

Corporate and Business Law

(English)

PART 2

TUESDAY 5 DECEMBER 2006

QUESTION PAPER

Time allowed **3 hours**

This paper is divided into two sections

Section A SIX questions ONLY to be answered

Section B TWO questions ONLY to be answered

Do not open this paper until instructed by the supervisor

This question paper must not be removed from the examination hall

The Association of Chartered Certified Accountants

Paper 2.2(ENG)



Section A – SIX questions ONLY to be attempted

- 1 Distinguish between, and explain the roles of, the following two courts in relation to English law:**
- (a) the European Court of Justice; (5 marks)
 - (b) the European Court of Human Rights. (5 marks)
- (10 marks)**
- 2 In relation to the acceptance of an offer in contract law explain the meaning and effect of:**
- (a) a counter-offer; (4 marks)
 - (b) acceptance subject to contract; (2 marks)
 - (c) the postal rule (4 marks)
- (10 marks)**
- 3 In relation to the law of contract explain the rules relating to:**
- (a) remoteness of damage; (4 marks)
 - (b) the measure of damages; (4 marks)
 - (c) the duty to mitigate losses. (2 marks)
- (10 marks)**
- 4 In relation to partnership law explain the difference between and the rules applicable to the following:**
- (a) limited partnerships (4 marks)
 - (b) limited liability partnerships (6 marks)
- (10 marks)**
- 5 In relation to employment law explain:**
- (a) the grounds upon which dismissal may be fair; (5 marks)
 - (b) the meaning and effect of constructive dismissal. (5 marks)
- (10 marks)**
- 6 In relation to company law explain the powers of the following to bind their company:**
- (a) the board of directors; (3 marks)
 - (b) the managing director; (2 marks)
 - (c) individual directors. (5 marks)
- (10 marks)**
- 7 In relation to company law explain the procedure that must be followed in order for a company to reduce its issued capital.**
- (10 marks)**
- 8 In relation to private companies explain the meaning of, and the procedure for passing, the following:**
- (a) a written resolution; (5 marks)
 - (b) an elective resolution. (5 marks)
- (10 marks)**

Section B – TWO questions only to be attempted

- 9 Art has operated his own internet business since 1995 and ever since then he has used Bling Ltd to provide for all of his computer requirements. On the five previous occasions he upgraded his computer network, the contract with Bling Ltd was in writing and contained a clause stating that:

‘Bling Ltd is not liable for any financial or other losses caused through the installation, or use, of any equipment supplied by it, whether as a result of negligence or otherwise of the company or its staff.’

In October 2005, Art once more contacted Bling Ltd with an urgent request for them to upgrade his computer system before the expected rush of business before the Christmas period. On this occasion, although the terms of the contract were amicably agreed over the phone, due to the need for speed, the contract was not reduced to a written document. However, when Bling Ltd’s workers arrived to install the new computers, the foreman handed Art a delivery note which detailed the number and cost of the new computers and related software. On the back of the document was printed the usual exclusion clause, as stated above. Art only checked the front of the document and did not notice the statement on the reverse.

On the first occasion that Art tried to use the new computers a wiring fault caused a fire to break out and as a result, not only was Art severely burned, but his premises suffered £50,000 worth of damage, and as a result he was not able to supply any goods for Christmas, which caused him to lose a further £100,000.

Bling Ltd admits that the fire was caused by the negligence of its workers, but is relying on the exclusion clause to deny any liability for the damage caused.

Required:

- (a) **Advise Art whether the exclusion clause was incorporated into his contract with Bling Ltd;** (10 marks)
- (b) **Assuming the clause has been incorporated into the contract, advise Art whether it covers all the damages suffered as a result of Bling Ltd’s admitted negligence.** (10 marks)

(20 marks)

- 10** At the start of 2005 Crums Ltd was faced with the need to raise a large amount of capital, which it was decided to raise through the mechanism of issuing a number of secured loans. In order to raise the capital Crums Ltd entered into the following transactions:
- (i) it borrowed £50,000 from Don secured by a floating charge. The loan was given and the charge created on 1 February. The charge was registered on 15 February;
 - (ii) it borrowed £50,000 from Else, also secured by a floating charge. This charge was created on the morning of 1 April and it was registered on 15 April;
 - (iii) it borrowed £100,000 from Flash Bank plc. This loan was secured by a fixed charge. It was created in the afternoon of 1 April and was registered on 20 April;
 - (iv) it borrowed a further £50,000 from Gus. This loan was secured by a floating charge created on 3 April and registered on 12 April;
 - (v) it borrowed £100,000 from High Bank plc. This loan was secured by a fixed charge. It was created on 5 April and was registered on 15 April.

Unfortunately the money borrowed was not sufficient to sustain Crums Ltd and in January 2006 proceedings were instituted to wind it up compulsorily. It is extremely unlikely that there will be sufficient assets to pay the debts owed to all of the secured creditors.

Required:

- (a) (i) **Explain the effect of, and difference between,**
 - (1) floating charges; (7 marks)
 - (2) fixed charges. (3 marks)
- (ii) **Explain the need to register such charges.** (3 marks)

- (b) **Place the above debts in order of security and payment and explain why they are placed in that order.** (10 marks)
- (20 marks)**

- 11** Ira and Jan started a building business in 1980. They ran it successfully as a partnership until 1990 when they converted it into a private limited company. The company was formed with an authorised capital of 200 £1 shares and Ira and Jan each took 100 shares and were appointed as the directors of the company. In 1995 Ira and Jan each gave Ira's son Kit 25 shares in the company and he joined the board of directors.

The company continued to be financially successful but in 2000 Ira and Kit argued with Jan about how the business should be run, and overruled Jan's wishes at board meetings.

Subsequently Ira and Kit used their majority voting power to pass a resolution to remove Jan from his position as director. They also passed a resolution to increase the payment to be made to directors and have failed to recommend a dividend payment, since 2003.

Required:

Advise Jan, as a minority shareholder, how he can use the following provisions to remedy his situation:

- (a) **the common law rules relating to minority protection;** (8 marks)
- (b) **s.122 of the Insolvency Act 1986 relating to just and equitable winding up;** (4 marks)
- (c) **s.459 of the Companies Act 1985 relating to prejudicial conduct.** (8 marks)

(20 marks)

- 12** Ken is involved in illegal activity, from which he makes a considerable amount of money. In order to conceal his gain from the illegal activity he bought a bookshop intending to pass off his illegally gained money as profits from the legitimate bookshop business. Ken employs Los to act as the manager of the bookshop and Mel as his accountant to produce false business accounts for the bookshop business.

Required:

- (a) Explain what is meant by the term 'money laundering'; (10 marks)
- (b) Analyse the above scenario from the perspective of the law relating to money laundering. In particular, explain which criminal offences may have been committed by the various parties. (10 marks)
- (20 marks)**

End of Question Paper