Answers

Section A

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

Section B

1 **(a)** An ordinary share denotes equity ownership of a company and usually carries voting rights. Preferential shares usually have no, or limited, voting rights, but attract fixed dividend payments.

(b) Alex could not give the company such notice. Only fully paid up shares may be redeemed. Further, shares may only be redeemed out of profits. Therefore, since the company has not made profits, and has not declared a dividend, the shares cannot be redeemed by the company.

(c) Ted has no liability as his shares are fully paid up. Alex is liable to pay the outstanding amount on his shares.

2 **(a)** Money laundering is when a person

(i) acquires, possesses or uses property and then
(ii) converts or transfers that property
(iii) with the aim of concealing or disguising the illicit origins of that property.

(b) PBN Bank failed in its obligations as an accountable institution. Accountable institutions must verify a customer's identity when establishing a business relationship. Further, they must report suspicious transactions. It should have been suspicious that she was depositing such large sums of money. Accountable institutions are obliged to pay attention to complex, unusual or large transactions.

(c) As an employee of an accountable institution, Alfie is prohibited from tipping off Bethany regarding the possibility that she may be investigated by the Financial Intelligence Unit. It is an offence to do so.

3 **(a)** The interests which a director is obliged to disclose are as follows:

(1) Deriving a financial benefit from a transaction.
(2) Being an office bearer (e.g. officer, auditor or trustee) of a party which will derive a financial benefit from the transaction.
(3) Being the close relative (e.g. parent, child, sibling) of a person who will derive a financial benefit from the transaction.
(4) Has a material financial interest in the counter-party to the transaction.

(b) Failure to disclose interest and breach of fiduciary duties.

A director who has an interest in a proposed transaction by a company must disclose the nature and extent of their interest and have this entered in the register of directors. Gerald ought to have disclosed that he is the sibling of the counter-party to the transaction.

Secondly, a director owes fiduciary duties to the company. This means that a director must exercise reasonable care, skill and diligence in executing duties and must act in good faith. Gerald ought to have heeded the lack of road-worthiness of his brother's vehicles and not approved their purchase.

(c) Ordinary resolution at a special meeting upon written request by shareholders representing at least 20% ownership of the issued shares.

4 **(a)** The individual partners and the partnership are one and the same. This is because a partnership does not have a separate legal identity. Thus, the partners and the partnership are liable for partnership debts. Execution will normally be effected against partnership assets first and then, if the debt is still not satisfied, execution will be against the personal assets of the individual partners.

(b) The partners are jointly and severally liable for the partnership debts. If one partner is singled out to pay the partnership debts, he can demand the other partners to contribute to the debt, since they are supposed to share the losses of the partnership. The other partners would have to reimburse him in accordance with the partnership agreement.

(c) Special partners do not participate in the management of the partnership business and are not known to outsiders. As a result, their liability is limited and they cannot be sued by outsiders. However, Ronnie would not be able to rely on his status as a special partner because he has held himself out as a partner to outsiders and has participated in the management of the affairs of the partnership. Therefore the bank would be entitled to sue him.

5 **(a)** An offer is a proposal made by the offeror with the intention that, should it be accepted by the offeree, a binding, legally enforceable contract will be created. An offer must, therefore, be made with the intention to be bound. This is called the *animus contrahendi*.

(b) The advertisement for the submission of tenders is not equivalent to an offer, and responding to such an advertisement does not create a contract. The tender put in by Ben was not an acceptance of an offer made. It was, instead, his offer to the company for the supply of the equipment, and the company was free to accept or to decline the offer. The company has, therefore, not erred nor breached any contract with Ben.

(c) For a contract to arise, there must be a meeting of the minds of the parties. The doctrine of quasi mutual assent is used to determine whether, objectively, there could be said to have been an agreement between the parties. It looks at whether there was an outward appearance of consensus. As Laurie had put in an offer, and received communication of its acceptance then, despite the mistake, it can be held that the company is nevertheless bound to a contract with Laurie.

Section A

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

Section B

1 **(a)** 1 mark for defining feature of ordinary shares; 1 mark for defining feature of preferential shares.

(b) 1 mark for correct answer; 1 mark for the legal basis.

(c) 1 mark for each condition, up to a maximum of 2 marks.

2 **(a)** 1 mark for each correct component of the definition up to a maximum of 2 marks.

(b) 1 mark for each correct explanation of a duty of an accountable institution with respect to the crime of money laundering. Up to a maximum of 2 marks.

(c) 2 marks for the correct answer.

3 **(a)** 1 mark for each disqualifying condition, up to a maximum of 2 marks.

(b) 1 mark for each basis of liability.

(c) 2 marks for the correct answer.

4 **(a)** 1 mark for each relevant point made relating to the liability of partners and of the partnership.

(b) 1 mark for the correct statement of the principle and 1 mark for its correct application.

(c) 1 mark for the correct statement of the principle and 1 mark for its correct application.

5 **(a)** 1 mark for each correct component of the definition of an offer.

(b) 1 mark for the correct statement of the principle and 1 mark for its application.

(c) 1 mark for the correct statement of the principle and 1 mark for its correct application.