

Fundamentals Level – Skills Module

Corporate and Business Law (Irish)

Monday 18 June 2012



Time allowed

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

Do NOT open this paper until instructed by the supervisor.

During reading and planning time only the question paper may be annotated. You must NOT write in your answer booklet until instructed by the supervisor.

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

The Association of Chartered Certified Accountants

Paper F4 (IRL)

The ACCA logo, consisting of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black square.

ALL TEN questions are compulsory and MUST be attempted

- 1 In relation to the DOCTRINE OF PRECEDENT in the Irish legal system:**
- (a) explain the importance of the hierarchical court structure; (7 marks)
 - (b) explain and distinguish between binding precedent and persuasive precedent. (3 marks)
- (10 marks)**
- 2 In relation to the formation of a contract explain the meaning and effect of:**
- (a) an invitation to treat; (7 marks)
 - (b) a tender. (3 marks)
- (10 marks)**
- 3 In relation to defences to the tort of negligence, explain the meaning of:**
- (a) contributory negligence; (5 marks)
 - (b) *volenti non fit injuria* (consent). (5 marks)
- (10 marks)**
- 4 Explain the meaning and consequences of the following terms when found at the end of the names of business organisations:**
- (a) & Co; (4 marks)
 - (b) Ltd; (3 marks)
 - (c) plc. (3 marks)
- (10 marks)**
- 5 In relation to company law, explain the meaning of, and distinguish between the rights attached to, each of the following interests in a company:**
- (a) ordinary shares; (3 marks)
 - (b) preference shares; (3 marks)
 - (c) debentures. (4 marks)
- (10 marks)**

- 6 In relation to private companies explain the meaning of, and the procedure for passing, the following:**
- (a) an ordinary resolution; (2 marks)
 - (b) a special resolution; (3 marks)
 - (c) a written resolution. (5 marks)
- (10 marks)**

- 7 In relation to company law explain:**
- (a) the grounds on which an action for compulsory winding up may be taken under the Companies Act, 1963; (5 marks)
 - (b) the procedure to be followed in, and the consequences of, an action for compulsory winding up. (5 marks)
- (10 marks)**

8 Az Ltd operates a shipbuilding business, which specialises in constructing and modifying ships to order. In 2011, the company entered into two contracts.

- (a) Az Ltd entered into an agreement with Blud to completely rebuild a ship to Blud's specification for a total contract price of €7 million. However, just before completion, Blud informed Az Ltd that, due to the downturn in the world economy, he no longer needed the ship. Az Ltd immediately started an action against Blud for breach of contract. However, in the week before the case was to be decided in the court, Az Ltd sold the ship for the same amount of money that they would have received from Blud.

Required:

Advise Az Ltd whether it can claim damages from Blud, and the extent of those damages. (5 marks)

- (b) Az Ltd also entered into a contract to build a new ship for Cam for a total cost of €25 million. The contract terms provided that the total price was to be paid in 12 instalments and, in the event of Cam failing to make a payment, gave Az Ltd the right to terminate the agreement and claim an amount equal to 20% of the total contract price as damages. Any amount paid over the 20% was required to be returned to Cam.

Cam failed to make the first instalment payment, but refused to pay the damages as set out in the agreement on the grounds that they were excessive.

Required:

Advise Az Ltd whether it can claim damages from Cam, and the extent of those damages. (5 marks)

(10 marks)

9 Dan operated a business providing statistical analysis in the financial services sector. Eve and Fred have both worked for Dan for three years. They were both described as self-employed and both paid tax as self-employed persons. Dan provided all of their specialist computer equipment and software. Eve was required to work solely on the projects Dan provided, and she had to attend Dan's premises every day from 9 am until 5 pm.

Fred, on the other hand, usually worked at home and was allowed to work on other projects. Fred could even arrange for his work for Dan to be done by someone else if he was too busy to do it personally.

As a result of the downturn in the financial services sector Dan has told Eve and Fred that there will be no more work for them and that they will not receive any further payment or compensation from him for their loss of work.

Required:

Advise Eve and Fred what rights they have on their dismissal by Dan.

(10 marks)

10 In 2008 Ger was disqualified from acting as a company director for a period of 10 years under the Companies Act 1990 for engaging in fraudulent trading.

However, he decided to continue to pursue his fraudulent business and, in order to avoid the consequences of the disqualification order, he arranged for his sons, Ham and Ive, to register a new company, Just Ltd, with them as the only shareholders and directors of the company. As neither Ham nor Ive have any business experience Ger arranged for his accountant Kim to run the business on his instructions. Although Kim took no shares in the company, and was never officially appointed as a director, he nonetheless assumed the title of managing director.

Lyn, a customer of Just Ltd, suffered considerable loss on account of its fraudulent activity.

Required:

Advise Lyn as to:

(a) the status of Ham, Ive, Ger and Kim as directors in Just Ltd; and (4 marks)

(b) the potential liability of Ham, Ive, Ger and Kim under company legislation. (6 marks)

(10 marks)

End of Question Paper