow a member additional votes so that they may block company resolutions on certain issues
- Changes that restrict the objects of the company
- Changes that conflict with the Companies Act

(1 mark)

16.6 Which of the following is a correct rule concerning company names?

- A company may be required to change its name if it is deemed offensive by the Secretary of State
- A company may not set its own rules for changing its name
- A company may not have a name that suggests a connection with the government

(1 mark)

16.7 Are companies permitted to change their names and domiciles?

- A company may change its name but not its domicile
- A company may change its domicile but not its name
- A company may change its name and its domicile

(1 mark)

16.8 Which of the following parties is contractually bound by a company's constitution?

- The company
- Members in a capacity other than as a member
- Company directors
- Third parties with a business relationship with the company

(2 marks)

16.9 A company may have restricted objects and therefore it may not be permitted to enter into certain contracts.

Which of the following statements describes the position of third parties whose contract with a company is outside the scope of its objects?

- The contract will not be a valid one
- The company is required to ratify the contract for it to be binding on the third party
- The contract will be binding on the company and the third party
- The contract is voidable at the instance of the company

(2 marks)

16.10 Which **TWO** of the following are included in the content of a company's model articles of association?

- Payment of dividends
- Payment of charitable donations
- Formation of a remuneration committee
- Appointment of directors

(2 marks)

16.11 Which of the following is true regarding the content of model articles of association?

- The content of model articles of association is the same for all types of company
- The content of model articles of association includes clauses relating to the remuneration of employees
- The content of model articles of association includes clauses relating to the ethical treatment of suppliers
- The content of model articles of association includes clauses relating to communication with members

(2 marks)

16.12 Which of the following resolutions are sufficient to alter a company's constitution?

| | Sufficient | Insufficient |
|---|-----------------------|-----------------------|
| Ordinary resolution of a plc | <input type="radio"/> | <input type="radio"/> |
| Written resolution of a private company with a 75% majority | <input type="radio"/> | <input type="radio"/> |

(2 marks)

16.13 Which of the following statements concerning restrictions on a company altering its constitution are true or false?

| | True | False |
|--|-----------------------|-----------------------|
| An alteration may not compel members to purchase more shares in the company | <input type="radio"/> | <input type="radio"/> |
| An alteration must be bona fide for the benefit of all the company's members | <input type="radio"/> | <input type="radio"/> |

(2 marks)

16.14 Which of the following is true regarding the choice of company name?

- No name may be offensive or sensitive as defined by the Secretary of State
- All private companies must end their name with 'Ltd'
- Names that suggest a connection with the government are void
- Companies that are registered as Welsh must end their name with '(Cym)'

(2 marks)

16.15 Which **TWO** statements concerning company names and passing-off action are correct?

- Only the Company Names Adjudicators can create a new company name, if one is needed, following a complaint about a company name that is too similar to another
- A passing-off action will fail if the claimant has not sought a remedy from the Company Names Adjudicators first
- A company can be prevented by a court injunction from using its name, even if it is properly registered
- Courts can refuse an injunction to prevent the use of a company name if the businesses are sufficiently different in nature

(2 marks)

(Total = 23 marks)

17 MTQ Bank 3**36 mins**

17.1 Ham, Sam, Tam and Cam formed a partnership to run a petrol station. The partnership agreement expressly stated that the partnership business was to be limited exclusively to the sale of petrol.

In January 20X8 Sam received £10,000 from the partnership's bank drawn on its overdraft facility. He told the bank that the money was to finance a short-term partnership debt but in fact he used the money to pay for a round the world cruise. In February 20X8 Tam entered into a £15,000 contract on behalf of the partnership to buy a stock of bicycles, which he hoped to sell from the garage forecourt.

In March 20X8 Cam retired from the partnership but the creditors were not notified of his retirement until May 20X8. In April 20X8 the partnership's bank refused to honour its cheque for the payment of its monthly petrol account, on the basis that there were no funds in its account and it had reached its overdraft facility.

(a) Which statement concerning the liability of the partners for the overdraft is correct?

- Only Sam is liable to repay the overdraft because he used the funds for his own personal use
- Only Sam is liable to repay the overdraft because he lied to the bank about how he would use the money
- None of the partners are liable to repay the overdraft because the funds were not used for legitimate partnership expenses
- All of the partners are liable to repay the overdraft because Sam had authority to withdraw the funds

(2 marks)

(b) Which statement concerning the liability of the partners for the bicycles is correct?

- All of the partners are liable because Tam has apparent authority to enter into the contract on behalf of the partnership
- None of the partners are liable because the contract is outside the scope of the partnership agreement
- Only Tam is liable because he authorised the contract which is outside the scope of the partnership agreement
- All of the partners are liable because the contract is within the scope of the partnership's trade

(2 marks)

(c) Which of the partners are liable for the petrol account debt?

- Ham, Sam, Tam and Cam
- None of the partners
- Ham, Sam, and Tam only
- Cam only

(2 marks)

(Total = 6 marks)

17.2 Mick has operated a house building business as a sole trader for a number of years. The business is growing and in recent times, Mick has taken out a business loan to buy business assets. Mick is considering tendering for a couple of very large contracts that should earn the business substantial sums, but also increases his potential liability if he is in breach of contract.

Now his accountant has recommended that he should consider registering as a company in order to gain the benefits of separate corporate personality.

(a) Which of the following describes separate legal personality?

- The business and its owners are viewed as the same legal person, separate from other business organisations
- The business is viewed as a legal person in its own right, separate from its owners
- The business and its directors are viewed as the same legal person separate from the business' owners
- The business and its employees are viewed as the same legal person, separate from the business' owners

(2 marks)

(b) Identify which of the following are benefits to Mick of incorporating the business.

| | Benefit | Not a benefit |
|---|-----------------------|-----------------------|
| The company, rather than Mick, will be liable for any negligence claims made against the business | <input type="radio"/> | <input type="radio"/> |
| The limit of Mick's liability in respect of the business will be any amount unpaid on his shares | <input type="radio"/> | <input type="radio"/> |
| The company will be liable for the business loan rather than Mick | <input type="radio"/> | <input type="radio"/> |
| The company can enter into the new contracts in its own right | <input type="radio"/> | <input type="radio"/> |

(4 marks)
(Total = 6 marks)

17.3 Doc, a supplier of building materials, entered into the following transactions:

An agreement to sell some goods to a longstanding friend, Ed. The contractual document, however, actually stated that the contract was made with Ed's company, Ed Ltd. Although the materials were delivered, they have not been paid for and Doc has learned that Ed Ltd has just gone into insolvent liquidation.

Doc had employed a salesman, Fitt, whose contract of employment contained a clause preventing him from approaching any of Doc's clients for a period of two years after he had left Doc's employment. Doc has found out that, on stopping working for him, Fitt has started working for a company, Gen Ltd, wholly owned by Fitt and his wife, and is approaching contacts he had made while working for Doc.

(a) Which **TWO** of the following are consequences of limited liability in regards to a private company limited by shares?

- The company's creditors may not demand payment for the company's debts from the members
- The limit of the members' liability is the amount unpaid on their shares
- The limit of the members' liability is what they agreed to when they purchased their shares
- The company's creditors may only demand payment for the company's debts from the members in the event of a compulsory liquidation

(2 marks)

(b) Which statement concerning the clause in Fitt's employment contract is correct?

- A court may lift the veil of incorporation to enforce the clause against Fitt
- Doc can seek the just and equitable winding-up of Gen Ltd if Fitt does not fulfill his obligations
- Doc may not enforce the clause against Fitt because Fitt is protected by limited liability
- Doc may not enforce the clause against Fitt because Gen Ltd is a quasi-partnership

(2 marks)

(c) Which statement concerning Ed Ltd's debt is correct?

- Doc cannot pursue the debt because Ed Ltd is insolvent
- Doc can pursue Ed personally for the debt because Ed Ltd is insolvent
- Doc may only pursue Ed Ltd for the debt
- Doc cannot pursue Ed or Ed Ltd for the debt

(2 marks)

(Total = 6 marks)

17.4 Don was instrumental in forming Eden plc, which was registered and received its trading certificate in December 20X4. It has subsequently come to the attention of the board of directors that the following events had taken place prior to the incorporation of the company:

Don entered into a contract in the company's name to buy computer equipment, which the board of directors does not wish to honour.

Don entered into a contract in the company's name to develop a particular patent, which the board of directors of Eden wishes to pursue but in relation to which the other party does not wish to proceed.

Don entered into a contract with Fad Ltd for business equipment. The contract was made 'subject to adoption by Eden plc' but now Eden plc does not wish to pursue it.

(a) Which of the following statements concerning the contract to buy computer equipment is correct?

- Eden plc is liable on the contract because correctly entered it into a pre-incorporation contract
- The directors are bound to honour the contract even though Eden plc is not technically liable on it
- Don is liable on the contract as Eden plc was not in existence when it was formed
- The contract is void because Eden plc was not in existence when it was formed

(2 marks)

(b) Identify whether the following contracts are enforceable or not enforceable.

| | Enforceable | Not enforceable |
|--------------------|-----------------------|-----------------------|
| Patent | <input type="radio"/> | <input type="radio"/> |
| Business equipment | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(Total = 6 marks)

17.5 Fred is a member of Glad Ltd, a small publishing company, holding 100 of its 500 shares; the other 400 shares are held by four other members. It has recently become apparent that Fred has set up a rival business to Glad Ltd and the other members have decided that he should be expelled from the company.

To that end, they propose to alter the articles of association to include a new power to 'require any member to transfer their shares for fair value to the other members upon the passing of a resolution so to do'.

(a) A company's articles of association form a contract between the company and which of the following parties?

- The company's suppliers
- The company secretary
- The company's shareholders
- The company's auditor

(2 marks)

(b) By which **TWO** of the following methods can Glad Ltd amend its articles of association?

Ordinary resolution
 Special resolution
 Written resolution
 Extra-ordinary resolution (2 marks)

(c) Will the other members of Glad Ltd will be successful in their attempt to change the articles and require Fred to transfer his shares to them and why?

Yes – because the other members own 80% of the shares and can pass a special resolution
 Yes – because the amendment is for the benefit of the company as a whole and therefore no vote is required
 No – because the other members need a 90% majority to pass the required amendment
 No – because requiring 'any member' to transfer their shares at a fair price does not benefit the company (2 marks)

(Total = 6 marks)

(Total = 30 marks)

18 Share capital

28 mins

18.1 As a minimum, how many members must a public company have?

- One
- Two
- Three

(1 mark)

18.2 Which of the following statements regarding ordinary share capital is correct?

- Dividends must be paid on ordinary share capital every financial year
- On liquidation of the company, ordinary shares entitle the shareholder to have their capital repaid ahead of other creditors
- Ordinary shares may or may not have voting rights attached

(1 mark)

18.3 Which of the following statements regarding treasury shares is correct?

- Only public limited companies may create treasury shares
- A company may exercise voting rights on its treasury shares
- Treasury shares may be reissued for cash without the usual issuing formalities

(1 mark)

18.4 Which of the following describes the public offer method of allotting shares by a public company?

- An offer is made to the public to apply for shares based on information in a prospectus
- Members of the public subscribe for shares directly to the company
- Shares are offered in a small number of large blocks to persons or institutions who have previously agreed to purchase the shares at a pre-determined price

(1 mark)

18.5 Which of the following describes a rights issue?

- An offer to existing shareholders to purchase further shares in the company
- The allotment of additional shares to existing shareholders in proportion to their holdings
- An offer to debentureholders to purchase shares in the company

(1 mark)

18.6 Which of the following statements regarding issuing shares is correct?

- Shares must be issued at their nominal value
- Shares may be issued at a discount to their nominal value
- Shares may be issued at a premium to their nominal value

(1 mark)

18.7 Which of the following is true concerning issuing shares?

- A company must receive full payment of the nominal value of a share when it is issued
- A shareholder who did not pay the full nominal value of their share on issue, must pay any unpaid amount before selling the share
- Where a shareholder did not pay the full nominal value of their share on issue, the debt transfers to the new shareholder if the share is sold

(1 mark)

18.8 Which of the following describes a company's called-up share capital?

- The amount the company has required shareholders to pay on existing shares
- The type, class, number and amount of shares issued and allotted to shareholders
- The amount shareholders have paid on existing shares
- The maximum amount of share capital that a company can have in issue

(2 marks)

18.9 Which of the following is correct concerning the market value of a company's shares?

- Market value must be greater than nominal value
- Market value must be lower than nominal value
- Market value equals nominal value
- Market value may be equal to, greater or lower than nominal value

(2 marks)

18.10 Which **TWO** of the following statements regarding preference shares are correct?

- A company is compelled to pay dividends on preference shares every financial year
- Preference shares do not normally entitle the shareholder to vote in company meetings
- Preference shareholders usually have a right to have their capital returned in the event of a liquidation ahead of ordinary shareholders
- In the event of a liquidation, preference shareholders have the right to share in any surplus assets ahead of the ordinary shareholders

(2 marks)

18.11 With regard to share capital, which of the following constitutes a variation of class rights?

- Issuing shares of the same class to allottees who are not already members of the class
- Returning capital to preference shareholders
- Subdividing shares of another class with the incidental effect of increasing the voting strength of that other class
- Changing the amount of dividend payable to a class of preference share

(2 marks)

18.12 Which of the following is true regarding the power of directors to allot shares?

- Directors of private companies with one class of share have the power to allot shares unless restricted by the articles
- Directors of all private companies have the power to allot shares unless restricted by the articles
- Directors of private and public companies with one class of share have the power to allot shares unless restricted by the articles
- Directors of all private and public companies have the power to allot shares unless restricted by the articles

(2 marks)

18.13 Pre-emption rights are granted in which of the following situations?

- A company proposes to allot ordinary shares wholly for cash
- A company proposes to allot ordinary shares
- A company proposes to allot preference shares wholly for cash
- A company proposes to allot preference shares

(2 marks)

18.14 Which of the following statements regarding payment for shares is correct?

- Public company shares must always be paid for in cash
- At the time of allotment, a public company must receive payment of at least 50% of the nominal value of the shares
- A private company may allot shares for inadequate consideration by accepting goods or services at an over-value
- A private company must have non-cash consideration independently valued before accepting it as payment for shares

(2 marks)

18.15 Which **TWO** of the following are valid uses of a share premium account?

- To issue fully paid shares under a bonus issue
- To pay issue costs and expenses in respect of a new share issue
- To issue fully paid shares under a rights issue
- To purchase treasury shares

(2 marks)

(Total = 23 marks)

19 Loan capital**28 mins**

19.1 Which of the following is true regarding the borrowing powers of companies?

- All companies registered under the Companies Act 2006 have an implied power to borrow
- The members of public companies registered under the Companies Act 2006 must authorise the company to borrow
- The Companies Act 2006 sets a maximum limit on the amount each type of company may borrow

(1 mark)

19.2 In relation to debentures issued as a series, which of the following describes the term *pari passu*?

- All debentures rank equally
- Older debentures rank above newer debentures
- Higher value debentures rank above lower value debentures

(1 mark)

19.3 Which of the following differences between share capital and debentures is correct?

- Dividend payments on shares is tax-deductible, interest payments on debentures is not tax-deductible
- Interest payments on debentures is mandatory, dividend payments on shares is discretionary
- In the event of liquidation, shareholders are paid their investment back before the debentureholders

(1 mark)

19.4 Which of the following charges on the same asset, all of which have been properly registered, has the highest priority? Assume all chargeholders are unaware of the other charges.

- A floating charge with a value of £5,000 registered on 1 January 20X1
- A fixed charge with a value of £2,000 registered on 1 February 20X1
- A floating charge with a value of £7,000 registered on 1 March 20X1

(1 mark)

19.5 Which of the following events will cause a floating charge to crystallise?

- Resignation of the finance director
- The chargee appointing a receiver
- Sale of the assets subject to the charge

(1 mark)

19.6 How many days after creation must a charge be registered in order for it to be valid and enforceable?

- 7
- 14
- 21

(1 mark)

19.7 Which of the following is true concerning late registration of a company charge?

- A charge may not be registered late
- A charge may be registered late, but only if the permission of the Registrar of Companies is obtained
- A charge may be registered late if it does not prejudice the creditors or shareholders of the company

(1 mark)

19.8 Which of the following statements regarding directors' borrowing powers is correct?

- Where directors borrow for a non-business purpose, the loan contract is unenforceable by the lender
- Where directors borrow a greater amount than they have the power to, the loan contract is unenforceable by the lender
- Where directors exceed their borrowing powers, the company may ratify the loan contract if it is within the capacity of the company
- Where directors borrow for a business purpose, the loan contract is unenforceable unless it is supported by a company charge

(2 marks)

19.9 Which of the following **MUST** be created using a debenture trust deed?

- A single debenture
- Debenture stock
- Series debentures
- Register of debentureholders

(2 marks)

19.10 Which **TWO** of the following are advantages of using a debenture trust deed?

- The deed creates a charge or charges over the company's assets which creates security
- A single trustee of the debentureholders is appointed so the company only has to deal with one person
- Debentures covered by a debenture trust deed have a higher priority of repayment on liquidation than debentures not covered by a deed
- The process of selling a debenture covered by a debenture trust deed is substantially faster than the process of selling a debenture not covered by a debenture trust deed

(2 marks)

19.11 Which of the following statements regarding the differences between loan capital and share capital is correct?

- Unlike loan capital, share capital does not have to be repaid
- Loan capital has voting rights attached but share capital does not
- Share capital offers the holder more security than loan capital
- Share capital is transferable but loan capital is not

(2 marks)

19.12 Which of the following statements regarding the differences between loan capital and share capital is **NOT** correct?

- A shareholder is an owner of the company, a debentureholder is not
- Shares may not be issued at a discount to their nominal value, debentures may be issued at a discount to their nominal value
- A public sale of shares is known as a prospectus, the public sale of debentures is known as a listing
- There are statutory restrictions on redeeming shares, there are no statutory restrictions on redeeming debentures

(2 marks)

19.13 Which of the following is the purpose of a 'negative pledge' clause on a company charge?

- To prevent the company from issuing a subsequent charge on the same asset
- To prevent the company from selling the asset without the chargee's permission
- To prevent the company from using the asset without the chargee's permission
- To ensure the company pays the proceeds from the sale of the asset to the chargeholder

(2 marks)

19.14 Which of the following statements relates to fixed charges and which relates to floating charges?

| | Fixed charges | Floating charges |
|---|--------------------------|-----------------------------|
| This charge attaches to an asset once an event occurs that causes it to crystallise | <input type="radio"/> | <input type="radio"/> |
| This charge prevents the company from dealing with the charged asset without the permission of the chargeholder | <input type="radio"/> | <input type="radio"/> |

(2 marks)

19.15 Which **TWO** of the following are true concerning the registration of company charges?

- Charges must be registered within 21 days of creation
- If a charge is not registered on time then the company and its officers who created the charge are liable to a fine
- The Registrar of Companies is permitted to rectify a mistake in the registration documents of a charge with the permission of the chargeholder
- Non-registered charges are valid and enforceable with the permission of the Registrar of Companies

(2 marks)

(Total = 23 marks)

20 Capital maintenance and dividend law

28 mins

20.1 What is the principle of capital maintenance?

- Companies should not make payments out of capital to the detriment of creditors
- Companies should seek to maintain or increase their capital at all times
- Companies should maintain the ratio of their debt and equity capital

(1 mark)

20.2 Which of the following statements regarding reduction of capital is correct?

- A limited company requires a court order to cancel unissued shares
- A limited company requires a special resolution of its members to cancel unissued shares
- A limited company is permitted without restriction to cancel its unissued shares

(1 mark)

20.3 Which of the following is required to permit a private company to reduce its share capital without application to a court?

- A special resolution only
- A special resolution and a solvency statement from the directors
- Authority in the articles and an ordinary resolution

(1 mark)

20.4 Which of the following is required to permit a public company to reduce its share capital?

- A special resolution and a solvency statement from the directors
- A special resolution and court approval
- Authority in the articles and a special resolution

(1 mark)

20.5 Which type of dividend is paid by the issue of additional shares?

- Scrip dividends
- Capital dividends
- Equity dividends

(1 mark)

20.6 At which point before its payment does a dividend become a debt of the company?

- When it is declared by the company in general meeting
- When it is recorded in the financial statements
- When the company's bank receives the instruction to make the payment

(1 mark)

20.7 Which of the following is an undistributable reserve for the payment of a dividend?

- Accumulated realised profits
- Retained earnings
- Capital redemption reserve

(1 mark)

20.8 The rules of capital maintenance exist to primarily protect which of the following parties?

- A company's members
- A company's creditors
- A company's customers
- The government

(2 marks)

20.9 Which of the following is **NOT** a valid method that a company may use to reduce its share capital according to the Companies Act 2006?

- Pay off part of paid-up share capital out of surplus profits
- Extinguish liability on partly paid shares
- Buy back fully paid up share capital from shareholders using cash not surplus profit
- Cancel paid-up share capital that is no longer represented by assets

(2 marks)

20.10 Which **TWO** of the following are true concerning the issuing of a solvency statement by private companies in connection with a reduction of the company's share capital?

- A solvency statement must be made 15 days in advance of the meeting where the special resolution concerning the reduction will be voted on
- Only the Chairman and Finance Director of the company must be named on the statement
- The statement must declare that there are no grounds to suspect the company will be unable to pay its debts for the next six months
- It is an offence to make a solvency statement without reasonable grounds for the opinion expressed in it

(2 marks)

20.11 Which of the following statements concerning public companies reducing their share capital is correct?

- A public company can reduce its share capital to below £50,000 and remain a public company without restriction
- A public company that wishes to reduce its share capital to below £50,000 must re-register as a private company
- A public company that wishes to reduce its share capital to below £50,000 must obtain permission from the stock market
- A public company that wishes to reduce its share capital to below £50,000 must pass a written resolution of the members

(2 marks)

20.12 What is the name given to dividends that are paid part of the way through a company's financial year?

- Semi-dividends
- Part paid dividends
- Interim dividends
- Preference dividends

(2 marks)

20.13 In relation to the payment of dividends, which of the following will be included in the profit available for distribution in a company's current financial year?

- An increase in the asset value of a head office building that occurred during the current financial year
- Profit on the sale of an asset sold after the end of the current financial year
- A depreciation charge made in the current financial year
- A premium received on the nominal value of shares issued in the current financial year

(2 marks)

20.14 Which of the following statements is true concerning the payment of dividends by a public company?

- A public company may make a distribution as long as its net assets are not less than its share capital
- A public company may make a distribution as long as its net assets are not less than its undistributable reserves
- A public company may make a distribution as long as its net assets are not less than its share capital less its undistributable reserves
- A public company may make a distribution as long as its net assets are not less than its share capital plus its undistributable reserves

(2 marks)

20.15 Which **TWO** of the following statements concerning liability for the payment of unlawful dividends is correct?

- Directors are liable if they declare a dividend that they know to be paid out of capital
- Members who did not know the payment was unlawful are not liable
- Directors face criminal liability if they declare unlawful dividends
- Directors who honestly rely on proper accounts when deciding whether to pay a dividend are still liable if it turns out to be unlawful

(2 marks)

(Total = 23 marks)

21 MTQ Bank 4**36 mins**

21.1 Riz is considering incorporating a public limited company. He is keen to ensure that the company is funded correctly, but not excessively, and is aware that the Companies Act includes a number of rules concerning share capital.

He has been advised to consider the following terms in connection with share capital and is seeking your advice.

- (1) Issued share capital
- (2) Paid-up share capital
- (3) Called-up share capital
- (4) Authorised share capital

(a) Which of the following concerns the number of shares held by shareholders?

- Issued share capital
- Paid-up share capital
- Called-up share capital
- Authorised share capital

(2 marks)

(b) Which concerns the amount of money a company has received for the shares held by shareholders?

- Issued share capital
- Paid-up share capital
- Called-up share capital
- Authorised share capital

(2 marks)

(c) Which of the following correctly describes the minimum amount of paid up share capital that Riz's company must have?

- £12,500
- £12,500 plus a quarter of any share premium
- £12,500 plus the full amount of any share premium
- £50,000

(2 marks)

(Total = 6 marks)

21.2 Flop Ltd was in financial difficulties. In January, in order to raise capital, it issued 10,000 £1 shares to Gus, but only asked him to pay 75 pence per share at the time of issue.

In June, the company realised that it needed even more money, and in order to persuade Gus to provide it, Flop Ltd told him that if he bought a further 10,000 shares he would only have to pay a total of 40 pence for each £1 share.

Gus agreed to this, but the injection of cash did not save Flop Ltd and in December it went into insolvent liquidation, owing a considerable amount of money.

(a) What is the general rule concerning the issuing of shares?

- Shares may be issued at a premium to their nominal value but not at a discount to it
- Shares may be issued at a premium or discount to their nominal value
- Shares must be issued at a discount to their nominal value
- Shares may be issued at a discount but not at a premium to their nominal value

(2 marks)

(b) What is the extent of Gus's liability on the 10,000 £1 shares that he paid 75p each for?

- Nothing
- £2,500 (the amount of Gus's unpaid share capital)
- £7,500 (the amount of share capital paid by Gus)
- £10,000 (the amount of share capital issued to Gus)

(2 marks)

(c) What is the extent of Gus's liability on the further 10,000 £1 shares that he paid 40p each for?

- Nothing
- £4,000 (the amount Gus paid for the shares) plus interest
- £6,000 (the amount unpaid on Gus's shares) plus interest
- £6,000 (the amount unpaid on Gus's shares) only

(2 marks)

(Total = 6 marks)

21.3 In 20X5 two newspaper companies, Kudos Ltd and Lux Ltd, entered into an agreement in an attempt to safeguard their independent positions. Under the agreement, Kudos Ltd purchased 20% of Lux Ltd's preference shares which carry a preferred dividend of 10%.

The board of directors of Lux Ltd have recently become disenchanted with their link with Kudos Ltd and want encourage Kudos Ltd to sell its preference share in the company. To do this, the board of Lux Ltd proposes a resolution to reduce the dividend on all preference shares to 5%.

(a) Which **TWO** of the following are examples of class rights?

- The priority right to a dividend granted to preference shareholders
- The right to appoint directors granted to preference and ordinary shareholders
- The right to attend company meetings granted to ordinary shareholders but not preference shareholders
- The right to approve the appointment of auditors granted to all shareholders **(2 marks)**

(b) Which of the following correctly describes the percentage of members that are needed to apply to the court for a variation of class rights to be cancelled?

- 10% of members of the affected class
- 10% of all company members
- 15% of members of the affected class
- 15% of all company members

(2 marks)

(c) Can Kudos Ltd prevent the reduction of the preference dividend and why?

- No – because it does not have enough votes to block the resolution or apply to the court for the variation to be cancelled
- No – because it does not have enough votes to block the resolution and the court is unlikely to uphold a request from it to have the variation cancelled
- Yes – because it has enough votes to block the resolution
- Yes – because it can demonstrate the variation is not for the benefit of the company as a whole

(2 marks)

(Total = 6 marks)

21.4 Milly Ltd has recently entered into the following arrangements with its creditors.

- (1) A single debenture of £15,000 from B Bank that is secured by a charge over Milly Ltd's trade receivables. Milly Ltd may deal with the trade receivables as it wishes. The charge documentation describes the charge as a fixed charge. It was created on 15 May 20X1 and registered on 31 May 20X1.
- (2) A single debenture of £10,000 from C Bank that is secured by a fixed charge over Milly Ltd's office building. The charge was created on 20 May 20X1 and registered on 31 May 20X1.
- (3) A single debenture of £20,000 from Peppa Ltd secured on Milly Ltd's inventory. A floating charge was created on 3 March 20X1 and registered on 31 March 20X1.
- (4) A single debenture of £5,000 from Otto Ltd that is also secured on Milly Ltd's inventory. A floating charge was created on 10 April 20X1 and registered on 30 April 20X1.

(a) Which of the following statements concerning a register of debenture holders is correct?

- Companies have no legal obligation to keep a register of debentureholders
- Companies are legally required to keep a register of debentureholders for debentures issued as a series
- Companies are legally required to keep a register of debentureholders for debentures issued as a series or as debenture stock
- Companies are legally required to keep a register of debentureholders for any debentures that it has issued

(2 marks)

(b) In regards to the fixed charges, which of the following parties' charges has priority?

- B Bank
- C Bank

(2 marks)

(c) In regards to the floating charges, which of the following parties' charges has priority?

- Peppa Ltd
- Otto Ltd

(2 marks)

(Total = 6 marks)

21.5 Dee and Eff are major shareholders in, and the directors of, Fan Ltd. For the year ended 30 April 20X8 Fan Ltd's financial statements showed a loss of £2,000 for the year and no profits were carried forward. For the year ended 30 April 20X9 Fan Ltd made a profit of £3,000. Also, due to a revaluation, the value of its land and buildings increased by £5,000 and a premium of £4,000 was received from a share issue. As a consequence, Dee and Eff recommended, and the shareholders approved, the payment of £4,000 in dividends.

(a) What is the distributable profit of Fan Ltd for 20X9?

- £Nil
- £3,000 (the company's profit for the year)
- £8,000 (the company's profit for the year plus increase in value of land and buildings)
- £12,000 (the company's profit for the year plus increase in value of land and buildings and share premium from share issue)

(2 marks)

(b) Which of the following statements correctly describes the liability of Dee and Eff if the dividend paid to them is made from undistributable reserves?

- No liability because as directors and shareholders, Dee and Eff are protected by the veil of incorporation
- Liable only as directors for declaring unlawful dividends
- Liable only as shareholders for knowingly receiving an unlawful dividend
- Liable as directors for declaring unlawful dividends and as shareholders for knowingly receiving unlawful dividends

(2 marks)

(c) Which of the following is **NOT** exempt from the dividend payment rules?

- The issue of bonus shares
- A reduction of share capital
- Distributing assets upon a winding up
- Paying out a cumulative dividend to preference shareholders

(2 marks)

(Total = 6 marks)

(Total = 30 marks)

22 Company directors

28 mins

22.1 Which of the following types of director is expressly appointed as such?

- De jure
- De facto
- Shadow

(1 mark)

22.2 What is the minimum age that a director can be?

- 16
- 17
- 18

(1 mark)

22.3 How many directors are required to retire at the first annual general meeting of a public company?

- One-third of the directors
- Half the directors
- All of the directors

(1 mark)

22.4 Which of the following describes the actual authority of a Chief Executive Officer?

- The authority that the board expressly gives to them
- The authority that is usual for a Chief Executive Officer
- The authority that the Chief Executive Officer says to others they have

(1 mark)

22.5 The powers of a company's directors are defined in which company document?

- Articles of Association
- Memorandum of Association
- Register of Directors

(1 mark)

22.6 To which of the following does a director owe their statutory duties?

- The members personally
- The company as a whole
- The board of directors

(1 mark)

22.7 In which of the following circumstances will a director be personally liable for the debts of the company?

- Where the company's Articles of Association state that they are liable
- Where a creditor has told them they are liable
- Where they have breached their fiduciary duties

(1 mark)

22.8 Which of the following types of director is not validly appointed but is held out by the company to be a director?

- De jure director
- De facto director
- Shadow director
- Alternate director

(2 marks)

22.9 Which of the following is a characteristic of a non-executive director?

- They are individuals that are held out by the company to be directors
- They are not involved in the day-to-day running of the company
- They are individuals whose instructions concerning running the company are followed
- They are not subject to the statutory duties of directors

(2 marks)

22.10 Which **TWO** of the following are grounds that must be fulfilled in order for a court to be required to disqualify a director?

- Conviction of an indictable offence in connection with the management of a company
- Insolvency of a company that they are a director of
- Conduct making them unfit to be concerned in the management of a company
- Persistently failing to meet provisions of company legislation

(2 marks)

22.11 Which of the following resolutions is required to remove a director from office?

- Ordinary resolution
- Ordinary resolution with special notice
- Special resolution
- Special resolution with special notice

(2 marks)

22.12 Which of the following describes the correct way that directors should use their powers?

- For any reason necessary to maximise profit
- To achieve the goals of the business
- For a proper purpose that is honestly believed to be in the best interests of the company
- For any legal purpose

(2 marks)

22.13 Which of the following statements concerning a director that has acted outside their authority is correct?

- The company may not subsequently ratify their actions
- The members may ratify their actions but an ordinary resolution is required
- The members may ratify their actions but a special resolution is required
- The board of directors can ratify their actions on behalf of the members

(2 marks)

22.14 Which of the following statutory duties is a director meeting when they consider the long-term consequences of a decision on their employees?

- Act within powers
- Exercise independent judgement
- Avoid conflicts of interest
- Promote the success of the company

(2 marks)

22.15 Which **TWO** of the following describe the level of knowledge, skill and experience required by a director in order to meet their statutory duty to exercise reasonable, skill, care and diligence?

- The knowledge, skill and experience that the director actually has
- The knowledge, skill and experience expected of the director by the board of directors
- The knowledge, skill and experience that is reasonably expected of a person carrying out the functions of the director
- The knowledge, skill and experience that the members of the company believe the director to actually have

(2 marks)

(Total = 23 marks)

23 Other company officers

28 mins

23.1 Which of the following companies **MUST** have a company secretary?

- Private limited company
- Unlimited liability company
- Public limited company

(1 mark)

23.2 Which of the following parties associated with a company may **NOT** act as its company secretary?

- A company's sole director
- A company's accountant
- A company's solicitor

(1 mark)

23.3 Which of the following parties associated with a company appoints the company secretary?

- The members
- The directors
- The auditor

(1 mark)

23.4 Which of the following is eligible to act as a company's auditor?

- An employee of the company
- The partner of an employee of a company
- The accountancy firm responsible for producing the company's accounts

(1 mark)

23.5 Which of the following parties appoints the company's first ever auditors?

- The members
- The Registrar of Companies
- The directors

(1 mark)

23.6 Which of the following auditors are deemed automatically reappointed each year unless specific circumstances dictate otherwise?

- Auditors of public limited companies
- Auditors of private limited companies
- Auditors of quoted companies

(1 mark)

23.7 Which of the following is the statutory duty of an auditor?

- To report to the members that the accounts are accurate and free from error
- To report to the members that the accounts give a true and fair view and have been properly prepared in accordance with the Companies Act
- To report to the members that the accounts have been prepared in line with accounting standards

(1 mark)

23.8 Which of the following sets the specific duties expected of a company's secretary?

- The Articles of Association
- The Companies Act
- The Memorandum of Association
- The Board of Directors

(2 marks)

23.9 Which of the following contracts does a company secretary have the power to bind their company in?

- Purchase of inventory from a supplier
- Acquisition of a head office building
- Car hire for transporting customers to meetings with the directors
- A bank loan

(2 marks)

23.10 Which **TWO** of the following duties would a company secretary expect to perform?

- Establishing and maintaining the company's statutory registers
- Filing accurate returns with the Registrar of Companies.
- Hiring and firing directors
- Reviewing the work of the company auditor

(2 marks)

23.11 Which of the following is a permitted qualification for a company secretary of a public limited company?

- A business degree
- Employment as a plc's secretary for two out of five years preceding appointment
- Full membership of the ACCA
- A qualifying law degree

(2 marks)

23.12 Which of the following is a statutory right of a company auditor?

- To attend board meetings
- To vote in the company's general meetings
- To access, at all times, the books, accounts and vouchers of the company
- To appoint non-executive directors

(2 marks)

23.13 What type of company resolution is required to remove an auditor?

- Ordinary resolution
- Ordinary resolution with special notice
- Special resolution
- Special resolution with special notice

(2 marks)

23.14 Which of the following must an auditor of a non-quoted company provide if they are removed from office at a general meeting?

- A breakdown of their fees covering the period they acted as auditor
- A list of recommendations to the members on how company procedures may be improved
- A statement to members and creditors of whether there are circumstances that the auditor believes should be brought to their attention
- An opinion on the performance of the company directors

(2 marks)

23.15 Which **TWO** of the following are criteria that a private company must meet to be exempt from audit?

- Turnover less than £10.2 million
- Balance sheet total less than £5.1 million
- Average number of employees fewer than 30
- Total long-term debt less than £4.5 million

(2 marks)

(Total = 23 marks)

24 Company meetings and resolutions

28 mins

24.1 An annual general meeting must be held by which of the following companies?

- Public limited company
- Private limited company
- Company limited by guarantee

(1 mark)

24.2 Unless a shorter period is agreed by the members, how many days' notice must be given in respect of an annual general meeting?

- 14
- 21
- 28

(1 mark)

24.3 How many days' notice is required for a meeting at which a special resolution is to be voted on?

- 14
- 21
- 28

(1 mark)

24.4 As a minimum, what percentage of the votes is required to pass an ordinary resolution?

- 50%
- 51%
- 75%

(1 mark)

24.5 As a minimum, what percentage of the members can agree to a shorter notice period in respect of a general meeting?

- 51%
- 75%
- 90%

(1 mark)

24.6 What is the minimum percentage of the voting rights required by members to requisition a resolution at an annual general meeting?

- 5%
- 10%
- 15%

(1 mark)

24.7 On a vote on a show of hands, how many votes is each member granted?

- One
- One per share held
- As many votes as their shareholding entitles them to

(1 mark)

24.8 Which of the following is included in the ordinary business of an annual general meeting?

- Changing the company's name
- Reducing the company's share capital
- Approving the payment of dividends
- Appointing an administrator

(2 marks)

24.9 In a general meeting, which of the following items of business would require a special resolution?

- Appointing a director
- Removing an auditor
- Ratifying the *ultra vires* actions of a director
- Altering the Articles of Association

(2 marks)

24.10 Which **TWO** of the following are correct differences between ordinary and special resolutions?

- The text of a special resolution must be set out in full in the notice conveying the meeting. The text of an ordinary resolution does not need to be set out in full
- A special resolution requires 21 days' notice. An ordinary resolution requires 14 days' notice
- An ordinary resolution can be passed on a show of hands, but a special resolution requires a poll to be taken
- Copies of special resolutions must always be sent to the Registrar of Companies. Ordinary resolutions do not generally have to be sent to the Registrar

(2 marks)

24.11 Which type of resolution can **ONLY** be passed by a private company?

- Written resolution
- Ordinary resolution
- Special resolution
- Special resolution with special notice

(2 marks)

24.12 Which of the following may **NOT** be achieved by written resolution?

- Removal of an auditor
- Alteration of the company's articles
- Variation of class rights
- Change to the company's name

(2 marks)

24.13 How many days' notice is required for a meeting where a resolution requires special notice?

- 21
- 28
- 30
- 35

(2 marks)

24.14 Where members hold sufficient voting rights to requisition a resolution at a general meeting, how much notice in advance of the meeting must they give the company?

- One week
- Two weeks
- Four weeks
- Six weeks

(2 marks)

24.15 Which **TWO** of the following are rights of a proxy at a general meeting?

- To vote on a show of hands but not a poll
- To speak at the meeting
- To requisition a resolution at the meeting
- To demand a poll

(2 marks)

(Total = 23 marks)

25 MTQ Bank 5**36 mins**

25.1 Caz is a director of Dull plc, but she also carries out her own business as a wholesale supplier of specialist metals under the name of Era Ltd. Last year Dull plc entered into a contract to buy a large consignment of metal from Era Ltd. Caz attended the board meeting that approved the contract and voted in favour of it, without revealing any link with Era Ltd.

(a) Which of the following describes a director's statutory duties?

- Duties created under common law principles of agency law
- Duties created by Parliament under the Companies Act
- Duties created under the terms of a director's service contract
- Duties created under the UK Corporate Governance Code

(2 marks)

(b) Identify whether Caz has breached any of these duties of a director.

| | Breached | Not Breached |
|--|-----------------------|-----------------------|
| Promote the success of the company | <input type="radio"/> | <input type="radio"/> |
| Duty to exercise independent judgment | <input type="radio"/> | <input type="radio"/> |
| Declare interest in proposed transaction or arrangement | <input type="radio"/> | <input type="radio"/> |
| Declaration of interest in existing transaction or arrangement | <input type="radio"/> | <input type="radio"/> |

(4 marks)**(Total = 6 marks)**

25.2 Katch Ltd is a small private company. Although there are three members of its board of directors, the actual day-to-day running of the business is left to one of them, Len, who simply reports back to the board on the business he has transacted. Len refers to himself as the Chief Executive Officer of Katch Ltd, although he has never been officially appointed as such.

Six months ago Len entered into a contract on Katch Ltd's behalf with Mo to produce some advertising material for the company. However Katch Ltd did not wish to proceed with the advertising campaign and the board of directors has refused to pay Mo, claiming that Len did not have the necessary authority to enter into the contract with him.

(a) Which of the following describes a director's express authority?

- The authority granted to the director by the shareholders
- The authority granted to the director by the company secretary
- The authority granted to the director by the board of directors
- The authority granted to the director by the chief executive officer

(2 marks)

(b) Which of the following describes the extent of a chief executive officer's implied authority?

- To enter the company into administrative contracts only
- To enter the company into any administrative or commercial contract
- To enter the company into commercial contracts only
- To enter the company into contracts up to a maximum value that is set by the board

(2 marks)

(c) Is Mo entitled to payment from Katch Ltd in respect of the contract entered into by Len and why?

- No – Len did not have authority to enter into the contract
- No – Mo should have checked whether Len had authority before entering into the contract
- Yes – Len had express authority to enter into the contract
- Yes – Mo is entitled to assume that Len had implied authority to enter into the contract

(2 marks)**(Total = 6 marks)**

25.3 Boo was recently disqualified from acting as a company director under the Company Directors Disqualification Act 1986. She decided to continue trading and arranged for her daughter, Mills, to form a new company, Purr Ltd.

On registration, Mills was appointed as a director, however, she would receive instruction on what to do from Boo's personal financial adviser, Beni, who is accustomed to act on Boo's orders. Beni was not appointed as a director but is identified as the company's managing director on all its official paperwork. Suki was also appointed as a director, but his role is limited to providing an independent view on how the company is being run.

(a) Which of the following statements concerning company directors is correct?

- The minimum number of directors required by all companies is one
- A company may act as a director of another company
- The minimum age of a director is 18
- All companies must hold a meeting if they wish to remove a director

(2 marks)

(b) Match the parties to the type of director they are.

| | De jure director | De facto director | Shadow director | Non-executive director |
|-------|-----------------------|-----------------------|-----------------------|------------------------|
| Boo | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mills | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Beni | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Suki | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(Total = 6 marks)

25.4 Vic, an ACCA member, is the sole director of Envy Ltd, a wholesaler of books. Last year he employed Div, his solicitor, to act as Envy Ltd's company secretary. Vic believed that Div had all the necessary knowledge and experience needed to do the job. Whilst Vic was away on business, Div entered Envy Ltd into a contract with Green Ltd to buy a consignment of tablet computers that would be resold as electronic books. Vic was not happy about this and has decided to take action.

(a) Which of the following statements concerning Div is correct?

- Div should have passed professional company secretary exams before acting as company secretary
- Div was free to act as company secretary as soon as he was appointed
- Div required authorisation from the Registrar of Companies before acting as company secretary
- Envy Ltd should have passed an ordinary resolution appointing Div as company secretary before he could act as such

(2 marks)

(b) Is Envy Ltd bound by the contract to buy the tablet computers?

- Yes, a company secretary is free to make any contracts on behalf of the company
- Yes, in this case Div has implied authority to bind the company in this contract
- No, because the contract is commercial in nature
- No, because a company secretary has no authority to bind a company in any contract

(2 marks)

(c) Is Vic legally permitted to perform the role of company secretary of Envy Ltd?

- Yes, Vic is ACCA qualified and therefore may act as company secretary
- Yes, Vic is permitted by virtue of his position as company director to also act as company secretary
- No, a sole director may not act as company secretary
- No, only public companies are permitted to appoint company secretaries

(2 marks)

(Total = 6 marks)

25.5 Grave plc's year end was on 31 December 20X7. Notice of its annual general meeting was sent to shareholders on 1 March 20X8 and it was to be held on 25 March 20X8. However, the date of the meeting was not convenient for 75% of the company's shareholders who decided that the meeting should be held on 10 March 20X8. The meeting took place on 10 March 20X8.

Later that year, the company's auditors decided to resign. They requested that a general meeting should be held so that they can inform the shareholders of the circumstances surrounding their resignation. The directors of Grave plc are not keen for such a meeting to be held and are refusing to organise it.

(a) Which **TWO** of the following are examples of the ordinary business dealt with at an annual general meeting?

- Appointment of the company secretary
- Fixing the auditor's remuneration
- Paying shareholders their dividends
- Considering the directors' report

(2 marks)

(b) Was Grave plc's annual general meeting was called correctly and why?

- No – it was not called within the required time after the company's year end
- No – insufficient notice was given to members
- No – the meeting date should not have differed from the one stated in the official notice
- Yes – all requirements for calling a meeting were correctly followed

(2 marks)

(c) Are the directors of Grave Ltd required to hold the general meeting as requested by the auditors and why?

- Yes – auditors have authority in law to request a company holds a general meeting at any time
- Yes – auditors have authority in law to request a general meeting to hear circumstances behind their resignation
- No – the power to call general meetings is only granted to directors
- No – auditors have authority to request a general meeting but directors have the power to ignore them if it is not in the interests of the company

(2 marks)

(Total = 6 marks)

(Total = 30 marks)

26 Insolvency and administration

28 mins

26.1 Which of the following parties applies for a company to be liquidated in a creditors' voluntary liquidation?

- The creditors
- The members
- The directors

(1 mark)

26.2 Which of the following determines whether a voluntary liquidation is a members' or creditors' voluntary liquidation?

- The solvency of the company
- A decision of the members
- A decision of the creditors

(1 mark)

26.3 Which of the following parties may apply to the court for the compulsory liquidation of a company?

- The company's auditor if they deem it necessary in the public interest
- A creditor who is owed more than £750 and who sent the company a written demand for it over three weeks ago and has not had a reply
- The Registrar of Companies if they have not received copies of the company's last three financial statements

(1 mark)

26.4 In which of the following situations will the court order the compulsory liquidation of a company on the just and equitable ground?

- Where 50% of the members disagree with the actions of the directors
- When the main object of the company cannot be achieved
- Where the company has failed to pay its creditors for three months

(1 mark)

26.5 Which of the following parties has their interest paid last out of a liquidated company's assets?

- Employees
- Unsecured creditors
- Members

(1 mark)

26.6 In the context of corporate insolvency, which of the following describes the purpose of an administration order?

- To allow the company to pay its debts before it is liquidated
- To prevent legal actions being taken against it
- To attempt to rescue the company as a going concern

(1 mark)

26.7 Which of the following parties may appoint an administrator without a court order?

- A floating chargeholder
- A fixed charge holder
- An unsecured creditor

(1 mark)

26.8 Which of the following names is given to the person in charge of the voluntary liquidation of a company?

- Receiver
- Chargee
- Liquidator
- Administrator

(2 marks)

26.9 At which point does a members' voluntary liquidation commence?

- As soon as the members pass the necessary resolution
- As soon as the Registrar receives a copy of the resolution to liquidate the company
- As soon as the liquidator is appointed
- As soon as the directors authorise it after the resolution to liquidate the company is passed

(2 marks)

26.10 Which **TWO** of the following resolutions may commence a creditors' voluntary liquidation of a company?

- A special resolution of the creditors
- A written resolution of the members with a 75% majority
- A resolution of the board of directors with a 75% majority
- A special resolution of the members

(2 marks)

26.11 Which of the following statements relates to a compulsory liquidation and which relates to a voluntary liquidation?

| | Compulsory liquidation | Voluntary liquidation |
|--|------------------------|-----------------------|
| An insolvency practitioner acts as liquidator | <input type="radio"/> | <input type="radio"/> |
| The liquidation process is controlled by the court | <input type="radio"/> | <input type="radio"/> |

(2 marks)

26.12 Which of the following statements concerning a members' voluntary liquidation is correct?

- Creditors must approve the choice of liquidator
- The liquidator must hold an annual general meeting of the contributories
- The final act of the liquidator is to file the company's final accounts
- Notice of the liquidation must be published in *The Gazette*

(2 marks)

26.13 Which of the following parties has their interest paid first out of a liquidated company's assets?

- The liquidator
- Floating chargeholders
- Employees
- Those owed deferred debts

(2 marks)

26.14 Which of the following statements concerning administration is correct?

- A liquidation order may be granted against the company if the company is in administration
- To commence administration always requires a court order
- The official receiver is put in charge of a company subject to an administration order
- If the company cannot be rescued as a going concern, the next objective of administration is to achieve a better result for creditors than an immediate liquidation would

(2 marks)

26.15 Which **TWO** of the following will end an administration period?

- After 12 months have elapsed since the administration commenced
- The success of the administration
- A court order granted following a special resolution of the members
- Agreement of the creditors

(2 marks)

(Total = 23 marks)

27 MTQ Bank 6**36 mins**

27.1 Jinx Ltd was formed by two brothers, Son and Lon, who are the company's only shareholders and directors. The company was very successful and has made good profits in every year of trading. However, recently the two brothers have fallen out over some matters in their personal lives and they are no longer talking to each other. This argument, and the resulting lack of trust between Son and Lon, has made running the company almost impossible and business is suffering a consequence.

Son would like to have the company liquidated and is seeking advice.

(a) Which of the following parties instigates a creditors' voluntary liquidation?

- The directors
- The members
- The creditors
- The official receiver

(2 marks)

(b) In regards to Jinx Ltd, identify whether the following statements are true or false.

| | True | False |
|--|-----------------------|-----------------------|
| Son will need the agreement of Lon to instigate a members' voluntary liquidation | <input type="radio"/> | <input type="radio"/> |
| Son will need the agreement of Lon to instigate a compulsory liquidation | <input type="radio"/> | <input type="radio"/> |
| A court is likely to order a just and equitable winding up of Jinx Ltd | <input type="radio"/> | <input type="radio"/> |
| An insolvency practitioner would oversee a compulsory liquidation of Jinx Ltd | <input type="radio"/> | <input type="radio"/> |

(4 marks)**(Total = 6 marks)**

27.2 Aspin is the Finance Director of Getz Ltd. The company has recently gone through a severe downturn in its business and has failed to pay some of its creditors. Aspin believes that Getz Ltd may be the subject of a compulsory liquidation order and seeks advice, he is particularly concerned about the effect of a compulsory liquidation on the following matters:

- (1) The sale of a company office building that is currently being advertised
- (2) A threatened legal action by one of Getz Ltd's suppliers against the company
- (3) The company's employees
- (4) A number of floating charges that are secured against company inventory

(a) Which **TWO** of the following are requirements for a successful application for a compulsory liquidation?

- A debt of £750 or more
- An oral or written demand for payment of the debt
- A period of at least two weeks following demand for payment
- Failure to pay the debt or offer reasonable security for it

(2 marks)

(b) Identify whether the following are correct consequences of a compulsory liquidation on Getz Ltd.

| | Incorrect | Correct |
|--|-----------------------|-----------------------|
| The company will be unable to sell the office building once compulsory liquidation commences | <input type="radio"/> | <input type="radio"/> |
| The threatened legal action by the creditor can no longer proceed under any circumstances once compulsory liquidation starts | <input type="radio"/> | <input type="radio"/> |
| Unless the liquidator decides otherwise, the employees will be dismissed once compulsory liquidation starts | <input type="radio"/> | <input type="radio"/> |
| On commencement of the compulsory liquidation, the floating charges will crystallise | <input type="radio"/> | <input type="radio"/> |

(4 marks)
(Total = 6 marks)

27.3 Lazy Days Ltd is a coach tour company. It recently leased a fleet of five brand new 'Executive style' coaches ahead of an anticipated increase in business. The coaches cost a total of £20,000 a month to lease, and on top of this, the business also has to pay its overheads including staff costs – a total of £15,000 per month. The increase in business did not materialise and Lazy Days is only generating £28,000 of revenue per month. The coach trips are going out on average 50% full of passengers.

Noelle, the Finance Director is increasingly concerned about the situation and has called a meeting of the board of directors to discuss the matter and the possibility of putting the business into administration.

(a) Which **TWO** of the following statements concerning administration orders are correct?

- Administration orders are granted by the Registrar of Companies
- Administration orders put an insolvency practitioner in control of the company
- Administration orders protect the company from its creditors whilst it is liquidated
- Administration orders can be used to realise property in order to make a distribution to creditors

(2 marks)

(b) Identify which of the following documents Noelle would be required to submit in order to apply for an administration order for Lazy Days Ltd.

| | Required | Not required |
|------------------------------------|-----------------------|-----------------------|
| Notice in the prescribed form | <input type="radio"/> | <input type="radio"/> |
| Statement of insolvency | <input type="radio"/> | <input type="radio"/> |
| Statutory declaration | <input type="radio"/> | <input type="radio"/> |
| Latest set of financial statements | <input type="radio"/> | <input type="radio"/> |

(2 marks)

(c) Would an administration order be granted to Lazy Days Ltd and why?

- Yes – because the company is making a loss
- No – because the company is insolvent
- Yes – providing the company can increase its revenue above its costs
- No – administration orders are only granted to plcs

(2 marks)

(Total = 6 marks)

27.4 On the advice of his accountant, Mat registered a private limited company, Purge Ltd, to conduct his small manufacturing business. Unfortunately the business did not prove successful and Mat and the other shareholders have decided that it is better to liquidate the company rather than run up any more debts.

The company has assets totaling £15,000 and has the following debts:

Unsecured debts to business creditors £8,000

Wages to due to employees £6,000

Cost of the liquidation £5,000

Company dividend £4,000 declared but not paid

(a) Which type of insolvency procedure is most appropriate to Purge Ltd's situation?

- Compulsory liquidation
- Creditors' voluntary liquidation
- Members' voluntary liquidation
- Administration

(2 marks)

(b) On liquidation, in which order will Purge Ltd's debts be repaid?

| | 1st | 2nd | 3rd | 4th |
|----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Dividend | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Costs of liquidation | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Business creditors | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Employee wages | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(Total = 6 marks)

27.5 Earl has been employed by Flash Ltd for the past 20 years. During that time he has also invested in the company in the form of shares and debentures. Earl owns 5,000 ordinary shares in Flash Ltd. The shares are of £1 nominal value and are fully paid-up. The debentures, to the value of £5,000, are secured by a fixed charge against the land on which Flash Ltd's factory is built.

In April it was announced that Flash Ltd was insolvent and owed considerable amounts of money to trade creditors. However, the employees did receive half their contracted wages. In Earl's case this amounted to £2,000.

(a) If Flash Ltd is liquidated, which type of creditor would Earl be in respect of the remaining half of his wages?

- Secured creditor
- Preferential creditor
- Unsecured creditor
- Deferred creditor

(2 marks)

(b) If Flash Ltd is liquidated, how much of the company's debt will Earl be liable to repay?

- None
- £5,000 (the shares only)
- £10,000 (the debentures only)
- £12,000 (the shares, debentures and his wages)

(2 marks)

(c) Assuming no insolvency proceedings have commenced, which of the following statements is correct in regards to Earl's fixed charge over the land?

- Earl may appoint a receiver of the land and order its sale
- Earl can demand immediate repayment of what he is owed
- Earl may appoint an administrator of the company without reference to the court
- Earl may request the just and equitable winding-up of the company

(2 marks)

(Total = 6 marks)

(Total = 30 marks)

28 Fraudulent and criminal behaviour**28 mins**

28.1 In relation to the law on insider dealing, which of the following parties would be categorised as an insider?

- A company's auditor
- A company's supplier
- A company's customer

(1 mark)

28.2 Market abuse is an offence under which form of law?

- Civil law only
- Criminal law only
- Civil and criminal law

(1 mark)

28.3 In a criminal case, which of the following parties could be offered a deferred prosecution agreement by the prosecution?

- An individual director
- An individual shareholder
- The company as a whole

(1 mark)

28.4 In the context of money laundering, the transfer of monies in order to disguise their source is known by which of the following names?

- Layering
- Integration
- Placement

(1 mark)

28.5 Which of the following statements in relation to the offence of bribery is correct?

- Bribery is a tort
- Bribery can only be committed in the UK
- It is an offence for a corporation to fail to prevent bribery

(1 mark)

28.6 Which of the following is an agreement between an organisation and the prosecution whereby the organisation admits wrongdoing but stops short of pleading guilty to the offence?

- Deferred prosecution agreement
- Suspended prosecution agreement
- Corporate prosecution agreement

(1 mark)

28.7 Directors found guilty of fraudulent trading under the Insolvency Act 1986 face which of the following penalties?

- Imprisonment
- Unlimited fine
- Make good the debts of the company

(1 mark)

28.8 Which of the following is a defence to a charge of insider dealing?

- The individual had no expectation of profit
- The individual had reasonable grounds to believe that the information was about to be published
- The individual had reasonable grounds to believe their action was in the public interest
- The individual was not seeking to profit from the transaction personally

(2 marks)

28.9 Which of the following is an example of market abuse?

- An employee who sells shares in their company at a profit
- A finance director who makes a deliberately deceptive profit forecast
- An individual who buys a company's shares on the advice of a broker
- Timing the sale of a company office building so that the sale proceeds are included in the accounts of the current financial year

(2 marks)

28.10 Match the statement to the money laundering process.

| | Placement | Layering |
|---|-----------------------|-----------------------|
| The initial disposal of proceeds from criminal activity | <input type="radio"/> | <input type="radio"/> |
| The attempt to disguise the original source of criminal funds | <input type="radio"/> | <input type="radio"/> |

(2 marks)

28.11 To whom should a person who suspects another of money laundering report their suspicions?

- National Crime Agency
- National Audit Office
- Companies House
- Financial Conduct Authority

(2 marks)

28.12 Identify whether the following are classed as bribery offences.

| | Bribery offence | Not a bribery offence |
|---|-----------------------|-----------------------|
| Receiving reasonable corporate hospitality | <input type="radio"/> | <input type="radio"/> |
| Accepting an incentive to perform a function of a public nature | <input type="radio"/> | <input type="radio"/> |

(2 marks)

28.13 The Criminal Finances Act 2017 makes 'relevant bodies' criminally liable if their staff or agents are involved in tax evasion.

Which **THREE** of the following must be proved for a 'relevant body' to be liable?

- The business was involved in criminal tax evasion
- The company's reasonable procedures to prevent tax evasion had failed
- A member of the company's staff or its agent facilitated the tax evasion
- The business failed to prevent the member of staff or agent from committing the offence
- The business is a private limited company or public limited company

(2 marks)

28.14 Which of the following statements relates to wrongful trading and which relates to fraudulent trading?

| | Wrongful trading | Fraudulent trading |
|---|-----------------------|-----------------------|
| It must be proved that the defendant intended to commit this wrongdoing | <input type="radio"/> | <input type="radio"/> |
| Defendants who commit this wrongdoing have only committed a civil offence | <input type="radio"/> | <input type="radio"/> |

(2 marks)

28.15 Which **TWO** of the following are offences connected with the insolvency of a company?

- Wrongful trading
- Market abuse
- Making a false declaration of solvency
- Bribery

(2 marks)

(Total = 23 marks)

29 MTQ Bank 7**36 mins**

29.1 In January the board of directors of Huge plc decided to make a takeover bid for Large plc. After the decision was taken, but before it is announced, the following chain of events occurs:

- (1) Slye, a director of Huge plc, buys shares in Large plc.
- (2) Slye tells his friend Mate about the likelihood of the takeover and Mate buys shares in Large plc.
- (3) At a dinner party Slye, without actually telling him about the takeover proposal, advises his brother Tim to buy shares in Large plc and Tim does so.

(a) Indicate whether any of the following parties have committed any offence in respect of insider dealing.

| | Committed an offence | Has not committed an offence |
|------|-----------------------|------------------------------|
| Slye | <input type="radio"/> | <input type="radio"/> |
| Mate | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(b) Which of the following statements regarding Tim is correct?

- Tim committed a criminal offence because he knows Slye is a director of Huge plc
- Tim committed a criminal offence because he has a family connection with Huge plc
- Tim did not commit a criminal offence because the advice he received from Slye was given in a social situation
- Tim did not commit a criminal offence because the advice he was given was not precise or specific

(2 marks)**(Total = 6 marks)**

29.2 Five years ago, Del and Rod formed a limited company, Trot Ltd. The pair were the company's only directors and shareholders. The company was initially profitable but started making losses in its third year. Rod thought that the business should be liquidated at this point but Del persuaded him that the business should continue. Del continued to run the company but Rod, although he retained his position as a director, decided to focus his attention on another business venture.

Trot Ltd continued to make substantial losses, but Del produced fake company accounts to hide the company's debts. Eventually the scale of the losses became too large to hide and the company went into liquidation.

(a) Identify whether a company must be insolvent or in administration for the offence of fraudulent trading to be actionable under the Insolvency Act 1986 and Companies Act 2006.

| | Insolvency or administration required | Insolvency or administration not required |
|---------------------|---------------------------------------|---|
| Insolvency Act 1986 | <input type="radio"/> | <input type="radio"/> |
| Companies Act 2006 | <input type="radio"/> | <input type="radio"/> |

(2 marks)

(b) Identify whether Del and Rod have committed the following offences.

| | Fraudulent trading under s 213 Insolvency Act 1986 | Wrongful trading under s 214 Insolvency Act 1986 |
|-----|--|--|
| Del | <input type="radio"/> | <input type="radio"/> |
| Rod | <input type="radio"/> | <input type="radio"/> |

(4 marks)**(Total = 6 marks)**

29.3 Ian is an accountant, and one of his clients is Jet, who runs an illegal operation as well as some other legitimate businesses. Jet approached Ian for advice as to how he should deal with the gains he makes from the illegal operation. Ian suggested that, rather than try to use his existing legitimate businesses to disguise the source of the money, Jet should use his legally made money to buy the local football club, Kickers, with the intention of passing his gains from the illegal operation through the club's accounts.

Jet accepted the proposal and appointed Ian as Kickers' finance director and together they passed the illegal money through the football club.

(a) Which **TWO** of the following statements concerning the offence of money laundering are correct?

- The offence of money laundering applies where funds have been obtained through any criminal activity
- The offence of money laundering only applies to certain business sectors
- The offence of money laundering applies where the source of illegitimate funds are disguised
- The offence of money laundering only applies to funds over a fixed amount **(2 marks)**

(b) Which money laundering offences have Ian and Jet committed?

| | No offence committed | Money laundering | Failure to report | Tipping off |
|-----|-----------------------|-----------------------|-----------------------|-----------------------|
| Ian | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Jet | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(Total = 6 marks)

29.4 Sid is a director of two listed public companies in which he has substantial shareholdings: Trend plc and Umber plc.

The annual reports of both Trend plc and Umber plc have just been drawn up, although not yet disclosed. They show that Trend plc has made a surprisingly big loss and that Umber plc has made an equally surprising big profit. On the basis of this information Sid sold his shares in Trend plc and bought shares in Umber plc. He also advised his brother to buy shares in Umber plc.

Vic, who is also a shareholder in both companies, sold a significant number of shares in Umber plc only the day before its annual report was published.

(a) Which of the following statements concerning Vic is correct?

- Vic is the victim of fraud and can claim for the profit he missed out on by selling his shares
- Vic is a victim of money laundering and can claim for the profit he missed out on by selling his shares
- Vic is a victim of insider dealing and can claim for the profit he missed out on by selling his shares
- Vic is not the victim of any criminal offence and cannot claim for the profit he missed out on by selling his shares **(2 marks)**

(b) Identify whether Sid committed any of the following criminal offences.

| | Offence committed | Offence not committed |
|---|-----------------------|-----------------------|
| Market abuse – misuse of information | <input type="radio"/> | <input type="radio"/> |
| Market abuse – market distortion | <input type="radio"/> | <input type="radio"/> |
| Insider dealing – insider dealing | <input type="radio"/> | <input type="radio"/> |
| Insider dealing – encouraging another to deal | <input type="radio"/> | <input type="radio"/> |

(4 marks)
(Total = 6 marks)

29.5 Greg and Helen are members of the board of directors of Huge plc. Greg also controls a private limited company, Imp Ltd, through which he operates a management consultancy business. He also owns all the shares in Jet Ltd through which he conducts an investment business.

When Greg learns that Huge plc is going to make a take-over bid for Kop plc he arranges for Jet Ltd to buy a large number of shares in Kop plc on the London Stock Exchange on which it makes a large profit when it sells them after the takeover bid is announced. He then arranges for Jet Ltd to transfer the profit to Imp Ltd as the charge for supposed consultancy work. The money is then transferred to Greg through the declaration of dividends by Imp Ltd.

Helen learns of Greg's actions and tells him that she will be reporting him to the authorities because she believes that he is guilty of money laundering. However she has decided not to report him for the insider dealing offence.

(a) Dealing in which of the following securities is covered by insider dealing legislation?

- Shares and associated derivatives, debt securities and warrants
- Shares and associated derivatives only
- Shares and associated derivatives and debt securities only
- Debt securities and warrants only

(2 marks)

(b) Indicate whether the following parties have committed an offence in respect of insider dealing and money laundering.

| | Committed an insider dealing offence | Committed a money laundering offence | Both |
|-------|--------------------------------------|--------------------------------------|-----------------------|
| Greg | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Helen | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

(4 marks)
(Total = 6 marks)

(Total = 30 marks)

30 Mixed Questions 1 (Specimen exam)**27 mins**

30.1 Which of the following may imply terms into contracts?

- Statute
- Third parties
- The parties to the contract

(1 mark)

30.2 There are a number of ways in which investors can take an interest in a company and such different interests have different rights attached to them.

Which of the following **NORMALLY** participate in surplus capital?

- Preference shares
- Ordinary shares
- Debentures secured by a fixed charge
- Debentures secured by a floating charge

(2 marks)30.3 In the context of the English legal system, which of the following courts **ONLY** has civil jurisdiction?

- Magistrates' court
- County court
- High Court

(1 mark)30.4 In the context of employment law, which of the following is an **AUTOMATICALLY** fair ground for dismissing an employee?

- Unofficial industrial action
- Redundancy
- Refusal to join a trade union
- Legal prohibition

(2 marks)

30.5 Which of the following business forms does the use of the abbreviation 'Ltd' after the name of a business indicate?

- A limited partnership
- A limited liability partnership
- A private limited company

(1 mark)

30.6 Jas has been continuously employed for six years.

Which of the following states the minimum period of notice she is entitled to?

- One month
- Six weeks
- Three months

(1 mark)

30.7 Which of the following is indicated by the abbreviation 'Ltd' at the end of a company's name?

- The shares are not transferable
- The shares may not be offered to the public
- The shares are freely transferable on the stock exchange

(1 mark)

30.8 Section 122 Insolvency Act 1986 specifically provides a distinct ground for applying to have a company liquidated on the ground that it is just and equitable to do so.

Which of the following parties may petition to have a company compulsorily liquidated under that provision?

- Shareholders of the company
- Creditors of the company
- Debentureholders of the company
- The Secretary of State

(2 marks)

30.9 Mo has a significant holding in the shares of Nova Ltd. He wishes to use his shareholding to remove Owen from the board of directors but is not sure how to do so.

Which of the following must be used to remove a director from office?

- An ordinary resolution
- An ordinary resolution with special notice
- A special resolution
- A written resolution

(2 marks)

30.10 A written ordinary resolution requires the approval of which of the following?

- More than 50% of those actually voting
- More than 50% of those entitled to vote
- Unanimous approval of those entitled to vote

(1 mark)

30.11 Employment law is a mixture of common law and statutory provisions.

Which of the following is purely based on statute law?

- Summary dismissal
- Unfair dismissal
- Wrongful dismissal

(1 mark)

30.12 Jo's contract of employment states that she is employed in Glasgow. When her employer tells her that she has to work in London, some 500 miles away, Jo immediately resigns.

Which of the following may this be considered an example of?

- Unfair dismissal
- Constructive dismissal
- Summary dismissal

(1 mark)

30.13 Which parties are bound by the terms of the tender when one party submits a tender?

- The person submitting the tender
- The person requesting the tender
- Both parties
- Neither party

(2 marks)

30.14 In the context of contract law, a bid at an auction is which of the following?

- An invitation to treat
- An offer
- A counter-offer
- An acceptance

(2 marks)

30.15 Bee injured her eye after failing to close a safety gate on a machine as instructed. She was also not wearing mandatory safety goggles as required by her contract of employment.

Which of the following is this an example of?

- Novus actus interveniens*
- Volenti non fit injuria*
- Res ipsa loquitur*
- Contributory negligence

(2 marks)

(Total = 22 marks)

31 Mixed Questions 2 (Specimen exam)**27 mins**

31.1 What is the effect of a finding of contributory negligence in the law of tort?

- It removes the requirement to pay damages
- It reverses the payment of damages
- It decreases the level of damages

(1 mark)31.2 In the context of the English legal system, which of the following courts **ONLY** has criminal jurisdiction?

- A Magistrates' Court
- The Crown Court
- A County Court

(1 mark)

31.3 Imran claims that Zak owes him £1,000 as a result of a breach of contract.

In which court will Imran start his action against Zak?

- A Magistrates' Court
- A County Court
- The High Court

(1 mark)31.4 In the context of case law, which of the following applies to an *obiter dictum*?

- It is binding on all future courts
- It is binding on all lower courts
- It is not binding on any courts
- It is not binding outside the court it was issued in

(2 marks)

31.5 Contributory negligence arises as a result of the fault of which of the following?

- The claimant
- The respondent
- A third party

(1 mark)

31.6 Ann got trapped in a public toilet due to the lock being faulty. Rather than wait for help, she tried to climb out of the window but fell and broke her leg.

Which of the following is this an example of?

- Res ipsa loquitur*
- Volenti non fit injuria*
- Novus actus interveniens*
- Contributory negligence

(2 marks)

31.7 The law treats employees differently from the self-employed and has established a number of tests to distinguish between the two categories.

Which of the following is **NOT** a test for establishing an employment relationship?

- The subordinate test
- The control test
- The integration test
- The economic reality test

(2 marks)

31.8 Breach of which of the following terms does **NOT** allow the possibility of the aggrieved party terminating the contract?

- A condition
- A warranty
- An innominate term

(1 mark)

31.9 Which of the following, in the context of entering into a contract, constitutes a binding offer to sell a unique item of furniture?

- Placing an advert in a newspaper with a price attached
- Placing it on display inside a shop with a price attached
- Telling someone the price you may be willing to accept for it
- Telling someone you will reduce the marked price on it by 10%

(2 marks)

31.10 Mark has received the agenda for the annual general meeting of Rova Ltd, a company he has shares in. The agenda contains a number of resolutions to be proposed at the meeting, but being a new member Mark is not certain as to what is exactly involved.

In the context of company meetings, which of the following must be passed by a 75% majority to be effective?

- An ordinary resolution with special notice
- A special resolution
- A written resolution

(1 mark)

31.11 Section 122 Insolvency Act 1986 provides a number of distinct grounds for applying to have a company liquidated on a compulsory basis.

Which of the following is **NOT** a ground for the compulsory liquidation of a company under that provision?

- The company has not received a trading certificate within its first 12 months
- The company has not started trading within the first 12 months
- The company has suspended its business for 12 months
- The company has altered its primary business within the first 12 months

(2 marks)

31.12 Abe issued an invitation to tender for a contract and Bea submitted her terms.

Which of the following statements is accurate?

- Abe made an offer which Bea accepted
- Abe made an invitation to treat and Bea made an offer
- Both Abe and Bea made invitations to treat
- Abe made an offer and Bea made a counter-offer

(2 marks)

31.13 In the context of statutory interpretation, which of the following requires judges to consider the wrong which the legislation was intended to prevent?

- The mischief rule
- The literal rule
- The golden rule

(1 mark)

31.14 It is not unusual for some company investments to carry cumulative dividend rights.

Which of the following statements about the declaration of cumulative dividends is correct?

- They are not paid until profits reach a certain percentage
- They are paid in the form of a bonus issue
- They are paid out of capital
- They are paid when profits are available for that purpose

(2 marks)

31.15 Which of the following statements in relation to effective consideration is correct?

- It must be both adequate and sufficient
- It must be adequate but need not be sufficient
- It must be sufficient but need not be adequate

(1 mark)

(Total = 22 marks)

32 Mixed Questions 3 (Specimen exam)

32 mins

32.1 In the context of the English legal system, which of the following defines the *ratio decidendi* of a judgement?

- The decision in a previous case
- The facts of the case
- The legal reason for deciding the case
- The future application of the case

(2 marks)

32.2 Dan has been accused of a criminal offence and is due to be tried soon. He denies responsibility, claiming that the prosecution has no evidence that he committed the offence in question.

Which of the following describes the standard of proof in a criminal case?

- On the balance of probability
- On the balance of certainty
- Beyond reasonable doubt
- Beyond evident doubt

(2 marks)

32.3 Which of the following statements relating to limited liability partnerships is correct?

- They are limited to a maximum of 20 members
- They must have a minimum of two members
- They must have at least one unlimited member

(1 mark)

32.4 Ho subscribed for some partly paid-up shares in Io Ltd. The company has not been successful and Ho has been told that when Io Ltd is liquidated, he will have to pay the amount remaining unpaid on his shares. However, he is not sure to whom such payment should be made.

In limited liability companies, shareholders are liable to which party for any unpaid capital?

- Creditors
- The directors
- The company
- The liquidator

(2 marks)

32.5 Which of the following **CANNOT** petition for the compulsory liquidation of a company on the grounds of insolvency under s 122 Insolvency Act 1986?

- The board of directors
- The members of the company
- The company's creditors
- The Secretary of State

(2 marks)

32.6 Money laundering involves a number of phases in the overall procedure.

Which **TWO** of the following are recognised phases in money laundering?

- Layering
- Distribution
- Relocation
- Integration

(2 marks)

32.7 Which **TWO** of the following are **AUTOMATICALLY** unfair grounds for dismissing an employee?

- Constructive dismissal
- Engaging in trade union activity
- Dismissal on transfer of employment to a new undertaking
- Redundancy

(2 marks)

32.8 In the context of the law of agency, an agent will **NOT** be liable for a contract in which of the following instances?

- Where the agent fails to disclose that they are acting as such
- Where the agent intends to take the benefit of the contract and does not disclose they are acting as an agent
- Where the agent acts on their own behalf although claiming to be an agent

(1 mark)

32.9 The Employment Rights Act (ERA) 1996 sets out remedies in relation to unfair dismissal.

Which of the following is **NOT** a potential remedy for unfair dismissal under the ERA 1996?

- Reinstatement
- Re-engagement
- Re-employment

(1 mark)

32.10 Which **TWO** statements are correct in relation to designated members in limited liability partnerships (LLPs)?

- They are responsible for filing the LLP's accounts
- They must not take part in the day-to-day operation of the business
- They have limited liability
- They are fully liable for partnership debts

(2 marks)

32.11 The term insider dealing relates to a number of potential criminal offences.

Which **TWO** of the following are crimes in relation to insider dealing?

- Failing to report insider dealing
- Encouraging someone to engage in insider dealing
- Concealing insider dealing
- Passing on inside information

(2 marks)

32.12 Which of the following can be accepted so as to form a binding contract?

- A supply of information
- A statement of intent
- A quotation of price
- An agreement to enter into a future contract

(2 marks)

32.13 Contracts are legally enforceable agreements.

Which of the following statements regarding contractual agreements is true?

- They must be in writing
- They must be evidenced in writing
- They need not be in writing

(1 mark)

32.14 In relation to the law of negligence, a finding of *volenti non fit injuria* arises from the action of which of the following?

- The claimant
- The respondent
- A third party
- An unforeseeable event

(2 marks)

32.15 In the context of the law of contract, which **TWO** of the following statements in relation to a letter of comfort are correct?

- It is a binding promise to pay a subsidiary company's future debts
- It is issued by a parent company
- It is issued by a parent company's bank
- It is a non-binding statement of present intention to pay a subsidiary company's future debts

(2 marks)

(Total = 26 marks)

33 Mixed Multiple Task Questions 1 (CBE Specimen exam)

36 mins

33.1 Az Ltd operates a shipbuilding business which specialises in constructing and modifying ships to order. In 2011, Az Ltd entered into an agreement with Bob to completely rebuild a ship to Bob's specification for a total contract price of £7 million. However after completion, Bob informed Az Ltd that, due to the downturn in the world economy, he no longer needed the ship. Az Ltd had already expended £5 million on altering the ship, and immediately started an action against Bob for breach of contract.

However, in the week before the case was to be decided in the court, Az Ltd sold the ship for the same amount of money that they would have received from Bob.

(a) Which **TWO** of the following statements explain the purposes of awarding damages for breach of contract?

- They are a punishment for the party in breach
- They put the parties in the position they would have been in had the contract been performed
- They compensate the injured party for any financial loss
- They put the parties in the position they were in before the contract was formed **(2 marks)**

(b) Which **TWO** of the following statements in relation to the duty to mitigate losses are correct?

- It lies with the party in breach of contract
- It lies with the party who suffers the breach
- It results in an increase of damages
- It reduces damages **(2 marks)**

(c) What level of damages can Az Ltd claim for breach of contract?

- £5 million
- £0
- £2 million
- £7 million **(2 marks)**

(Total = 6 marks)

33.2 Clare, Dan and Eve formed a partnership ten years ago, although Clare was a sleeping partner and never had anything to do with running the business. Last year Dan retired from the partnership. Eve has subsequently entered into two large contracts. The first one was with a long-standing customer, Greg, who had dealt with the partnership for some five years. The second contract was with a new customer, Hugh. Both believed that Dan was still a partner in the business. Both contracts have gone badly wrong, leaving the partnership owing £50,000 to both Greg and Hugh. Unfortunately the business assets will only cover the first £50,000 of the debt.

(a) Which of the following states the liability of Clare as a sleeping partner?

- She has limited liability set at the amount she has introduced into the partnership
- She has no liability for partnership debts
- She has limited liability for partnership debts set at a pre-determined level
- She has full liability for partnership debts **(2 marks)**

(b) Which of the following describes the liabilities of Dan as a retiring partner?

- He remains liable to existing customers for a period of six months
- He remains liable for any debts or obligations incurred by the partnership prior to retirement
- His liability for any debts ceases on retirement
- He remains liable to new customers who knew he was a member of the partnership, unless he declared his withdrawal

(2 marks)

(c) From whom can Greg claim the outstanding debt?

- Eve, Dan and Clare
- Eve and Clare only
- Eve only
- Eve and Dan only

(2 marks)

(Total = 6 marks)

33.3 Jon, who is 65 years of age, has just retired from his employment with a pension and a lump sum payment of £100,000. He is keen to invest his money but has absolutely no knowledge of business or investment. He does not wish to take any great risk with his investment but he would like to have a steady flow of income from it.

He has been advised that he can invest in the following range of securities:

- (1) Preference shares
- (2) Ordinary shares
- (3) Debentures secured by a fixed charge
- (4) Debentures secured by a floating charge

(a) In relation to the above investment forms, which is the most secure?

- Preference shares
- Ordinary shares
- Debentures secured by a floating charge
- Debentures secured by a fixed charge

(2 marks)

(b) In relation to the above investment forms, which may have a cumulative right to dividends?

- Debentures secured by a fixed charge
- Ordinary shares
- Preference shares
- Debentures secured by a floating charge

(2 marks)

(c) In relation to the above investment forms, which **NORMALLY** participates in surplus capital?

- Debentures secured by a fixed charge
- Preference shares
- Ordinary shares
- Debentures secured by a floating charge

(2 marks)

(Total = 6 marks)

33.4 In 2008 Ger was disqualified from acting as a company director for a period of ten years under the Company Directors Disqualification Act 1986 for engaging in fraudulent trading.

However, he decided to continue to pursue his fraudulent business and, in order to avoid the consequences of the disqualification order, he arranged for his accountant Kim to run the business on his instructions. Although Kim took no shares in the company, and was never officially appointed as a director, he nonetheless assumed the title of managing director.

(a) Identify which of the following categories of director applies to each of Ger, and Kim?

| | De facto director | De jure director | Non-executive director | Shadow director |
|-----|-----------------------|-----------------------|------------------------|-----------------------|
| Kim | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Ger | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(b) Which of the following characteristics apply to non-executive directors?

- They owe fiduciary duties to the company
- They attend, but do not vote at, meetings
- They are involved in the day-to-day business of the company
- They have contracts of employment with the company

(2 marks)

(Total = 6 marks)

33.5 Fran and Gram registered a private limited company, Ire Ltd, in January 2009, with each of them becoming a director of the company. Although the company did manage to make a small profit in its first year of trading, it was never a great success and in its second year of trading it made a loss of £10,000.

At that time Fran said he thought the company should cease trading and be wound up. Gram, however, was insistent that the company would be profitable in the long term so they agreed to carry on the business, with Fran taking less of a part in the day-to-day management of the company, although retaining his position as a company director.

In the course of the next three years Gram falsified Ire Ltd's accounts to disguise the fact that the company had continued to suffer losses, until it became obvious that he could no longer hide the company's debts and that it would have to go into insolvent liquidation, with debts of £100,000.

(a) Which type of action, civil, criminal, or both, can be taken in relation to each of fraudulent trading and wrongful trading?

| | Civil only | Criminal only | Both civil and criminal |
|--------------------|-----------------------|-----------------------|-------------------------|
| Wrongful trading | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Fraudulent trading | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

(2 marks)

(b) Does fraudulent or wrongful trading apply to each of Fran and Gram?

| | Fraudulent trading (s 213 Insolvency Act 1986) | Wrongful trading (s 214 Insolvency Act 1986) |
|------|---|---|
| Gram | <input type="radio"/> | <input type="radio"/> |
| Fran | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(Total = 6 marks)

(Total = 30 marks)

Answers

1 Law and the legal system

1.1 The State

In a criminal law case it is the State that prosecutes the accused.

Syllabus area A1(a)

1.2 Balance of probability

In a civil law hearing, the claimant must prove their case on the balance of probabilities. Beyond reasonable doubt is the standard of proof in a criminal law hearing.

Syllabus area A1(a)

1.3 Damages

Damages is a remedy under civil law. Fines and imprisonment are only available under criminal law.

Syllabus area A1(a)

1.4 The Magistrates' Court

All criminal cases begin in a Magistrates' Court.

Syllabus area A1(b)

1.5 High Court

The Queen's Bench, Family and Chancery are all divisions of the High Court.

Syllabus area A1(b)

1.6 The case is decided by the Magistrate rather than a jury

In a Magistrates' Court, cases are decided by the Magistrate because there is no jury. The Magistrates' Court does have some civil jurisdiction, for example in family proceedings. Appeals are usually made to the Crown Court, but the High Court may also hear them.

Syllabus area A1(b)

1.7 A summary offence

Summary offences are minor offences that would only be heard at a Magistrates' Court. Indictable offences are serious offences that would only be heard at a Crown Court. A 'triable either way' offence is one where the accused has the choice of which court will hear the case.

Syllabus area A1(b)

1.8 Public Law

Public law is concerned with the operation of the Government and public organisations such as Councils and Local Authorities.

Syllabus area A1(a)

1.9 Punishment, Public law

Criminal law is a form of public law and is associated with punishment. Civil law is private law and is associated with compensation. In a civil law case a claimant sues a defendant. In criminal law the parties are the accused and prosecution.

Syllabus area A1(a)

1.10 Defendant, Claimant

A civil law case is between the claimant and defendant. A criminal law case is between the prosecution and accused.

Syllabus area A1(a)

1.11 Medium

In the civil law system, cases are allocated to either the 'fast', 'small' or 'multi' track depending on the size and complexity of the claim.

Syllabus area A1(b)

1.12 The Crown Court

In the criminal law system, an appeal regarding a decision by a Magistrates' Court would be heard by the Crown Court. Appeals can also be made by way of case stated to the Divisional Court of Queen's Bench in the High Court, but this was not one of the options.

Syllabus area A1(b)

1.13 The County Court

It is the County Court that only has civil jurisdiction.

Syllabus area A1(b)

1.14 Trusts and mortgages

The Chancery Division would deal with matters relating to trusts and mortgages. Contract law cases would be heard by the Queen's Bench Division. Matrimonial cases and proceedings involving children (such as adoption) would be heard by the Family Division.

Syllabus area A1(b)

1.15 Summary, Triable either way

A Magistrates' Court hears minor, summary, offences without a jury. A Crown Court hears serious, indictable, offences with a jury. Some offences are 'triable either way' and can be heard at either a Magistrates' or Crown Court. There is no such offence as a 'hybrid' offence.

Syllabus area A1(b)

2 Sources of law

2.1 *Ratio decidendi*

It is the *ratio decidendi* that becomes binding on future judges. *Obiter dicta* are statements said 'by the way' and are not binding. *Per incuriam* is a legal term that means 'made without care'.

Syllabus area A2(a)

2.2 Reversing

A reversing decision is made when a case is appealed. An overruling decision occurs when a superior court overturns the decision of a lower court in a different case. Distinguishing occurs when a judge decides not to follow a precedent in the case before them because the material facts of the two cases are sufficiently different.

Syllabus area A2(a)

2.3 Legislation may modify or replace existing statutes

Parliamentary sovereignty means that Parliament may modify or replace existing statutes. Legislation may overrule or modify existing case law but may not prevent a future Parliament from changing the law.

Syllabus area A2(b)

2.4 Private

Private Acts affect specific individuals or groups. Public Acts affect the general public. Enabling legislation empowers a specific individual or body to produce the detail required by a parent Act.

Syllabus area A2(b)

2.5 Golden rule

The golden rule states that words in a statute should be given their plain, ordinary meaning unless this would give rise to a manifest absurdity or inconsistency with the rest of the statute. The mischief rule states that judges should consider what mischief the Act was trying to prevent. The contextual rule states that a word should be construed in its context.

Syllabus area A2(c)

2.6 The long title of the Act

The long title is an element of the Act and is therefore an intrinsic aid. Hansard and Law Commission reports are not part of the Act and are therefore extrinsic aids.

Syllabus area A2(c)

2.7 European Court of Human Rights

The European Court of Human Rights is the final appeal court for human rights issues in the UK.

Syllabus area A2(d)

2.8 The Court of Appeal

The only courts that bind the Court of Appeal are the Supreme Court, the European Court of Justice and itself.

Syllabus area A2(a)

2.9 Mistakes by judges are eliminated

Mistakes by judges can never be eliminated. The other options are correct statements concerning binding precedent.

Syllabus area A2(a)

2.10 Report stage, Committee stage

The stages that a Bill passes through before becoming legislation are: First reading, second reading, committee stage, report stage, third reading, pass through same stages in the other House and Royal Assent.

Syllabus area A2(b)

2.11 40

Statutory instruments must be laid before Parliament for 40 days before coming into effect.

Syllabus area A2(b)

2.12 Purposive approach

Under the purposive approach to statutory interpretation, the purpose, or what the legislation is trying to achieve, is considered.

Syllabus area A2(c)

2.13 A statute does not have retrospective effect

A statute does not have retrospective effect. However, a person may be deprived of their property (but they must be compensated for this), the Crown is not bound by statute and statutes only have effect in the UK.

Syllabus area A2(c)

2.14 Hansard

Extrinsic aids do not form part of the Act. Hansard is an example of an extrinsic aid.

Syllabus area A2(c)

2.15 The courts may strike out secondary legislation that is incompatible with the European Convention on Human Rights, Courts must interpret legislation in such a way that is compatible with the European Convention on Human Rights

Under UK Human Rights legislation courts may strike out secondary legislation that is incompatible with the Convention and must interpret legislation in such a way that is compatible with it. New legislation does not have to be compatible with the Convention, but a statement to that effect must be made before the Bill becomes law. UK courts must take the decisions of the European Court of Justice into account when making judgements.

Syllabus area A2(d)

3 Formation of contract I

3.1 A conveyance (a transfer of a legal estate in land)

A conveyance must be in the form of a deed. A transfer of shares and a consumer credit contract must be in writing.

Syllabus area B1(a)

3.2 A verbal promise to be bound on specific terms

An offer is defined as a promise to be bound on specific terms and can be made in any form such as in writing or verbally. A statement of possible terms is a supply of information. Displaying goods for sale is an invitation to treat.

Syllabus area B1(b)

3.3 When the auctioneer presents the goods being sold

In a sale by auction that is stated to be 'without reserve', the auctioneer presenting the goods for sale is the offer and a bid represents acceptance.

Syllabus area B1(b)

3.4 For a reasonable time

If no time period is set for its expiry, an offer will remain open for a reasonable time. What is reasonable will depend on the circumstances.

Syllabus area B1(c)

3.5 Death of the offeree

The death of the offeree will terminate an offer. Posting a letter of revocation is not sufficient to terminate an offer, it must be received before acceptance is made in order to be effective. A request for information will also not terminate an offer.

Syllabus area B1(c)

3.6 Silence of the offeree

Acceptance may be made by express words or conduct of the offeree. Silence is not valid acceptance.

Syllabus area B1(d)

3.7 Acceptance is effective once the letter of acceptance is posted

The postal rule states that acceptance is effective once the letter of acceptance is posted.

Syllabus area B1(d)

3.8 A contract for the supply of electricity between a utility company and a private individual

A standard form contract is a document set out by large organisations that states the terms that its customers will do business with it. There is no negotiation, either the customer accepts the terms or goes elsewhere. The contracts in the other options include scope for negotiation.

Syllabus area B1(a)

3.9 The law will only interfere in contracts where one party abuses a stronger bargaining position

The law may interfere in the formation of contracts, but only to ensure that stronger parties do not abuse their position. The law does not seek to maintain or amend bargaining power.

Syllabus area B1(a)

3.10 A person verbally stating to another person that they would like to sell their computer to them for £500 today, A person handing their shopping to a supermarket checkout operator

An offer is a definite promise to be bound on specific terms and can be made in a number of forms. Therefore a verbal statement to sell something to another person is an offer. Newspaper adverts and price lists are examples of invitations to treat. At a supermarket checkout, the person handing their goods to the checkout operator is making an offer to buy the goods.

Syllabus area B1(b)

3.11 A newspaper advert that includes a specific statement, made to the world at large, offering a reward for the return of a particular item

Although newspaper adverts are usually considered invitations to treat, they will be regarded as offers if they are made to the world at large and are sufficiently specific. The other options are examples of invitations to treat.

Syllabus area B1(b)

3.12 Counter-offers may be accepted by the original offeror

Counter-offers have the effect of terminating the original offer, but may be accepted by the original offeror. A statement that enquires whether alternative terms would be acceptable is a request for information, not a counter-offer. Counter-offers are made by the original offeree to the original offeror.

Syllabus area B1(c)

3.13 When a third party, who is sufficiently reliable, verbally notifies the offeree of the offeror's revocation

A third party who is sufficiently reliable may revoke an offer on behalf of the offeror. Letters of revocation are only effective when they are received by the offeree, not when they are posted. Enquiring whether another method of payment would be acceptable is a request for information that does not terminate the original offer. The death of the offeror does not terminate the offer if the offeree is unaware of the death and the contract is not of a personal nature.

Syllabus area B1(c)

3.14 Posting a letter of acceptance

The postal rule states that acceptance is valid when a letter of acceptance is posted. The other options are not regarded as acceptance – a counter-offer is in effect a new offer, acceptance 'subject to contract' means the offeree is agreeable to the terms but the parties should negotiate a valid contract, and a tender to perform a task is an offer.

Syllabus area B1(d)

3.15 Acceptance does not need to be communicated in a unilateral contract, Under the postal rule, a letter of acceptance that has been posted does not have to be received by the offeror to be valid acceptance

A unilateral contract is one where there is a promise to pay money in return for an act – such as an offer to pay a reward for the return of an item. In such cases, acceptance does not need to be communicated because a contract is formed when the item is returned. Under the postal rule, a letter of acceptance just needs to be posted for acceptance to be valid. If two identical offers cross in the post then there is no contract – just two offers. Where no method of communication of acceptance is required then any method of acceptance can be used.

Syllabus area B1(d)

4 Formation of contract II

4.1 Providing goods in return for payment at the same time

Executed consideration takes place at the same time. Executory consideration takes place at a future date. Past consideration is something that has already been done.

Syllabus area B1(e)

4.2 Courts will not interfere in a contract to rectify a bad bargain

Courts will not interfere in contracts in regards to the adequacy of consideration.

Syllabus area B1(f)

4.3 Consideration is sufficient if it has some economic value

Consideration must be sufficient but not necessarily adequate. It must have some economic value to be sufficient.

Syllabus area B1(f)

4.4 Only parties to a contract generally have enforceable rights under it

Privity of contract means that only parties to a contract have enforceable rights under it. The concept applies to both rights and obligations under a contract. Generally, third parties do not have enforceable rights under a contract.

Syllabus area B1(g)

4.5 A third party to a contract can enforce rights under it if it is equitable for them to do so

Two exceptions to the rule of privity of contract are that a third party can sue for foreseeable losses they incur and if an implied trust has been created.

Syllabus area B1(g)

4.6 A contract will be legally binding if both parties intended it to be so

The presumption is that social arrangements are not intended to be legally binding and commercial arrangements are intended to be legally binding. However, this presumption is rebuttable and a contract will be legally binding if both parties intended it to be so.

Syllabus area B1(h)

4.7 An agreement between a husband and wife to transfer property between them

The courts are very ready to impute an intention to be legally bound where a husband and wife agree to transfer property between them. Letters of comfort and transactions 'binding in honour only' both indicate there is no intention to be legally bound.

Syllabus area B1(h)

4.8 Consideration must pass from the promisee

Consideration must pass from the promisee. It must be sufficient but not necessarily adequate. Past consideration is generally not valid consideration. Executory consideration is generally valid consideration.

Syllabus area B1(e)

4.9 Past consideration is sufficient to create liability on a bill of exchange

Past consideration is sufficient to create liability on a bill of exchange – this is one of the few exceptions to the rule on past consideration. Suffering loss or detriment is valid consideration. Impossible or illegal acts are not valid consideration.

Syllabus area B1(e)

4.10 Payment in the form of goods rather than cash, Payment by a third party rather than the debtor

For the extra consideration to be valid, the creditor must become entitled to something that they are not already entitled to. In this case, goods rather than cash and payment by a third party are valid examples. A guarantee of payment and payment on time are not valid as extra consideration because the creditor is already entitled to them.

Syllabus area B1(f)

4.11 Performance of an existing contractual duty to a third party is sufficient consideration for the promise of additional reward

The performance of an existing contractual duty is not sufficient consideration for the promise of additional reward unless an additional service is also provided, or if the duty is provided to a third party instead.

Syllabus area B1(f)

4.12 Privity of contract means only parties to a contract may sue on it

Privity of contract means that only parties to a contract may sue on it. The Contracts (Rights of Third Parties) Act 1999 is a source of regulation. There are exceptions to the rule of privity. Privity of contract applies to all contracts, not just commercial ones.

Syllabus area B1(g)

4.13 The third party need not be in existence when the contract was formed

Third parties need not have been in existence when the contract was formed but must be expressly identified in the contract. The Act does not confer rights to third parties in respect of a company's constitution or employment contracts.

Syllabus area B1(g)

4.14 Any presumptions in regards to the intention of parties to be legally bound may be refuted and the burden of proof is on the party seeking to escape liability

Parties in social, domestic and family agreements are presumed not to intend to be legally bound, but this presumption is rebuttable. Parties in commercial contracts are presumed to intend to be legally bound but this presumption is rebuttable. With regard to rebutting either presumption, the burden of proof is on the party seeking to escape liability.

Syllabus area B1(h)

4.15 An agreement between friends to enter a newspaper competition together and share any prizes between them, An agreement between a husband and wife who have separated for one to rent the family home from the other

Agreements from a husband and wife who have separated, and between friends who have entered a competition, have both been held by the courts as legally binding agreements. Payment of a monthly allowance and housekeeping money are not viewed as intending to be legally binding.

Syllabus area B1(h)

5 Content of contracts

5.1 Sue for breach of contract

Where a term of a contract is found to be untrue then the party can sue for breach of contract. A party can sue for misrepresentation when a representation (which is not a term) proves to be untrue.

Syllabus area B2(a)

5.2 A representation is not a term of a contract

A representation is something said before a contract is formed, that induces the formation of the contract, but does not become a term of the contract.

Syllabus area B2(a)

5.3 Terms may be implied into a contract by statute

Terms can be implied into contracts by statute (for example the Consumer Rights Act 2015). The courts may imply terms into contracts in order to give the contract efficacy. Express terms will override terms implied by custom.

Syllabus area B2(b)

5.4 A term subsidiary to the main purpose of the contract, that if breached, entitles the injured party to claim damages

A warranty is a term subsidiary to the main purpose of the contract, that, if breached, entitles the injured party to claim damages. A condition is a term vital to the contract. An implied term is a term that is not expressly stated by the parties.

Syllabus area B2(b)

5.5 All terms in a consumer contract should be set out in plain, intelligible language

The Consumer Rights Act 2015 applies to consumer notices (such as signs in car parks) as well as to consumer contracts. Businesses are protected if they can prove they were acting as a consumer. All terms must be in plain, intelligible language.

Syllabus area B2(c)

5.6 Any ambiguity in exclusion clauses are interpreted against the person seeking to rely on them

The contra proferentem rule states that any ambiguity in exclusion clauses is to be interpreted against the person seeking to rely on them.

Syllabus area B2(c)

5.7 The purpose of an exclusion clause is not to prevent the main purpose of the contract

The main purpose rule states that the purpose of an exclusion clause is not to prevent the main purpose of the contract.

Syllabus area B2(c)

5.8 During pre-contract negotiations

A representation is something that induces the formation of a contract but does not become a term of a contract. They are made during pre-contract negotiations.

Syllabus area B2(a)

5.9 By the parties themselves

Express terms are expressly agreed by the parties. The other options are examples of how terms are implied into contracts.

Syllabus area B2(b)

5.10 The principle of freedom of contract states that parties may include in their contract any terms that they see fit, To be valid, a contract must be complete in its terms

The principle of freedom of contracts states that parties are generally free to form a contract as they wish, but to be valid, a contract must be complete in its terms. Parties may include a term that allows a third party to determine an essential term. Where a condition is breached, the injured party may claim damages or treat the contract as discharged.

Syllabus area B2(b)

5.11 By the courts

The classification of an innominate term is determined by the courts.

Syllabus area B2(b)

5.12 Exclusion clauses are interpreted by the courts strictly

Exclusion clauses are interpreted by the courts strictly. They must be incorporated before the contract is formed and are regulated by statute law. Exclusion clauses may exclude liability for negligence but not for death or injury due to negligence.

Syllabus area B2(c)

5.13 A clause that excludes the condition that the seller has a right to sell the goods

Under UCTA 1977, a clause that excludes the condition that the seller has a right to sell the goods is void. UCTA 1977 does not apply to contracts of insurance. In commercial contracts, parties may exclude liability for loss or damage caused by negligence and breach of contract.

Syllabus area B2(c)

5.14 The Act only applies to business-to-consumer contracts

As its name suggests, the Consumer Rights Act 2015 only applies to business-to-consumer contracts (although in certain circumstances a business may be classed as a consumer). The Act applies to all terms in a consumer contract and the contract does not have to be verbally agreed. Particularly onerous terms must be made more prominent than other terms.

Syllabus area B2(c)

5.15 The Act only applies to business-to-business contracts

The Unfair Contract Terms Act 1977 only applies to business-to-business contracts and to all terms, whether individually negotiated or not. It does not apply to contracts regarding the transfer of an interest in land. Terms which seek to restrict liability for loss or damage (other than injury or death) caused by negligence are not automatically void, they are subject to a reasonableness test.

Syllabus area B2(c)

6 Breach of contract and remedies

6.1 Performing the contract will cause the party concerned financial hardship

Performance which is impossible is a legal excuse for non-performance, as is agreement. Financial hardship is not a lawful excuse for non-performance.

Syllabus area B3(a)

6.2 Before the time performance is due

Anticipatory breach of contract occurs where one party states before the time of performance that they will not perform their obligations.

Syllabus area B3(b)

6.3 One party states that they have no intention to perform their obligations

Renunciation involves one party stating they have no intention of performing their obligations. Incapacitation involves one party preventing themselves from performing their obligations. Frustration occurs where external circumstances prevent a party from performing their obligations.

Syllabus area B3(b)

6.4 What is needed to put the claimant into the position they would have been in if they had not relied on the contract

Damages paid to protect reliance interest recover what the claimant has lost due to relying on the contract. Damages paid to put the claimant into the position they would have been in if the contract was performed protect expectation interest. Action for the price is a common law remedy to recover the price of goods or services provided.

Syllabus area B3(c)

6.5 A genuine pre-estimate of losses payable in the event of breach of contract

Liquidated damages is a genuine pre-estimate of losses payable in the event of a breach of contract. A penalty clause is a fixed amount payable on breach of contract.

Syllabus area B3(c)

6.6 In breach of contract in a contract involving the sale of property

Specific performance is typically awarded in contracts for the sale of property. It is not made in respect of contracts for employment or personal services.

Syllabus area B3(d)

6.7 Injunction

An injunction is an equitable remedy. Action for the price and *quantum meruit* are common law remedies.

Syllabus area B3(d)

6.8 The innocent party may affirm the contract and continue with their obligations

In the event of repudiatory breach, the innocent party may affirm the contract and continue with their obligations. They must inform the other party if they intend to terminate the contract. They may claim damages or treat the contract as discharged. They can refuse to pay for partial or defective performance already received.

Syllabus area B3(b)

6.9 Performance is rendered more expensive than agreed due to external circumstances

Just because performance is more expensive than agreed does not mean the party does not have to perform their obligations. The other options are lawful reasons for non-performance.

Syllabus area B3(b)

6.10 Losses must arise naturally from the breach of contract, Losses arising outside the normal course of events will be compensated if the circumstances are within the defendant's knowledge when they formed to contract

To be claimable, losses must arise naturally from the breach of contract. If they arise outside the normal course of events, the circumstances must be within the defendant's knowledge when they made the contract.

Syllabus area B3(c)

6.11 An innocent party is required to take reasonable steps to mitigate their losses

Innocent parties are required to mitigate their losses. Damages are payable in respect of mental distress – although the scope of such payments is limited. Damages that are wholly disproportionate to the breach are not payable. Penalty clauses are void and not enforceable.

Syllabus area B3(c)

6.12 Liquidated damage clauses must be highlighted in the contract

Liquidated damage clauses are onerous terms that must be highlighted in the contract. They are valid and enforceable. Their purpose is to compensate the innocent party for losses incurred, not to deter breaches of contract. They are payable where conditions, warranties and innominate terms are breached.

Syllabus area B3(c)

6.13 Injunctions require a defendant to observe a negative restriction of a contract

Injunctions require a defendant to observe negative restrictions of a contract. They are an equitable remedy that is awarded when damages are inadequate compensation. The award of an injunction is entirely at the discretion of the court.

Syllabus area B3(d)

6.14 Innocent third parties must not have acquired rights under the subject matter of the contract

For an award of rescission to be made, innocent third parties must not have acquired rights under the subject matter of the contract. Both parties must be able to be restored to their pre-contract position. The right to rescind must be exercised within a reasonable time of it being awarded. The right to rescind expires if the contract is affirmed.

Syllabus area B3(d)

6.15 Damages must be inadequate compensation, Consideration must have passed between the parties

For an order of specific performance to be made, damages must be an inadequate remedy and consideration must have passed. Both parties do not have to agree to the remedy and it will not be awarded when the contract requires performance over a long period of time.

Syllabus area B3(d)

7 The law of torts and professional negligence

7.1 A tort is a civil wrong and the victim sues for compensation or an injunction

Torts are civil wrongs, not crimes or breaches of contract, and the victim sues for compensation or an injunction.

Syllabus area B4(a)

7.2 The use of a business name or trademark that misleads the consumer to believe that one business is that of another

'Passing-off' is the use of a business name or trademark that misleads a consumer to believe that a business is that of another.

Syllabus area B4(b)

7.3 They breached a duty of care to the claimant and as a consequence the claimant suffered loss, injury or damage

For the defendant to be liable in negligence, the claimant must prove that the defendant had a duty to avoid causing them loss, injury or damage, that the defendant breached that duty, and as a consequence of the breach, the claimant suffered loss, injury or damage.

Syllabus area B4(c)

7.4 The defendant must prove that they were not negligent

Where *res ipsa loquitur* applies, the burden of proof is reversed and the defendant must prove that they were not negligent.

Syllabus area B4(c)

7.5 Where the loss or damage was caused by the employee when performing the duties they were employed to do

Employers are only vicariously liable where the loss or damage was caused by the employee when performing the duties they were employed to do.

Syllabus area B4(c)

7.6 The claimant accepted the risk of injury and the defendant is not liable for the claimant's losses

Volenti non fit injuria means the claimant voluntarily accepted the risk of injury and the defendant is not liable.

Syllabus area B4(e)

7.7 The company only

Following the *Caparo* decision, a company's auditors do not owe a duty of care to the public at large or to shareholders increasing their stakes. They only owe a duty of care to the company.

Syllabus area B4(f)

7.8 No contractual relationship need exist between claimant and defendant for the defendant to be liable to the claimant in tort

In tort, no contractual relationship need exist between claimant and defendant. A number of remedies are available to a victim of a tort, such as an injunction or compensation. Torts are heard in the civil court system. The burden of proof is generally on the claimant unless *res ipsa loquitur* is established.

Syllabus area B4(a)

7.9 The name of the defendant's business is similar enough to the claimant's to mislead the consumer

'Passing-off' involves the use of a business name, trademark or description that is similar enough to another business so that the consumer is misled to believe that one business is that of another.

Syllabus area B4(b)

7.10 Was there a relationship of proximity between the parties?, Is it fair, just and reasonable to impose a duty of care on the defendant?

The three questions that must be asked to establish a duty of care are: Was the harm reasonably foreseeable? Was there a relationship of proximity between the parties? and is it fair, just and reasonable to impose a duty of care?

Syllabus area B4(c)

7.11 Defendants are not expected to ensure that all possible precautions against risk are taken if the cost of the precautions outweigh the risk

Defendants are not expected to take precautions if the cost or disruption caused outweighs the risk. Where there is a high probability of injury the defendant should take extra care. Social benefit of a defendant's actions may protect them from liability. A professional is expected to show the same level of skill as a reasonable person possessing the same skill.

Syllabus area B4(c)

7.12 Multiple possible reasons for the injury with no one act being established as the cause

Where there are multiple possible causes, the court must establish that the negligent act was the one that caused the injury. If this is not possible then causality is not established. The other options are examples of circumstances that will not prevent causality being established.

Syllabus area B4(d)

7.13 Pure financial losses caused by negligent misstatements are not recoverable – False

Auditors do not owe a duty of care to members of the public who rely on published accounts for investment decisions – True

Pure financial losses are recoverable if they are caused by negligent misstatements of professionals. Auditors do not owe a duty of care to members of the public who rely on published accounts for investment decisions (*Caparo Industries plc v Dickman and others*).

Syllabus area B4(f)

7.14 Where they prepare a statement for general public circulation where it is unknown who may rely on the information and for what purpose – No duty of care owed

Where they produce information for a particular person, in the knowledge that the person will rely on the information when making a decision about a transaction – Duty of care owed

A duty of care will be owed if a special relationship is established between the accountant and the person relying on their work. For a special relationship to exist, the accountant must know who will rely on the information and what purpose it will be used for.

Syllabus area B4(f)

7.15 The parent company, The subsidiary company

Following the *Caparo* decision, the auditors do not owe a duty of care to the shareholders of the parent company. There is no special relationship with the rival company, so no duty of care is owed to that.

Following the cases of *Barings plc and Cooper & Lybrand 1997* and *BCCI (Overseas) Ltd v Ernst & Whinney 1997*, the auditors of a subsidiary company owe a duty of care to both the parent and subsidiary companies.

Syllabus area B4(f)

8 MTQ Bank 1

8.1 (a) The correct answers are:

An offer is a definite promise to be bound on specific terms.

An offer can be made to a specific class of person.

An offer is a definite promise to be bound on specific terms. It must be certain in its terms and can be made to a particular person or to a class of persons. Offers can be made in a number of forms such as verbally or in writing.

(b) The correct answer is: An invitation to treat.

It is generally accepted that goods displayed in a shop window give rise to an invitation to treat (*Fisher v Bell 1961*).

(c) The correct answers are:

- Chas – Binding contract
- Dave – No binding contract

Because the parties negotiated face-to-face it is likely that the use of the post is outside the contemplation of the parties and therefore any acceptance should not be by post. However, Chas' acceptance arrived within the stipulated time and therefore an enforceable contract for sale exists from this point.

It is probable that Dave, however, has not entered into an enforceable contract for sale with Ann because his acceptance was not communicated by noon on Monday and the postal rule was not in the reasonable contemplation of the parties.

8.2 (a) The correct answer is: Unilateral contract.

In a unilateral contract, the party whose performance is sought is not obligated to act, but if they do, the offeror is bound to comply with the terms of the agreement. In a bilateral contract both parties are bound by an exchange of promises. The offer of a reward for some kind of performance is therefore a unilateral contract. Contract by deed and estoppel are unrelated to offers of reward.

(b) The correct answer is: Cid may not claim for the work he did to solve the Brag problem because the offer was not made to him.

The terms of Ace Ltd's offer clearly state that it is open to employees of Ace Ltd only. In general, offers can be made to the world at large, but where they are addressed to a specific group of people then only those within that group can accept them. Therefore Cid has no right to claim anything from Ace Ltd.

(c) The correct answer is: Ed may claim for the work he did to solve the Brag problem because he started work before Ace Ltd revoked its offer.

Usually an offeror may revoke their offer at any time before acceptance. However this is not the case in unilateral contracts and revocation is not possible once the offeree has begun to perform the task specified in the offer. Ed is an employee and therefore included in the terms of the offer. The rule on revocation still applies to employees. Ace Ltd is not permitted to revoke the offer and therefore since he solved the problem before the deadline Ed is entitled to the reward. The value of work done is not relevant as any work done has some value of consideration.

8.3 (a) The correct answer is: A promise made under contract law cannot be retracted if the person to whom the promise was made relies on it.

Promissory estoppel is the principle that a promise made under contract law cannot be retracted if the person to whom the promise was made relies on it.

(b) The correct answers are:

- Ad – Debt is recoverable
- Bi – Debt is not recoverable
- Cas – Debt is not recoverable
- Dex – Debt is recoverable

Zri's agreement to accept only half of the debt is unsupported by consideration from Ad and therefore he may still claim the remaining amount. Ad may try to claim he cannot do so because of his promise to waive the fees and therefore the doctrine of promissory estoppel applies. However, it does not appear from the scenario that Ad relied on the promise so the doctrine would not apply and Zri should be able to recover the remaining debt from him.

Zri agreed to accept accountancy work from Bi as a payment in kind and payment in another form is valid consideration for a promise to waive part of a debt (*Anon 1495*). Zri therefore may not recover any further sum from Bi.

Although Zri accepted part-payment from Cas, the part-payment came from a third party and payment from a third party is valid consideration to waive a debt (*Welby v Drake 1825*). Zri therefore cannot enforce the remainder of the debt.

A court is unlikely to find Dex's offer of childcare as valid consideration for her debt because it has no value to Zri. This is due to the fact that he does not have any children and therefore no need for childcare. Therefore the debt is recoverable.

8.4 (a) The correct answers are: Excludes all liability on a contract altogether, Restricts liability on a contract by limiting damages

An exclusion or exemption clause, can be defined as 'a clause in a contract which purports to exclude liability altogether or to restrict it by limiting damages or by imposing other onerous conditions'.

(b) The Unfair Contract Terms Act 1977 applies to commercial contracts such as in this situation. It divides exclusion clauses into two types; those that are void and those that are valid only as far as they are reasonable. Under s 2, liability for personal injury or death due to negligence may never be excluded. An exemption for loss due to negligence in other circumstances will be valid only insofar as it is reasonable. Reasonableness is to be considered with reference to the parties' obligations of skill and care.

The correct answers are:

- Damage to truck – will receive damages. The exclusion clause seeking to exempt Hazelwood Ltd from liability for the damage to Andy's truck will only be valid if it is reasonable. Courts will take into account all the circumstances that were known, or ought to have been known by the parties when the contract was made and it will be up to Hazelwood Ltd to prove that the clause was reasonable. The company would be unlikely to succeed in avoiding liability for damage to Andy's truck since it is reasonable to expect its driver not to be negligent in operating such a tow vehicle. Andy can claim damages.

- Injury to his leg – will receive damages. Taking into account s 2 of UCTA 1977, Hazelwood Ltd would not be able to rely on the exclusion clause to avoid liability for the injuries to Andy that arose from its negligence due to the actions of the towing vehicle's driver. Andy can claim damages.

8.5 (a) The correct answers are: There was a relationship of proximity between the parties, It is fair, just and reasonable to impose a duty of care

To establish a duty of care, a claimant must prove that the harm was reasonably foreseeable, there was a relationship of proximity between the parties and it is fair, just and reasonable to impose a duty of care.

(b) The correct answer is: Roger cannot claim damages from the fight organiser because the organiser can claim the defence of *volenti non fit injuria*

Volenti non fit injuria is the voluntary acceptance of the risk of injury and is a defence to a claim of negligence. It applies where the claimant expressly consented to the risk (such as on waiver forms signed by those taking part in dangerous sports), or it may be implied by their conduct.

Whilst it is not clear that Roger expressly agreed to the risk, it is reasonable for him to expect it. Roger has taken part in many fights, so he cannot argue that he was not aware of the risk – therefore the organisers are likely to be exonerated from any liability under negligence for the injuries caused to Roger.

(c) The correct answer is: Lulu has a right to claim damages in respect to her head injury but the amount she is entitled to will be reduced because she was partly to blame for it

Contributory negligence does not exonerate the defendant from their negligence completely, but their liability to pay compensation may be reduced by the courts if the injured party is proved to have contributed to the loss they suffered in some way. In the case of *Sayers v Harlow UDC 1958*, a lady was injured while trying to climb out of a public toilet cubicle which had a defective lock. The court held that she had contributed to her injuries by the method by which she had tried to climb out.

This case is almost identical to Lulu's so it is expected that the train station may use this defence and the courts will reduce damages awarded to Lulu on a percentage basis that is just and reasonable. This is typically in the range of 10% to 75%, however it is possible to reduce the claim by up to 100%.

In the tort of negligence there does not need to be a contract in place between the parties.

Although the train station may argue a defence of *volenti* it is unlikely to be upheld because it is responsible for the defective lock.

9 Contract of employment

9.1 A contract of service

An employee works under a contract of service. A self-employed person works under a contract for services.

Syllabus area C1(a)

9.2 The person owns their own tools

Ownership of tools is a classic example of an indication of being self-employed. The other options indicate that the person is an employee.

Syllabus area C1(a)

9.3 The person can register for and charge VAT

The self-employed can register and charge VAT on their services. The other options are consequences of being an employee.

Syllabus area C1(a)

9.4 Employment contracts may include terms implied by custom and practice of the industry
Employment contracts may be oral or in writing. As with all contracts, consideration is required. Terms can be implied from trade custom and practice.

Syllabus area C1(b)

9.5 To take reasonable care and skill in performing their work
Reasonable care and skill is a common law duty of an employee. Employees do not have to obey all instructions (for example they can refuse to put their health and safety at risk). They have a duty of reasonable competence, but this does not refer to qualifications.

Syllabus area C1(b)

9.6 To provide health insurance
Providing health insurance is not a common law duty of an employer. The other options are common law duties.

Syllabus area C1(b)

9.7 A trade union official wishing to carry out trade union duties
Trade union officials are entitled to time off on full pay to carry out trade union duties. Trade union members are entitled to time off to attend trade union meetings but there is no right to pay.

Syllabus area C1(b)

9.8 Is the employee so skilled that they cannot be controlled in the performance of their duties?
The integration test asks whether the person is so skilled that they cannot be controlled in the performance of their duties. Lack of control indicates the person is not integrated into the employer's organisation. The control test considers whether the employer has control over the way the employee performs their duties. The multiple (economic reality) test considers whether the employee works on their own account.

Syllabus area C1(a)

9.9 Rob – who is provided with his work tools by his employer
The provision of work tools by an employer is a sign that the person is an employee. The other options indicate the person is self-employed.

Syllabus area C1(a)

9.10 The employer is vicariously liable for the tortious acts of the employee performed in the course of employment, PAYE tax is deducted by the employer from the employee's salary
Vicarious liability and the deduction of PAYE tax are consequences of being an employee. The other options are consequences of being self-employed.

Syllabus area C1(a)

9.11 The self-employed are entitled to a minimum notice period
The self-employed are not entitled to a minimum notice period.

Syllabus area C1(a)

9.12 Two months
The written statement of prescribed particulars must be provided within two months following the commencement of employment.

Syllabus area C1(b)

9.13 Workplace childcare
There is no right to workplace childcare.

Syllabus area C1(b)

9.14 Flexible working on return to work

An employer may reasonably refuse a request for flexible working.

Syllabus area C1(b)

9.15 An itemised pay slip, A minimum hourly wage

Employees are entitled to an itemised pay slip and a minimum hourly wage rate. Parental leave is available but it is unpaid. Under the Working Time Regulations 1998, an employee's hours in a 17-week block should not exceed 48 hours in each seven-day period.

Syllabus area C1(b)

10 Dismissal and redundancy

10.1 Ten weeks

Employees with between two and ten years of continuous service are entitled to one week's notice for every year of employment.

Syllabus area C2(a)

10.2 Summary dismissal

Dismissal without notice is known as summary dismissal.

Syllabus area C2(b)

10.3 When they are summarily dismissed without justification

Wrongful dismissal occurs when an employee is summarily dismissed without justification. This means they did not receive the correct notice period. A claim for wrongful dismissal seeks compensation for the loss of notice period.

Syllabus area C2(c)

10.4 A wrongfully dismissed employee is expected to mitigate their loss by seeking alternative employment

Damages for wrongful dismissal are to recover lost earnings. They do not include an amount for mental distress and wrongful dismissal is not a criminal offence.

Syllabus area C2(c)

10.5 Pregnancy of the employee

An employee who is pregnant is exempt from the need to have a minimum period of continuous service before being able to claim unfair dismissal. In the other cases, the employee is required to have a minimum of two years' continuous service in order to claim unfair dismissal.

Syllabus area C2(d)

10.6 A basic award is determined by the age, salary and length of service of the employee and is subject to a statutory maximum

A basic award is subject to a statutory maximum but is based on the employee's age, pay and length of service. A compensatory award is subject to a statutory maximum. Additional awards are only granted where the employer does not comply with an order for reinstatement or re-engagement.

Syllabus area C2(e)

10.7 2 years

An employee must have a minimum of two years' continuous service before being entitled to redundancy pay.

Syllabus area C2(f)

10.8 One week

An employee who has been continuously employed for over a month must give a minimum of one week's notice to their employer if they decide to leave.

Syllabus area C2(a)

10.9 The employee resigns after they are required to work 40 hours per week when they are contracted to work 30
Constructive dismissal occurs where the employer resigns following their employer's breach of contract.
Dismissal without correct notice and justification is wrongful dismissal. Dismissal without notice is summary dismissal.

Syllabus area C2(b)

10.10 Misconduct, Gross negligence

Only serious misbehaviour by the employee will justify summary dismissal. Misconduct and gross negligence are serious reasons. Lateness and failure to follow a dress code are unlikely to warrant summary dismissal.

Syllabus area C2(c)

10.11 Damages

Wrongful dismissal involves a breach of contract and damages are payable for the loss of notice period only. The other remedies are for unfair dismissal.

Syllabus area C2(c)

10.12 Employee resigning

The resignation of an employee does not count as dismissal in an unfair dismissal case. The other options are examples of dismissal for unfair dismissal purposes.

Syllabus area C2(d)

10.13 Lack of capability or qualifications

Capability or qualifications is a fair reason for dismissal. The other options are unfair reasons for dismissal.

Syllabus area C2(d)

10.14 Compensation may be reduced if it is greater than lost earnings

Compensation for unfair dismissal is a statutory concept, not just based on common law principles relating to breach of contract. It will not be reduced just because it may exceed lost earnings. The other options are circumstances where an award may be reduced.

Syllabus area C2(e)

10.15 They could have been dismissed for misconduct before the redundancy notice, They unreasonably refuse a renewal to their contract

Employees who were or could have been dismissed before the redundancy notice cannot claim a redundancy payment. An employee who unreasonably refuses a renewal to their contract cannot claim a redundancy payment. A claim can be made within six months and those involved in strike action after the redundancy notice can claim a redundancy payment.

Syllabus area C2(f)

11 MTQ Bank 2

11.1 (a) The correct answers are:

- Maternity and paternity rights
- Rights as a preferential creditor if the employer goes into liquidation

If the worker is an independent contractor than the employer is generally **not** vicariously liable for their actions. PAYE is deducted from the salaries of employees only.

(b) The correct answers are:

- Professional – Independent contractor
- Techie – Independent contractor
- Mechanic – Employee
- Temp – Employee

The issue regarding the 'professionals' is their integration with the company. Using the integration test, the courts consider whether the employee is so skilled that they cannot be controlled in the performance of their duties. In *Cassidy v Ministry of Health 1951* a doctor was held to be an employee as they were selected for a particular task and integrated into the organisation to perform certain surgical operations. If patients had the right to choose the doctor, this would indicate that the doctor was not so integrated and they would have been treated as an independent contractor. It is therefore likely that the 'professionals' will be classified as independent contractors.

The issue regarding the 'techies' is the degree of control the company has over them. Using the control test, a court will consider whether the employer has control over the way in which the employee performs their duties. Where it appears that the 'employer' may control how the 'employee's' duties are performed, then they will be treated as an employee; *Mersey Docks & Harbour Board v Coggins & Griffiths (Liverpool) 1947*. Gem Ltd has very little control over how the 'techies' do their work and therefore they will be classified as independent contractors.

Using the economic reality (multiple) test, courts focus on whether the 'employee' was working on their own account and this requires numerous factors to be considered. One of these factors is whether it is the employee or employer who provides work tools. Because Gem Ltd provides the 'mechanics' tools, they will be considered as employees.

A court is likely to find the 'temps' to be employees because of the control test. The company controls where they work and how they perform their tasks. Therefore they are likely to be considered as employees.

11.2 (a) The correct answers are: The employer repudiating an essential term of the employment contract, The resignation of the employee

Constructive dismissal takes place where the employer repudiates some vital term of the employment contract and, despite the employer's willingness to continue the employment, the employee resigns because of it. No notice of termination is served on either party. In such cases, the employer is liable for breach of contract and unfair dismissal.

(b) The correct answers are:

- Gus has been constructively dismissed – True
- Gus can claim wrongful dismissal – False
- Gus can claim unfair dismissal – True
- Gus can claim redundancy – False

Fine Ltd has repudiated a vital term of Gus's contract (location) and Gus resigned because of it. There appears to be no mobility clause in Gus's contract that would require him to relocate. Therefore Fine Ltd has constructively dismissed Gus and he can therefore claim compensation for unfair dismissal.

There can be no redundancy or wrongful dismissal as Gus has not been dismissed by Fine Ltd.

11.3 (a) The correct answer is: Grace has been fairly dismissed

Grace has been dismissed because her employer has closed her shop and therefore no longer requires a shop manager. This means that it has ceased carrying on the business in which the Grace has been employed and therefore Grace has been made redundant. Redundancy is a fair reason for dismissal.

(b) The correct answers are: Employment must be in the same capacity as the old employment, Employment must be on the same terms as the old employment

An employer may choose to offer a redundant employee alternative employment. If the employee unreasonably refuses the offer, they lose their entitlement to a redundancy payment. Broadly speaking, the alternative employment must be in the same capacity, at the same place and on the same terms and conditions as the old employment. It should not be perceived as being lower in status.

(c) The correct answer is: Grace will be entitled to financial compensation of three weeks' salary up to a statutory maximum

Grace has been employed for three years and is 33 years old. According the rules of statutory redundancy pay she is entitled to a redundancy payment of one week's pay per complete year of employment. She will therefore receive three weeks' pay (although a week's pay is subject to a statutory maximum).

11.4 (a) The correct answers are: Integration, Control

The distinction between employees and independent contractors depends on many factors. The courts will primarily look at the reality of the situation rather than accept the form of the arrangement at face value. Initially, they will look at the relationship between the parties and any agreement between them. Where the 'employee's' status is still unclear, a series of tests will be applied; the control, integration and economic reality (multiple) tests.

(b) The correct answers are:

- Fred – Not entitled to compensation
- Eve – Entitled to compensation

Using the three tests it would appear that Fred is self-employed. The main reason for this is the fact that Dan has little control over Fred's work. For example, he can work at home, on other projects and even delegate his work to others if he so decides. As self-employed, Fred has no rights with regard to his loss of work and may not claim any payment or compensation from Dan.

Using the same tests it would appear that Eve is an employee. This is because Dan exercises sufficient control over her work, for example by not allowing her to take on other work and requiring her to attend his premises every day. As an employee, Eve has the right to claim redundancy because her services are no longer required by Dan. She will be able to claim a redundancy payment, calculated using the rules already discussed.

11.5 (a) The correct answers are:

- Capability
- Redundancy

When a case comes before an employment tribunal it is for the employer to prove that the dismissal was for a fair reason (capability, conduct, redundancy, legal prohibition or another substantial reason).

(b) The correct answers are:

- Fred – Unfairly dismissed
- Gale – Unfairly dismissed
- Hannah – Fairly dismissed
- Igor – Fairly dismissed

Fred feels that his confrontations with Jack is related to an automatically unfair reason for dismissal (trade union membership), and he has evidence that this is why he was dismissed.

Gale is pregnant and has been dismissed. Pregnancy is an automatically unfair reason for dismissal that cannot be disputed.

Although taking steps to avert health and safety issues is an unfair reason for dismissal, Hannah cannot claim unfair dismissal because she has not been employed for two years.

Expiry of a fixed-term contract may be an unfair reason for dismissal, however in Igor's case the reason for the non-renewal is redundancy and therefore he cannot claim unfair dismissal.

12 Agency law

12.1 Principal and third party

In an agency relationship, the purpose of the agent is to form a contract between the principal and a third party.

Syllabus area D1(a)

12.2 Either oral or written agreement

Express agreements can be oral or in writing.

Syllabus area D1(b)

12.3 Agency by estoppel

Agency by estoppel occurs where one party 'holds out' to another that a person is acting as their agent.

Syllabus area D1(b)

12.4 Implied authority

Express authority is the authority actually granted by the principal to the agent. Ostensible authority is the authority that the agent represents to others that the agent has. What is usual or customary in the circumstances is implied authority.

Syllabus area D1(c)

12.5 Express and implied authority

The combination of express and implied authority is known as an agent's actual authority.

Syllabus area D1(c)

12.6 Agent

Unless circumstances indicate otherwise, the principal and third party will be liable under a contract formed by an agency relationship.

Syllabus area D1(d)

12.7 A third party and principal do not need to be in direct contact for a binding contract between them to be formed

Only the principal and third party have rights and obligations under a contract formed under an agency relationship. Direct contact between them is not required to form a binding contract; the agent acts as a 'middle man' between them.

Syllabus area D1(d)

12.8 Partner

Accountancy practices are run as partnerships by partners.

Syllabus area D1(a)

12.9 The principal must communicate their ratification of the contract clearly to the third party

The principal must have existed and had legal capacity when the contract was formed. The entire contract must be ratified. The principal must communicate their ratification clearly to the third party.

Syllabus area D1(b)

12.10 Agency by implied agreement, Agency by estoppel

Agency by estoppel and implied agreement are known as agency without consent. A principal expressly consents to agency by express agreement and ratification.

Syllabus area D1(b)

12.11 There is no agency agreement but the principal states publicly that a person is their agent – Agency by estoppel.

There is no agency agreement but the principal looks after another person's property when they cannot be contacted – Agency by necessity.

Agency by estoppel is created when a person 'holds' out that a person is their agent when in fact no agency agreement exists between them. Agency by necessity is created, often in emergency situations, where a person takes control over another person's property, usually when they are out of contact or where time is of the essence.

Syllabus area D1(b)

12.12 The authority that is usual in the circumstances and what the principal impliedly gives the agent

Ostensible authority includes whatever is usual in the circumstances plus whatever the principal impliedly gives the agent.

Syllabus area D1(c)

12.13 Where a principal has represented a person to third parties as being their agent, despite not actually appointing the person as such

An agent's apparent authority is determined by what the principal has represented to others. A principal telling the agent their authority is express authority. A third party determining the authority to be based on what is usual in the circumstances is implied usual authority.

Syllabus area D1(c)

12.14 Performance by the principal of their contractual obligations

The death, insanity or bankruptcy of a principal or agent will terminate the agency relationship. Otherwise agency will continue until the parties agree to terminate the relationship.

Syllabus area D1(c)

12.15 Where it is usual business practice for the agent to be liable, Where the agent acts on their own behalf even though they purport to be acting for the principal

An agent will be liable on a contract if they intended to take personal liability, where it is usual business practice for them to be liable or where they act on their own behalf even though they purport to be acting for the principal.

Syllabus area D1(d)

13 Partnerships

13.1 A partner can be an individual living person or a registered company

A partner can be an individual person or a registered company. A partnership must just have the intention to be profitable and it can exist for a single business transaction.

Syllabus area D2(a)

13.2 Limited partnership

In a limited partnership there is a partner who invests in the business but does not take part in the day-to-day running of the business.

Syllabus area D2(a)

13.3 A decision by the partners to set up business together

To form an unlimited liability partnership the partners just need to decide to set up business together.

Syllabus area D2(b)

13.4 What is agreed between the partners

Partnership authority is based on agency law. Actual authority is determined by what the partners agree.

Syllabus area D2(c)

13.5 Retiring partners are liable only for existing partnership debts when they leave, unless third parties are notified that they have retired

Retiring partners are liable for existing partnership debts, and those incurred after their retirement, unless third parties are notified of their retirement. This is because as far as third parties are aware, a partner is a partner until they are told they are no longer so.

Syllabus area D2(d)

13.6 Bankruptcy of a partner

The bankruptcy of a partner will terminate the partnership.

Syllabus area D2(d)

13.7 External debts

When a partnership is terminated, external debts are paid off first.

Syllabus area D2(e)

13.8 The partnership dissolves when a partner leaves

An LLP must have two designated partners responsible for the publicity requirements of the partnership. A written partnership agreement is not required to form the partnership. The partnership does not dissolve when a partner leaves and is not exempt from audit.

Syllabus area D2(a)

13.9 The partnership is liable for its own debts

An LLP is liable for its own debts. Partners are only liable for partnership debts up to the amount of their capital contribution. LLPs do have to file accounts with the Registrar of Companies and all partners may take part in the day-to-day running of the partnership.

Syllabus area D2(a)

13.10 Terms in the agreement override terms implied by the Partnership Act 1890, Written partnership agreements are not required on formation and may be created at any point in the life of the partnership

Written partnership agreements are not required on formation of a partnership and, like any contract, may be created at any point. Terms in a written partnership agreement override terms in the Partnership Act 1890. They are not required by law when there are 20 partners and do not have to be in the form of a deed.

Syllabus area D2(b)

13.11 Partnerships can grant fixed charges only

Partnerships can only grant fixed charges.

Syllabus area D2(d)

13.12 Existing partnership debts on the day they are admitted to the partnership – Not liable.

All partnership debts incurred after their admission to membership – Liable.

New partners are only liable for partnership debts incurred after their admission to membership.

Syllabus area D2(d)

13.13 Formal liquidation

To dissolve an LLP, it needs to be liquidated, in a similar way to a company.

Syllabus area D2(e)

13.14 Partners' share of partnership profits

Any surplus profit after all the other debts are repaid is distributed to the partners in the profit sharing ratio.

Syllabus area D2(e)

13.15 Notice by a partner, The end of an agreed fixed period of time for the partnership

Under the Partnership Act 1890, notice by a partner and the end of an agreed fixed period of time for the partnership will result in its termination.

Syllabus area D2(e)

14 Corporations and legal personality

14.1 No formal procedures to set up the business

A benefit of running a business as a sole trader is that there are no formal procedures involved in setting one up. High dependence on the owner and an absence of economies of scale are disadvantages of being a sole trader.

Syllabus area D3(a)

14.2 All of a sole trader's profits accrue to the owner

All profits of a sole trader accrue to the owner. The business is not legally distinct from the owner and sole traders may need to register for VAT.

Syllabus area D3(a)

14.3 The amount of share capital they have purchased, including any amounts outstanding on the shares that they own

In a company limited by shares, a member's liability is limited to the amount of company share capital they have purchased, including any amounts outstanding.

Syllabus area D3(b)

14.4 A company limited by guarantee

Companies limited by guarantee do not have share capital.

Syllabus area D3(c)

14.5 £50,000

The minimum issued share capital of a public company is £50,000.

Syllabus area D3(c)

14.6 The company is liable for its own debts

Separate legal personality means that the company is responsible for its own debts. Members and directors are not protected from the force of the law because the veil of incorporation can be lifted. Members are liable up to the amount they have contributed in share capital if the company is insolvent.

Syllabus area D3(d)

14.7 Where a director commits fraudulent trading

Out of all the options, the courts will only lift the veil of incorporation with regard to fraudulent trading by a director.

Syllabus area D3(e)

14.8 The business is run by one person who is not legally distinct from the business

A sole trader business is run by a single person who is not legally distinct from the business. The other options may be true for a sole trader, but they may also be true for various types of company and partnership as well.

Syllabus area D3(a)

14.9 A company limited by shares

Out of the options, a company limited by shares is the only one available to the group that will limit their liability to an amount that they agree to when the company is formed. On formation, each member will agree to a limit on their liability – the nominal value of their shares.

Syllabus area D3(b)

14.10 A public company must have a minimum of two directors. A public company cannot be an unlimited liability company

A public company is required to have a minimum of one member and two directors. Public companies cannot have unlimited liability. Public company names must end with 'plc'.

Syllabus area D3(c)

14.11 Net profit of no more than £1.0 million

Net profit is not a criteria that must be met when qualifying for the small companies' regime. The other options are valid criteria.

Syllabus area D3(c)

14.12 Listed company

A public company does not have to have its shares traded on a public stock exchange. If it does so, then it becomes known as a listed (or quoted) company.

Syllabus area D3(c)

14.13 A company is a parent company if it holds debentures in another company

Holding debentures in a company does not make that company a subsidiary. The other options are correct statements in regards to parent companies.

Syllabus area D3(c)

14.14 Separate legal personality can be ignored in certain circumstances

Separate legal personality can be ignored in certain circumstances (this is known as lifting the veil of incorporation).

Syllabus area D3(d)

14.15 To allow directors of insolvent companies to be found liable for the debts of the company, To treat a group company as a single economic entity

The veil may be lifted to allow directors of insolvent companies to be found liable for their debts or to identify a group as a single economic entity. Lifting of the veil is not required in the other two options.

Syllabus area D3(e)

15 Company formation

15.1 Reasonable skill and care

The general duty of a promoter is reasonable skill and care.

Syllabus area D4(a)

15.2 Pre-incorporation contracts cannot be ratified by the company

Legally, pre-incorporation contracts cannot be ratified by the company.

Syllabus area D4(b)

15.3 The company

The promoter and third party are liable on a pre-incorporation contract. The company never is.

Syllabus area D4(b)

15.4 It must obtain a trading certificate from the Registrar of Companies

Before it can trade, a public company must be issued with a trading certificate from the Registrar of Companies. None of the other options are criteria for obtaining a trading certificate.

Syllabus area D4(c)

15.5 It must have obtained a certificate of incorporation from the Registrar of Companies

A private company can trade as soon as it has obtained a certificate of incorporation from the Registrar of Companies. No trading certificate is required.

Syllabus area D4(c)

15.6 Register of debentureholders

Keeping a register of debentureholders is not a legal requirement, although most companies will hold such a register. The other options are company books that a public company is required by law to keep.

Syllabus area D4(d)

15.7 The register must include a service address for each director

A register of directors must include a service address for each director. It does not include a list of shadow directors. It should be available for members to inspect for free.

Syllabus area D4(d)

15.8 Promoter

The role of a promoter is to form a company.

Syllabus area D4(a)

15.9 A promoter that acts as an agent for others must not put themselves into a position where their own interests clash with that of the company they are forming

Where a promoter acts as an agent for others, they must not put themselves into a position where their own interests clash with those of the company. Accountants acting in a professional capacity are not promoters. A promoter may make a legitimate profit as a result of their position. There is nothing to stop a promoter from owning shares in the company that they form.

Syllabus area D4(a)

15.10 Buying an 'off-the-shelf' company, Novating the contract

Buying an 'off-the-shelf' company and novating the contract are two ways that a promoter can avoid liability on a pre-incorporation contract. The other options will not prevent the promoter from being liable.

Syllabus area D4(b)

15.11 Articles of association

All the documents, except for the articles of association, must be sent to the Registrar to register a company. If articles of association are not submitted then the company will be issued with model articles relevant to the type of company being formed.

Syllabus area D4(c)

15.12 6/1/X1

The date on the certificate of incorporation is conclusive proof of the date of incorporation.

Syllabus area D4(c)

15.13 If its share capital falls below £50,000

A public company must re-register as a public company if its share capital falls below £50,000.

Syllabus area D4(c)

15.14 Filing a copy of each company's Register of Members

The Registrar is responsible for registering all companies and for issuing Certificates of Incorporation. They also file copies of special resolutions sent in by each company. The Register of Members is only held by the company itself.

Syllabus area D4(d)

15.15 Private companies must keep their accounting records for three years, Public companies must keep their accounting records for six years

Private companies must keep their accounting records for three years, public companies for six years.

Syllabus area D4(d)

16 Constitution of a company

16.1 The subscribers

It is the subscribers who sign the memorandum of association.

Syllabus area D4(e)

16.2 Model articles of association describe how the company is to be managed and administered

Model articles of association describe how the company is to be managed and administered. Companies can use any version of model articles that they like and members are free to amend their contents.

Syllabus area D4(f)

16.3 Clauses relating to the mission statement of the company

Model articles of association may refer to the objects of the company, but this is not the same as the mission statement. The other options are examples taken from the content of model articles.

Syllabus area D4(f)

16.4 A company requires a special or written resolution with a 75% majority to change its articles

A special or written resolution with a 75% majority is sufficient to change a company's articles. There is no restriction on the number of times per year the articles may be changed. Copies of the amended articles must be submitted to the Registrar within 15 days of the amendment taking effect.

Syllabus area D4(g)

16.5 Changes that conflict with the Companies Act

Changes to company articles that conflict with the Companies Act are void. The other options are valid changes.

Syllabus area D4(g)

16.6 A company may be required to change its name if it is deemed offensive by the Secretary of State

A company may be required to change its name if it is deemed offensive. It may set its own rules for changing its name, and names that suggest a connection with the Government are permitted providing the appropriate permission is granted.

Syllabus area D4(h)

16.7 A company may change its name but not its domicile

A company may change its name but not its domicile.

Syllabus area D4(h)

16.8 The company

A company's constitution contractually binds the company and members in their capacity as members.

Syllabus area D4(e)

16.9 The contract will be binding on the company and the third party

S 40 of the Companies Act 2006 protects the interests of third parties when a contract with a company is outside the scope of the company's objects.

Syllabus area D4(e)

16.10 Payment of dividends, Appointment of directors

Payment of dividends and appointment of directors are included in the content of model articles of association. Payment of charitable donations and formation of a remuneration committee are not included.

Syllabus area D4(f)

16.11 The content of model articles of association includes clauses relating to communication with members

Communication with members is covered by model articles of association. Model articles differ depending on the type of company. They do not contain clauses on remuneration of employees or ethical treatment of suppliers.

Syllabus area D4(f)

16.12 Ordinary resolution of a plc – Insufficient.

Written resolution of a private company with a 75% majority – Sufficient.

Altering a company's constitution requires passing with a special resolution or a written resolution with a 75% majority.

Syllabus area D4(g)

16.13 An alteration may not compel members to purchase more shares in the company – True.

An alteration must be bona fide for the benefit of all the company's members – False.

Alterations may not compel members to subscribe for more shares and must be bona fide for the benefit of the company as a whole. This may mean some members feeling that their interests are damaged by it.

Syllabus area D4(g)

16.14 No name may be offensive or sensitive as defined by the Secretary of State

No name may be offensive or sensitive as defined by the Secretary of State. Some private companies may omit 'Ltd' from their name. Names that suggest a connection with the government are not void but official approval is required to use them. Welsh companies are not required to end their name with '(Cym)'.

Syllabus area D4(h)

16.15 A company can be prevented by a court injunction from using its name, even if it is properly registered, Courts can refuse an injunction to prevent the use of a company name if the businesses are sufficiently different in nature

An injunction can prevent the use of a properly registered company name. A court may refuse an injunction if the businesses are sufficiently different in nature because the chance of customer confusion is low. Courts and the Company Names Adjudicators may change a company's name if necessary. Failure to refer to the Company Names Adjudicators first will not stop a passing-off action from succeeding.

Syllabus area D4(h)

17 MTQ Bank 3

17.1 (a) The correct answer is: All of the partners are liable to repay the overdraft because Sam had authority to withdraw the funds.

Sam has taken money from the firm's bank account to use for a personal holiday. However, as a partner, and in the absence of any specific mention to the contrary in the agreement, he has authority to withdraw money from the bank account. His action has therefore incurred a debt to a third party that is owed by all three partners, not just himself, and if he cannot repay the money to the bank, the bank is entitled to sue the other partners for the balance.

(b) The correct answer is: All of the partners are liable because Tam has apparent authority to enter into the contract on behalf of the partnership.

Tam entered into a contract to buy bicycles in the name of the partnership. The partnership agreement specifies that the partnership should only sell petrol, so Tam does not have authority to undertake this contract. However, the third party is not privy to the partnership agreement so is not aware that the contract is beyond the scope of the partnership. Tam has apparent authority to undertake the contract on behalf of the other partners who are liable on the contract.

(c) The correct answer is: Ham, Sam, Tam and Cam.

Purchasing petrol is a normal part of business for this partnership. Whoever made the contract would have had authority to do so and bound the other partners to the contract. Cam is liable because the creditors were not notified of his retirement until May 20X8.

17.2 (a) The correct answer is: The business is viewed as a legal person in its own right, separate from its owners.

Separate corporate personality means that a company is distinct as a separate legal person from its owners, directors, employees and other business organisations. The distinction between a company and its members was clearly set out in *Salomon v Salomon & Co Ltd 1897*.

(b) A consequence of registering his business as a company is separate legal personality and limited liability. The benefits to Mick are:

- The company, rather than Mick, will be liable for any negligence claims made against the business.
- The limit of Mick's liability in respect of the business will be any amount unpaid on his shares.
- The company can enter into the new contracts in its own right because they have not yet been entered into.

However, Mick will still be liable on the business loan as it was entered into before formation of the company.

17.3 (a) The correct answers are: The company's creditors may not demand payment for the company's debts from the members, The limit of the members' liability is the amount unpaid on their shares.

A consequence of limited liability is that a company itself is liable without limit for its own debts. If the company buys goods from a supplier it owes the supplier money. Limited liability is a benefit to members. They own the business, so might be the people whom the creditors logically ask to pay the debts of the company if the company is unable to pay them itself. Limited liability prevents this by stipulating the creditors of a limited company cannot demand payment of the company's debts from members of the company (*MacDonald v Costello 2011*). The limit of a member's liability is any amount unpaid on their shares.

(b) The correct answer is: A court may lift the veil of incorporation to enforce the clause against Fitt. Fitt has a legal obligation not to pursue Doc's clients and by setting up Gen Ltd he has attempted to use the veil of corporate personality to evade this obligation. The case of *Gilford Motor Co Ltd v Horne 1933* suggests that the court would find in favour of Doc and enforce the agreement between Doc and Fitt.

(c) The correct answer is: Doc may only pursue Ed Ltd for the debt. In the case of his contract with Ed Ltd, Doc cannot pursue Ed Ltd's debt by suing Ed. This is because Ed is only a member of Ed Ltd and has no liability for the company's debts (*Salomon v Salomon & Co Ltd 1897*).

17.4 (a) The correct answer is: Don is liable on the contract as Eden plc was not in existence when it was formed. The general rule is that a promoter is personally liable on any completed pre-incorporation contract entered into with a third party. A pre-incorporation contract is a contract purported to be made by a company or its agent at a time before the company has received its certificate of incorporation. In the situation involving the computer equipment, the directors of Eden plc are not legally bound to honour the purported contract with the supplier. The supplier will have to take action against Don for breach of contract.

(b) The correct answers are:

- Patent – not enforceable. There is no contract involving the company because the company did not exist when the contract was formed. If the other party does not wish to proceed with the agreement, the directors of Eden plc will be unable to show any obligation for them to do so.
- Business equipment – not enforceable. There is no contract since Eden plc does not wish to pursue the arrangements with Fad Ltd. Fad Ltd therefore has no cause of action against either Don or the company. This is because the 'contract' was 'subject to adoption by Eden plc' and this condition never happened – therefore the contract is not valid.

17.5 (a) The correct answer is: The company's shareholders. The Companies Act 2006 provides that a company's articles of association bind a company to its members (the shareholders), the members to the company and members to members. Members are deemed to have separately covenanted with each other and the company to observe the provisions of the articles.

(b) The correct answers are: Special resolution, Written resolution. A company's articles of association may be altered by passing a special resolution to that effect in general meeting. As a private company, Glad Ltd may also pass a written resolution to the same effect with a 75% majority.

(c) The correct answer is: No – because requiring 'any member' to transfer their shares at a fair price does not benefit the company. A change to a company's articles is generally valid if it is of benefit to the company, and this certainly appears to apply in Fred's case (he is in direct competition with Glad Ltd). However, in *Dafen Tinplate Co Ltd v Llanelli Steel Co (1907) Ltd 1920* a similar amendment was held to be invalid because it permitted the company to acquire the shares of any member, even if there were no specific grounds to show that it would benefit the company. The resolution actually proposed by Glad Ltd is the same because it would allow the company to acquire the shares of any member for a fair price. Therefore it is likely to be held as invalid under the facts of the *Dafen* case.

18 Share capital

18.1 1

A public company must have a minimum of one member.

Syllabus area E1(a)

18.2 Ordinary shares may or may not have voting rights attached

Ordinary shares may or may not have voting rights attached. Dividends do not have to be paid every year and ordinary shares do not entitle the shareholder to have their capital repaid ahead of other creditors on liquidation.

Syllabus area E1(b)

18.3 Treasury shares may be reissued for cash without the usual issuing formalities

Any limited company may create treasury shares by purchasing its own shares for cash or out of distributable profit. It cannot exercise voting rights attaching to the shares, but may re-issue them for cash without the usual issuing formalities.

Syllabus area E1(b)

18.4 Members of the public subscribe for shares directly to the company

A public offer is where the public subscribe for shares directly to the company. An offer for sale is an offer to the public to buy shares based on information in a prospectus. A placing involves individuals or institutions being offered shares in a small number of large blocks based on agreement to buy shares at a pre-determined price.

Syllabus area E1(c)

18.5 An offer to existing shareholders to purchase further shares in the company

A rights issue is an offer to existing shareholders to buy further shares in the company. A bonus issue is the allotment of additional shares to shareholders in proportion to their holdings.

Syllabus area E1(c)

18.6 Shares may be issued at a premium to their nominal value

Shares may be issued at a premium to their nominal value and the premium is credited to the share premium account. Therefore shares do not have to be issued at their nominal value. Shares must not be issued at a discount to their nominal value.

Syllabus area E1(d)

18.7 Where a shareholder did not pay the full nominal value of their share on issue, the debt transfers to the new shareholder if the share is sold

The company does not have to receive the full nominal value of the share when it is issued. Such shares are known as partly-paid shares. Any balance owing on partly-paid shares transfers to the new shareholder if the share is sold.

Syllabus area E1(d)

18.8 The amount the company has required shareholders to pay on existing shares

Called-up share capital is the amount the company has required shareholders to pay on existing shares. A company's issued share capital is the type, class, number and amount of shares issued to shareholders. The amount existing shareholders have paid on existing shares is the paid-up share capital.

Syllabus area E1(a)

18.9 Market value may be equal to, greater or lower than nominal value

A share's market value is based on the prospects of the company and may be equal, greater or lower than nominal value.

Syllabus area E1(a)

18.10 Preference shares do not normally entitle the shareholder to vote in company meetings, Preference shareholders usually have a right to have their capital returned in the event of a liquidation ahead of ordinary shareholders

Preference shareholders do not usually have the right to vote in company meetings but they do have the right to have their capital repaid ahead of ordinary shareholders in the event of a liquidation. On liquidation, preference shareholders usually have no right to share in any surplus assets. A company is not compelled to pay a dividend on preference shares.

Syllabus area E1(b)

18.11 Changing the amount of dividend payable to a class of preference share

Class rights are rights that attach to a specific class of share. It would therefore be a variation of class rights if the amount of dividend payable on a class of preference share is changed. The other options are examples of what does not constitute a variation of class rights.

Syllabus area E1(b)

18.12 Directors of private companies with one class of share have the power to allot shares unless restricted by the articles

Only directors of private companies with one class of share have the power to allot shares unless restricted by the articles. Directors of all other companies must have authority from the members to do so.

Syllabus area E1(c)

18.13 A company proposes to allot ordinary shares wholly for cash

Pre-emption rights only apply when a company proposes to allot ordinary shares wholly for cash.

Syllabus area E1(c)

18.14 A private company may allot shares for inadequate consideration by accepting goods or services at an over-value

A private company may accept goods or services for payment at an over-value. No independent valuation is required. A public company may issue shares for non-cash consideration and at least 25% of the nominal value of the shares must be paid up on allotment.

Syllabus area E1(d)

18.15 To issue fully paid shares under a bonus issue, To pay issue costs and expenses in respect of a new share issue

The permitted uses of a share premium account are to issue fully paid shares under a bonus issue or pay issue expenses and commissions in respect of a new share issue.

Syllabus area E1(d)

19 Loan capital

19.1 All companies registered under the Companies Act 2006 have an implied power to borrow

All companies registered under the Companies Act 2006 have an implied power to borrow.

Syllabus area E2(a)

19.2 All debentures rank equally

Pari passu means that all debentures rank equally.

Syllabus area E2(b)

19.3 Interest payments on debentures is mandatory, dividend payments on shares is discretionary

Interest on debentures must be paid and is tax-deductible. Dividends are only paid if the directors declare them and payment is not tax-deductible. In the event of liquidation, debentureholders have their investment repaid before anything is returned to the shareholders.

Syllabus area E2(c)

19.4 A fixed charge with a value of £2,000 registered on 1 February 20X1

A fixed charge will always have priority over a floating charge created before it if the fixed chargeholder was not aware of the other charge.

Syllabus area E2(d)

19.5 The chargee appointing a receiver

Active intervention by the chargee, such as appointing a receiver will cause the charge to crystallise. The other options will not cause the charge to crystallise.

Syllabus area E2(d)

19.6 21

Charges must be registered within 21 days of creation.

Syllabus area E2(e)

19.7 A charge may be registered late if it does not prejudice the creditors or shareholders of the company

A charge may be registered late but only if it does not prejudice the creditors or shareholders of the company.

Syllabus area E2(e)

19.8 Where directors exceed their borrowing powers, the company may ratify the loan contract if it is within the capacity of the company

A loan contract that is beyond the powers of the directors may be ratified by the company if it is within the capacity of the company. Charges are not required for a loan contract to be enforceable. Loan contracts are enforceable by the lender even if they are ultra vires.

Syllabus area E2(a)

19.9 Debenture stock

Out of the options, only debenture stock must be created using a debenture trust deed. Single and series debentures may use a debenture trust deed but this is not compulsory.

Syllabus area E2(b)

19.10 The deed creates a charge or charges over the company's assets which creates security, A single trustee of the debentureholders is appointed so the company only has to deal with one person

A debenture trust deed creates security for the debentures via charges. A single person (a trustee) is appointed. This means the company only has to deal with one person rather than a number of individual debentureholders. Debentures covered by a debenture trust deed do not have a higher priority of repayment and are not necessarily faster to sell.

Syllabus area E2(b)

19.11 Unlike loan capital, share capital does not have to be repaid

Share capital does not have to be repaid, unlike a loan which must be repaid at some point. Share capital has voting rights but loan capital does not. Loan capital offers the holder more security than share capital because it has a higher priority to be repaid and may be secured on assets by a charge. Both loan and share capital are transferrable.

Syllabus area E2(c)

19.12 A public sale of shares is known as a prospectus, the public sale of debentures is known as a listing

The public sale of shares and debentures are both known as a prospectus. The other options are true statements.

Syllabus area E2(c)

19.13 To prevent the company from issuing a subsequent charge on the same asset

A 'negative pledge' clause prevents the company from issuing subsequent charges on the same asset.

Syllabus area E2(d)

19.14 This charge attaches to an asset once an event occurs that causes it to crystallise – Floating charges.

This charge prevents the company from dealing with the charged asset without the permission of the chargeholder – Fixed charges.

A floating charge only attaches to the charged asset once an event occurs that causes it to crystallise. A fixed charge attaches to the charged asset on creation and this prevents the company from dealing with the charged asset without the permission of the chargeholder.

Syllabus area E2(d)

19.15 Charges must be registered within 21 days of creation, If a charge is not registered on time then the company and its officers who created the charge are liable to a fine

A charge must be registered within 21 days of creation or the company and officers that created it will be liable for a fine. A court order is required to rectify a mistake in the registration documents. The Registrar cannot deem non-registered charges as valid and enforceable.

Syllabus area E2(e)

20 Capital maintenance and dividend law

20.1 Companies should not make payments out of capital to the detriment of creditors

The principle of capital maintenance states that companies should not make payments out of their capital to the detriment of creditors.

Syllabus area E3(a)

20.2 A limited company is permitted without restriction to cancel its unissued shares

There are no restrictions on a limited company concerning the cancellation of unissued shares because such a change will not affect its financial position.

Syllabus area E3(a)

20.3 A special resolution and a solvency statement from the directors

A private company may reduce its share capital without application to a court if it passes a special resolution and obtains a statement of solvency from the directors.

Syllabus area E3(a)

20.4 A special resolution and court approval

A special resolution and court approval are required for a public company to reduce its share capital.

Syllabus area E3(a)

20.5 Scrip dividends

Scrip dividends are paid by issuing additional shares.

Syllabus area E3(b)

20.6 When it is declared by the company in general meeting

A dividend becomes a debt of the company when it is declared.

Syllabus area E3(b)

20.7 Capital redemption reserve

A capital redemption reserve is an undistributable reserve. Dividends may be paid out of retained earnings or accumulated realised profits.

Syllabus area E3(b)

20.8 A company's creditors

The rules on capital maintenance exist to protect the interest of a company's creditors.

Syllabus area E3(a)

20.9 Buy back fully paid up share capital from shareholders using cash not surplus profit

Buying back shares using cash not surplus profit is not a method of reducing share capital permitted by the Companies Act. The other options are valid methods of reducing share capital.

Syllabus area E3(a)

20.10 A solvency statement must be made 15 days in advance of the meeting where the special resolution concerning the reduction will be voted on. It is an offence to make a solvency statement without reasonable grounds for the opinion expressed in it

A solvency statement must be made 15 days before the meeting where the special resolution to reduce the company's share capital will be voted on. It is an offence to make a solvency statement without reasonable grounds. All the company's directors must be named on the statement and solvency statements must declare that the company should be able to pay its debts for the next 12 months.

Syllabus area E3(a)

20.11 A public company that wishes to reduce its share capital to below £50,000 must re-register as a private company

Public companies must have a minimum share capital of £50,000. If any reduction takes the value to below £50,000 then the company must re-register as a private company.

Syllabus area E3(a)

20.12 Interim dividends

Dividends paid part of the way through a company's financial year are known as interim dividends.

Syllabus area E3(b)

20.13 A depreciation charge made in the current financial year

Depreciation in the current year is a realised loss that is included in the calculation of distributable profit. Asset revaluations are unrealised and not included. Only realised profits in the current or previous financial years are included. A premium received on issuing shares goes to the share premium account and is not included in the profits available for distribution.

Syllabus area E3(b)

20.14 A public company may make a distribution as long as its net assets are not less than its share capital plus its undistributable reserves

A public company may make a distribution as long as its net assets are not less than its share capital plus its undistributable reserves

Syllabus area E3(b)

20.15 Directors are liable if they declare a dividend that they know to be paid out of capital. Members who did not know the payment was unlawful are not liable

Directors who know dividends are unlawful will be liable, but those who honestly rely on proper accounts when making the decision to pay the dividend are not liable. Liability is in civil law not criminal law. Members who did not know the payment was unlawful are not liable.

Syllabus area E3(b)

21 MTQ Bank 4

21.1 (a) The correct answer is: Issued share capital.

A company's issued share capital is the type, class, number and amount of shares actually held by its shareholders. Therefore it is the term related to the number of shares held by shareholders.

(b) The correct answer is: Paid-up share capital.

Paid-up share capital is the amount of a company's issued share capital that it has actually received payment for from the shareholders. It is therefore the term related to the amount of money received by the company from shareholders for their shares.

(c) The correct answer is: £12,500 plus the full amount of any share premium.

The Companies Act states that for a public limited company, the issued share capital must be at least £50,000 of which at least one quarter (£12,500) plus the full amount of any share premium must be paid up.

21.2 (a) The correct answer is: Shares may be issued at a premium to their nominal value but not at a discount to it.

The general rule on issuing shares states that shares may be issued at a premium to their nominal value but may not be issued at a discount to it.

(b) The correct answer is: £2,500 (the amount of Gus's unpaid share capital).

Under the Companies Act, Flop Ltd had a remaining call on Gus after the first issue for the amount left unpaid on his shares of $(10,000 \times 25p = £2,500)$.

(c) The correct answer is: £6,000 (the amount unpaid on Gus's shares) plus interest.

Flop Ltd is trying to issue shares at a 60p discount to their nominal value. This is disallowed under the Companies Act and Gus is liable for the balance $(10,000 \times 60p = £6,000)$ plus interest.

21.3 (a) The correct answer are: The priority right to a dividend granted to preference shareholders, The right to attend company meetings granted to ordinary shareholders but not preference shareholders.

A company's shares confer certain rights on the members who own them. Where only one type of share exists the rights are normally the same, however different types of share will often confer different rights. For example preference shares usually entitle the member to a fixed dividend with priority of payment over ordinary shares and priority over the repayment of capital (ahead of ordinary shares) in the event of a liquidation. Other class rights may attach regarding voting or the right to remove a director. Any share that has different rights from others is grouped with the other shares carrying identical rights to form a class.

(b) The correct answer is: 15% of members of the affected class.

Class rights may be varied providing a special resolution is passed by members of that class. For an alteration to be valid the majority must honestly believe that it is in the interest of the company as a whole and that it would be in the interests of a hypothetical individual member. A minority of members that hold at least 15% of the shares of the class may apply to the court to have a variation cancelled.

(c) The correct answer is: No – because it does not have enough votes to block the resolution and the court is unlikely to uphold a request from it to have the variation cancelled.

The reduction of dividends proposed by the directors of Lux Ltd is clearly a variation of a class right that under the statutory variation procedure requires a 75% majority by special or written resolution. Kudos Ltd is likely to want to prevent this variation but as it only holds 20% of the shares in the class it cannot prevent the variation by itself. However, Kudos Ltd does hold over 15% of the shares in the class so it could apply to the court for the variation to be cancelled. As the effect on Kudos Ltd is relatively minor and as it affects all shareholders equally it is likely that the court would uphold the variation.

21.4 (a) The correct answer is: Companies have no legal obligation to keep a register of debentureholders.
A company is not required by law to keep a register of debentureholders.

(b) Although B Bank's charge documentation states that a fixed charge was created, Milly Ltd may deal with the charged asset as it wishes to. This fulfils the criteria for a floating charge and therefore the charge will be registered as a floating charge. C Bank's charge is a legitimate fixed charge that has been correctly registered. Therefore it has priority.

(c) Peppa Ltd's charge, whilst created first, was not registered within 21 days. It is therefore not valid. Otto Ltd's charge was validly registered and therefore will take priority in the event of liquidation.

21.5 (a) The correct answer is: £3,000 (the company's profit for the year).
The revaluation reserve and share premium accounts are undistributable reserves. No profits were carried forward so the only profit available for distribution as a dividend are the profits earned in the year (£3,000).

(b) The correct answer is: Liable as directors for declaring unlawful dividends and as shareholders for knowingly receiving unlawful dividends.
Dee and Eff would be liable as directors (for declaring unlawful dividends) and as shareholders (who knew or had reasonable grounds to believe the dividend was unlawful) if the dividend paid was in excess of the company's distributable profit.

(c) The correct answer is: Paying out a cumulative dividend to preference shareholders
The dividend rules apply to every form of distribution of assets except the following:

- The issue of bonus shares whether fully or partly paid
- The redemption or purchase of the company's shares out of capital or profits
- A reduction of share capital
- A distribution of assets to members in a winding up

22 Company directors

22.1 De jure

A de jure director is expressly appointed. A de facto director is held out by the company to be a director. A shadow director is neither, they are a person whose instructions the actual directors are accustomed to follow.

Syllabus area F1(a)

22.2 16

Company directors must be at least 16 years old.

Syllabus area F1(b)

22.3 All of the directors

At the first AGM of a public company, all the directors are required to retire.

Syllabus area F1(b)

22.4 The authority that the board expressly gives to them

A CEO's actual authority is whatever the board gives to them.

Syllabus area F1(c)

22.5 Articles of Association

The power of a company's directors is defined in its Articles of Association.

Syllabus area F1(c)

22.6 The company as a whole

A director owes their statutory duties to the company as a whole.

Syllabus area F1(d)

22.7 Where the company's Articles of Association state that they are liable

Directors will be liable for a company's debts if the Articles of Association say that they are. There may be financial penalties for a director who breaches their fiduciary duties, but taking over personal responsibility for the company's debts is unlikely to be one of them.

Syllabus area F1(d)

22.8 De facto director

A de jure director is expressly appointed. A de facto director is held out by the company to be a director. A shadow director is neither, they are a person whose instructions the actual directors are accustomed to follow. An alternate director is appointed by a director of a company to attend and vote for them at board meetings they are unable to attend.

Syllabus area F1(a)

22.9 They are not involved in the day-to-day running of the company

Non-executive directors are not involved in the day-to-day running of the company. A de facto director is held out by the company to be a director. A shadow director is a person whose instructions the actual directors are accustomed to follow. All directors are subject to statutory duties.

Syllabus area F1(a)

22.10 Insolvency of a company that they are a director of, Conduct making them unfit to be concerned in the management of a company

Being a director of an insolvent company or being unfit to be concerned in the management of a company are the two grounds where a court must disqualify. The other options are grounds where the court may disqualify.

Syllabus area F1(b)

22.11 Ordinary resolution with special notice

The removal of a company director from office requires an ordinary resolution with special notice.

Syllabus area F1(b)

22.12 For a proper purpose that is honestly believed to be in the best interests of the company

Directors should use their powers for a proper purpose that they honestly believe to be in the best interests of the company.

Syllabus area F1(c)

22.13 The members may ratify their actions but an ordinary resolution is required

Members can ratify such actions but an ordinary resolution is required.

Syllabus area F1(c)

22.14 Promote the success of the company

Directors who consider the long-term consequences of their decisions on employees are meeting their duty to promote the success of the company.

Syllabus area F1(d)

22.15 The knowledge, skill and experience that the director actually has, The knowledge, skill and experience that is reasonably expected of a person carrying out the functions of the director

A director is expected to show the level of knowledge, skill and experience that is reasonably expected of a person who is carrying out their function and the levels that they actually have.

Syllabus area F1(d)

23 Other company officers

23.1 Public limited company

Only a public limited company must have a company secretary.

Syllabus area F2(a)

23.2 A company's sole director

A company's sole director may not act as company secretary. A company's accountant or solicitor may act as company secretary.

Syllabus area F2(a)

23.3 The directors

A company secretary is appointed by the directors.

Syllabus area F2(a)

23.4 The accountancy firm responsible for producing the company's accounts

Accountancy firms often audit the accounts that they have prepared. Employees of a company and their partners are expressly prevented from acting as company auditor.

Syllabus area F2(b)

23.5 The directors

The directors appoint the first ever auditors of their company.

Syllabus area F2(b)

23.6 Auditors of private limited companies

Only auditors of private companies are deemed automatically reappointed unless specific circumstances apply.

Syllabus area F2(b)

23.7 To report to the members that the accounts give a true and fair view and have been properly prepared in accordance with the Companies Act

The statutory duty of an auditor is to report to the members on the truth and fairness of the accounts and whether the accounts have been prepared in accordance with the Companies Act.

Syllabus area F2(b)

23.8 The Board of Directors

It is the Board of Directors that sets the specific duties of the company secretary.

Syllabus area F2(a)

23.9 Car hire for transporting customers to meetings with the directors

A company secretary has the power to bind the company in contracts related to the administrative side of the company only. It was decided in *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd 1971* that this includes a contract for hiring cars to transport customers.

Syllabus area F2(a)

23.10 Establishing and maintaining the company's statutory registers, Filing accurate returns with the Registrar of Companies

A company secretary would expect to be responsible for establishing and maintaining the company's statutory registers and filing accurate company returns with the Registrar of Companies.

Syllabus area F2(a)

23.11 Full membership of the ACCA

A full member of the ACCA is qualified to act as a company secretary. Employment as a plc's company secretary is also valid qualification, but the employment must be for three out of the five preceding years.

Syllabus area F2(a)

23.12 To access, at all times, the books, accounts and vouchers of the company

A company auditor has the right, at all times, to access the books, accounts and vouchers of the company.

Syllabus area F2(b)

23.13 Ordinary resolution with special notice

As with directors, an ordinary resolution with special notice is required to remove an auditor from office.

Syllabus area F2(b)

23.14 A statement to members and creditors of whether there are circumstances that the auditor believes should be brought to their attention

Where an auditor of a non-quoted company is removed at a general meeting they must provide members and creditors with a statement of whether there is anything that should be brought to their attention.

Syllabus area F2(b)

23.15 Turnover less than £10.2 million, Balance sheet total less than £5.1 million

A private company is exempt from audit if its turnover is less than £10.2 million, its balance sheet total is less than £5.1 million and it has fewer than 50 employees on average.

Syllabus area F2(b)

24 Company meetings and resolutions

24.1 Public limited company

Only public limited companies must hold annual general meetings.

Syllabus area F3(a)

24.2 21

21 days' notice must be given in respect of annual general meetings.

Syllabus area F3(a)

24.3 14

14 days' notice is required for a special resolution.

Syllabus area F3(b)

24.4 51%

An ordinary resolution requires a simple majority of the votes cast to be passed. 50% is not enough because no majority is achieved and those voting against the resolution can have the same number of votes. 51% is therefore the minimum.

Syllabus area F3(b)

24.5 90%

90% of the members of a private company may agree to a shorter notice period.

Syllabus area F3(c)

24.6 5%

Members controlling 5% of the voting rights may requisition a resolution at an annual general meeting.

Syllabus area F3(c)

24.7 One

On a vote on a show of hands, each member receives one vote.

Syllabus area F3(c)

24.8 Approving the payment of dividends

Approving dividends is included in the ordinary business of an AGM.

Syllabus area F3(a)

24.9 Altering the Articles of Association

The alteration of the Articles requires a special resolution. The other items of business require an ordinary resolution.

Syllabus area F3(a)

24.10 The text of a special resolution must be set out in full in the notice conveying the meeting. The text of an ordinary resolution does not need to be set out in full; Copies of special resolutions must always be sent to the Registrar of Companies. Ordinary resolutions do not generally have to be sent to the Registrar

The text of special resolutions must be included in the meeting notice and copies must be sent to the Registrar for filing. Both types of resolution require 14 days' notice and both can be voted on via a show of hands or a poll.

Syllabus area F3(b)

24.11 Written resolution

Only private companies may pass written resolutions.

Syllabus area F3(b)

24.12 Removal of an auditor

Removal of an auditor (or a director) are the only items of business that may not be achieved by a written resolution.

Syllabus area F3(b)

24.13 28

Special notice is 28 days.

Syllabus area F3(c)

24.14 Six weeks

Members must make their request and identify the resolution six weeks before the meeting.

Syllabus area F3(c)

24.15 To speak at the meeting, To demand a poll

Proxies may speak at a meeting and demand a poll. They may vote on a show of hands and a poll. They may not requisition a meeting.

Syllabus area F3(c)

25 MTQ Bank 5

25.1 (a) The correct answer is: Duties created by Parliament under the Companies Act.

Before the Companies Act 2006, directors owed common law fiduciary duties based on principles of trust and honesty. These fiduciary duties, and others, were put onto a statutory basis in the Companies Act 2006. This means that the duties are now enshrined in the statute books rather than being based in common law. The duties do not come from service contracts or the UK Corporate Governance Code.

(b) The correct answers are:

- Promote the success of the company – not breached
- Duty to exercise independent judgment – not breached
- Declare interest in proposed transaction or arrangement – breached
- Declaration of interest in existing transaction or arrangement – breached

It appears that Caz has not disclosed either her interest in Era Ltd or her interest in this particular contract. Under s 177 of the Companies Act (declare interest in proposed transaction or arrangement), the interest should have been stated at the board meeting that Caz attended that approved the contract. It was not. It should also have been declared under s 182 of the Companies Act (declaration of interest in existing transaction or arrangement) once it had occurred – but it was not either. The other duties have not been breached. The success of the company has not been affected nor was Caz's judgement affected by others.

25.2 (a) The correct answer is: The authority granted to the director by the board of directors.

A director's express authority to enter into a particular contract is granted formally by the board of directors. Where such express authority is given, the company will be bound by the agreement.

(b) The correct answer is: To enter the company into any administrative or commercial contract.

Where there is no express authority, authority may be implied from the director's position within the company. Chief Executive Officers usually have authority to make commercial contracts on behalf of the company, but they would also have authority to enter the company into administrative contracts as well. The company secretary usually only has implied authority to enter the company into administrative contracts. If limits are set by the board then this concerns express, not implied, authority.

(c) The correct answer is: Yes – Mo is entitled to assume that Len had implied authority to enter into the contract.

The circumstances in which Katch Ltd finds itself are very similar to that of the *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd 1964* case. Len has been allowed by the board to act as if he were Chief Executive Officer and therefore as a third party Mo is entitled to assume that he has the implied authority of one. This authority permits him to bind the company in commercial contracts, so the company will be bound by the advertising contract entered into by Len. Katch Ltd therefore has a liability to pay Mo or be sued for breach of contract.

25.3 (a) The correct answer is: All companies must hold a meeting if they wish to remove a director.

All directors facing removal have the right to speak at a meeting.

A private company can have one director but a public company needs two.

The minimum age of a director is 16.

All company directors must be natural persons.

(b) The correct answers are:

- Boo – Shadow director
- Mills – De jure director
- Beni – De facto director
- Suki – Non-executive director

Mills was appointed as a director on registration and is therefore a *de jure* director.

Beni was not officially appointed as a director but is held out to be the company's managing director on its paperwork. He runs the business on Boo's instructions and is therefore a *de facto* director.

Boo has not been appointed as a director, nor is she held out by the company to be a director. However, because the director (Mills) is accustomed to act on her instructions (via Beni) she is a shadow director of the company.

Suki was appointed to provide an independent view on how the company is being run – a role of a non-executive director.

25.4 (a) The correct answer is: Div was free to act as company secretary as soon as he was appointed. Qualification as a solicitor is sufficient for a person to be appointed as a company secretary. Authorisation from the Registrar, passing professional company secretarial exams and passing company resolutions are not required to appoint a company secretary.

(b) The correct answer is: No, because the contract is commercial in nature. The powers of the company secretary have historically been very limited, but the common law increasingly recognises that they may be able to act as agents in some circumstances. Specifically, they may enter the company into contracts connected with the administrative side of the company: *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd 1971*. Envy Ltd will not be bound by the contract because it is commercial, rather than administrative, in nature.

(c) The correct answer is: No, a sole director may not act as company secretary. Under the Companies Act, a sole director may not be appointed as company secretary. Therefore even though Vic is qualified to act as company secretary by virtue of being ACCA qualified, he may not act as Envy Ltd's company secretary. Both private and public companies may appoint company secretaries.

25.5 (a) The correct answers are: Fixing the auditor's remuneration, Considering the directors' report. The ordinary business to be transacted at an annual general meeting includes the consideration of the directors' and auditors' reports and the company accounts, the election of directors and appointment of auditors, the fixing of auditors' remuneration and the declaration (not paying) of dividends. The company secretary's appointment is a matter for the directors at a directors' meeting.

(b) The correct answer is: No – insufficient notice was given to members. Every public company must hold an annual general meeting in each calendar year within six months of the company's year end. At least 21 days' written notice must be given unless all members entitled to attend agree to shorter notice. Therefore, although the meeting was held in the correct time after the company's year end, there was insufficient notice given because not all the shareholders agreed to the shorter notice.

(c) The correct answer is: Yes – auditors have authority in law to request a general meeting to hear circumstances behind their resignation. Under the Companies Act, a general meeting can be called by an auditor who gives a statement detailing the circumstances for their resignation or other loss of office and requires their explanation to be considered by the company. Therefore the directors must uphold the request.

26 Insolvency and administration

26.1 The members

The members always commence a voluntary liquidation.

Syllabus area G1(a)

26.2 The solvency of the company

Although a voluntary liquidation is commenced by the members, it is the solvency of the company that determines whether it is a members' or creditors' voluntary liquidation. If the company is solvent then it is a members' voluntary liquidation, if it is insolvent then it is a creditors' voluntary liquidation.

Syllabus area G1(a)

26.3 A creditor who is owed more than £750 and who sent the company a written demand for it over three weeks ago and has not had a reply

Creditors owed more than £750 and who sent a written demand for payment but have not heard from the company in 21 days may request the compulsory liquidation of the company. The other parties may not request the compulsory liquidation of a company.

Syllabus area G1(b)

26.4 When the main object of the company cannot be achieved

The just and equitable ground will be applied where the object of the company cannot be achieved. The other options are not grounds for the just and equitable liquidation of a company.

Syllabus area G1(b)

26.5 Members

When a company is liquidated, the members share any surplus remaining after all the other debts have been repaid.

Syllabus area G1(c)

26.6 To attempt to rescue the company as a going concern

The main purpose of administration is to attempt to rescue the company as a going concern. During this time the company will be protected from legal action but this is not the purpose of administration.

Syllabus area G1(d)

26.7 A floating chargeholder

Only floating chargeholders, directors and the company itself may appoint an administrator without a court order.

Syllabus area G1(e)

26.8 Liquidator

A liquidator is in charge of a voluntary liquidation. The official receiver is in charge of a compulsory liquidator. An administrator is in charge of an administration.

Syllabus area G1(a)

26.9 As soon as the members pass the necessary resolution

A members' voluntary liquidation commences as soon as the necessary resolution is passed.

Syllabus area G1(a)

26.10 A written resolution of the members with a 75% majority, A special resolution of the members

Only the members can commence a creditors' voluntary liquidation. They can do so with either a special resolution or written resolution with a 75% majority (private companies only).

Syllabus area G1(a)

26.11 An insolvency practitioner acts as liquidator – Voluntary liquidation.

The liquidation process is controlled by the court – Compulsory liquidation.

In a voluntary liquidation an insolvency practitioner acts as liquidator (in a compulsory liquidation the official receiver acts as liquidator). The process of compulsory liquidation is controlled by the court (in a voluntary liquidation the members or creditors control the process).

Syllabus area G1(b)

26.12 The liquidator must hold an annual general meeting of the contributories

In a members' voluntary liquidation, the liquidator must hold an annual general meeting of the contributories within three months of the anniversary of the commencement of the liquidation. Creditors have no input into a members' voluntary liquidation, hence they have no say in the choice of liquidator and there is no need to give notice in *The Gazette*. The final act of the liquidator is to dissolve the company and remove its name from the register.

Syllabus area G1(b)

26.13 The liquidator

The liquidator has the highest priority for payment when a company is liquidated.

Syllabus area G1(c)

26.14 If the company cannot be rescued as a going concern, the next objective of administration is to achieve a better result for creditors than an immediate liquidation would

If a company cannot be rescued as a going concern then the next objective of administration is to achieve a better result for creditors than an immediate liquidation. Liquidation and administration are mutually exclusive, a liquidation order cannot be made if an administration order is already in place. Administrations may be made by certain parties without a court order. An administrator is put in charge of a company in administration.

Syllabus area G1(d)

26.15 After 12 months have elapsed since the administration commenced, The success of the administration

A period of administration ends 12 months after it commenced or following the success of the administration. It may also end following a court order granted on application by the administrator or a creditor, or if an improper motive for applying for administration is discovered.

Syllabus area G1(e)

27 MTQ Bank 6

27.1 (a) The correct answer is: The directors.

A voluntary liquidation is instigated by a company resolution that states that the company cannot continue to trade. For the liquidation to be a members' voluntary liquidation, the directors must issue a statement of solvency. If they do not issue a statement of solvency then the liquidation is a creditors' liquidation.

(b) The correct answers are:

- Son will need the agreement of Lon to instigate a members' voluntary liquidation – True
- Son will need the agreement of Lon to instigate a compulsory liquidation – False
- A court is likely to order a just and equitable winding up of Jinx Ltd – True
- An insolvency practitioner would oversee a compulsory liquidation of Jinx Ltd – False

A compulsory liquidation is one ordered by the court under s 122 Insolvency Act 1986 on one or more of seven specified grounds. One of these grounds is that it is just and equitable to wind-up the company.

A member who is dissatisfied with the directors or controlling shareholders over the management of the company may petition the court for a liquidation on the basis that to do so is just and equitable. Such liquidation orders have been made where there is a complete deadlock in the management of the company's affairs and where the trust and confidence between both directors and shareholders in a small company have broken down. Due to the complete deadlock in the management of the company's affairs, and the lack of trust between the brothers, it is likely that a court will order it to be liquidated on the just and equitable ground.

Compulsory liquidations are overseen by the official receiver. In order to instigate a members' voluntary liquidation, it is started by a resolution of the members and the directors must issue a statement of solvency. Both actions require the agreement of the brothers.

27.2 (a) The correct answers are: A debt of £750 or more, Failure to pay the debt or offer reasonable security for it.

Under s 122 Insolvency Act 1986, where a creditor is owed more than £750 and makes a written (not oral) demand for payment and the company fails to pay the debt, or offer reasonable security for it, within three weeks, the company is deemed unable to pay its debts.

(b) The correct answers are:

- The company will be unable to sell the office building once compulsory liquidation commences – Correct
- The threatened legal action by the creditor can no longer proceed under any circumstances once compulsory liquidation starts – Incorrect

- Unless the liquidator decides otherwise, the employees will be dismissed once compulsory liquidation starts – Correct
- On commencement of the compulsory liquidation, the floating charges will crystallise – Correct

The company may not dispose of the office building from the commencement of the liquidation unless approved by the court.

The creditor may not commence legal action against the company except with the leave of the court.

The employment of the company's staff ceases unless the liquidator retains them to carry on the business.

The company's floating charges will crystallise. The creditors will be paid in accordance with the priority of charges and funds available from the assets.

27.3 (a) The correct answers are: Administration orders put an insolvency practitioner in control of the company, Administration orders can be used to realise property in order to make a distribution to creditors.

An administration order is an order of the court that puts an insolvency practitioner in control of the company with a defined programme for rescuing the company from insolvency as a going concern. Its effect is to insulate the company from its creditors while it seeks, to save itself, or failing that, to achieve a better result for creditors than an immediate liquidation would secure, or failing that, to realise property so as to make a distribution to creditors.

(b) The correct answers are:

- Notice in the prescribed form – Required
- Statement of insolvency – Not required
- Statutory declaration – Required
- Latest set of financial statements – Not required

Applying for an administration order involves sending a notice in the prescribed form identifying the proposed administrator and a statutory declaration that:

- (i) The company is, or is likely to be, unable to pay its debts
- (ii) The company is not in liquidation
- (iii) As far as ascertainable there is no restriction in making the appointment

(c) The correct answer is: Yes – providing the company can increase its revenue above its costs.

The problem with Lazy Days Ltd's case is whether or not the purpose of administration will be achieved. The company is currently running at a £7,000 loss per month and this must be solvable for the administration order to be granted. If the company can argue that it has a good chance of increasing trip sales from 50% to nearer 80% to 90% and that these extra sales will make up the shortfall in revenue then it would have a good chance of obtaining the order. Administration orders are not granted just because a company is running at a loss and insolvency would not prevent one being granted providing the company could be turned around. Limited companies can be subject to an administration order as well as plcs.

27.4 (a) The correct answer is: Creditors' voluntary liquidation.

The shareholders have decided to wind-up the company and therefore administration and compulsory liquidation are not appropriate. Because the company is insolvent (assets worth less than liabilities) a creditors' voluntary liquidation is the most appropriate.

(b) The correct answers are:

- Dividend – 4th
- Costs of liquidation – 1st
- Business creditors – 3rd
- Employee wages – 2nd

The company has total assets of £15,000. The first debt that must be paid is the liquidation costs (£5,000) and the second debt payable is the preferential debt of employee wages (£6,000). This leaves £4,000 to distribute to the business creditors. This equates to half their money back. The dividend would be the last payment to be made but there are no funds left to pay it.

27.5 (a) The correct answer is: Preferential creditor.

Employee wages are a preferential debt and therefore Earl will be a preferential creditor in respect of them.

(b) The correct answer is: None.

Earl's shares are fully paid and therefore he cannot be required to make any further payment on them. As an employee and debentureholder he is a creditor of the company and no call for the company's debts can be made of him.

(c) The correct answer is: Earl may appoint a receiver of the land and order its sale.

As a fixed charge holder, Earl may only appoint a receiver for the asset and order its sale in order to repay the debt.

28 Fraudulent and criminal behaviour

28.1 A company's auditor

An insider is a person who has information from an inside source through being a director, employee, or shareholder, or because of their employment, office or profession. Customers and suppliers are not likely to be privy to inside information.

Syllabus area H1(a)

28.2 Civil law only

Market abuse is a civil law offence.

Syllabus area H1(b)

28.3 The company as a whole

To prevent individuals from benefiting from deferred prosecution agreements, they are only offered to organisations.

Syllabus area H1(e)

28.4 Layering

Layering involves the transfer of monies to disguise their original source.

Syllabus area H1(c)

28.5 It is an offence for a corporation to fail to prevent bribery

Bribery is a criminal offence. It can occur inside or outside the UK and corporations can be liable if they fail to prevent bribery.

Syllabus area H1(d)

28.6 Deferred prosecution agreement

A deferred prosecution agreement is made under the Crime and Courts Act 2013 and allows an organisation to admit wrongdoing and pay a fine but avoid a criminal case being brought against it.

Syllabus area H1(e)

28.7 Make good the debts of the company

Fraudulent trading under the Insolvency Act 1986 is a civil – not a criminal offence. Any directors found guilty are liable to make good the company's debts.

Syllabus area H1(f)

28.8 The individual had no expectation of profit

No expectation of profit is a valid defence to a charge of insider dealing. The other options are not valid defences.

Syllabus area H1(a)

28.9 A finance director who makes a deliberately deceptive profit forecast

Market abuse involves the deliberate manipulation of the stock market or those trading in the stock market. The issue of a deliberately deceptive profit forecast misleads the market about the company's prospects and is considered market abuse.

Syllabus area H1(b)

28.10 The initial disposal of proceeds from criminal activity – Placement.

The attempt to disguise the original source of criminal funds – Layering.

Placement is the initial disposal of proceeds from criminal activity. Layering involves transferring money to conceal the original source of the funds.

Syllabus area H1(c)

28.11 National Crime Agency

Suspicions of money laundering should be reported to the National Crime Agency.

Syllabus area H1(c)

28.12 Receiving reasonable corporate hospitality – Not a bribery offence.

Accepting an incentive to perform a function of a public nature – Bribery offence.

Syllabus area H1(d)

28.13 The business was involved in criminal tax evasion, A member of the company's staff or its agent facilitated the tax evasion, The business failed to prevent the member of staff or agent from committing the offence

For a business to be liable under the Criminal Finances Act 2017, all three must be proved. However, a company has a defence if it had reasonable prevention procedures in place (even if they failed). Reasonable prevention procedures are not required if it was unreasonable or unrealistic for the company to have such procedures in place. Partnerships are 'relevant bodies' as well as companies.

Syllabus area H1(e)

28.14 It must be proved that the defendant intended to commit this wrongdoing – Fraudulent trading.

Defendants who commit this wrongdoing have only committed a civil offence – Wrongful trading.

Intention must be proved in cases of fraudulent trading (ie that the defendant intended to defraud others) but is not required in cases of wrongful trading. Wrongful trading is a civil offence. Fraudulent trading is both a civil and criminal offence.

Syllabus area H1(f)

28.15 Wrongful trading, Making a false declaration of solvency

Wrongful trading is committed when the directors allow a company to trade when there is no reasonable prospect of the company avoiding liquidation. Making a false declaration of solvency is committed when the company wishes to arrange a members' voluntary liquidation and the directors falsely declare that the company is solvent.

Syllabus area H1(f)

29 MTQ Bank 7

29.1 (a) The correct answers are:

- Slye – Committed an offence
- Mate – Committed an offence

Slye has inside information as an insider as a director and employee of Huge plc. Slye knows that the information is inside information. He then buys shares in Large plc, which constitutes dealing because he is 'acquiring securities'. He has therefore dealt in price-affected securities while in possession of inside information as an insider, and has committed the offence of insider dealing.

Mate has knowingly received inside information from a person whom he knows to be an insider (Slye), so he has become an insider and in dealing he too has committed the primary offence of insider dealing.

(b) The correct answer is: Tim did not commit a criminal offence because the advice he was given was not precise or specific.

Tim did not receive inside information, this is because the information that Slye told him was neither precise nor specific, so he has committed no offence.

29.2 (a) The correct answers are:

- Insolvency Act 1986 – Insolvency or administration required
- Companies Act 2006 – Insolvency or administration not required

Under s 213 Insolvency Act 1986, the offence of fraudulent trading is actionable if the company is in liquidation or administration. Under s 993 Companies Act 2006, the offence is actionable whether or not the company is insolvent or in administration.

(b) The correct answers are:

- Fraudulent trading under s 213 Insolvency Act 1986 – Del committed offence, Rod no offence committed
- Wrongful trading under s 214 Insolvency Act 1986 – Both Del and Rod have committed offences

Because Del falsified the company's accounts, and the company is insolvent, he is likely to be guilty of intention to defraud under s 213 Insolvency Act 1986. There is not enough evidence to prove Rod is guilty – the prosecution is unlikely to be able to prove he intended to defraud the creditors or others.

Del will be personally liable under s 214 Insolvency Act 1986 for the increase in the company's debts since it is already established that he is likely to be liable for fraudulent trading which carries a higher standard of proof. Rod will also be liable for the company's debts, since as a director of a company, he should have been aware of the situation.

29.3 (a) The correct answers are: The offence of money laundering applies where funds have been obtained through any criminal activity, The offence of money laundering applies where the source of illegitimate funds are disguised.

Money laundering is the term given to attempts to make the proceeds of crime appear respectable. There is no minimum value for the funds. It covers any activity by which the apparent source and ownership of money representing the proceeds of crime are changed so that the money appears to have been obtained legitimately. It is not restricted to certain business sectors.

(b) The correct answers are:

- Ian – Money laundering and failure to report
- Jet – Money laundering

Ian has assisted in Jet's money laundering, so may be convicted of money laundering under the Proceeds of Crime Act. He may also be found guilty of failure to report under the Proceeds of Crime Act.

Jet is guilty of the main offence of money laundering under the Proceeds of Crime Act.

29.4 (a) The correct answer is: Vic is not the victim of any criminal offence and cannot claim for the profit he missed out on by selling his shares.

Vic sold his shares willingly and it is unfortunate for him that the share price subsequently may have risen. He has no right of action.

(b) The correct answers are:

- Market abuse – misuse of information – Offence committed
- Market abuse – market distortion – Offence not committed
- Insider dealing – insider dealing – Offence committed
- Insider dealing – encouraging another to deal – Offence committed

Misuse of information is any behaviour by an individual that is based on information that is not publically available, but if it was, it would influence an investor's decision. This describes Sid's behaviour and therefore Sid has committed this market abuse offence.

Under the Criminal Justice Act 1993, Sid is an insider by virtue of his position as director in Trend plc and Umber plc. The information he holds is price-sensitive as it concerns large profits and large losses. Therefore, it would appear that he is liable for dealing in price-affected securities. None of the defences would apply to him as he clearly expected to make a profit in one transaction and to avoid a loss in the other.

He also becomes liable for the offence of encouraging another to deal in price-affected securities when he advises his brother to buy shares in Umber plc. This is even though we are not told whether the brother actually brought the shares and that no inside information was passed.

29.5 (a) The correct answer is: Shares and associated derivatives, debt securities and warrants.

Insider dealing legislation covers dealing in shares and associated derivatives, debt securities and warrants

(b) The correct answers are:

- Greg – Both
- Helen – Committed a money laundering offence

Greg's position as a director of Huge plc makes him an insider, the takeover information is clearly inside information and by instructing Jet plc to buy Kop plc shares he was involved in dealing. Therefore he has committed the offence of insider dealing.

The profit on the sale of the Kop plc shares was created as a result of insider dealing – a criminal offence. Greg has sought to disguise the profit by transferring it as a consultancy fee to Imp plc and as a dividend to himself. Therefore he has also committed the offence of money laundering.

Helen committed no offence in respect of insider dealing, however she did commit the offence of tipping off when she told Greg that she would report him for money laundering.

30 Mixed Questions 1 (Specimen exam)

30.1 Statute

Out of the options, only statute may imply terms into contracts.

Syllabus area B2(b)

30.2 Ordinary shares

Only ordinary shareholders have the right to share in surplus capital.

Syllabus area E1(b)

30.3 County court

The Magistrates' and High Court have criminal and civil jurisdiction. The County Court only has civil jurisdiction.

Syllabus area A1(a)

30.4 Unofficial industrial action

Taking part in unofficial industrial action and being a threat to national security are automatic fair reasons for dismissal.

Syllabus area C2(d)

30.5 A private limited company

Ltd indicates that an organisation is a private limited company.

Syllabus area D4(h)

30.6 Six weeks

Employees with six years' service are entitled to one week's notice per year of employment.

Syllabus area C2(a)

30.7 The shares may not be offered to the public

Ltd indicates a private company and such a company may not trade its shares publicly.

Syllabus area D4(h)

30.8 Shareholders of the company

Only the shareholders of a company may petition for its just and equitable liquidation.

Syllabus area G1(a)

30.9 An ordinary resolution with special notice

An ordinary resolution with special notice is required to remove a director.

Syllabus area F1(b)

30.10 More than 50% of those actually voting

To be passed, all ordinary resolutions require the approval of more than 50% of those actually voting.

Syllabus area F3(b)

30.11 Unfair dismissal

Unfair dismissal only has a statutory basis.

Syllabus area C2(d)

30.12 Constructive dismissal

The repudiation of the employment contract that causes the employee to resign is constructive dismissal.

Syllabus area C2(b)

30.13 The person submitting the tender

The party submitting the tender is setting out the terms that they will be bound when performing the contract.

Syllabus area B1(b)

30.14 An offer

The bid is the offer that the auctioneer is free to accept or reject.

Syllabus area B1(b)

30.15 Volenti non fit injuria

By not wearing the safety goggles, Bee accepted the risk of injury of not wearing them.

Syllabus area B4(e)

31 Mixed Questions 2 (Specimen exam)

31.1 It decreases the level of damages

If a claimant is found to have contributed to their loss then damages will be reduced accordingly.

Syllabus area B4(e)

31.2 The Crown Court

The County Court only has civil jurisdiction. A Magistrates' Court mainly has criminal jurisdiction, but also has limited civil jurisdiction too.

Syllabus area A1(b)

31.3 A County Court

Breach of contract cases are heard by a County Court.

Syllabus area A1(b)

31.4 It is not binding on any courts

Obiter dictum is not binding. It is the *ratio decidendi* that binds future courts.

Syllabus area A2(a)

31.5 The claimant

In contributory negligence, damages are reduced as a consequence of the claimant's actions.

Syllabus area B4(e)

31.6 Contributory negligence

Ann contributed to her injury by her actions.

Syllabus area B4(e)

31.7 The subordinate test

Control, integration and multiple (economic reality) tests are used by the courts in determining employment status.

Syllabus area C1(a)

31.8 A warranty

Breach of a condition allows the injured party to terminate the contract. Innominate terms may allow termination if they can be classified as conditions. Breach of a warranty only entitles the injured party to damages.

Syllabus area B2(b)

31.9 Telling someone you will reduce the marked price on it by 10%

Adverts, displays and statements of information are invitations to treat.

Syllabus area B1(b)

31.10 A special resolution

Special resolutions require a 75% majority.

Syllabus area F3(b)

31.11 The company has altered its primary business within the first 12 months

Trading without a trading certificate for 12 months, not started to trade within 12 months and having suspended trading for 12 months are all grounds for liquidating a public company.

Syllabus area G1(b)

31.12 Abe made an invitation to treat and Bea made an offer

An invitation to tender is not an offer but an invitation to treat. Bea made an offer when she submitted her terms.

Syllabus area B1(b)

31.13 The mischief rule

When considering the wrong which the legislation was intended to prevent, the Judge is applying the mischief rule.

Syllabus area A2(c)

31.14 They are paid when profits are available for that purpose

Cumulative dividends are paid when profits are available to pay them.

Syllabus area E1(b)

31.15 It must be sufficient but need not be adequate

Consideration must be sufficient but need not be adequate.

Syllabus area B1(e)

32 Mixed Questions 3 (Specimen exam)

32.1 The legal reason for deciding the case

Ratio decidendi is the legal reason for deciding the case.

Syllabus area A2(a)

32.2 Beyond reasonable doubt

The standard of proof in a criminal case is beyond reasonable doubt.

Syllabus area A1(a)

32.3 They must have a minimum of two members

Like all partnerships, LLPs must have at least two members.

Syllabus area D2(a)

32.4 The company

Shareholders are liable to the company for unpaid share capital.

Syllabus area E1(b)

32.5 The members of the company

The company's board, creditors and the Secretary of State may petition for the liquidation on the ground of insolvency.

Syllabus area G1(b)

32.6 Layering, Integration

Out of the options, only layering and integration are phases of money laundering.

Syllabus area H1(c)

32.7 Engaging in trade union activity, Dismissal on transfer of employment to a new undertaking

Dismissal for engaging in trade union activity or on transfer of employment are automatically unfair reasons for dismissal.

Syllabus area C2(d)

32.8 Where the agent fails to disclose that they are acting as such

Agents are liable if they intend to take the benefit of a contract if they fail to disclose they are acting as agent, or if they act in their own interest whilst claiming to be an agent.

Syllabus area D1(d)

32.9 Re-employment

Reinstatement, re-engagement and compensation are the remedies for unfair dismissal.

Syllabus area D1(d)

32.10 They are responsible for filing the LLP's accounts, They have limited liability

Designated members are responsible for the publicity requirements of the LLP and like all members they have limited liability.

Syllabus area D2(a)

32.11 Encouraging someone to engage in insider dealing, Passing on inside information

It is an insider dealing offence to encourage another to engage in insider dealing or pass on inside information. Failing to report is a money laundering offence.

Syllabus area H1(a)

32.12 A quotation of price

Statements of intent, supplies of information and agreements are not offers and are not sufficient if to form a contract.

Syllabus area B1(b)

32.13 They need not be in writing

Although some types of contract must be in writing or evidenced in writing, this is not required for most.

Syllabus area B1(a)

32.14 The claimant

If a claimant voluntarily accepts the risk of injury then the defendant has a defence against their negligence claim.

Syllabus area A4(e)

32.15 It is issued by a parent company, It is a non-binding statement of present intention to pay a subsidiary company's future debts

Letters of comfort are non-binding statements of present intention to pay a subsidiary company's future debts that are issued by the parent company.

Syllabus area B1(h)

33 Mixed Multiple Task Questions 1 (Specimen exam)

33.1 (a) The correct answers are: They put the parties in the position they would have been had the contract been performed, They compensate the injured party for any financial loss

(b) The correct answer is: It lies with the party who suffers the breach, It reduces damages

(c) The correct answer is: £0

As the ship was sold at its original price to a new buyer Az Ltd has suffered no loss.

33.2 (a) The correct answer is: She has full liability for partnership debts

(b) The correct answer is: He remains liable to new customers who knew he was a member of the partnership, unless he declared his withdrawal

(c) The correct answer is: Eve, Dan and Clare

33.3 (a) The correct answer is: Debentures secured by a fixed charge

(b) The correct answer is: Preference shares

(c) The correct answer is: Ordinary shares

33.4 (a) The correct answers are:

- Kim – De facto director
- Ger – Shadow director

(b) The correct answer is: They owe fiduciary duties to the company

33.5 (a) The correct answers are:

- Wrongful trading – Civil only
- Fraudulent trading – Both civil and criminal

(b) The correct answers are:

- Fran – Wrongful trading (s 214 Insolvency Act 1986)
- Gram – Fraudulent trading (s 213 Insolvency Act 1986)

Mock exams

ACCA Applied Skills

Corporate and Business Law

(LW) (ENG)

Mock Exam 1

| Questions | |
|---|---|
| Time allowed | 2 hours |
| This exam is divided into two sections: | |
| Section A | ALL 45 questions are compulsory and MUST be attempted |
| Section B | ALL 5 questions are compulsory and MUST be attempted |

Please note that it is not possible to predict question topics in an examination of this nature. We have based the content of this Mock Exam on our long experience of the ACCA exams. We do not claim to have any endorsement of the question types or topics from either the examining team or the ACCA and we do not guarantee that either the specific questions or the general areas that are featured here will necessarily be included in the exams, in part or in whole.

We do not accept any liability or responsibility to any person who takes, or does not take, any action based (either in whole or in part and either directly or indirectly) upon any statement or omission made in this book. We encourage students to study all topics in the ACCA syllabus and this Mock Exam is intended as an aid to revision only.

DO NOT OPEN THIS EXAM UNTIL YOU ARE READY TO START UNDER EXAMINATION CONDITIONS

Section A – ALL 45 questions are compulsory and MUST be attempted

1 In which of the following courts do all criminal cases begin?

- County Court
- Magistrates' Court
- Crown Court

(1 mark)

2 Joan holds 100 shares in Box Ltd. The directors of Box Ltd have announced that she will be granted one share for every five shares that she holds. The shares will be issued fully paid-up.

What is the name given to such an allotment of shares?

- Rights issue
- Bonus issue
- Capital issue
- Special issue

(2 marks)

3 In the context of sources of law, what is a statutory instrument?

- A tool used by Parliament in the process of developing primary legislation
- A form of delegated legislation that allows ministerial powers to be exercised
- A right granted by the UK's Human Rights legislation to strike out secondary legislation

(1 mark)

4 Which of the following is an indication that a person is self-employed rather than an employee?

- The person has the ability to delegate work to others
- The person is paid a salary
- The person is told how they should perform their job
- The person has their work tools provided to them

(2 marks)

5 Which of the following is a condition that must be met in order for a principal to ratify the actions of an agent?

- Ratification must occur immediately after the contract is formed
- Ratification must be agreed with the third party
- The principal must have existed when the contract was formed

(1 mark)

6 What is the minimum notice period that a person who has been employed for 18 months is entitled to?

- One week
- One month
- Two months

(1 mark)

7 In the event of an unlimited liability partnership being terminated, which of the following liabilities are repaid next, once all external debts have been settled?

- Partners' loan advances
- Partners' capital contributions
- Partners' share of profit

(1 mark)

8 A declaration of solvency is required to commence which of the following?

- A members' voluntary liquidation
- A creditors' voluntary liquidation
- A compulsory liquidation
- An administration

(2 marks)

9 Which of the following is a ground for disqualifying a director under the model articles of association?

- Breach of fiduciary duty
- Failure to meet a statutory duty
- Breaking the terms of their service contract
- Becoming bankrupt

(2 marks)

10 Which of the following companies qualify for exemption from audit?

- A public company with turnover of £1 million and a balance sheet total of £2 million
- A private company with turnover of £11 million and a balance sheet total of £6 million
- A dormant company

(1 mark)

11 How many days' holiday leave (including bank holidays) is an employee entitled to as a minimum?

- 21 days
- 25 days
- 28 days

(1 mark)

12 Lia was recently dismissed from employment when her employer found out she was pregnant.

Which of the following types of dismissal is this an example of?

- Constructive dismissal
- Wrongful dismissal
- Unfair dismissal

(1 mark)

13 In the context of contract law, what is the effect of a counter-offer on the original offer?

- Acceptance of the original offer as it stands
- Acceptance of the original offer with new terms introduced
- Rejection of the original offer
- No effect on the original offer

(2 marks)

14 Holding companies may give creditors of their subsidiary companies a 'letter of comfort' regarding the ability of the subsidiary to pay its debts.

What is the legal effect of a 'letter of comfort'?

- It is legally binding on the holding company only
- It is legally binding on the subsidiary company only
- It is legally binding on the holding company and subsidiary company
- It is not legally binding on the holding company or subsidiary company

(2 marks)

15 In relation to the tort of negligence, which of the following describes the standard of care expected of individuals?

- What can be reasonably expected of them personally in the circumstances
- What a reasonable person would do in the circumstances
- What the person is actually capable of in the circumstances
- What it is actually possible to do in the circumstances

(2 marks)

16 What is the effect of *volenti non fit injuria* in the law of tort?

- It is a complete defence to an action in negligence
- It reduces the amount of damages that a defendant is liable for
- It reverses the burden of proof so that the defendant must prove that they were not negligent

(1 mark)

17 Bankruptcy cases are heard by which division of the High Court?

- Queen's Bench Division
- Family Division
- Chancery Division

(1 mark)

18 In relation to the general rules of statutory interpretation, which of the following is the rule that states 'to express one thing is by implication to exclude anything else'?

- Expressio unius est exclusio alterius*
- Noscitur a sociis*
- In pari materia*

(1 mark)

19 Which of the following contracts will the Consumer Rights Act 2015 apply to?

- The supply of commercial goods from one business to another
- A contract made in relation to family law
- A mobile phone contract from a telecommunications company to a private individual
- An employment contract

(2 marks)

20 In negligence, what is the limit of a defendant's liability for damages?

- The full losses incurred by the claimant
- The losses that the defendant could reasonably foresee
- The amount of losses that the defendant can afford to pay

(1 mark)

21 Which of the following parties does a company auditor owe their duty of care to in respect of their audit report?

- The members personally
- The directors
- The creditors
- The company as a whole

(2 marks)

22 Terms may be implied into a contract of employment if they have certain characteristics.
Which of the following is a characteristic of a term that may be implied into an employment contract?

- The term must be acceptable
- The term must be proportionate
- The term must be practical
- The term must be notorious

(2 marks)

23 Which of the following is a lawful excuse for not performing contractual obligations?

- The cost of performance has increased from when the contract was formed
- Performance is made more difficult due to unforeseen circumstances
- The other party has made performance impossible

(1 mark)

24 Certain contracts may be made orally but are not enforceable unless they are evidenced in writing.
Which of the following contracts must be evidenced in writing?

- A lease for more than three years
- A conveyance
- A contract of guarantee
- A promise not supported by consideration

(2 marks)

25 In a company with more than one member, what is the quorum for a class meeting?

- Two persons who hold at least a third of the nominal value of the shares in the class
- Three persons who hold at least a half of the nominal value of the shares in the class
- Five persons who hold at least a three-quarters of the nominal value of the shares in the class

(1 mark)

26 Where a compulsory liquidation order has been granted, which of the following is true?

- An insolvency practitioner is appointed as liquidator
- All employees are automatically dismissed
- Any legal proceedings against the company that are in progress at the time of the liquidation order are allowed to continue
- The company's directors continue to run the company whilst the liquidation process is on-going

(2 marks)

27 Which of the following is a rule for valid consideration?

- Consideration must pass from the promisor
- Consideration must be adequate but not necessarily sufficient
- Performance of the promise must be possible
- The promise must be given in writing

(2 marks)

28 Which of the following is the final court of appeal for a number Commonwealth countries?

- The Supreme Court
- The Court of Appeal
- The Privy Council

(1 mark)

29 Which of the following is a right of the holder of a debenture that is secured by a fixed charge?

- Payment of a company dividend
- To vote at the company's general meeting
- To vote on company resolutions that affect them as a debentureholder
- To prevent the company from selling the asset secured by the charge

(2 marks)

30 Which of the following statements concerning the Consumer Rights Act 2015 is **NOT** correct?

- A term that restricts a consumer's legal rights is void
- A term that allows the business to unilaterally alter the terms of the contract is void
- A term that is deemed unfair cannot be enforced by the consumer

(1 mark)

31 Which of the following statements concerning the impact of the UK's Human Rights legislation is **NOT** correct?

- Legislation must be interpreted in a manner that is compatible with the European Convention on Human rights
- New Bills must be accompanied with a statement of compatibility with the European Convention on Human Rights
- Common law must be interpreted in line with decisions of the European Court of Human Rights
- The courts may strike out primary legislation that is incompatible with the European Convention on Human Rights

(2 marks)

32 Liam was convicted of a criminal offence by a Magistrates' Court.
If Liam has grounds to appeal, which court will the case move to next?

- Crown Court
- High Court
- Court of Appeal
- Supreme Court

(2 marks)

33 Which of the following describes the liability of a sole trader for the debts of the business?

- Unlimited liability
- Limited by the amount they guarantee to pay on winding-up
- Limited by the amount of capital in the business

(1 mark)

34 The latest accounts of Tsar Ltd showed that the company had profits available for distribution of £10,000. Mick (the sole director of Tsar Ltd) negligently misinterpreted the accounts and authorised a dividend payment of £20,000. Joan, Mick's wife and shareholder of Tsar Ltd, saw the accounts and knew the dividend was unlawful. The other shareholders did not see the accounts.

Which of the following parties are liable for the unlawful dividend?

- Mick only
- Joan only
- Mick and Joan only
- Mick, Joan and all the other shareholders

(2 marks)

35 An administrator of a company has a number of powers that may or may not require the permission of the court to exercise.

Which of the following is a power that usually requires court approval to exercise?

- Appoint a director
- Call a meeting of members
- Make a payment to a preferential creditor
- Make a payment to an unsecured creditor

(2 marks)

36 LT is an accountant who works for Tapa Ltd, a company owned by SP. LT has devised a scheme where Tapa Ltd can illegally disguise certain revenues so that the company's tax charge is reduced. Any tax that the scheme saves is paid to SP as a dividend.

Which **TWO** offences has LT committed?

- Tipping off
- Failure to prevent
- Laundering
- Failure to report

(2 marks)

37 Ian has recently become a father for the first time.

Which **TWO** of the following are statutory rights that Ian's employer owes him?

- The right to statutory paternity leave and pay for a maximum of two weeks
- The right to a change in his terms of employment to allow flexible working
- The right to unpaid paternity leave for up to 18 weeks until the child is age 18
- The right to protection from redundancy until the child's first birthday

(2 marks)

38 Which of the following will the Registrar of Companies hold on a company's file?

- Copies of all ordinary resolutions
- Certificate of incorporation
- Minutes from board meetings

(1 mark)

39 Which of the following reasons is an automatically fair reason for dismissal?

- Pregnancy of an employee
- The taking part in unofficial industrial action by an employee
- Capability of an employee

(1 mark)

40 Which **TWO** of the following are elements of a company's constitution?

- Memorandum of association
- Articles of association
- Company resolutions
- Register of members

(2 marks)

41 Which **TWO** of the following are criminal offences that directors of a company may commit as a consequence of their company being insolvent?

- Acting as a director whilst disqualified
- Making a false declaration of solvency
- Wrongful trading
- Abuse of position

(2 marks)

42 Which of the following remedies for breach of contract involves the injured party claiming the value of the work they have done?

- Quantum meruit*
- Action for the price
- Specific performance
- Rescission

(2 marks)

43 In relation to contract law, which of the following statements in relation to acceptance of an offer is correct?

- Acceptance may be indicated by a person's silence
- Acceptance must be made verbally
- Acceptance may be inferred from a person's actions

(1 mark)

44 Which of the following parties are owed a duty of care by an accountant in respect of accounts that they have produced?

- The client only
- The client and any person relying on the accounts
- The client and any person that the accountant knows will rely on the accounts
- The client and to the public at large

(2 marks)

45 In which **TWO** of the following contracts will intention to create legal relations be presumed?

- A contract between a man and his brother in relation to the transfer of property between them
- A contract between two friends for one to wash the other's car
- A contract between a mother and daughter for the daughter to pay the mother housekeeping money while she lives at home
- A contract of employment between a company and an employee

(2 marks)

(Total = 70 marks)

Section B – ALL 5 questions are compulsory and MUST be attempted

1 Adam, who operates an accountancy practice, charges £1,000 per year for producing business accounts for tax purposes. Unfortunately he has had some difficulty in recovering his fees from two clients as follows.

Bob, a car mechanic, told Adam that he could only raise cash to pay half of his fees but that he would service Adam's car for the coming year. Adam reluctantly agreed to this proposal.

Dawn, a not very successful musician, also told Adam that she could only pay half the money she owed him as she needed to use the other half to finance her new recording. Once again Adam agreed to accept the half payment. Dawn's recording subsequently became a major hit and she made £100,000 profit from it.

Adam himself is now in financial difficulty and needs cash to pay his own tax bill.

(a) Which of the following statements concerning Adam's agreement with Bob is correct?

- Adam can require Bob to pay his balance in full if the value of the car servicing is less than the accountancy fees owed
- Adam can require Bob to pay his balance in full because payment in kind is not valid consideration
- Adam cannot require Bob to pay his balance in full because payment in kind is valid consideration
- Adam cannot require Bob to pay his balance in full because he is prevented by the Unfair Contract Terms Act 1977

(2 marks)

(b) In regards to Adam's agreement with Dawn, identify which of the following statements are true or false.

| True | False |
|------|-------|
|------|-------|

The doctrine of promissory estoppel does not apply

Adam can recover the part payment if he did not accept it voluntarily

Adam can recover the part payment if Dawn took advantage of him financially

Dawn may be required to pay Adam in full because of the success of her recording

(4 marks)

(Total = 6 marks)

2 Chi, Di and Fi formed an ordinary partnership to run an art gallery. Each of them paid £100,000 into the business. As Fi had no prospect of raising any more money it was agreed between them that her maximum liability for any partnership debts would be fixed at her original contribution of £100,000. The partnership agreement specifically restricted the scope of the partnership business to the sale of 'paintings, sculptures and other works of art'. In January 20X0 Chi took £10,000 from the partnership's bank drawn on its overdraft facility. She had told the bank that the money was to finance a short-term partnership debt but in fact she used the money to pay for a holiday. In February Di entered into a £25,000 contract on behalf of the partnership to buy some books, which she hoped to sell in the gallery.

(a) Which of the following partners are liable to repay the overdraft created by Chi?

- Chi only
- Chi and Di only
- Di and Fi only
- Chi, Di and Fi

(2 marks)

(b) Did Di have any authority to purchase the books?

- No – she had no authority
- Yes – she had actual authority
- Yes – she had express authority
- Yes – she had apparent authority

(2 marks)

(c) Which of the following statements about Fi's liability for the partnership debts is correct?

- Fi has no liability for the partnership's debts
- Fi is only liable to third parties up to £100,000
- Fi is jointly liable for all partnership debts and cannot claim back any amount from Chi and Di
- Fi is jointly liable for all partnership debts but may claim back any amount she is liable for over £100,000 from Chi and Di

(2 marks)

(Total = 6 marks)

3 In 20X0 Fay, Gus and Het formed a private limited company, FGH Ltd, to carry out technological research. They each took 100 shares in the company and each of them became a director in the company.

In January 20X2 Fay admitted that she had been working with a much larger rival company, Ix plc, and that she had passed on some of FGH Ltd's research results to Ix plc in return for substantial payment. Fay maintains that she has done no harm, as FGH Ltd was not capable of using the information. Nonetheless, Gus and Het are extremely angered by Fay's actions.

(a) Which **TWO** of the following are consequences to directors who are in breach of their duties to their company?

- Payment of a fine to the company
- Restoration of company property
- Repayment of any remuneration paid to the director
- Rescission of contract (where the director did not disclose an interest)

(2 marks)

(b) Identify whether Fay acted in breach of the following duties of a director.

| | Duty breached | Duty not breached |
|--|-----------------------|-----------------------|
| Duty to avoid conflict of duty and personal interest | <input type="radio"/> | <input type="radio"/> |
| Duty not to accept benefits from third parties | <input type="radio"/> | <input type="radio"/> |

(2 marks)

(c) Identify the type of resolution and meeting notice period that Gus and Het would need to use in order to correctly remove Fay as a director.

| | Ordinary notice | Special notice |
|---------------------|-----------------------|-----------------------|
| Ordinary Resolution | <input type="radio"/> | <input type="radio"/> |
| Special Resolution | <input type="radio"/> | <input type="radio"/> |

(2 marks)

(Total = 6 marks)

4 Two years ago Fin inherited some money and decided to invest the money in company shares.

At that time he heard that Heave Ltd was badly in need of additional capital and that the directors had decided that the only way to raise the needed money was to offer fully paid up £1 shares to new members at a discount price of 60p per share. Fin thought the offer was too good to miss and he subscribed and paid for 20,000 new shares on this basis. However, Heave Ltd has since gone into insolvent liquidation, owing a considerable sum of money to its unsecured creditors.

With the remaining money of his investment Fin subscribed for 10,000 shares in Irk plc. Although they were nominally £1 shares, he was required to pay £2 for each share he subscribed for. The shares are currently trading at £2.50 per share.

(a) Which of the following describes Fin's liability for Heave Ltd's debts?

- Jointly liable for all the company's debts with the other shareholders
- No liability because he has already paid for his shares in full
- Liable in full for £8,000 (40p per share × 20,000 shares owned)
- Liable up to £8,000 (40p per share × 20,000 shares owned) depending on the amount Heave Ltd owes

(2 marks)

(b) Identify which of the following statements concerning Fin and Irk plc are true or false.

True False

Irk plc must transfer the excess Fin paid over the nominal value of the shares to a general reserve

Irk plc is not permitted to pay the excess Fin paid over the nominal value of the shares as a dividend

Irk plc is permitted to use the excess Fin paid over the nominal value of the shares to fund a bonus issue

Irk plc is permitted to repay the excess Fin paid over the nominal value of the shares back to him as a cash payment

(4 marks)

(Total = 6 marks)

5 Jaz plc is listed on the London Stock Exchange. Kip works for Jaz plc as an accountant. Whilst drawing up the annual accounts, Kip noticed that Jaz plc's profits were better than anyone could have expected. As a consequence of this knowledge, he bought shares in Jaz plc before its good results were announced. He made a substantial profit on the share dealing. Kip also told his friend Lu about the results before they were announced. Lu also bought shares in Jaz plc.

(a) Which **TWO** of the following are elements of the definition of inside information?

- Relating to any securities
- Being specific or precise
- Made public
- Likely to have a significant effect on the price of securities

2 marks)

(b) Identify which of the following offences Kip and Lu have committed.

| | | |
|----------------------------------|-----------------------------|---------------|
| Trading using inside information | Encouraging another to deal | Both offences |
|----------------------------------|-----------------------------|---------------|

| | | |
|-----|-----------------------|-----------------------|
| Kip | <input type="radio"/> | <input type="radio"/> |
| Lu | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(Total = 6 marks)

(Total = 30 marks)

Answers

**DO NOT TURN THIS PAGE UNTIL YOU HAVE
COMPLETED THE MOCK EXAM**

SECTION A

1 Magistrates' Court

All criminal cases begin in a Magistrates' Court with the more serious cases moving to the Crown Court afterwards. County Courts are in the civil court system and mainly deal with contract and tort cases.

Syllabus area A1(b)

2 Bonus issue

The allotment of additional, fully paid-up shares, in proportion to the holding of each shareholder is a bonus issue. A rights issue requires the shareholder to pay for the extra shares issued.

Syllabus area E1(c)

3 A form of delegated legislation that allows ministerial powers to be exercised

A statutory instrument is a form of delegated legislation that allows ministerial powers to be exercised.

Syllabus area A2(b)

4 The person has the ability to delegate work to others

The ability to delegate work is an indication of self-employment. The other options are indications that the person is employed.

Syllabus area C1(a)

5 The principal must have existed when the contract was formed

To ratify the contract, the principal must have existed when it was formed and ratification must take place within a reasonable period of time. Ratification must be communicated to the third party, but their agreement to the ratification is not required.

Syllabus area D1(b)

6 One week

If a person is employed between one month and two years they are entitled to one week's notice.

Syllabus area C2(a)

7 Partners' loan advances

After external debts have been settled, loan advances from partners are repaid next followed by partners' capital contributions and then any profits are shared out.

Syllabus area D2(e)

8 A members' voluntary liquidation

A declaration of solvency is required to commence a members' voluntary liquidation. It is not required in the other options.

Syllabus area G1(a)

9 Becoming bankrupt

Out of the options only becoming bankrupt is a ground for disqualifying a company director under the model articles.

Syllabus area F1(b)

10 A dormant company

Dormant companies are exempt from audit. Public companies are never exempt from audit. Private companies are exempt from audit if they have turnover of less than £10.2 million and a balance sheet total of less than £5.1 million.

Syllabus area F2(b)

11 28 days

Every employee is entitled to a minimum of 28 days' holiday leave.

Syllabus area C1(b)

12 Unfair dismissal

Dismissal on the grounds of pregnancy is an automatically unfair reason for dismissal. Wrongful dismissal occurs when insufficient notice is given to an employee. Constructive dismissal occurs when the employer repudiates an essential term of the employment contract and the employee resigns.

Syllabus area C2(d)

13 Rejection of the original offer

A counter-offer has the effect of rejecting the original offer.

Syllabus area B1(c)

14 It is not legally binding on the holding company or subsidiary company

A 'letter of comfort' is not legally binding on the holding company or subsidiary company.

Syllabus area B1(h)

15 What a reasonable person would do in the circumstances

The standard of care is what a reasonable person would do in the circumstances.

Syllabus area B4(c)

16 It is a complete defence to an action in negligence

Volenti non fit injuria is a complete defence to an action in negligence. The defendant is not liable because the claimant voluntarily accepted the risk of injury or loss. Contributory negligence reduces the amount of damages that a defendant must pay. *Res ipsa loquitur* reverses the burden of proof.

Syllabus area B4(e)

17 Chancery Division

Bankruptcy cases are heard by the Chancery Division. The Queen's Bench Division mainly deals with contract and tort cases. The Family Division deals with family related cases.

Syllabus area A1(b)

18 *Expressio unius est exclusio alterius*

Expressio unius est exclusio alterius means that to express one thing is by implication to exclude anything else. *Noscitur a sociis* means that it is presumed that words draw meaning from those around them. *In pari materia* means that if the statute forms part of a series that are on a similar subject, the court may look to the interpretation of previous statutes on the assumption that Parliament intended the same thing.

Syllabus area A2(c)

19 A mobile phone contract from a telecommunications company to a private individual

The Consumer Rights Act 2015 only applies to business-to-consumer contracts. The other options are examples of contracts that are therefore outside from the scope of the Act.

Syllabus area B2(c)

20 The losses that the defendant could reasonably foresee

A claimant is only liable for the losses that they could reasonably foresee and this may mean that the defendant does not receive damages in respect of all the losses suffered.

Syllabus area B4(d)

21 The company as a whole

Since the *Caparo* case, auditors only owe a duty of care to the company as a whole.

Syllabus area C1(b)

22 The term must be notorious

Terms may be implied into contracts from custom and practice if they are reasonable, certain and notorious.

Syllabus area A1(b)

23 The other party has made performance impossible

A party will have a lawful excuse not to perform their obligations if the other party has made performance impossible. An increase in cost is not a lawful excuse, nor is performance being more difficult.

Syllabus area B3(a)

24 A contract of guarantee

A contract of guarantee must be evidenced in writing. The other options are contracts that must be made by deed.

Syllabus area B1(a)

25 Two persons who hold at least a third of the nominal value of the shares in the class

The quorum for a class meeting is two members who hold at least a third of the nominal value of the shares in the class.

Syllabus area F3(c)

26 All employees are automatically dismissed

Once a liquidation order has been granted all employees are automatically dismissed. The official receiver is appointed as liquidator and runs the company during the liquidation process. Existing legal proceedings are halted and new proceedings may not commence.

Syllabus area G1(b)

27 Performance of the promise must be possible

To be valid consideration, the promise must be possible. It must pass from the promise. Consideration must be sufficient but not necessarily adequate. It does not have to be given in writing.

Syllabus area B1(e)

28 The Privy Council

The Judicial Committee of the Privy Council is the final court of appeal for a number of Commonwealth countries. Its decisions have a persuasive influence over points of law in the English legal system.

Syllabus area A1(b)

29 To prevent the company from selling the asset secured by the charge

Debentureholders do not have the right to dividends, to attend company meetings or to vote on company resolutions. However, if the debenture is secured by a fixed charge, they may prevent the company from selling the asset that the charge is secured on.

Syllabus area E2(b)

30 A term that is deemed unfair cannot be enforced by the consumer

Under the Act, terms which are void include those which restrict the consumer's legal rights and those which allow the business to unilaterally change the terms of the contract. A consumer may enforce a term which is deemed unfair.

Syllabus area B2(c)

31 The courts may strike out primary legislation that is incompatible with the European Convention on Human Rights

All legislation must be interpreted in a manner that is compatible with the Convention. New Bills must be accompanied with a statement of compatibility. Common law must be interpreted in line with decisions of the European Court of Human Rights. The courts may strike out secondary, not primary, legislation.

Syllabus area A2(d)

32 High Court

Appeals from a Magistrates' Court are heard by the High Court (Queen's Bench Division).

Syllabus area A1(b)

33 Unlimited liability

A sole trader has unlimited liability for the debts of the business.

Syllabus area D3(a)

34 Mick and Joan only

Directors who misinterpret the accounts will be liable for an unlawful dividend. Relief may be granted if the mistake was honest and reasonable, but this is not the case here because the misinterpretation was due to negligence. Only shareholders who know the dividend was unlawful are liable.

Syllabus area D3(b)

35 Make a payment to an unsecured creditor

An administrator usually requires court approval to make payments to unsecured creditors. The other actions do not require court approval.

Syllabus area G1(e)

36 Laundering, Failure to report

LT has assisted SP in laundering money from a criminal offence (tax evasion) and is also liable for failing to report SP's money laundering activities.

Syllabus area H1(c)

37 The right to statutory paternity leave and pay for a maximum of two weeks, The right to unpaid paternity leave for up to 18 weeks until the child is age 18

A new father is entitled to two weeks of paternity leave and pay after the birth of his child. He is also entitled to 18 weeks of unpaid parental leave until the child is aged 18. He has the right to apply for flexible working, but it does not have to be granted. There is no protection from redundancy available.

Syllabus area C1(b)

38 Certificate of incorporation

As well as sending a certificate of incorporation to the company, the Registrar will keep a copy on the company's file. Not all ordinary resolutions will be filed. Copies of board minutes are not sent to the Registrar.

Syllabus area D4(d)

39 The taking part in unofficial industrial action by an employee

Taking part in unofficial industrial action and being a threat to national security are the two automatically fair reasons for dismissal. Pregnancy is an automatically unfair reason. Capability is a potentially fair reason.

Syllabus area C2(d)

40 Articles of association, Company resolutions

A company's constitution consists of its articles of association and any resolutions or agreements that it makes.

Syllabus area D4(e)

41 Making a false declaration of solvency, Wrongful trading

All the offences may be committed by directors, but only making a false declaration of solvency and wrongful trading are a consequence of insolvency – ie they can only be committed by directors of insolvent companies.

Syllabus area A1(b)

42 *Quantum meruit*

In a *quantum meruit* claim, the injured party claims the value of the work done. An action for the price is an action to recover a specific amount, usually the price of goods supplied. Specific performance involves the defendant performing the contract as agreed. Rescission involves reversing what has happened so all parties are returned to the pre-contract status quo.

Syllabus area B3(c)

43 Acceptance may be inferred from a person's actions

Acceptance may be inferred by a person's actions. It cannot be indicated by a person's silence but does not have to be made verbally either.

Syllabus area B1(d)

44 The client and any person that the accountant knows will rely on the accounts

An accountant owes a duty of care to those they have a special relationship with. This includes the client that the accounts were prepared for, but also to anyone who the accountant knows will rely on the accounts.

Syllabus area B4(f)

45 A contract between a man and his brother in relation to the transfer of property between them, A contract of employment between a company and an employee

The courts will infer intention where property is transferred between family members. An employment contract is commercial in nature and therefore intention is presumed. The other options are domestic matters where intention is not presumed.

Syllabus area B1(h)

SECTION B

1 (a) Adam cannot require Bob to pay his balance in full because payment in kind is valid consideration. Adam agreed to accept Bob's servicing of his car as a payment in kind. He may not recover any further sum from Bob. Consideration need not be 'adequate' at law but must be sufficient so the question of whether servicing of the car is valuable enough is not relevant. The Unfair Contract Terms Act is also not relevant to this case.

(b) The doctrine of promissory estoppel does not apply – False
 Adam can recover the part payment if he did not accept it voluntarily – True
 Adam can recover the part payment if Dawn took advantage of him financially – True
 Dawn may be required to pay Adam in full because of the success of her recording – True
Prima facie, Adam's agreement to accept only half of the debt appears to be unsupported by consideration and therefore Adam may still claim the remaining amount. However, Dawn may claim he cannot do so because of the doctrine of promissory estoppel, since she acted on the strength of his waiver by spending the remaining debt money on her recording.
 If Adam can show that he did not accept part payment voluntarily or that Dawn took advantage of his financial difficulty, he may be entitled to recover following *D and C Builders v Rees 1966*. Alternatively, it may be argued that following the success of Dawn's recording, her reliance on the waiver was not to her detriment and it would be inequitable to allow her to avoid her obligations. The circumstances are such that it may be just to allow Adam to enforce his legal rights.

2 (a) Chi, Di and Fi. Chi has taken money from the firm's bank account to use for a personal holiday. However, as a partner, and in the absence of any specific mention to the contrary in the agreement, she has authority to withdraw money from the bank account. Her action has therefore incurred a debt to a third party that is owed by all three partners, not just herself.

(b) Yes – she had apparent authority. The partnership agreement specifies that the partnership should only sell paintings, sculptures and other works of art, so Di did not have actual (or express) authority to undertake this contract. However, the third party is not privy to the partnership agreement so is not aware that the contract is beyond the scope of the partnership. Therefore, Di has apparent authority to undertake the contract on behalf of the other partners.

(c) Fi is jointly liable for all partnership debts but may claim back any amount she is liable for over £100,000 from Chi and Di. Because both the overdraft and contract for the books are binding on the partnership all three partners are personally liable if the partnership does not have sufficient funds to pay them. Fi is jointly liable for the debts of the partnership to the third parties. However as the partnership agreement limits her liability to £100,000 she will be able to claim any amount over this from Chi and Di.

3 (a) Restoration of company property, Rescission of contract (where the director did not disclose an interest). Consequences for directors that are in breach of their duties include:

- Damages payable to the company where it has suffered loss
- Restoration of company property
- Repayment of any profits made by the director
- Rescission of contract (where the director did not disclose an interest)

(b) Duty to avoid conflict of duty and personal interest – duty breached
 Duty not to accept benefits from third parties – duty breached
 Under the Companies Act 2006, Fay is in breach of her s 175 duty to avoid conflict of duty and personal interest. This is because she did not disclose her interest in Ix plc and she obtained a personal advantage through this interest. She is also in breach of her s 176 duty not to accept benefits from third parties when she accepted the substantial payment from Ix plc for passing on information.

(c) Ordinary resolution and special notice. Gus and Het could seek Fay's removal as a director of FGH Ltd. To do this they would have to provide the company with special (28-day) notice to arrange a general meeting. They would then need to arrange for an ordinary resolution to be voted on at the meeting, calling for her removal. They have sufficient numbers of shares between them to meet the requirements of a simple majority.

4 (a) Liable up to £8,000 (40p per share \times 20,000 shares owned) depending on the amount Heave Ltd owes. On allotment, it is possible for part of the payment for shares to be deferred to a future date. In such cases the shares are referred to as 'partly paid'. In the event of the shares being transferred, the unpaid capital passes with the shares as a debt payable by the holder at the time when payment becomes due. Fin is therefore liable to Heave Ltd for the unpaid element of 40p per share. He will therefore have to pay up to a maximum of £8,000 to Heave Ltd, depending on the actual liabilities of the company.

(b) Irk plc must transfer the excess Fin paid over the nominal value of the shares to a general reserve – False

Irk plc is not permitted to pay the excess Fin paid over the nominal value of the shares as a dividend – True

Irk plc is permitted to use the excess Fin paid over the nominal value of the shares to fund a bonus issue – True

Irk plc is permitted to repay the excess Fin paid over the nominal value of the shares back to him as a cash payment – False

A company may issue shares for a price in excess of the nominal value of those shares. The excess is called the 'share premium' and must be credited to a share premium account which is not a general reserve. The general rule is that reduction of the share premium account is subject to the same restrictions as reduction of share capital. No part of the account can be distributed as dividend or as a cash payment. The account can be used to pay up fully paid shares under a bonus issue since this operation simply converts one form of fixed capital into another. It can also be used to pay issue expenses and commissions in respect of a new share issue.

5 (a) Being specific or precise,
Likely to have a significant effect on the price of securities.
The Criminal Justice Act 1993 defines inside information as information:

- Relating to particular securities
- Being specific or precise
- Not made public
- Likely to have a significant effect on the price of securities

(b) Kip – Both offences
Lu – Trading using inside information

Kip is an insider by virtue of his position as an accountant in Jaz plc. The information he holds is price-sensitive because it concerns large profits. Therefore, it would appear that he is liable for dealing in price-affected securities. None of the defences would apply to him as he clearly expected to make a profit.

He also becomes liable for the offence of encouraging another to deal in price-affected securities when he advises Lu to buy shares in Jaz plc.

Lu received inside information from Kip who he knew to be an insider. Therefore he is liable, like Kip, for trading using inside information.

ACCA Applied Skills

Corporate and Business Law

(LW) (ENG)

Mock Exam 2

| Questions | |
|---|---|
| Time allowed | 2 hours |
| This exam is divided into two sections: | |
| Section A | ALL 45 questions are compulsory and MUST be attempted |
| Section B | ALL 5 questions are compulsory and MUST be attempted |

Please note that it is not possible to predict question topics in an examination of this nature. We have based the content of this Mock Exam on our long experience of the ACCA exams. We do not claim to have any endorsement of the question types or topics from either the examining team or the ACCA and we do not guarantee that either the specific questions or the general areas that are featured here will necessarily be included in the exams, in part or in whole.

We do not accept any liability or responsibility to any person who takes, or does not take, any action based (either in whole or in part and either directly or indirectly) upon any statement or omission made in this book. We encourage students to study all topics in the ACCA syllabus and this Mock Exam is intended as an aid to revision only.

DO NOT OPEN THIS EXAM UNTIL YOU ARE READY TO START UNDER EXAMINATION CONDITIONS

Section A – ALL 45 questions are compulsory and MUST be attempted

1 In a case that is being heard under the civil law, which of the following is the injured party?

- The prosecution
- The claimant
- The defendant

(1 mark)

2 What is a treasury share?

- A share issued on terms that it may be brought back by the company at a future date
- A share offered to members to purchase pro rata to their existing holding
- A share given fully-paid to existing members
- A share created when a company purchases its own shares for cash or out of distributable profit

(2 marks)

3 Which rule of statutory interpretation means that words in an Act should be given their grammatical meaning?

- The literal rule
- The golden rule
- The mischief rule

(1 mark)

4 Which of the following is an example of wrongful dismissal?

- Dismissal with insufficient notice
- Dismissal on grounds of trade union membership
- The repudiation of an essential term of the employment contract by the employer resulting in the resignation of the employee
- Dismissal on grounds of pregnancy

(2 marks)

5 Hamble is the Chief Executive Officer of Bead Ltd. In a communication with one of Bead Ltd's suppliers, Hamble states that Avery is now an agent of Bead Ltd and that the supplier should in future communicate with Bead Ltd through Avery.

Which type of agency agreement has been created?

- Agency by estoppel
- Agency by necessity
- Agency by implied agreement

(1 mark)

6 An employment contract can be in which of the following forms?

- Written only
- Oral only
- Written or oral

(1 mark)

7 Which of the following describes the liability of partners who retire from an unlimited partnership?

- Liable for partnership debts only up until the date of retirement
- Liable for partnership debts incurred before and after retirement
- Liable for partnership debts until all creditors of the firm have been notified of their retirement

(1 mark)

8 A liquidation committee is involved in which of the following insolvency procedures?

- Members' voluntary liquidation
- Creditors' voluntary liquidation
- Compulsory liquidation
- Administration

(2 marks)

9 George is a director of two companies that operate in the same industry, Zip Ltd and Bung Ltd. Both Zip Ltd and Bung Ltd have recently tendered for the same contract with Jane Ltd. Only one company will be awarded the contract.

Which statutory duty of a director is George in breach of?

- Acting within powers
- Exercising independent judgement
- Not accepting benefits from third parties
- Avoiding conflicts of interest

(2 marks)

10 Which of the following is **NOT** a test used by the courts to determine the employment status of an employee?

- Control test
- Integration test
- Delegation test

(1 mark)

11 Which of the following is a legitimate method for an auditor to leave office?

- Written resolution with a 75% majority
- Ordinary resolution with 14 days' notice of the meeting
- Resignation of the auditor before the end of their term of office

(1 mark)

12 Which of the following is a remedy for unfair dismissal?

- Re-engagement as an employee of the employer
- Damages for breach of employment contract
- Damages for the employer's negligence

(1 mark)

13 Which of the following is **NOT** an essential element of a valid contract?

- Acceptance
- Invitation to treat
- Intention to create legal relations
- Consideration

(2 marks)

14 Which of the following is the name given to something that induces the formation of a contract but does not become a term of the contract?

- Condition
- Warranty
- Representation
- Statement

(2 marks)

15 In relation to the tort of negligence, what is *novus actus interveniens*?

- A decision by the court that reverses the burden of proof
- An intervening act that may break the chain of causality
- An event that makes the damage too remote so that the defendant is not liable
- A defence to a liability in negligence

(2 marks)

16 Which type of legal wrong is 'passing-off' classified as?

- A criminal offence
- A breach of contract
- A tort

(1 mark)

17 The Queen's Bench Division is a part of which of the following courts?

- The Court of Appeal
- The Supreme Court
- The High Court

(1 mark)

18 In the English civil law system, the decision of which of the following courts may be appealed directly to the Supreme Court?

- Crown Court
- County Court
- High Court

(1 mark)

19 Gup has a contract to supply Jud with a computer on 31 March 20X1. On 2 March 20X1 Gup tells Jud that due to demand in the market for computer chips, the cost of supplying the computer has increased and that he will no longer be able to supply it.

On 2 March 20X1, which of the following options is available to Jud?

- Jud may treat the contract as discharged, but cannot sue for damages until after 31 March
- Jud must allow the contract to continue until actual breach occurs and then sue for damages
- Jud may treat the contract as discharged and sue for damages on 2 March, or allow the contract to continue until actual breach occurs and then sue for damages
- Jud must accept that Gup's performance is impossible and there is no legal remedy for him

(2 marks)

20 In which of the following circumstances does *volenti non fit injuria* apply?

- Where the claimant accepted the risk of loss or damage
- Where the claimant fully or partly contributed to their losses
- Where the claimant accepts the burden of proof

(1 mark)

21 DDD plc requested a meeting with the auditor of a company that it wanted to takeover in order to discuss the company's finances. In the meeting, the senior partner of audit firm stated that the target company's latest accounts can be relied upon. The takeover took place and it was discovered that the accounts of the target company understated debts by £10 million.

Which of the following describes the legal position of the audit firm?

- The auditor does not owe a duty of care to DDD plc because it was not a client of the firm
- The auditor does not owe a duty of care to DDD plc because the accounts are not intended as advice in a takeover
- The auditor owes DDD plc a duty of care because of the statement of the senior partner
- The auditor owes DDD plc a duty of care because they could have foreseen that the accounts may be used in a takeover

(2 marks)

22 What is the statutory minimum notice period that an employee with 12 years of service has to give their employer when they wish to terminate their employment?

- 1 week
- 4 weeks
- 6 weeks
- 12 weeks

(2 marks)

23 Which type of consideration has been provided where goods are delivered and payment is made at the same time?

- Executory consideration
- Executed consideration
- Past consideration

(1 mark)

24 Luce sent an email to Brice that asked 'Will you sell your car to me?'. Brice sent an email in reply that stated 'The price of the car is £2,000'.

How will Brice's email to Luce be treated under contract law?

- As an offer
- As an invitation to treat
- As a supply of information
- As an invitation to tender

(2 marks)

25 In relation to company meetings, what is a proxy?

- A person appointed by a shareholder to attend the meeting and vote on their behalf
- A person who presides over the meeting
- A person who counts the votes cast by members on a resolution

(1 mark)

26 One ground for a creditor to apply for the compulsory liquidation of a company is that they are owed a minimum amount of money, they have issued a written demand for payment of what is owed and the company fails to repay the debt or offer reasonable security for it within 21 days.

What is the minimum amount of debt owed by the company for this procedure to apply?

- £500
- £750
- £1,000
- £1,500

(2 marks)

27 Which of the following statements concerning consideration is correct?

- Consideration must be adequate
- Consideration must be sufficient
- Consideration from each party must be of equal value
- Consideration must be present in all contracts

(2 marks)

28 Which of the following is the name given to companies that are created by directors of insolvent companies in order to continue their business illegally?

- Unicorn companies
- Phoenix companies
- Dragon companies

(1 mark)

29 Which of the following will **NOT** cause a floating charge to crystallise?

- Liquidation of the company
- Sale of the assets the charge is secured on
- Cessation of the company's business
- Appointment of a receiver by the chargee

(2 marks)

30 Which of the following is the remedy to the injured party in the event of a breach of warranty?

- Treat the contract as discharged only
- Claim damages only
- Treat the contract as discharged and claim damages

(1 mark)

31 The Criminal Division of the Court of Appeal normally hears appeals from which of the following courts?

- High Court
- Crown Court
- County Court
- Magistrates' Court

(2 marks)

32 In the context of the English legal system, what are 'Rules of Court'?

- A form of delegated legislation
- Parliamentary procedures followed in the formation of primary legislation
- A handbook used by Judges when interpreting primary legislation
- Guidance given to Judges when applying the UK's Human Rights legislation

(2 marks)

33 A private limited company is distinguished from other corporate forms by what at the end of its name?

- plc
- Ltd
- LLP

(1 mark)

34 In relation to the payment of dividends, which of the following is a distributable reserve?

- Capital redemption reserve
- Revaluation reserve
- Retained earnings
- Share premium account

(2 marks)

35 Which of the following will prevent a company from appointing an administrator?

- The company is currently unable to pay its debts
- A resolution of the floating chargeholders with a 75% majority
- A receiver currently in office at the company
- A declaration of solvency from the directors

(2 marks)

36 In relation to insider dealing, information that is 'made public' is not classed as inside information.

Which **TWO** of the following are information that is 'made public'?

- Information that is published under the rules of the regulated market
- Information concerning public companies
- Information communicated by the company Chairman
- Information published in *The Gazette*

(2 marks)

37 Which **TWO** of the following must be included on an employee's statement of prescribed particulars given to them soon after they commence employment?

- Job title
- Entitlement to flexible working
- Provision of training facilities
- Details of pensions or pension schemes

(2 marks)

38 Which party is **NOT** liable on a pre-incorporation contract?

- The company
- The third party
- The promoter

(1 mark)

39 After what period of continuous service does an employee become eligible for redundancy pay?

- 12 months
- 18 months
- 24 months

(1 mark)

40 Which **TWO** of the following parties are bound by a company's constitution?

- The company's shareholders
- The company's suppliers
- The company's debentureholders
- The company itself

(2 marks)

41 Which **TWO** of the following are valid defences available to a charge of bribery?

- The person did not expect to make a profit
- The person was exercising their function as a member of the intelligence service
- The person was exercising their function as a member of the armed forces on active service
- The person had reasonable grounds for their conduct

(2 marks)

42 Which of the following is **NOT** a type of repudiatory breach of contract?

- Renunciation
- Incapacitation
- Excommunication
- Breach of condition

(2 marks)

43 How is an advertisement of goods for sale treated under contract law?

- As an offer
- As a supply of information
- As an invitation to treat

(1 mark)

44 In the tort of negligence what is the effect of the 'egg-shell skull' rule?

- The claimant is expected to take extra care if they are more prone to injury
- The claimant is expected to have notified the defendant that they are at a high risk of injury
- The defendant is expected to take the victim as they find them
- The defendant is expected to assume liability for unforeseeable damage to the claimant if the claimant is especially vulnerable

(2 marks)

45 Terms in a business-to-business contract may include exclusion clauses limiting a party's liability for losses due to negligence.

Which **TWO** of the following exclusion clauses are only valid if reasonable?

- Liability for death
- Liability for economic loss
- Liability for damage to a vehicle
- Liability for personal injury

(2 marks)

SECTION B – ALL 5 questions are compulsory and MUST be attempted

1 Ali is a dealer in Persian rugs and placed an advertisement in his local paper stating: 'Once in a lifetime opportunity to own a handmade Persian antique rug for only £1,500 – cash only. This is a serious offer – the rug will go to the first person who accepts it – offer valid for one day only – today Saturday.'

When Bud saw the advert, he immediately posted a letter of acceptance of Ali's offer in order to make sure he got the rug. Cil also saw the advert and after inspecting the rug offered Ali a cheque for £1,500, but he refused to accept the cheque and told her she could not have the rug. Later in the day, Das asked Ali if he would keep the offer open until he could get to his bank to arrange a loan. Ali agreed, but subsequently, when Ed offered to pay £2,000 in cash for the rug, Ali sold the rug to him.

On Monday morning Bud's letter arrived, and Das returned to complete his purchase of the rug.

(a) Which of the following statements concerning Ali's advertisement is correct?

- The advert is an invitation to treat
- The advert is an offer
- The advert is an invitation to tender
- The advert is sales puff

(2 marks)

(b) Identify the reasons why the following parties do not have a binding contract with Ali.

| | Insufficient consideration | Counter-offer | No valid acceptance | Revocation |
|-----|----------------------------|-----------------------|-----------------------|-----------------------|
| Bud | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Cil | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Das | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(Total = 6 marks)

2 Brian is the manager of a distribution warehouse that supplies a number of Do-It-Yourself stores. Following the introduction of a new computerised stock record system, Brian is dismissed, because he is unable to adapt to the new working practices – no warnings were given and no disciplinary action was taken before his dismissal. Brian has worked for the company for 15 years. As a result of the re-organisation, John is also dismissed because of his involvement in trade union activities. He has worked for the company for nine months.

(a) Which of the following are available remedies for unfair dismissal.

- Reinstatement, promotion, compensation
- Compensation, re-engagement, reinstatement
- Re-engagement, reinstatement, redundancy
- Redundancy, compensation, promotion

(2 marks)

(b) Identify which of the following dismissals apply to Brian and John

| | Redundancy | Wrongful Dismissal | Unfair Dismissal |
|-------|-----------------------|-----------------------|-----------------------|
| Brian | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| John | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

(4 marks)

(Total = 6 marks)

3 Mat is in the process of setting up an IT business as a private limited company. He has been told that in order to register the company he should submit appropriate articles of association and a memorandum of association.

He also thinks that because there is an existing similar, local business called Netscape Ltd it would be a good idea to call his new company Netscope Ltd based on the chance that he could transfer some of its business to his new company.

(a) Which of the following is contained within a company's memorandum of association?

- Details of class rights
- Names of the subscribers to the company
- Rules governing the conduct of meetings
- Powers of directors

(2 marks)

(b) Which of the following statements concerning Mat's company's articles of association is correct?

- Mat's company will not be registered until he submits articles of association
- Mat's company may trade while he finalises its articles of association
- If Mat does not submit articles of association then the Registrar will incorporate the company with model articles for a 'Limited Company'
- If Mat does not submit articles of association then the Registrar will incorporate the company with model articles for a 'Private Limited Company'

(2 marks)

(c) What advice would you give to Mat in regards to his proposed company's name?

- He should use the name because it is not the same as the existing company
- He should use the name because there are no laws against using a similar name to another company
- He should not use the name because he would be prevented to do so by the common law
- He should not use the name because it is unethical to do so

(2 marks)

(Total = 6 marks)

4 Five years ago Kim, Liz and Meg formed Orb Ltd in which Kim and Liz each hold 40% of the shares and Meg owns the remaining 20%. They are the only directors. The objects of Orb Ltd contained in its articles are restricted to research, production and marketing environmentally-friendly cleaning products.

In the course of a research project for Orb Ltd, Kim discovered a new highly powerful industrial cleaner, but unfortunately it is extremely toxic and not at all environmentally-friendly. She persuaded Liz that Orb Ltd should sell the new product and the pair recently signed a contract with Zeeb Ltd to distribute it. The pair have started to market the product to other potential customers as well.

Meg maintains that the contract is contrary to the restrictions stated in Orb Ltd's articles and is not binding on the company.

(a) Which of the following statements describe the legal capacity of a registered company to contract?

- A registered company may enter into any lawful contract and cannot be restricted by the members
- A registered company may enter into any lawful or unlawful contract
- A registered company may enter into any lawful contract subject to any restrictions placed on it by the members
- A registered company may enter into any lawful contract subject to approval of the members

(2 marks)

(b) Can Zeeb Ltd enforce its contract with Orb Ltd?

- No – the contract is *ultra vires* for the company
- No – Kim and Liz did not have authority to enter the company into the contract
- Yes – the principle of *ultra vires* does not apply to companies
- Yes – the principle of *ultra vires* applies but the Companies Act 2006 protects third parties to *ultra vires* contracts

(2 marks)

(c) Can Meg may stop Kim and Liz marketing the new product to other potential customers?

- Yes – because shareholders owning over 15% of the shares may apply to the court to prevent the company carrying out *ultra vires* activities
- Yes – because Kim and Liz have acted in breach of their statutory duties as directors
- No – because Kim and Liz own sufficient voting rights to control the company
- No – because it is a matter for the Registrar of Companies to decide on

(2 marks)

(Total = 6 marks)

5 Martha is the finance director of a publicly listed chain of fashion stores. The company is finding it increasingly hard to pay its creditors as its sales are falling rapidly and the point has been reached where Martha must decide whether to close the failing business down or to battle on, even though the business is unlikely to pull through.

Em jointly owns a rival store. It is experiencing some minor cash flow problems and she is thinking about starting a members' voluntary winding up to close the company down.

(a) Which of the following is a criminal offence that Em may commit if a members' voluntary winding up is commenced?

- Making a false declaration of solvency
- Insider dealing
- Money laundering
- Bribery

(2 marks)

(b) Identify whether Martha and Em have any liability for fraudulent or wrongful trading under the Insolvency Act 1986.

| | Fraudulent trading only | Wrongful trading only | Both offences | Neither offence |
|--------|-------------------------|-----------------------|-----------------------|-----------------------|
| Martha | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Em | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

(4 marks)
(Total = 6 marks)

Answers

**DO NOT TURN THIS PAGE UNTIL YOU HAVE
COMPLETED THE MOCK EXAM**

SECTION A

1 The claimant

In the civil law system the injured party is known as the claimant and the person who the case is being brought against is known as the defendant. The prosecution is the party bringing a case under the criminal law.

Syllabus area A1(a)

2 A share created when a company purchases its own shares for cash or out of distributable profit

A treasury share is created when a company buys its own shares for cash or out of distributable profit. A redeemable share is issued on the basis that the company can buy it back at a future date. A rights issue is where shares are offered to members to buy pro rata to their existing holding. A bonus issue is where shares are given fully-paid to the existing members.

Syllabus area E1(b)

3 The literal rule

The literal rule states that words should be given their grammatical meaning. The golden rule states that the literal rule should be followed unless it could give an absurd result. The mischief rule states that the judge should consider what mischief the Act was intended to prevent.

Syllabus area A2(c)

4 Dismissal with insufficient notice

Wrongful dismissal is dismissal with insufficient notice. Dismissal on grounds of trade union membership or pregnancy is unfair dismissal. The repudiation of an essential term of the employment contract by the employer that results in the resignation of the employee is constructive dismissal.

Syllabus area C2(c)

5 Agency by estoppel

Hamble is 'holding out' to the supplier that Avery is an agent of Bead Ltd. Therefore an agency by estoppel has been created.

Syllabus area D1(b)

6 Written or oral

An employment contract can be in written or oral form.

Syllabus area C1(b)

7 Liable for partnership debts until all creditors of the firm have been notified of their retirement

Retiring partners are liable for partnership debts, incurred before and after the retirement until all creditors are notified of their retirement.

Syllabus area D2(d)

8 Creditors' voluntary liquidation

A liquidation committee is involved in a creditors' voluntary liquidation.

Syllabus area G1(a)

9 Avoiding conflicts of interest

George has a conflict of interest because both companies want to win the contract, but only one will be successful. The interests of both companies are in conflict.

Syllabus area F1(d)

10 Delegation test

The three tests used by the courts to determine employment status are the control test, integration test and multiple (economic reality) test.

Syllabus area C1(a)

11 Resignation of the auditor before the end of their term of office

An auditor may resign from office during their term by giving the company notice in writing. They cannot be removed by a written resolution, but can be removed with an ordinary resolution with special (28-day) notice of the meeting.

Syllabus area F2(b)

12 Re-engagement as an employee of the employer

The three remedies for unfair dismissal are reinstatement (same employer, same job), re-engagement (same employer, different job), or compensation (based on a statutory calculation not breach of contract).

Syllabus area A1(b)

13 Invitation to treat

The essential elements of a valid contract are offer, acceptance, intention to create legal relations and consideration.

Syllabus area B1(a)

14 Representation

A representation is something that induces a contract but does not become a term of the contract. Conditions and warranties are types of contractual term. A statement may be a term or a representation.

Syllabus area B2(a)

15 An intervening act that may break the chain of causality

Novus actus interveniens are intervening acts, such as by the claimant or a third party, that may break the chain of causality.

Syllabus area B4(d)

16 A tort

'Passing-off' is a type of tort.

Syllabus area B4(b)

17 The High Court

The Queen's Bench Division is a divisional court of the High Court.

Syllabus area A1(b)

18 High Court

In the civil law system, appeals to the Supreme Court are usually made from the Court of Appeal (not listed as an option). However, an appeal can also be made from the High Court via the leapfrog procedure.

Syllabus area A1(b)

19 Jud may treat the contract as discharged and sue for damages on 2 March, or allow the contract to continue until actual breach occurs and then sue for damages

Gup's performance is not impossible, just more expensive, and therefore he has committed anticipatory breach of contract. In this situation, Jud is entitled to treat the contract as discharged and sue for damages immediately, or allow the contract to continue and sue for damages at that point.

Syllabus area B3(b)

20 Where the claimant accepted the risk of loss or damage

Volenti non fit injuria is a defence to a liability in negligence and applies if the claimant voluntarily accepted the risk of injury or loss.

Syllabus area B4(e)

21 The auditor owes DDD plc a duty of care because of the statement of the senior partner

In general, an auditor does not owe a duty of care to the public, shareholders and others who buy or increase their stake in a company due to the *Caparo* decision. However, the statement by the senior partner is sufficient to create a duty of care because the firm knew that the accounts would be relied upon in a takeover.

Syllabus area B4(f)

22 1 week

The statutory minimum notice period of an employee, regardless of length of service, is one week.

Syllabus area C2(a)

23 Executed consideration

Executed consideration occurs at the present time – goods are delivered and the price is paid. Executory consideration is a promise given for a promise – a promise to pay for goods when they are delivered at a future time. Past consideration occurs before the contract is made.

Syllabus area B1(e)

24 As a supply of information

A statement of the price of an item is treated as a supply of information.

Syllabus area A1(b)

25 A person appointed by a shareholder to attend the meeting and vote on their behalf

A proxy is a person appointed by a shareholder to attend the meeting and vote on their behalf. It is the chairman that presides over the meeting.

Syllabus area F3(c)

26 £750

The creditor must be owed at least £750 for the procedure to apply.

Syllabus area G1(b)

27 Consideration must be sufficient

Consideration must be sufficient but need not be adequate. Consideration does not need to be of equal value. Contracts that are in the form of a deed do not require consideration.

Syllabus area B1(f)

28 Phoenix companies

Companies formed by directors of insolvent companies in order to continue their business illegally are known as phoenix companies.

Syllabus area H1(e)

29 Sale of the assets the charge is secured on

Sale of the assets that the charge is secured on does not cause the charge to crystallise. The other options all cause the charge to crystallise.

Syllabus area E2(d)

30 Claim damages only

Damages are the only remedy where a warranty is breached. Breach of a condition allows the injured party to treat the contract as discharged and claim damages.

Syllabus area B2(b)

31 Crown Court

The Criminal Division of the Court of Appeal hears appeals from the Crown Court.

Syllabus area A1(b)

32 A form of delegated legislation

Rules of Court are a form of delegated legislation that allows the judiciary to control court procedure.

Syllabus area A2(b)

33 Ltd

A private limited company is identified by Ltd at the end of its name. A public limited company has plc and a limited liability partnership has LLP.

Syllabus area D3(a)

34 Retained earnings

Distributable reserves include reserves of realised profits less realised losses, for example retained earnings. The other options are all none distributable reserves.

Syllabus area E3(b)

35 A receiver currently in office at the company

A company may not appoint an administrator if a receiver is already in office. Being unable to pay its debts is a ground for appointing an administrator.

Syllabus area G1(e)

36 Information that is published under the rules of the regulated market, Information published in *The Gazette*

The key word in the two correct answers is 'published'. Information published under rules of the regulated market and contained in public records, such as *The Gazette*, is public information. The other options have not been made public and could have been disclosed privately.

Syllabus area H1(a)

37 Entitlement to flexible working, Details of pensions or pension schemes

Job title and details of pensions or pension schemes are included on the statement. The other options are not.

Syllabus area C1(b)

38 The company

The company is not liable on a pre-incorporation contract because it did not exist when the contract was formed. The parties to the contract are the promoter and the third party.

Syllabus area D4(b)

39 24 months

An employee must have two years of continuous service to be eligible for redundancy pay.

Syllabus area C2(f)

40 The company's shareholders, The company itself

A company's constitution only binds the company and its members (the shareholders).

Syllabus area D4(e)

41 The person was exercising their function as a member of the intelligence service, The person was exercising their function as a member of the armed forces on active service

Only members of the armed forces or intelligence service that are properly exercising their function have a defence to bribery charges.

Syllabus area H1(d)

42 Excommunication

In contract law there is no such term as excommunication. The other options are types of repudiatory breach of contract.

Syllabus area B3(b)

43 As an invitation to treat

An advertisement of goods for sale is treated as an invitation to treat.

Syllabus area B1(b)

44 The defendant is expected to take the victim as they find them

The 'egg-shell skull' rule states that the defendant is expected to take the victim as they find them.

Syllabus area B4(c)

45 Liability for economic loss, Liability for damage to a vehicle

Clauses that limit liability for death or personal injury are void. Clauses relating to other types of loss or damage must be reasonable.

Syllabus area A1(b)

SECTION B

1 (a) The advert is an offer. As in the Carlil case, this advertisement in a newspaper is an offer which is open to the world at large. It is more than mere sales puff and is not an invitation to treat or tender. It clearly states that it is an offer.

(b) Bud – No valid acceptance
Cil – Counter-offer
Das – Revocation

Ali's advert stated that the offer is for Saturday only (the day the advert was displayed) and therefore it is fair to say that the use of the post is outside his contemplation and so postal rule does not apply. Bud has no contract with Ali because his attempt to accept the offer uses an unacceptable method.

Cil made an offer to buy the rug from Ali for the asking price, but by cheque rather than cash. Ali did not accept the cheque. By introducing new terms (payment by cheque not cash) Cil made a counter-offer to Ali. Ali rejected this offer and therefore there is no contract between them.

Das requested some extra time to arrange a bank loan to buy the rug and Ali agreed. This agreement was revoked by Ali when he sold the rug to Ed. Das did not have a separate option contract with Ali to hold the offer open for him because he did not give something by way of consideration for Ali holding the offer open.

2 (a) Compensation, re-engagement, reinstatement. Remedies for unfair dismissal include, reinstatement (ie a return to the same job without any break in the continuity of employment), re-engagement (which is a different but comparable job with the same employer) and compensation (consisting of a basic award, calculated on age, length of service and weekly wage). There may also be a compensatory award for additional losses calculated on ordinary principles of breach of contract which should represent the amount which the tribunal considers to be just and equitable in all the circumstances.

(b) Brian – Wrongful dismissal
John – Unfair dismissal

Brian has been dismissed because he has been unable to adapt to new works practices, not by reason of redundancy. Redundancy occurs where a person's skills are no longer required by the employer, for example where the business is relocated, closes down or is liquidated. Brian is not entitled to claim redundancy compensation. Capability is a fair reason for dismissal, so his dismissal is not unfair. He was not given sufficient notice and therefore can claim wrongful dismissal.

John has been dismissed because of his involvement in trade union activities and has worked for the company for nine months. Under the Act, a dismissal is automatically unfair (regardless of length of service) if it is on account of an employee's trade union membership or activities.

3 (a) Names of the subscribers to the company. A company's articles of association is part of its constitution that deals with matters affecting the internal conduct of the company's affairs including the issue and transfer of shares and class rights, dividends and alterations of capital structure, the convening and conduct of general meetings, the appointment, powers and proceedings of directors and company accounts. The memorandum is a document that is signed and dated by the subscribers of the company. It states that the subscribers wish to form a company and that they undertake to subscribe for at least one share.

(b) If Mat does not submit articles of association then the Registrar will incorporate the company with model articles for a 'Private Limited Company'. If articles of association are not submitted when a company is registered then the Registrar will form the company with model articles for the type of company being formed, in this case a private limited company. There are no model articles for a 'limited company' as this term includes public limited companies as well as private limited companies. A company without articles cannot be formed and therefore trade.

(c) He should not use the name because he would be prevented to do so by the common law. At common law, a company can be prevented from using a name if the use of that name causes the company's goods to be confused with those of another company. The court may grant an injunction in a passing off action brought by that other company and may also force the defendant company to change its name.

Mat is likely to be liable for an action in passing-off, particularly because of the similarity in business types and their location near each other. The case against him is strengthened because he declared that his aim is to benefit from the goodwill of an existing company. He is advised not to call his new company Netscope Ltd.

4 (a) A registered company may enter into any lawful contract subject to any restrictions placed on it by the members. The contractual capacity of a registered company is usually unrestricted and it may enter into any lawful contract. However the members may resolve to restrict the activities of the company (the objects), or the articles may have included restrictions at the time the company was registered.

(b) Yes – the principle of *ultra vires* applies but the Companies Act 2006 protects third parties to *ultra vires* contracts. Any contract entered into that is affected by such restrictions is known as *ultra vires*, and in theory it is void. However, given that the validity of a company's acts cannot be questioned on the grounds of it having lacked legal capacity (under s 39 of the Companies Act 2006), the *ultra vires* rule is of very limited effect insofar as third parties are concerned. Therefore Zeeb Ltd may enforce its contract with Orb Ltd.

(c) No – because Kim and Liz own sufficient voting rights to control the company. Meg's colleagues own 80% of the company's shares and therefore can pass any resolution they wish to. They may well seek to unrestrict the company's objects by special resolution to make marketing the product fall within the scope of the company's objects. Kim and Liz may have breached their duties as directors, but this does not mean Meg can prevent the marketing of the product. The court and Registrar will not get involved in this matter.

5 (a) Making a false declaration of solvency. When companies go into a members' voluntary winding up, the directors must make a declaration of solvency – ie a declaration that the company is not insolvent. It is a criminal offence to make such a declaration without having reasonable grounds to do so. Therefore Em must be certain that the business is solvent before commencing the members' voluntary winding up or she risks committing this offence.

(b) Martha – Wrongful trading only

Em – Neither offence

Fraudulent trading occurs when a company intended to defraud its creditors. If it is proved in respect of a company that has gone into liquidation, the persons who decide to carry on trading may become liable for the company's debts.

On the evidence provided, it is unlikely that Martha or Em will be found guilty of this offence, as it does not appear that they intend to defraud the creditors of their company.

The offence of wrongful trading was introduced because it is often difficult to prove intention in fraudulent trading cases. Under this offence, the directors of a company become liable for its debts if they continue to trade even if they knew or should have known that there was no reasonable prospect of the company avoiding going into liquidation. The test is whether or not a reasonably diligent person with the general knowledge, skill and experience that might be reasonably expected of a person carrying out the particular director's duties would have continued to trade.

From the evidence, it appears that Martha's company is unlikely to pull through, therefore Martha risks committing wrongful trading if she decides to continue to trade. Em's company is experiencing only minor cash flow problems, so at this stage there is not enough evidence to prove wrongful trading.

Review Form – Corporate and Business Law (LW) (ENG) (02/19)

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