Law Society of Scotland

Business Organisations

Thursday 24 July 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.

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Question 1

George and Peter have been in partnership for 5 years, carrying on a business as caterers. Their last accounts showed a significant increase in their turnover to £125,000. They secured a number of very lucrative commercial contracts, which contributed to this figure. While they feel the business is now well established and has a strong financial base, they would not expect to achieve this level of turnover every year.

With specific reference to appropriate case law and legislation, advise George and Peter whether they should carry on in partnership or whether they should consider using another corporate vehicle for their business at this stage.

Question 2

With specific reference to appropriate case law and legislation, critically consider whether the Supreme Court decision in *Petrodel Resources Ltd v Prest [2013] UKSC 34* has provided clarity in our approach to when the veil of incorporation can be lifted.

Question 3

Victoria and Martha have decided to incorporate a company. They have undertaken the process themselves using the online service at Companies House. They received the certificate of incorporation for MacDonald Services Ltd ("**the Company")** dated 24th May 2025. In anticipation of the setting up of the company, Victoria and Martha sourced suppliers and made contact with a number of potential customers. Victoria entered into a contract on behalf of the Company with Superior Offices Ltd to rent office space in Aberdeen on 23rd May 2025. Victoria personally paid the £2,000 rental deposit, and would now like to recover that money from the Company. In addition, Victoria also ordered headed notepaper on behalf of the Company on 20th May 2025, but when it was delivered, it said 'McDonald Services' so cannot be used. She also purchased office furniture on behalf of the Company on 28th May 2025, but all of the chairs delivered were the wrong colour.

Meanwhile, Martha focused on securing potential customers; Jack Smith signed the Company's terms and conditions on 24th May 2025, but has just defaulted on paying his invoice of £1,000.

With specific reference to relevant case law and legislation advise on where liability may rest and what, if any, steps could have been taken to avoid or mitigate this liability.

Question 4

Company directors owe a significant number of duties to their company. With specific reference to case law and legislation, critically consider where you believe there may be room for improvement in this area.

Question 5

Married couple, Elizabeth and John incorporated a company in 2020 for the purpose of providing accountancy services to individuals and small businesses. At the point of incorporation, they used the Model Articles of Association and both were appointed directors of the company. John subscribed for 1000 ordinary shares of £1 each and Elizabeth subscribed for 500 ordinary shares of £1 each.

In May 2024, they divorced and Elizabeth decided that she no longer wished to work with John. Consequently, she stopped providing accountancy services to clients and resigned her directorship. John found he was unable to manage the workload himself so brought in Thomas to help. Thomas was subsequently voted onto the Board and Elizabeth has just discovered that John has been allotted a further 1000 ordinary shares and Thomas has been allotted 500 ordinary shares of £1 each.

Elizabeth is concerned about the recent developments given she continues to have a financial stake in the company. With specific reference to case law and legislation advise Elizabeth on any remedies she may have.

Question 6

Financial Support Ltd ("**the Company**") was incorporated in April 2022 using the Model Articles of Association. Frank, Alice and Stephen were appointed as the first directors and all subscribed to 500 ordinary shares of £1 each. The business of the Company was to provide financial advice as well as offering financial products e.g. loans. Frank is an entrepreneur with no higher education qualifications, who provided a start-up loan to the Company of £50,000 in August 2022, repayable in August 2027. Prior to setting up the Company Alice worked as a bank manager. Stephen is a chartered accountant and holds a law degree. Barbara was subsequently appointed as a non-executive director in November 2022, she has 20 years of financial experience.

Initially the business went really well, however, recently a number of customers have defaulted on loan repayments, which Frank authorised. This has caused significant cash flow issues for the Company and a liquidator was appointed last month.

The liquidator has been reviewing all transactions leading up to the liquidation. They have discovered that 4 of the loans, which relate to default debtors do not comply with relevant statutory requirements and therefore cannot be recovered. In addition, the Company provided a loan to Barbara for £25,000 in April 2024 in order for her and her family to go on a 21-day luxury cruise. Furthermore, on 20th December 2024, the Company repaid the £50,000 loan to Frank and gifted Alice a £1,500 watch and her husband Jack a bottle of whiskey worth £500.

With specific reference to case law and legislation, advise the directors and the Company of the legal issues here together with an analysis of the potential consequences of any action taken by the liquidator.

END OF PAPER