



LAW SOCIETY OF SCOTLAND EXAMINATIONS

BUSINESS ORGANISATIONS

Thursday 15 February 2024

**1300 – 1600
(Three hours)**

You are required to answer **THREE** questions.

You are expected to provide legal authority for all your assertions.

You are expected to write your own answers, and you must neither share your answers with any other candidate nor copy another candidate's work. Use your own words in your answers, not merely transcribing what you may find in textbooks, solicitors' blogs or other law-related websites.

Candidates are required to answer THREE questions.

Question 1

Primrose is the name of a partnership specialising in refurbishing country house hotels. There are ten partners, Albert, Bill, Charles, David, Ethel, Georgina, Harriet, Ilya, Jane and Kevin. Each partner is a specialist in a different skill. They are not very organised and they do not have a partnership agreement. They have each contributed £10,000 capital to the partnership. They share equally the gains and expenses of the partnership. Unwisely, they trust each other all to behave properly. Although they have monthly meetings to discuss their projects, they are not good at keeping minutes or records. Albert is the managing partner. You may assume that in each matter below the individual partner is carrying out work for the partnership (except in Kevin's case).

- a) Bill was told at a meeting that he was not to do any work for a particular client, Mabel, as she was notoriously difficult and a slow payer. Nevertheless he did some work for her, but made a mess of it. Mabel then sued the partnership for the cost of remedying the work. Albert, on behalf of the partnership, said that the partnership was not liable as Bill was not authorised to have done the work.
- b) Charles did some work for a client named Neil. He persuaded Neil to accept some antique paintings for Neil's hotel. Charles was secretly substituting fake paintings for the real ones, though Neil was unaware of this at the time. When Neil finally paid for the paintings, Charles used the funds to pay certain debts the partnership owed and which indeed had been incurred for the partnership by Charles. Neil later discovered what Charles had been doing. Albert said that Charles was liable, and not the partnership.
- c) David managed to run over Ethel in his car while on partnership business. Ethel wants to sue the partnership for her injuries.
- d) Georgina manages to enrage all the partnership's employees by her high-handed behaviour. The other partners wish to expel her from the partnership. She says that they have no right to do so.
- e) Harriet signed a contract with an IT company on behalf of the partnership. She forgot to tell any of the other partners about it. When the invoice from the IT company came in, Albert refused to pay it on the grounds that he knew nothing about it.
- f) Ilya asked the partnership if he could be treated as a salaried partner instead of an equity partner. This means that he would receive a regular monthly income instead of taking drawings whenever he had generated enough money for the partnership. The other partners said that he could do that, provided he left his capital in the partnership. The partnership paid him a monthly sum, but he accounted to HMRC for his tax on a self-employed basis and the partnership did not pay any national insurance contributions on his behalf. The other partners decided that he was not generating enough money and asked him to resign. He then claimed that he was being constructively dismissed and was entitled to compensation for breach of his employment rights, his salary entitling him to be treated as an employee.
- g) Jane became a partner on 1 April 2020. She had been an employee beforehand. Some of the work she did while an employee, but not as a partner, was subsequently discovered to be sub-standard and had to be redone at the partnership's expense.

The other partners wish the cost of this to be deducted from her share of the partnership profits.

- h) Kevin secretly took a list of his clients to a rival refurbishing firm. He did this in the hope that the other firm would then invite him to join them. The other firm, being honourable, was disgusted by this and told Albert what was happening.

Discuss the points of law in each of these events. The accuracy of the law for each partner is more important than the length of each answer.

Question 2

Company law is carefully designed so that it is deliberately quite difficult to pierce the corporate veil. Explain

- (a) under what circumstances under common law the veil may be pierced, and
- (b) explain what other means under common law may be used to make those involved in a company liable for their company's acts or omissions.

Question 3

- a) Explain how a Scottish company registers a qualifying floating charge.
- b) Explain why it is important that a Scottish company should have to register a floating charge.
- c) If a Scottish company which has granted a qualifying floating charge over some of its assets goes into liquidation, and if the company has also previously granted a standard security over an area of land owned by the company (the amount secured by the standard security being only 40% of the value of the land itself), what might the qualifying floating charge-holder hope to receive out of the total assets of the company in the hands of the liquidator?
- d) Other than the failure to register a qualifying floating charge properly, what else may render a qualifying floating charge unenforceable or only partially enforceable?

Question 4

S.172 of the Companies Act 2006 was designed to make directors take into consideration the interest of stakeholders when making decisions that affect their company. While well-intentioned, and not without merit, it is generally considered not to have been as successful as perhaps its promoters hoped. In the light of the case law referring to s.172, is this a fair criticism of the way the courts have interpreted s.172?

Question 5

Chough plc, a non-listed public limited company, has an issued share capital of £100,000 consisting of 100,000 ordinary shares of £1.00 nominal value each. The shares are owned by Paul, Orla, Quentin and Ruth who each have 25,000 shares. Each of these persons is a director. The net asset value of the company is £400,000. Paul is the managing director. Chough plc is a publisher of pocket-sized books on nature, geology, architecture etc. With so much information now freely available on the internet, sales have been dropping. The company needs additional capital with which it can make an on-line presence that might generate income. At a board meeting the directors make the following decisions, not all of which may be permissible. You are their legal adviser: explain to the board whether or not their decisions may be implemented, and if they can be, what procedures will be needed to do so. You should also provide them with any other relevant advice.

- a) Steven, a current consultant to the company, is offering to supply IT services to the company for the development of their website. Instead of a fee, he is willing to accept 20,000 ordinary shares in the company.
- b) Tabitha, Paul's wife, is willing to transfer the copyright of her best-selling children's book on castles to Chough plc. In exchange she wants to be given 25,000 ordinary shares of £1.00 nominal value. This will enable the book to be visible on the new website.
- c) Orla is willing to lend the company £50,000 on an unsecured basis provided the company pays her interest at 7% p.a on the loan. On the redemption of the loan in five years' time, a premium of 10% will be paid to her.
- d) Ruth wishes to cease being a member of the company and a director. Wanda is interested in being a member of the company in her place. However, rather than just buy Ruth's shares, she would like to have a different type of share, namely 25,000 £1.00 nominal value preference shares with a 4% coupon. Ruth proposes to sell her shares back to the company, which will then pay her £100,000, At the same time Wanda will pay her £100,000 to the company and be allotted her new shares.

Question 6

David is a secretive and successful businessman who does not enjoy others poking around in his businesses. He runs some of his businesses through his company, Scarecrow Ltd, of which he is sole shareholder and director. He also conducts some business on a self-employed basis. The following legal matters are concerning him, and he seeks your advice.

- a) During the pandemic, his company supplied medical equipment sourced from the Far East for the Scottish Government. Scarecrow Ltd used an agent based in London to arrange this. The agent was told never to reveal Scarecrow Ltd's interest in the contract, and duly complied with this instruction. The agent is now going to be sued because the equipment was faulty. However, it would appear likely that the Government's investigation department will eventually discover the interest of Scarecrow Ltd in the contract.
- b) David asked an estate agent if he would help in the sale of a property owned by Scarecrow Ltd. There was no written contract but it was agreed that if the property were sold for over £1 million, the estate agent would receive a commission of 1.5% of the value. At the end of the day, the property was sold for £850,000. The estate agent claimed his percentage and seemed to think that the Commercial Agency regulations entitled him to this. David sees no reason to pay the estate agent anything.

- c) Scarecrow Ltd sometimes clears out old houses before the houses are put on the market. By mistake, Scarecrow Ltd's employees emptied the wrong house. David then sold some of the goods that had come from the wrong house. The true owners reclaimed them from the purchaser. The purchaser was very disappointed at having to give the goods back as he knew he could have sold them on them very profitably. He is threatening to sue Scarecrow Ltd and indeed David.
- d) David asked Hilary, a jewellery-broker, to find a particularly special Patek Philippe watch for his son as a birthday present. Hilary duly did so, and received the commission for finding the watch, but did not reveal that actually she had supplied David with one from her own private collection.
- e) The warehouse adjacent to Scarecrow Ltd's office is owned by a friend of David's, Emily. The warehouse contains a good deal of Emily's stock. Emily is away on a cruise in the West Indies. The weather turns cold and David realises that Emily's warehouse might be in danger from the snow on the roof and from burst pipes. He manages to get into the warehouse and arrange for some heating to be installed. He is unable to get in touch with Emily to tell her what he has done because her ship has been caught up in a hurricane and Emily is swept overboard, never to be seen again. David puts in a claim to Emily's estate for reimbursement of his heating costs, but Emily's ungrateful children refuse to reimburse him on the grounds that David was just making a fuss and that the building did not need to be heated anyway. David pointed out that his actions prevented there being any burst pipes or other problems. The children still refuse to sanction the reimbursement.

END OF QUESTION PAPER