
Answers

Section A

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

Section B

- 1 (a) John has been employed on an indefinite basis and therefore as an employee he may terminate his contract of employment at will, provided that he gives his employer the notice required by law. He need not give a reason for his resigning. Notice periods in the case of indefinite contracts vary depending on the period of employment. We are informed that John has been working for a period of 5½ years and therefore has to give the employer eight weeks' notice. When the employer is so notified, he has the option of either allowing John to work the notice period or alternatively pay him the wage which would be due for the notice period and request John not to return to work.
- (b) It appears that ABC Ltd is undergoing a restructuring process due to a slow-down in business. This may therefore necessitate termination of employment of employees due to redundancy. ABC Ltd may terminate Jack's employment on grounds of redundancy if the restructuring will result in the need for fewer employees and provided that Jack was the last employee to be employed in the category of employees affected by the redundancy. ABC Ltd must apply the 'last in first out' rule.

- (c) An employer may terminate indefinite contracts of employment on the grounds of redundancy provided that the required notice is given. In this case since Jack has been working for three years, he must be given four weeks' notice. On receiving notice, Jack may choose either of continuing to perform work until the period of notice expires or, at any time during the currency of the period of notice, of requiring the employer to pay him a sum equal to half the wages which would be payable in respect of the unexpired period of notice.
- 2 (a) From the facts given, we are told that Michael continued to trade through the company and incur debts knowing full well that the company would not be able to satisfy and pay its debts. In order for action to be taken against Michael for wrongful or fraudulent trading, the company must first be dissolved as such actions are taken in the course of the winding up of a company. Therefore, if in the course of winding up, it appears that any business of the company has been carried on with the intent to defraud creditors of the company or any other person or for any fraudulent purpose, the court may declare that any persons who were knowingly parties to the carrying on of the business, hence Michael in this case, can be held liable for fraudulent trading.
- (b) Upon being appointed director, he has assumed all the rights and responsibilities of a director and hence, if once the company is placed into liquidation it is found that the new director was aware that the company continued to trade despite being in debt, then he too can be held responsible for fraudulent or wrongful trading. In the event that only Michael was managing the company, the son can raise this defence.
- (c) In finding a person responsible for fraudulent trading, the court may declare the individual concerned personally responsible, without any limitation of liability, for all or any of the debts, or other liabilities, of the company as the court may direct. Furthermore, where the business of the company was carried on with a fraudulent intent or for the purposes detailed in the relative provision, every person who was knowingly a party in the carrying on of the business as aforesaid, shall be guilty of an offence and liable on conviction to a fine (*multa*) of not more than €232,940 or imprisonment for a term of not more than five years, or to both such fine and imprisonment.
- 3 (a) Article 116 of the Companies Act, 1995 provides that if the memorandum or articles of association contain a provision authorising either the change of any shares in the company from one class into another, or the variation of the rights attached to any class of shares in the company, such change or variation shall be subject to the consent of a specified proportion of the holders of the issued shares of that class and of any other class affected thereby, or to the sanction of a resolution passed at a separate meeting of the holders of those shares and of the holders of any other shares affected thereby.
- However, if in pursuance of the said provision the shares are changed from one class into another or the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 15% either of the issued shares of that class or of any other class affected thereby, being persons who did not consent to or vote in favour of the resolution for the change or variation, may by writ of summons filed in court within 21 days of the consent or the resolution, demand that the change or variation shall not have effect. If the court is satisfied that the change or variation would unfairly prejudice the holders of those shares, the class of which is being changed or the rights of which are being varied, or the holders of any other class of shares affected thereby, it shall disallow the change or variation.
- (b) At law, a private limited liability company which is not a single member company must have a minimum of two shareholders. Therefore, the company may have three shareholders and each may subscribe to a different number of shares and to a different class of shares having varying rights. What is essential is that the company has ordinary shares which is the case under consideration. There is nothing which stipulates that all shareholders must subscribe to ordinary shares.
- (c) As a general rule, a company is prohibited from making a loan to any person who is its director or a director of its parent company, or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person, provided that such prohibition shall not apply in the following cases: namely (i) to anything done, with the approval of the company given at a general meeting, to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by them for the purposes of the company or for the purpose of enabling them to properly perform their duties as an officer of the company; or (ii) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business. However, private exempt companies are not subject to such prohibition and loans may freely be given to directors provided that this in no way violates any of the other provisions at law. Therefore Simon may obtain a loan from the company.
- 4 (a) In particular, but without prejudice to any other duty assigned to them by the memorandum or articles of association or by the Companies Act, 1995 or any other law, the directors of a company shall be obliged to exercise the degree of care, diligence and skill which would be exercised by a reasonably diligent person having the knowledge, skill and experience which may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company, and the knowledge, skill and experience which the director has.

- (b) If the new director holds a position of conflict in view of the fact that he also sits on the board of a competing company, he would need to adhere to the legal provisions on this matter. Article 143 of the Companies Act, 1995 provides that a director may not, in competition with the company and without the approval of the same company given in general meeting, carry on business for his own account or on account of others, nor may he be a partner with unlimited liability in another partnership or a director of a company which is in competition with that company. Failure to comply with this provision, other than any remedy which the company may have against the director for breach of duty, vests the company with the right either to take action for damages and interest against the director or to demand payment of any profits made by him from such failure. This provision does not totally prohibit directors from holding other directorships or from carrying on other business, but that when such shall be deemed to be in competition with his post of directorship, before so proceeding he is to acquire the approval of the company in the general meeting. Therefore, this would be the procedure which the new director must be aware of and comply with.
 - (c) A director is either appointed for a specific period of time or on an indefinite basis. If for a specific time, a director shall cease to hold such post when his term lapses. The founding director was appointed for life which means that he was appointed for an indefinite period. However, this does not mean that he may not choose to resign at any time and for whatever reason. In order to place his resignation into effect he would have to formally resign, inform the shareholders and the company would have to notify the Registry of Companies of this resignation.
- 5
- (a) Stephen is 13 years old and when dealing with capacity as an essential requisite for a valid contract, the law stipulates at what age a person shall be deemed so capable to enter into a contract. The law provides that if a person is between the age of 9 and 14 years, any contract entered into by such person is only valid in so far as it relates to obligations entered into by the other person in his favour. The obligations undertaken by the child are null. Thus it is called 'a lame contract' and the minor can institute an action in court to rescind the contract if it has been executed, whereas if he is called upon to perform, he can plead the legal exception of minority. The other contracting parties cannot take these courses of action. Therefore, should David institute a case against Stephen for payment of the price agreed upon for the phone, Stephen can claim nullity of the contract on the basis of minority.
 - (b) Sophie has turned 16 years of age and is deemed old enough in the eyes of the law to open and operate a bank account. Unless the bank can prove there is some other reason which should prohibit Sophie from having such a bank account, there is no reason for the bank not to proceed with the opening of the said bank account.
 - (c) Furthermore, Sophie is old enough to be emancipated to trade and therefore upon being emancipated to trade, she shall be deemed to be a major with regard to obligations contracted by her for the purpose of her trade and she can therefore also charge, alienate or hypothecate her property without further formality. In order to be emancipated to trade Sophie must follow the procedure stipulated in the Commercial Code.

Section A

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

Section B

- 1** (a) 2 marks depending on the level of detail given to explain the procedure for termination.
(b) 1 mark for stating whether employment may be terminated and 1 mark for explaining the grounds on which employment may be terminated.
(c) 2 marks depending on the level of detail given to explain the procedure for termination.
- 2** (a) 1 mark for stating if Michael can be deemed a shadow director and 1 mark for explaining why or why not.
(b) 1 mark for deciding whether action may be taken for fraudulent or wrongful trading and 1 mark for explaining why.
(c) 2 marks depending on level of detail given to explain what implications result from Michael being found guilty of fraudulent trading.
- 3** (a) 2 marks depending on level of detail given to explain the procedure which must be followed to vary class rights.
(b) 2 marks depending on the explanation given as to whether every shareholder has to subscribe to ordinary shares.
(c) 2 marks depending on level of detail given to explain whether a loan may be given to a director.
- 4** (a) 2 marks depending on level of detail given to explain the level of skill and diligence a director must exercise in carrying out his duties.
(b) 2 marks depending on level of detail given to explain what a director must do when his position is found to be in conflict with the business of the company.
(c) 2 marks depending on level of detail given to explain whether a director appointed for life can resign.
- 5** (a) 2 marks depending on level of detail given to explain capacity as an essential requirement with respect to Stephen's obligation or otherwise to fulfil his obligations in terms of the agreement reached with David.
(b) 2 marks depending on level of detail given to explain whether Sophie should be allowed to open and operate a bank account.
(c) 2 marks depending on level of detail given to explain whether Sophie can sell property she owns to set up a business.