

Fundamentals Level – Skills Module

Corporate and Business Law (Irish)

Specimen Exam applicable from
June 2017



Time allowed: 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and MUST be attempted

Section B – ALL FIVE questions are compulsory and MUST be attempted

Do NOT open this paper until instructed by the supervisor.

You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

Think Ahead

ACCA

The Association of
Chartered Certified
Accountants

Paper F4 (IRL)

Section A – ALL 45 questions are compulsory and MUST be attempted

Please use the grid provided on page two of the Candidate Answer Booklet to record your answers to each multiple choice question. Do not write out the answers to the MCQs on the lined pages of the answer booklet.

1 Which of the following are owed a duty of care by auditors when preparing a company's statutory financial statements?

- A The board of directors of the company
- B An existing shareholder looking to increase their holding
- C A company looking to make a takeover bid for the company
- D Any person who, at the time the accounts were audited, the auditors knew or ought reasonably to have foreseen might reasonably rely on the accounts

(2 marks)

2 In which of the following courts would a plaintiff, claiming damages of €50,000 for personal injuries, bring their claim?

- A The District Court
- B The Circuit Court
- C The High Court

(1 mark)

3 Which of the following are ordinary partnerships UNABLE to create in relation to their property?

- A Mortgages
- B Fixed charges
- C Floating charges

(1 mark)

4 Which of the following describes a pre-contractual statement which does NOT form a term of a contract but induces the contract?

- A A condition
- B A warranty
- C A representation
- D An innominate term

(2 marks)

5 What type of contract does an employee have?

- A A contract for service
- B A contract of service
- C A contract for services
- D A contract of services

(2 marks)

6 Which of the following correctly applies to the burden of proof in a criminal case?

- A It must be proved beyond reasonable doubt
- B It must be proved on the balance of probabilities
- C It lies with the prosecution
- D It lies with the defence

(2 marks)

7 In a potential redundancy situation, an employee may lose the right to payment if they reject an offer of alternative employment within the business.

Which of the following will allow the employee to reject the employment offered and claim redundancy?

- A The alternative was suitable but the employee reasonably felt that it was not of the same status
- B The alternative was suitable but the employee refused to consider it
- C The alternative was suitable but the employee's grounds for refusing to accept it were unreasonable

(1 mark)

8 Where a director makes a declaration of solvency without reasonable grounds prior to a members' voluntary winding up and it is subsequently proved in court that the company is unable to pay its debts, which of the following consequences may ensue?

- A A criminal prosecution of the director
- B The company may sue the director for damages for breach of fiduciary duty
- C The court may declare that the director shall be personally responsible, without limitation of liability, for all or any of the debts or other liabilities of the company
- D The company may sue the director for damages for negligence

(2 marks)

9 Which of the following statements about contracts of employment is true?

- A They can be made either orally or in writing
- B They must be made in writing
- C They must be evidenced in writing

(1 mark)

10 Which TWO of the following are substantial grounds which may justify a dismissal from employment as a fair dismissal?

- (1) Capability, competence or qualifications of the employee
- (2) Continued employment of the employee would be in breach of the law
- (3) Refusal of the employee to join a trade union
- (4) Taking part in unofficial industrial action

- A 1 and 2
- B 1 and 3
- C 2 and 3
- D 2 and 4

(2 marks)

11 The category of treasury shares comes into existence under which of the following circumstances?

- A They are issued as such by a private company
- B They are issued as such by a public company
- C They are purchased as such by the exchequer
- D They are redeemed as such by a private company limited by shares or a public limited company

(2 marks)

12 Jo promises to pay a reward for the return of her lost phone. Mia finds the phone and returns it to Jo.

Which of the following types of consideration has Mia provided?

- A Executed consideration
- B Executory consideration
- C Past consideration

(1 mark)

13 In relation to fraudulent or reckless trading, the standard against which the conduct of directors will be assessed is which of the following?

- A Purely subjective, the director did not honestly believe on reasonable grounds that the company would be able to pay its debts when they fell due
- B Purely objective, depending on the general knowledge, skill and experience which may reasonably be expected of a director in their position
- C A mixture of subjective and objective
- D A mixture of subjective and objective, depending upon whether it concerns an executive or non-executive director

(2 marks)

14 Tan writes to Yun stating that he will sell his car to him for €10,000. At the same time, Yun writes to Tan stating that he will buy his car for €10,000.

Which of the following statements applies to this situation?

- A There is a binding agreement due to the postal rule
- B There is a collateral contract
- C There is neither an agreement nor a contract

(1 mark)

15 In relation to agency law, 'warranty of authority' is provided by which of the following?

- A The agent
- B The principal
- C The third party

(1 mark)

16 Which of the following is the consequence when a patient signs a medical consent form before an operation?

- A** The patient gives up any right of action for any injury suffered
- B** Any action for any injury suffered during the operation is limited to negligence
- C** The level of any potential payment for any injury suffered is reduced

(1 mark)

17 Which of the following is NOT an automatic consequence of a compulsory winding up order against a public limited company?

- A** Transfers of shareholdings are suspended
- B** Winding up is deemed to start on the date of the issuing of the order
- C** Directors cease to exercise any management power
- D** Employees are immediately dismissed

(2 marks)

18 In relation to the tort of negligence, which TWO of the following criteria are required to establish the existence of a duty of care?

- (1) The claimant suffered a financial loss
- (2) The harm suffered was reasonably foreseeable
- (3) A relationship of proximity existed between the parties
- (4) The claimant did not consent to cause the injury suffered

- A** 1 and 2
- B** 1 and 3
- C** 2 and 3
- D** 2 and 4

(2 marks)

19 Which TWO of the following apply to shares of companies whose names end in 'Ltd'?

- (1) They may not be issued to non-members
- (2) They may not be offered to the public
- (3) They may not be transferred
- (4) They may not be traded on the stock exchange

- A** 1 and 2
- B** 2 and 3
- C** 1 and 4
- D** 2 and 4

(2 marks)

- 20 Which of the following may NOT petition the court for the appointment of an examiner to a private company limited by shares?**
- A Managing director
 - B Shareholders holding at least 5% of the company's paid-up share capital
 - C Creditors
 - D The company itself
- (2 marks)**
- 21 Where a business includes a term in a contract which excludes liability for death and personal injuries through negligence, which of the following states the effect of the term?**
- A It is invalid
 - B It is invalid unless it is reasonable in the circumstances of the case
 - C It is valid only if specifically brought to the attention of the other party
 - D It is valid if it is clearly included in the contract terms
- (2 marks)**
- 22 Which of the following involves a summary dismissal in relation to a contract of employment?**
- A Both parties agree to end the contract immediately without notice
 - B The employee breaks the contract without notice
 - C The employer terminates the contract without notice
- (1 mark)**
- 23 Which of the following is an example of the purposive approach to statutory interpretation?**
- A The mischief rule
 - B The literal rule
 - C The golden rule
- (1 mark)**
- 24 Which of the following involves an offer which may only be accepted by performing an action?**
- A A collateral contract
 - B A unilateral contract
 - C A bilateral contract
- (1 mark)**
- 25 Which of the following statements regarding the age limits for serving as a director in a public limited company is true?**
- A Minimum age 18 years and no maximum age
 - B Minimum age 21 years and no maximum age
 - C Minimum age 21 years and maximum age 75 years
 - D Minimum age 18 years and maximum age 75 years
- (2 marks)**

26 Which of the following is an Irish court NORMALLY bound to follow?

- A An *obiter* statement of a higher court
- B A *ratio* of a lower court
- C A *ratio* of a higher court
- D An *obiter* statement of the Supreme Court

(2 marks)

27 Which of the following statements as regards an acceptance of an offer 'subject to contract' is true?

- A It binds the offeror
- B It binds neither party
- C It binds both parties

(1 mark)

28 Which of the following courts hear appeals from the District Court?

- (1) Circuit Court
 - (2) High Court
 - (3) Supreme Court
- A 1 and 2 only
 - B 2 and 3 only
 - C 1 only
 - D 1, 2 and 3

(2 marks)

29 Which is the correct minimum period of notice an employee, to whom the Minimum Notice and Terms of Employment Act 1973 applies, is entitled to after five years' service?

- A One calendar month
- B Two weeks
- C Five weeks
- D Five calendar months

(2 marks)

30 Which TWO of the following are private law actions?

- (1) Those between individuals
 - (2) Those between business organisations
 - (3) Those between individuals and the state
- A 1 and 2
 - B 1 and 3
 - C 2 and 3

(1 mark)

31 Which of the following exists as a separate legal entity from its members?

- A An ordinary partnership
- B A limited partnership
- C A limited liability partnership

(1 mark)

32 Which of the following is NOT a source of Irish law?

- A Civil Law Code
- B Equity
- C Common law

(1 mark)

33 In relation to defences to the tort of negligence, which of the following is the consequence of a finding of *volenti non fit injuria*?

- A It removes the requirement to pay damages
- B It reverses the burden of proof as to who can claim damages
- C It increases the level of damages
- D It decreases the level of damages

(2 marks)

34 A breach of a contractual warranty enables the injured party to do which of the following?

- A To sue for damages only
- B To sue for damages or terminate the contract
- C To sue for damages and terminate the contract
- D To terminate the contract only

(2 marks)

35 Statutory redundancy payment is calculated on the basis of which of the following?

- A Length of service and pay only
- B Age and length of service only
- C Age, length of service and pay

(1 mark)

36 Which of the following must a private company limited by shares ALWAYS have?

- A Shares
- B Limited liability
- C A chairman of the board
- D A certificate of incorporation

(2 marks)

37 In which procedure does a committee of inspection operate?

- A Examinership
- B A members' voluntary winding up
- C A creditors' voluntary winding up
- D A receivership

(2 marks)

38 Which of the following actions is open to a party who has only partly performed work under a contract?

- A *Quantum meruit*
- B Action for the price
- C Damages
- D Restitution

(2 marks)

39 Su had just passed her driving test when she negligently drove into a pedestrian.

What standard of care will Su be judged by?

- A The objective standard of a newly qualified driver, lack of experience will be taken into account
- B The objective standard of a competent driver, lack of experience will not be taken into account
- C The subjective standard of actual ability

(1 mark)

40 Which of the following statements in relation to the rules governing the payment of dividends by a company is NOT true?

- A Before a dividend is paid by a public limited company, its net assets must be at least equal to the aggregate of its called-up share capital and undistributable reserves
- B A shareholder who knows, or has reasonable grounds for believing, that a dividend has been made in contravention of the statutory rules governing the financial requirements which must be met before a company declares a dividend is liable to repay the dividend to the company
- C Where a dividend has been improperly paid out by a company, the directors may be prosecuted for the criminal offence of unlawfully declaring a dividend

(1 mark)

41 Where a contract states the sum to be paid in the event of a breach of contract, the stated sum is known as which of the following?

- A Unliquidated damages
- B Liquidated damages
- C Specific damages
- D Nominal damages

(2 marks)

42 In relation to shares in a company, which of the following is NOT true?

- A** They may not be issued at a discount
- B** They may be issued at a premium
- C** They confer an interest in the company's assets
- D** They confer statutory rights

(2 marks)

43 In contract law, the 'market price rule' arises in relation to which of the following?

- A** Offer
- B** Consideration
- C** Remoteness
- D** Mitigation

(2 marks)

44 An agency relationship which is made retrospectively is referred to by which of the following terms?

- A** Agency by estoppel
- B** Agency by ratification
- C** Agency by necessity

(1 mark)

45 What qualification is the company secretary of a private company limited by shares required to have?

- A** An appropriate legal qualification
- B** An appropriate professional qualification such as ACCA
- C** No qualification

(1 mark)

(70 marks)

Section B – ALL FIVE questions are compulsory and MUST be attempted

Please write your answers to all parts of these questions on the lined pages within the Candidate Answer Booklet.

1 Ann owns a shop selling prints. She placed an advertisement in the Friday edition of her local paper stating:

‘Unique opportunity to own a Bell print for €500 cash. Offer valid for one day only – tomorrow Saturday.’

When Con saw the advert, he immediately posted a letter of acceptance.

On Saturday, Di asked Ann if she would take a cheque for €500, but she refused to accept the cheque and told her she could not have the print. Later that day Ann sold the print to Evi.

On Monday morning Con’s letter arrived.

Required:

In the context of the rules governing the creation of contracts:

(a) Describe the precise legal nature of Ann’s advertisement; (2 marks)

(b) Explain whether Con has any right of action against Ann; (2 marks)

(c) Explain whether Di has any right of action against Ann. (2 marks)

(6 marks)

2 Fred is a member of Glad Ltd, a small publishing company, holding 100 of its 500 shares. The other 400 shares are held by four other members.

It has recently become apparent that Fred has set up a rival business to Glad Ltd and the other members have decided that he should be expelled from the company. To that end they propose to alter the constitution to include a new power to ‘require any member to transfer their shares for fair value to the other members upon the passing of a resolution so to do’.

Required:

(a) State the procedure which Glad Ltd must follow to alter its constitution. (2 marks)

(b) Explain the effect of the requirement that any alteration to a company’s constitution must be for the benefit of the company as a whole. (2 marks)

(c) Explain whether or not the constitution of Glad Ltd can be altered as proposed. (2 marks)

(6 marks)

- 3** Three years ago Ho subscribed for shares in two companies: Ice Ltd and Jet plc. In relation to the shares in Ice Ltd, Ho was only required to pay 50 cents per €1 share when he took the shares and was assured that he would not be required to make any further payment on them to Ice Ltd and the company passed a resolution to that effect. Unfortunately, Ice Ltd has gone into insolvent winding up owing a substantial sum of money to its creditors.

In relation to the shares in Jet plc, Ho was required to pay a premium of 50 cents per €1 share. The shares are currently trading at 75 cents per share.

Required:

- (a) Describe any potential liability Ho may have with regard to the shares he holds in Ice Ltd and to whom any such liability would be owed. (2 marks)
- (b) Explain the meaning and purposes of a share premium account. (2 marks)
- (c) Explain whether Ho can gain access to the premium paid on the shares in Jet plc. (2 marks)

(6 marks)

- 4** Kut Ltd is a small private company limited by shares. Although there are three members of its board of directors, the actual day-to-day running of the business is left to Leo, who simply reports back to the board on the business he has carried out. Leo refers to himself as the chief executive officer of Kut Ltd, although he has never been officially appointed as such.

In October 2014, Leo entered into a normal business contract on Kut Ltd's behalf with Max. However, the other members of the board have subsequently lost confidence in Leo and have refused to pay Max, claiming that Leo did not have the necessary authority to enter into the contract with him.

Required:

- (a) State the usual authority of individual directors to enter into binding contracts on behalf of their company. (2 marks)
- (b) Explain whether or not Kut Ltd is liable to pay Max. (4 marks)

(6 marks)

- 5** Nit is involved in illegal activity, from which he makes a large amount of money. He also owns a legitimate taxi company and passes off his illegally gained money as profits of that business. Nit employs Owen, who is aware of the illegal source of the money, to act as the manager of the taxi company, and Pat as his accountant to produce false business accounts for the taxi business.

Required:

In the context of the law relating to money laundering:

- (a) Explain the meaning of layering. (2 marks)
- (b) Explain whether any criminal offences relating to money laundering may have been committed by Nit, Owen and Pat. (4 marks)

(6 marks)

End of Question Paper

Answers

Section A

- 1 D
- 2 B
- 3 C
- 4 C
- 5 B
- 6 C
- 7 A
- 8 C
- 9 A
- 10 A
- 11 D
- 12 A
- 13 C
- 14 C
- 15 A
- 16 B
- 17 B
- 18 C
- 19 D
- 20 B
- 21 A
- 22 C
- 23 A
- 24 B
- 25 A
- 26 C
- 27 B
- 28 C
- 29 B
- 30 A
- 31 C
- 32 A
- 33 A
- 34 A
- 35 A
- 36 D
- 37 C
- 38 A
- 39 B
- 40 C
- 41 B
- 42 C
- 43 D
- 44 B
- 45 C

Section B

- 1 (a) The first issue to determine is whether Ann's advertisement was an offer or an invitation to treat. An offer is a promise to be bound on particular terms. The offer may, through acceptance, result in a legally enforceable contract. Alternatively, an invitation to treat is an invitation to others to make offers. The person extending the invitation is not bound to accept any offers made to them. Usually, advertisements only amount to an invitation to treat and cannot be accepted to form a binding contract (*Partridge v Crittenden* (1968)). There are occasions, however, when an advert can amount to a genuine offer capable of acceptance by anyone to whom the offer is addressed (*Carlill v Carbolic Smoke Ball Co* (1893)). The wording of Ann's advert was in sufficiently categorical terms for it to have been an offer to the world at large, stating her unreserved commitment to enter into a contract with the first person who accepted it.
- (b) Once an offeree accepts the terms offered, a contract comes into effect and both parties are bound. Usually, acceptance must be communicated to the offeror. However, there are exceptions, one of which arises where acceptance is through the postal service. In the latter circumstances, acceptance is complete as soon as the letter, properly

addressed and stamped, is posted (*Adams v Lindsell* (1818)). The postal rule will only apply, however, where it is in the contemplation of the parties that the post will be used as the means of acceptance.

Con has clearly tried to accept the offer but his reliance on the postal rule would be to no avail as the use of the post was clearly an inappropriate mode of acceptance. He, therefore, has no right of action against Ann.

- (c) In order to form a binding agreement, acceptance must correspond with the terms of the offer. Thus the offeree must not seek to introduce new contractual terms into their acceptance (*Neale v Merritt* (1830)). Any attempt to do so amounts to a counter-offer and leaves the original offeror at liberty to accept or reject the new offer as they choose (*Hyde v Wrench* (1840)).

Ann's advertisement clearly stated that she wanted cash for the print and, therefore, Di's attempt to pay with a cheque did not comply with the original offer and leaves her with no grounds for complaint. The decision in *D & C Builders Ltd v Rees* (1966) as to cheques being equivalent to money is not to the point, as Ann wanted immediate payment for the print.

- 2 (a) Section 32(1) Companies Act (CA) 2014 provides for the alteration of a company constitution by the passing of a special resolution, requiring a 75% vote in favour of the proposition. Consequently, the directors of Glad Ltd must call a general meeting of the company and put forward a resolution to alter the articles as proposed. Fred will be entitled to attend the meeting, speak and vote on the resolution.

If the resolution is successful, a copy of the altered constitution must be sent to the Companies Registration Office. The Registrar will publish notice of this fact within 10 days of delivery – s.33 CA 2014.

- (b) Any such alteration, as is proposed, has to be made '*bona fide* in the interest of the company as a whole'. This test involves a subjective element, in that those deciding the alteration must actually believe they are acting in the interest of the company. There is additionally, however, an objective element requiring that any alteration has to be in the interest of the 'individual hypothetical member' (*Greenhalgh v Arderne Cinemas Ltd* (1951)). Whether any alteration meets this requirement depends on the facts of the particular case. In *Brown v British Abrasive Wheel Co Ltd* (1919), an alteration to a company's articles to allow the 98% majority to buy out the 2% minority shareholders was held to be invalid as not being in the interest of the company as a whole. However, in *Sidebottom v Kershaw Leese & Co* (1920), an alteration to the articles to give the directors the power to require any shareholder, who entered into competition with the company, to sell their shares to nominees of the directors at a fair price was held to be valid.
- (c) It is extremely likely that the alteration will be permitted. Fred only controls 20% of the voting power in the company and so he is no position to prevent the passing of the necessary special resolution to alter the articles as proposed. Additionally, it would clearly benefit the company as a whole, and the hypothetical individual shareholder, to prevent Fred from competing with the company, so Fred would lose any challenge he subsequently raised in court.

- 3 (a) There is no requirement that companies should require their shareholders to immediately pay the full value of the shares. The proportion of the nominal value of the issued capital actually paid by the shareholder is called the paid up capital. It may be the full nominal value, in which case it fulfils the shareholder's responsibility to the company; or it can be a mere part payment, in which case the company has an outstanding claim against the shareholder. A call is a demand by the company for money due on shares – s.77 CA 2014. It is possible for a company to pass a resolution that it will not make a call on any unpaid capital. However, even in this situation, the unpaid element can be called upon if the company cannot pay its debts from existing assets in the event of its winding up.

Applying this to Ho's case, it can be seen that he has a maximum potential liability in relation to his shares in Ice Ltd of 50 cents per share. The exact amount of his liability will depend on the extent of the company's debts but it will be fixed at a maximum of 50 cents per share.

- (b) It is common for successful companies to issue shares at a premium, the premium being the value received over and above the nominal value of the shares. Section 71(5) Companies Act (CA) 2014 provides that any such premium received must be placed into a share premium account. The share premium must be maintained in the share premium account and this is part of the company's undistributable capital – also known as the undenominated capital. This capital is subject to capital maintenance rules.

There are three exceptions to the rule regarding this account being classified as distributable capital:

1. Mergers – where one company has secured at least 90% equity share capital in another company – s.72 CA 2014.
2. Group reconstructions – where a company allots shares to its holding company in consideration for the transfer of assets, other than cash – s.73 CA 2014.
3. The acquisition of shares – where company A allots shares to the members of company B in exchange for all the shares of company B so that B becomes a wholly owned subsidiary of A – s.74 CA 2014.

- (c) Applying the rules relating to capital maintenance, it follows that the share premium account cannot be used for payments to the shareholders.

Applying the rules to Ho's situation, it can be seen that he cannot get any of the premium paid for the shares in Jet plc back from the company in the form of cash.

Ho would not even be able to recover the money indirectly as the shares are currently trading at below the nominal value, and at half of the premium price he paid.

- 4 (a)** This question requires candidates to consider the authority of company directors to enter into binding contracts on behalf of their companies.

Section 158(1) Companies Act 2014 provides that the directors of a company may exercise all the powers of the company as are not by the Act or the company's constitution required to be exercised by the company in a general meeting. It is important to note that this power is given to the board as a whole and not to individual directors and consequently individual directors cannot bind the company without their being authorised, in some way, so to do. Therefore the powers are conferred on the board of directors collectively. In the case of a private company limited by shares with a single director, the powers are conferred on the director.

- (b)** There are three ways in which the power of the board of directors may be extended to individual directors.

- (i) The board may delegate specific powers to individual directors under s.158(4) CA 2014. Where such express delegation has been made, then the company is bound by any contract entered into by the person to whom the power was delegated. Under s.39, the board of directors can authorise any person as a person authorised to bind the company (generally – not just for specific transactions). The Companies Registration Office must be notified and the Registrar will register the authorisation. This person is a 'registered person' for the purposes of the Companies Act 2014.
- (ii) A second type of authority which may empower an individual director to bind his company is implied authority. In this situation, the person's authority flows from their position. Section 159(4) enables the directors to delegate their authority to the managing director. Thus, the board of directors may expressly confer any of their powers on the managing director as they see fit. The directors may specify that the conferral of powers on a managing director is to operate either concurrently with the board or to the exclusion of their own powers. Outsiders, therefore, can safely assume that a person appointed as managing director has all the powers usually exercised by a person acting as a managing director. Implied actual authority to bind a company may also arise as a consequence of the appointment of an individual to a position other than that of managing director. In *Hely-Hutchinson v Brayhead Ltd* (1968), although the chairman and chief executive of a company acted as its *de facto* managing director, he had never been formally appointed to that position. Nevertheless, he purported to bind the company to a particular transaction. When the other party to the agreement sought to enforce it, the company claimed that the chairman had no authority to bind it. It was held that, although the director derived no authority from his position as chairman of the board, he did acquire such authority from his position as chief executive and thus the company was bound by the contract he had entered into on its behalf.
- (iii) The third way in which an individual director may possess the power to bind his company is through the operation of ostensible authority, which is alternatively described as apparent authority or agency by estoppel. This arises where an individual director has neither express nor implied authority. Nonetheless, the director is held out by the other members of the board of directors as having the authority to bind the company. If a third party acts on such a representation, then the company will be estopped from denying its truth. In *Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd* (1964), although a particular director had never been appointed as managing director, he acted as such with the clear knowledge of the other directors and entered into a contract with the plaintiffs on behalf of the company. When the plaintiffs sought to recover fees due to them under that contract, it was held that the company was liable; a properly appointed managing director would have been able to enter into such a contract and the third party was entitled to rely on the representation of the other directors that the person in question had been properly appointed to that position.

The situation in the problem is very similar to that in *Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd*. The board of Kut Ltd has permitted Leo to act as its chief executive, and he has even used that title. The board has therefore acquiesced in his representation of himself as their chief executive and consequently Kut Ltd is bound by any contracts he might make within the scope of a chief executive's implied authority. As the contract in question is in the ordinary run of business, it would clearly come within that authority. Consequently Kut Ltd will be liable to pay Max or face an action for breach of contract. Regard should also be given to the general duties of directors contained in ss.223–235 CA 2014.

- 5 (a)** Money laundering was first made a criminal offence under the Criminal Justice Act (CJA), 1994. The Criminal Assets Bureau (under the Proceeds of Crime Act, 1996) and the Director of Public Prosecutions were given responsibilities in respect of seeking orders freezing, forfeiting and confiscating assets. Certain relevant provisions of CJA 1994 were repealed and replaced by the Criminal Justice (Money Laundering and Terrorist Financing) Act (CJ(ML&TF)A) 2010 and the Criminal Justice Act 2013 (CJA 2013). Layering is one of the stages in the overall process of money laundering designed to disguise the illegal source of money. It involves the transfer of money made from illegal sources from place to place and from one business to another in order to conceal the initial illegal source of the money. The layering process may involve many inter-business transfers in an attempt to confuse any potential investigation of the original source of the money.

- (b)** The CJ(ML&TF)A 2010 seeks to control money laundering by creating three categories of criminal offences in relation to that activity.

– **laundering**

The first category of principal money laundering offences relates to laundering the proceeds of crime in the State. This is contained in s.7(1) CJ(ML&TF)A 2010. A person who aids or abets the commission of such an offence is liable to prosecution under s.7 Criminal Law Act 1997.

Under s.7 CJ(ML&TF)A 2010, it is an offence to conceal, disguise, convert, transfer or remove criminal property from the State. These offences are punishable on conviction by a maximum of 14 years imprisonment and/or a fine.

The handling of such property is also an offence under s.7. Furthermore, a person is deemed to handle property if s/he receives or arranges to receive the property or they retain, remove, dispose of or realise the property, or arrange to do any of the foregoing, for the benefit of another person (s.7(6)).

Section 33 CJ(ML&TF)A 2010 requires that a body which is designated by the Act must take reasonable measures to establish the identity of any person for whom it proposes to provide particular services in a variety of circumstances which include where it suspects that a service is connected with the commission of an offence under s.7. A body which identifies such a person is required to retain documents for evidence in any money laundering investigation. An offence under s.33 carries a maximum penalty of five years imprisonment and/or a fine.

– **failure to report**

The second category of offence relates to failing to report a suspicion of money laundering and is contained in s.42(9) CJ(ML&TF)A 2010. Section 42(1) CJ(ML&TF)A 2010 requires that certain designated bodies must report to An Garda Síochána and the Revenue Commissioners where they know, suspect or have reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering.

Failure to so report is an offence under s.42 and punishable by a maximum of five years imprisonment and/or a fine.

– **tipping off**

The third category of offence relates to tipping off and is contained in s.49 CJ(ML&TF)A 2010, which makes it an offence to make a disclosure which is likely to prejudice any investigation under the Act. The s.49 offences are punishable by a maximum penalty of five years and/or a fine.

It is apparent from the scenario that all three people involved in the scenario are liable to prosecution under the CJ(ML&TF)A 2010 as they are involved in money laundering. If the original money to establish the taxi company was the product of crime, then that transaction itself was an instance of money laundering. However, even if that were not the case and the taxi company had been bought from legitimate money, it is nonetheless the case that it is being used to conceal the fact that the source of much of Nit's money is criminal activity.

Nit would therefore be guilty on the primary offence of money laundering under s.7 CJ(ML&TF)A 2010.

Whether or not Owen is also guilty of an offence in relation to the CJ(ML&TF)A 2010 depends on the extent of his knowledge as to what is actually going on in the company. As he knows what is taking place, then, as he is clearly assisting Nit in his money laundering procedure, his activity is covered by s.7(1)(a)(i) CJ(ML&TF)A 2010, as he is actively concealing and disguising criminal property. He would also be liable under s.7 Criminal Law Act 1997, as he is clearly assisting Nit in his money laundering procedure.

Pat is also guilty under the same provisions as Owen, in that he is actively engaged in the money laundering process, by producing false accounts. Had he not been an active party to the process, he might nonetheless have been liable, under s.42 CJ(ML&TF)A 2010, for failing to disclose any suspiciously high profits from the taxi business.

Section A

1–45 One or two marks per question, total marks 70

Section B

- 1** This question requires an explanation of the rules relating to the formation of contracts, especially the distinction between offers and invitations to treat and the rules of acceptance of offers.
- (a)** 2 marks Good analysis and explanation of the nature of Ann’s advertisement.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.
- (b)** 2 marks A good explanation of Con’s situation in law.
1 mark Some, but limited, explanation.
0 marks No knowledge or explanation.
- (c)** 2 marks A good explanation of Di’s situation in law.
1 mark Some, but limited, explanation.
0 marks No knowledge or explanation.
- 2** This question requires an explanation of the rules relating to the alteration of a company’s constitution generally. It also requires an understanding of the way in which individual shareholders can have their right expropriated.
- (a)** 2 marks Good analysis and explanation of the procedure for altering the constitution.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.
- (b)** 2 marks Good explanation of what is meant by in the interest of the company as a whole.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.
- (c)** 2 marks Good analysis of the likely outcome with reasons.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.
- 3** This question requires an explanation of the rules relating to shareholders’ liability for shares.
- (a)** 2 marks Good analysis and explanation of the nature of Ho’s potential liability.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.
- (b)** 2 marks A good explanation of the share premium account and what it can be used for.
1 mark Some, but limited, explanation.
0 marks No knowledge or explanation.
- (c)** 2 marks A good explanation of Ho’s inability to access the share premium account.
1 mark Some, but limited, explanation.
0 marks No knowledge or explanation.
- 4** This question requires a consideration of the powers of individual directors to bind their company in contracts.
- (a)** 2 marks Good explanation of the directors’ powers collectively and individually.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.
- (b)** 3–4 marks A good explanation of express, implied and apparent authority plus appropriate application of that knowledge.
1–2 marks Some, but limited, explanation or application.
0 marks No knowledge or explanation.

- 5** This question requires a consideration of the law relating to money laundering.
- (a)** 2 marks Good explanation of the process of layering in the context of money laundering.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.
- (b)** 3–4 marks A good explanation of the potential crimes under the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 and s.7 Criminal Law Act 1997 plus appropriate application of that knowledge.
1–2 marks Some, but limited, explanation or application.
0 marks No knowledge or explanation.