
Answers

Section A

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

Section B

- 1 (a) Article 14(1) of the UN Convention on Contracts for the International Sale of Goods provides that:
- 'A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.' Any communication which does not comply with the stated requirements for an offer is to be treated as merely an invitation to make offers, or an invitation to treat in English law.
- Applying article 14(1), it is clear that Abe made an offer to Bo, the terms of which are clearly set out and only require acceptance.
- However, that is not the situation with regard to Chi, as, although there was a statement of price, there was no indication as to quantity of grain to be supplied. Consequently Abe's letter to Chi was merely an invitation to treat.

- (b) A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of the Convention (Article 23). As regards the time of acceptance, it becomes effective at the moment the indication of assent reaches the offeror, however, it is an essential feature is that the action indicates agreement to the offer as originally made by the offeror. Under Article 19, an acceptance which contains additions, limitations or other modifications which 'materially alter the terms of the offer' constitutes a counter-offer and acts as a rejection of the original offer.

By attempting to order a smaller quantity of grain than was actually offered, Bo has effectively rejected Abe's original offer and has no contractual claim against him.

- (c) As Abe's original letter to Chi did not amount to an offer, it can be seen that Chi's letter to Abe is in fact an offer which Abe can choose to accept or reject. Once again as there is no contract, Chi also has no contractual claim against Abe.

- 2 (a) Section 21 Companies Act 2006 provides for the alteration of articles of association by the passing of a special resolution, requiring a 75% vote in favour of the proposition. Consequently, the directors of Glad Co 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 new articles must be sent to the Companies Registry within 15 days.

- (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 its 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 outsiders; or it can be a mere part payment, in which case the company has an outstanding claim against the shareholder. 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 liquidation.

Applying this to Ho's case, it can be seen that he has a maximum potential liability in relation to his shares in Ice Co 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 pence 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 610 Companies Act 2006 provides that any such premium received must be placed into a share premium account. The premium obtained is regarded as equivalent to capital and, as such, there are limitations on how the fund can be used. Section 130 provides that the share premium account can be used for the following purposes:

- (i) to pay up bonus shares to be allotted as fully paid to members;
- (ii) to write off preliminary expenses of the company;
- (iii) to write off the expenses, commission or discount incurred in any issue of shares or debentures of the company;
- (iv) to pay for the premium payable on redemption of debentures.

- (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 Co 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.

Article 3 of the model articles of association for private companies provides that the directors of a company may exercise all the powers of the company. 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.

- (b) There are three ways in which the power of the board of directors may be extended to individual directors.
- (i) The individual director may be given express authority to enter into a particular transaction on the company's behalf. To this end, Article 5 allows for the delegation of the board's powers to one or more directors. 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.
 - (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. The mere fact of appointment to a particular position will mean that the person so appointed will have the implied authority to bind the company to the same extent as people in that position usually do (*Hely-Hutchinson v Brayhead Ltd* (1968)).
 - (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 (*Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd* (1964)).

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.

- 5 (a) Money laundering is a criminal offence under the Proceeds of Crime Act (POCA) 2002. 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 POCA 2002 seeks to control money laundering by creating three categories of criminal offences in relation to that activity.

- **laundering**
The principal money laundering offence relates to laundering the proceeds of crime or assisting in that process. Under s.327, it is an offence to conceal, disguise, convert, transfer or remove criminal property.
- **failure to report**
The second category of offence relates to failing to report a knowledge or suspicion of money laundering. Under s.330 POCA 2002 it is an offence for a person who knows or suspects that another person is engaged in money laundering not to report the fact to the appropriate authority.
- **tipping off**
The third category of offence relates to tipping off. Section 333 POCA 2002 makes it an offence to make a disclosure, which is likely to prejudice any investigation under the Act.

It is apparent from the scenario that all three people involved in the scenario are liable to prosecution under the POCA 2002 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.327 POCA 2002.

Whether or not Owen is also guilty of an offence in relation to the POCA 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.327, as he is actively concealing and disguising criminal property. He would also be liable under s.328 as his arrangement with Nit 'facilitates the retention of criminal property'.

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.330, 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 under the UN Convention on Contracts for the International Sale of Goods.
- (a)** 2 marks Good analysis and explanation of the nature of Abe’s letters.
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 Bo’s situation in law.
1 mark Some, but limited, explanation.
0 marks No knowledge or explanation.
- (c)** 2 marks A good explanation of Chi’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 articles of association 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 articles of association.
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** **(a)** This question requires an explanation of the rules relating to shareholders’ liability for shares.
- 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 Proceeds of Crime Act 2002 plus appropriate application of that knowledge.
1–2 marks Some, but limited, explanation or application.
0 marks No knowledge or explanation.