
Answers

Section B

- 1 (a) A company must pass a resolution to alter its share capital. Second, the registrar of companies must be notified of the alteration after the resolution has been passed.
- (b) It is legal for a company to consolidate its shares in order to reduce its share capital. This results in fewer shares of a higher value.
- It is legal for a company to reduce its share capital by cancelling shares. However, only shares which have not been issued, nor have been agreed to be taken up, may be cancelled. The company cannot reduce the capital to M100,000 because that would affect its agreement with Ms. Green.
- 2 (a) A partnership is not a legal person, but, under the Partnership Proclamation 1957, a registered partnership can sue and be sued.
- (b) Partners are jointly and severally liable for partnership debts. Each partner is liable *in solidum* meaning for the full amount of the debt. Therefore a creditor can proceed against one of the partners in the absence of the others.
- (c) A partner who is sued for the partnership debts and pays them is entitled to recover from the other partners since they were all liable for the amount. The other partners will have to contribute their share of liability in accordance with the partnership agreement.
- 3 (a) A managing director is delegated the function of managing the company on behalf of the board of directors.
- (b) There are two grounds for his removal. By influencing the appointment of his unqualified sister, he has breached his duty to act in good faith and in the best interests of the company.
- Second, he ought to have declared his interest in the contract in which his wife had a stake in the counter-party.
- The traffic offences are not relevant. Only a conviction for a crime involving dishonesty (such as fraud, theft, forgery or perjury) could disqualify one from directorship.
- (c) The correct procedure has not been followed for Sam's removal. The decision ought to have been taken by ordinary resolution at a special meeting that was called to consider the removal. The meeting should have been called upon the written request of shareholders.
- 4 (a) Its purpose is to exclude the liability of a party.
- (b) According to the *caveat subscriptor* rule he will be bound even if he was not aware of the clause. Not having seen the clause nor read it is not an excuse. One is bound by any terms which appear on a document which one has signed; therefore one has to beware.
- (c) Mere notice is not legally binding in contract law. The contract was completed at the front desk and the exclusion had not been part of the contract. The hotel should have clearly brought the notice to Kyle's attention and he should have agreed to be bound. The hotel cannot exclude its liability.
- 5 (a) The elements of the crime of corruption are as follows:
- (i) There must be a benefit, either financial or otherwise
 - (ii) The benefit must be given to a public officer
 - (iii) The benefit must be given in order to induce the officer to do some act or to refrain from doing an act
- (b) Patrick may be guilty of the crime of corruption by a public officer or corruption in respect of an official transaction because he accepted money in exchange for refraining from discharging his official duties in an unbiased manner.
- Larry is guilty of the crime of bribery in respect of withdrawal of a tender because he gave a public official money to interfere with a tender process.
- (c) Larry would still be guilty of an offence because the mere promise to give a bribe is an offence under the Act. It is not only the actual payment which is punishable.

Section B

- 1** **(a)** 1 mark for each correct aspect of the procedure up to a maximum of 2 marks
 (b) 1 mark for correct answer for Company A and 3 marks for the correct answer for Company B.

- 2** **(a)** 2 marks for the correct answer.
 (b) 1 mark for the correct answer and 1 mark for the reason.
 (c) 1 mark for the correct answer and 1 mark for the reason.

- 3** **(a)** 2 marks for the correct answer.
 (b) 1 mark for each correct answer up to a maximum of 2 marks.
 (c) 1 mark for the correct answer and 1 mark for the reason.

- 4** **(a)** 2 marks for the correct answer.
 (b) 1 mark for the correct answer and 1 mark for the reason.
 (c) 1 mark for the correct answer and 1 mark for the reason.

- 5** **(a)** 1 mark for each correct element, up to a maximum of 2 marks.
 (b) 1 mark for each correct component of the answer, up to a maximum of 2 marks.
 (c) 1 mark for the correct answer and 1 mark for the reason.