
Answers

Section A

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

Section B

- 1 (a) The purpose of an exclusion clause is to exclude or limit the parties' liability in case of breach of contract.
- (b) There are a number of tests which an exclusion clause must pass in order to be valid. One such test is the common law test of incorporation: the clause must be incorporated into the contract and not added after the contract is completed. Here, the exclusion clause has not been incorporated in the contract between Simon and the hotel, given that it was brought to the attention of Simon only after he had paid for the room and thus entered into a relevant contract with the hotel. There is no evidence that the hotel took any steps to bring the clause to the attention of Simon before the contract was concluded. Therefore, on the basis of the incorporation test, the exclusion clause is not applicable. It is clarified that, given that the exclusion clause does not pass the first test of incorporation, it does not matter if it passes the other tests.

- 2** (a) Tony retired in December 2013 and therefore he has no liability for acts of the partnership entered into after his retirement.
- (b) Although Wallace joined the partnership as a limited partner, he is involved in the management of the partnership and hence he will be treated as a general partner and he will therefore have full personal liability for the contract entered into on behalf of the partnership after he has joined the partnership.
- (c) Sarah can claim the outstanding debt from Mary, Nina and Wallace although Nina's liability will apparently be limited to the amount she contributed to the partnership at its formation.
- 3** (a) Given that the company has not been profitable, and hence final dividends cannot be declared, the most appropriate option with a view to returning funds to the shareholders is the declaration of interim dividends. Although reduction of share capital and redemption of redeemable shares involve the return of certain funds to the relevant shareholders, such funds are not given in the form of 'reward' to the shareholders in return for the improvement of the company's performance.
- (b) If the board of directors is of the opinion that the financial performance of the company warrants the distribution of interim dividends before the year end, they can proceed to declare such dividends without approval from the company in general meeting.
- 4** (a) Given that Clay is a member of the board of directors, the company will be bound by his actions purported to be taken on behalf of the company on the basis of implied authority and s.33A Companies Law Cap. 113, despite the internal regulations of the company.
- (b) Clay will be liable for the losses suffered by the company on the grounds that he acted beyond his authority.
- (c) Given that the company is bound by the contract with Claire, Clay has no personal liability towards Claire.
- 5** (a) Both civil and criminal action can be taken against Eddie for defrauding the company and for providing false information to the company's auditors in order to cover for his actions.
- (b) Criminal action can be taken against Fay on the grounds that she could have easily discovered that the company's books did not give a true and fair view of the state of the company's affairs.
- (c) Although George has no criminal liability, he has civil liability towards the company on the basis that in preparing his report, he has a duty to carry out investigations which will enable him to determine whether proper accounting records have been kept by the company and whether the company's individual accounts are in agreement with the accounting records and returns.

Section A

1–45 One or two marks per question as indicated.

Section B

- 1** (a) 1 mark for each relevant point made relating to exclusion clauses.
(b) 1 mark for correct answer and 2 marks for correct explanation.
- 2** (a) 1 mark for correct statement and 1 mark for explanation.
(b) 1 mark for correct statement and 1 mark for explanation.
(c) 1 mark for correct statement and 1 mark for explanation.
- 3** (a) 1 mark for correct answer and 3 marks for correct explanation.
(b) 2 marks for the correct answer.
- 4** (a) 1 mark for correct statement and 1 mark for explanation.
(b) 1 mark for correct statement and 1 mark for explanation.
(c) 1 mark for correct statement and 1 mark for explanation.
- 5** (a) 1 mark for correct statement and 1 mark for explanation.
(b) 1 mark for correct statement and 1 mark for explanation.
(c) 1 mark for correct statement and 1 mark for explanation.