

Business Organisations

Wednesday 19 February 2025

13.00 – 16.00

(three hours)

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

Candidates are expected to provide legal authority for all their assertions.

Candidates are required to answer THREE questions.

Question 1

- a) An agent owes a number of legal duties to a principal when acting on their behalf. Critically consider the circumstances where a breach of duty may result in liability.

and

- b) Critically discuss the circumstances where a principal will be bound to a third party where a person without actual authority has purported to contract on behalf of the principal with the third party.

Question 2

In 2021, Natasha was assumed as a partner into an established firm of accountants. She described herself as a 'Managing Partner' and on that basis negotiated a 3-year lease for premises in Shawlands, with Property Management Ltd. The unit measured 1500 square feet and was located in a busy high street allowing easy access for existing clients and with the hope of attracting new clients. Natasha set up a new branch of the firm in the Shawlands premises and hired several employees to work there.

Three weeks ago, Natasha again arranged a meeting with Property Management Ltd to discuss the possibility of opening another new branch of the firm in Hamilton. The only premises available in that area that the company had on their books was a building on an industrial estate with a floor area of 20,000 square feet. Natasha signed a 10-year lease for the massive property, again describing herself as a 'Managing Partner'.

On her way back from Hamilton to Shawlands, Natasha picked up a fellow partner John in Glasgow to give him a lift back to the office. Unfortunately, due to her negligent driving, Natasha crashed the car and both John and a pedestrian were injured.

The firm has just found out about the 10-year lease and is describing the building as a 'factory' and refusing to honour the lease for the Hamilton premises.

With reference to appropriate legislation and case law, advise the firm on its legal position in respect of payment for the lease, and in respect of its liability to John and the pedestrian for their respective injuries.

Question 3

With reference to case law as appropriate, analyse the extent to which members and directors may rely on section 33 of the Companies Act 2006 in order to enforce provisions affecting them in their respective capacities as stipulated in a company's Articles of Association.

Question 4

With reference to legislation and case law as appropriate, analyse the extent to which the new statutory derivative proceedings in Scotland may complement the protection afforded to shareholders by other statutory provisions.

Question 5

Top Class Events Ltd ("the Company") is a party planning company. The Company was incorporated in March 2015 and adopted the model articles of association without amendment. Katy and Sophie were subscribers holding 100 ordinary shares of £1 each and both were appointed as directors. In addition, Superior Catering Ltd was a subscriber holding 600 ordinary shares of £1 each.

In June 2024, Sophie met up with an old university friend Mia who was getting married in December 2024. Mia advised that she needed some help with planning her wedding but was on a very small budget and could not afford the services of Top Class Events Ltd. Sophie said she would be happy to help her (in a personal capacity) and could offer her expertise for 50% less than the Company would charge. Mia was delighted with the offer and quickly accepted. While Sophie was delighted she was doing Mia a favour, she also realised that she would earn more money out of the deal than she would receive by way of dividends, if the Company had carried out the work.

In October 2024, Katy announced to Sophie that she would be resigning from the board of directors in December 2024 in order to go on a round the world cruise. Sophie felt that in the circumstances Katy should be rewarded for all her work in the Company, and decided to transfer £20,000 from the Company account to Katy's bank account.

Superior Catering Ltd has only just found out what happened during 2024 and has decided to take action. With reference to legislation and case law as appropriate, advise Sophie of the potential consequences and liabilities she may face and whether there is any way to obtain relief.

Question 6

Cakes-R-Us Ltd ("the Company") was incorporated in November 2020 and operates as a retail business in Edinburgh selling wedding and celebration cakes. The Company's main supplier of ingredients (Top Class Products Ltd) has recently encountered severe financial difficulties and is now in administration. As a direct consequence, Cakes-R-Us Ltd is now suffering from an unexpected cash flow problem. The Company's directors believe that they have a viable business that should be able to survive this immediate problem, if they can agree a suitable arrangement with their creditors.

With reference to legislation and case law as appropriate, analyse the available 'rescue' procedures, which Cakes-R-Us Ltd could utilise and critically consider the likely outcomes.

END OF PAPER