

EDUCATION DEVELOPMENT INTERNATIONAL PLC
LCCIQ SAMPLE ANSWER QUESTIONS 2007
THE LEGAL ENVIRONMENT
LEVEL 4
MARKING SCHEME

DISTINCTION MARK 75%
CREDIT MARK 60%
PASS MARK 50

TOTAL 100 MARKS

QUESTION 1

Syllabus Topic 6: Company Law (6.9)

(a)

- The normal position is that a company operates on the basis of majority rule as defined in **Foss v Harbottle (1843)**. The directors are agents of the company and not the shareholders
- This relates to the very constitution of a company and the way in which resolutions are decided
- It is an inevitable consequence of the company being a separate entity
- Shareholders are free to use their votes as they please
- Retrospective approval is also possible – **Bamford v Bamford (1970)**
- It is the company that has to act if it is felt that minority shareholders have been prejudiced
- The rule is based on the decisions of the majority
- The rule stops pointless action from the minority.

(b)

- Where the company acts illegally (subject to company ratification)
- Infringing the individual rights of shareholders as laid down in the constitution
- Where the company acts on an improperly passed resolution
- Where there is a fraud on the minority, **Cook v Deeks (1916)**, expelling shareholders without just cause, issuing of shares to alter voting power, **Hogg v Cramphorn (1967)**
- Negligent acts – **Daniels v Daniels (1978)**.
- S.459 actions – prejudicial to company affairs, legitimate expectations, prejudicial management
- Court has absolute discretion over the matter
- A judicial order may be made regulating the company's affairs in the future, bring proceedings in the name of shareholders, issue a restraining order.

(Total 25 marks)

QUESTION 2

Syllabus Topic 6: Company Law (6.2)

- (a) A company is formed by the issue of a Certificate of Incorporation
- Documents must be sent to the Registrar
 - Memorandum and Articles of Association
 - Form 10
 - Form 12
 - Registration fee
 - A private company may commence business on receipt of a Certificate of Incorporation
 - A public company requires a trading certificate, s.117
 - This is issued subject to nominal capital of £50,000 and at least 25% issued and paid
- (b) Ordinary shares entitle the holder to receive a dividend if approved by the company
- They can attend and vote at general meetings
 - They can participate in any surplus upon liquidation
 - Preference shares carry a fixed percentage dividend
 - If no dividend is paid the assumption is that it is cumulative
 - Have limited voting rights
 - Priority right to return of capital.
- (c) A company has a separate legal entity from its members – known as the veil of incorporation – **Saloman v Saloman & Co Ltd (1897)**
- It means that directors can shelter behind the corporate façade and creditors cannot take action against the members
 - It means that controlling directors can also be employees – **Lee v Lees Air Farming Ltd (1961)**

The veil of incorporation will be lifted on occasions:

- Where membership falls below the statutory minimum s.24
- A public company trading without a trading certificate s.117
- Delinquent directors, ss212-4
- Incorrect use of the company name
- Judicial interference e.g. the company is a sham, *Gilford Motors v Horne* (1933).

(Total 25 marks)

QUESTION 3

Syllabus Topic 6: Company Law (6.11)

- (a) A company is insolvent if it is unable to pay its debts
- Liquidation occurs when a company is wound up
 - This can be voluntary or compulsory
 - Creditors are the commonest petitioners for compulsory liquidation
 - This will generally be granted if there is no sound objection from other creditors or the debt is disputed. Generally the debt has to be in excess of £750
 - Alternatively the courts will grant a winding up order if the value of the company's assets is substantially below its liabilities
 - A Receiver is someone appointed by secure creditors to take control of the company property
 - The appointment means the dismissal of all employees unless re-engaged
 - The receiver has the power to carry on business, borrow money and sell property
- (b) The priority of payment starts first with fixed charge secured creditors subject to the charge being properly registered

All expenses of the liquidation then follow:

- Preferential creditors include wages, holiday pay contributions to occupational pension schemes up to £800
- PAYE deductions, VAT, National Insurance
- Floating charge secured creditors
- Unsecured creditors
- Post insolvency interest on debts
- Shareholders
- Distribution will depend on the procedures being followed, plus the possibility of certain debts or payments being disallowed if ranked as unacceptably preferential

(Total 25 marks)

QUESTION 4

Syllabus Topic 3: Contract (2.4)

- (a) Promises between friends and family are usually not binding, **Balfour v Balfour (1919)**.
- However, this position can be rebutted if there is some formality in the arrangements – *Merritt v Merritt (1970)*, *Jones v Padavatton (1969)*
 - There is a presumption that commercial contracts are binding unless there is an honour clause within the agreement - *Rose & Frank v Crompton (1925)*
 - In addition, statutes sometimes give protection, *Triefus v Post Office (1957)*

Syllabus Topic 3: Contract (2.3)

- (b)
- Consideration in a contract – the price for which the promise is bought etc
 - Executed consideration – events taking place at the present time e.g. the price paid for goods
 - Definition of executory consideration – that taking place at some future time
 - Past consideration -something which is already done at the time the promise made

QUESTION 4 CONTINUED

(b)

- Consideration need not be adequate vitiating i.e no requirement in law that the value of the consideration between the parties must be equal or near equal provided that there has been no invalidating factors
- Consideration must be sufficient
- It is assumed that each party is capable of serving their own interest – **Thomas v Thomas (1842)**
- Consideration is sufficient if it has some value **Chappell & Co v Nestle (1960)**
- Performance of existing contractual duties may not be sufficient, **Glasbrook Bros v Glamorgan CC (1925)**
- Promise of additional reward will not be sufficient if this is within the contractual duties **Stilk v Myrick (1809)**
Williams v Roffey Bros (1990) is an interesting departure
- Waiver of existing rights to payment may not be sufficient **Foakes v Beer (1884)**, unless there is early payment
- The doctrine of promissory estoppel may prevent the retraction of the promise as long as it has been voluntary **D&C Builders v Rees (1966)**

(Total 25 marks)

QUESTION 5

Syllabus Topic 2: Contract (2.7)

(a)

- The doctrine of frustration was developed to deal with a restricted set of circumstances where the performance became impossible or performance of a contract would be a different thing from that contracted for
- Contracts for personal service can be a factor if the incapacity is not temporary, **Storey v Fulham Steel Works (1907)**
- Government interference; e.g. changes in the law
- Destruction of the subject matter – **Taylor v Caldwell (1863)**
- Non-Occurrence of an event which forms the basis of the contract – **Krell v Henry (1903)**
- Commercial purpose defeated – **Jackson v Union Marine Insurance Co (1874)**.

The doctrine does not apply to

- Expressed provision in the contract
- Self-induced events
- Events, which are not frustrating but are part of the normal commercial risk
Davis Contractors Ltd v Fareham UDC (1956).

(b)

- The **Law Reform (Frustrated Contracts) Act 1943** defines the rights of parties
- Money paid is recoverable
- Money payable ceases to be payable
- Expenses may be recoverable
- A recoverable sum on a *quantum meruit* basis is also possible.

(c) (i)

- If the contract has a clause, which covers potential disruption, then this can be relied upon.
- Destruction of the subject matter could be a frustrating event – **Taylor v Caldwell**.

(ii)

- Frustration is possible if the contract depends upon personal service
- Imprisonment may be a frustrating event although it could be argued as self-induced.

(Total 25 marks)

QUESTION 6

Syllabus Topic 3: Tort of Negligence (3.3)

- (a) A general duty of care was established by the House of Lords in **Donaghue v Stevenson (1932)** which established the neighbour test principle.
- The test led to expansion of the concept of duty of care into other areas where there is a reasonable foreseeability of damage and proximity of relationship – **Home Office v Dorset Yacht Co (1970)**
 - **Caparo Industries v Dickman (1990)** expressed the growth of the concept by reference to three issues: foreseeability of the damage, sufficient proximity, consideration of policy as to whether the extension should be permitted
 - If there is insufficient proximity there will be no claim – **Bourhill v Young**
 - Some cases of policy prevent liability being allowed – **Hill v Chief Constable of West Yorkshire (1988)**
 - The duty of care has expanded with some limitations into other areas such as economic loss, nervous shock, negligent misstatements

Syllabus Topic 3: Tort of Negligence (3.4)

- (c)
- The standard of care is based on what is expected of a reasonable person where the defendant purports to practice a particular skill, the standard is that of a reasonably competent practitioner of that skill, **The Lady Gwendolen (1965)**
 - Therefore the defendant will have to reach the standard even though he may be inexperienced – **Nettleship v Weston (1971)**
 - To establish whether there has been a falling short of the standard the courts will look at what the potential risk might be, **Haley v London Electricity Board (1965)** This can be contrasted with **Bolton v Stone (1951)**
 - The consequences of the injury – **Paris v Stepney Borough Council (1951)**
 - Perhaps also the social utility – **Watt v Hertfordshire County Council (1954)**
 - The cost involved in time, effort and money is also important – **Latimer v AEC Ltd (1953)**
 - There is also the degree to which practice has conformed to a standard – **Roe v Ministry of Health (1954)**.

Syllabus Topic 3: Tort of Negligence (3.5)

- (d)
- A duty of care is owed to all employees as risk of injury is foreseeable.
 - The duty will have been broken if reasonable care has not been taken.
 - The question would be whether the defendant had fallen short of the expected standard of care.
 - It would be reasonable for management not only to supply adequate safety equipment but to ensure that it is worn by the employee
 - Any award of damages will be mitigated by contributory negligence

(Total 25 marks)

QUESTION 7

Syllabus Topic 5: Partnership (5.1)

- (a)
- The formation of a partnership is quick and cheap, it can be formed by an oral arrangement, or a simple written contract, or even based on the conduct of the partners
 - The partnership agreement is a private document
 - Partners have an equal right to participate in the management of the business
 - Partners pay income tax, but otherwise all the affairs of the partnership remain private
 - Capital maintenance remains uncontrolled as long as the partnership is solvent and capital transactions are agreed by the partners.
- (b)
- S. 5 **Partnership Act 1890** states that every partner is an agent of the firm, and therefore any acts done in the usual way of business, and in the partnership name will be binding on the partnership
 - There will be no liability for breach of authority if the third party was aware of the partner's lack of authority
 - S.10 and 11 also treats the unlawful tortious acts of the partners liable, with s.11 dealing with the particular problem of misappropriation of money.

Syllabus Topic 5: Partnership (5.3)

- (c)
- The nature of an agent's duties may determine **implied** actual consent – **Hely Hutchinson v Brayhead Ltd (1968)**
 - The agent acts within the scope of apparent **authority** – **Freeman & Lockyer v Buckhurst Park Properties Ltd (1964)**
 - There has to be a representation of authority, made by the principal and which is relied upon by the third party
 - Alternatively the agent may be acting within the bounds of usual authority, **Watteau v Fenwick (1893)**.
- (d)
- Third parties dealing with a partnership could assume that all the partners have expressed or implied actual authority to enter into contracts of an IT nature
 - Unless there is a clear indication that a partner is acting outside of their authority, the partner will be acting within an apparent authority of an agent
 - The contract will be binding on the partnership although issues of specification may still lead to a further remedy.

(Total 25 marks)

QUESTION 8

Syllabus Topic 1: Outline of the English Legal System (1.1)

- (a)
- Barristers conduct cases in court and usually draft the statement of case, which outlines the manner in which the case is to be conducted
 - Barristers will not normally deal directly with the client, although the bar Council has approved direct routes to other professionals as long as it does not involve litigation
 - Barristers are briefed by solicitors, who pay them the fees taken from the client
 - Barristers along with solicitors are permitted immunity from action in negligence when involved in advocacy, **Rondel v Worsley (1969)**
 - The distinction between the role of barrister and solicitor in respect of court work is now no longer so marked
 - The **Access to Justice Act 1999** allows solicitors the right to acquire wider advocacy rights, subject to training and appearance in the Crown Court and above. However, most will continue the traditional work of pre-trial litigants, and general advisor of client affairs.

QUESTION 8 CONTINUED

- (b)
- Magistrates courts deal with those criminal offences that are classified under the **Criminal Justice Act 1977** as offences triable summarily, eg motoring offences, minor assaults. They also have jurisdiction over those triable either way (eg theft, burglary)
 - Those triable either way are subject to committal proceedings, with magistrates having the right to determine the ultimate court venue
 - Magistrates have limited sentencing powers, eg £5000 fine or 6 months imprisonment
 - Magistrates also sit in Youth Courts for those over 10
 - Description of the Crown Court and responsibility for all indictable crimes and those committed from the magistrates
 - Staffed by High Court judges or Circuit judges, plus a jury
 - Also hears appeals from the magistrates
 - Appeals from the Crown Court progresses to the Court of Appeal (Criminal Division) with leave, by the defendant against conviction or sentence
 - If there is a principle of general public importance a further appeal may be granted to the House of Lords.

Other marks could be awarded for reference to the case stated approach to the High Court and Divisional court, the implications of the **Human Rights Act 1998**, the application of EU law and the Court of Justice of the European Communities.

- (c)
- (i) **Bankruptcy**
- County court or bankruptcy Court (Chancery Division) for London bankruptcies
- (ii) **Breach of Contract**
- Small Claims Court, up to £5,000, County Court, up to £15,000 or High Court for larger sums or cases of complexity.
- (iii) **The adoption of a young child**
- Family Division of the High Court

(Total 25 marks)

QUESTION 9

Syllabus Topic 2 : Contract (2.5)

(a)

- The buyer should be aware of any attempt to exclude or restrict liability

However for such clauses to be effective:

- Exclusion clauses must be properly incorporated
- Exclusion clauses are interpreted strictly
- The term must be included in a contractual document that gives reasonable notice of the conditions that are imposed, **Chapelton v Barry UDC (1940)**, **Thompson v LMS Railway (1930)**
- Signed contracts represent a more effective method of incorporation, **L'Estrange v Graucob (1934)**, although misrepresentation can influence the incorporation, **Curtis v Chemical Cleaning and Dyeing (1951)**
- Each party must be aware of the terms at the time of entering the contract, **Thornton v Shoe Lane Parking Ltd (1971)**
- Onerous terms need special highlighting, **Interfoto Picture Library Limited v Stiletto Visual Programmes Ltd (1988)**
- Incorporation can be by the previous course of dealings.
- The **Unfair Contract Terms Act 1977 (UCTA)** introduces statutory constraints on the incorporation of exclusion clauses
- Death and personal injury is not excludable, although other loss of damages is dependant upon the test of reasonableness. Those who deal with consumers, or on standard terms cannot, unless the term is reasonable, restrict liability for breach or render substantially different performance, **George Mitchell Ltd v Finney Lock Seeds Ltd (1983)**
- Contracts that seek to remove the implied condition of the right to sell goods are void
- Restriction on liability or the statutory implied terms of quality, fitness, description and sample of the **Sale of Goods Act 1979** (as amended) and the **Supply of Goods and Services Act 1982** are void in consumer contracts. Non-consumer contracts must satisfy the test of reasonableness, s.11 UCTA77 and Schedule 2

(d)

- The incorporation of a limitation clause of this extent will be scrutinised by the courts under basic common law principles and the statutory implications for the **Unfair Contract Terms Act 1977**
- If such a clause is not typical of the business there may be a need for it to be made known (**Interfoto Picture Library**)
- There would be some discussion of David's position as a buyer, non-expert but in the course of a business
s. 3 of the UCTA would be considered in terms of the limitation clause itself
- The question of reasonableness in the light of knowledge, resources, and insurance would be considered
- The question of quality would presumably not be disputed. **S.14 Sale of Goods Act 1979**
- There would be a strong case for the architect to succeed in a claim for the clause to be regarded as unreasonable, subject to strength of business dealings between the parties

(Total 25 marks)