
Answers

Section B

- 1 (a)** The accident is an example of negligence, which is treated as a civil wrong under the provisions of the Civil Code. Mikhail, who unintentionally caused the damage, has no direct contractual relationship with the client but nevertheless may be held liable for his actions.

In ascertaining whether a civil wrong has occurred in this case, the court will take account of the following:

- (i) There must be some undue action, either by a person or a legal entity.
 - (ii) There must be fault, though not necessarily intention, by the person who inflicted the damage.
 - (iii) There must have been either physical or moral harm done.
 - (iv) There must be a direct causal link between the undue actions and the harm to the victim of the event.
- (b)** The Civil Code states that non-contractual obligations arising from employees in the course of their normal duties are the responsibility of the organisation which employs them. This is sometimes referred to as vicarious liability.

Liability of –000- Plant:

–000- Plant would be liable for the acts of Mikhail, its employee. It would therefore have to pay full compensation for damage caused, including the damage to the car plus any further costs which directly arise, such as the charges for renting a replacement vehicle if applicable.

Liability of Mikhail:

Although Mikhail is protected by the provisions of the Civil Code in relation to vicarious liability, he would nonetheless have a potential liability to his employer, who could take a regress action against him to recover the compensation paid to the owner of the car.

The court would limit Mikhail's liability if the compensation due was wholly disproportionate to his personal financial circumstances.

If Mikhail's accident arose from actions not connected with his usual duties, he could be fully liable. For example, if the window box had fallen due to Mikhail's improper conduct, then his company could be absolved of responsibility.

- 2 (a)** An unlimited partnership is a business form which has no separate legal personality in law. The business affairs of the partnership are inseparable from those of the partners, who own the assets and incur the liabilities, jointly and severally.

This business form is unsuitable for several reasons. Galina's desire to protect her investment cannot be achieved by forming an unlimited partnership, as there is no limited liability. In addition, the disparity between the financial situation and the expertise of the two partners suggests that it would be difficult to form a consensus on how profits should be allocated in their partnership agreement. This could cause difficulties if the partnership was terminated. Finally, Maria's demand that she is involved only as an investor precludes her direct involvement in the partnership, as she would be liable alongside the other two partners (though she could invest by providing loan capital without becoming a partner).

- (b)** The commandite partnership form meets some, but not all, of the needs of the individuals involved. It is a type of partnership in which there must be at least one investor (commandite partner) and at least one unlimited partner. Implicit in the proposal is that Maria would be the investor and Galina and Veronika would be unlimited partners.

Depending on the extent to which Galina insists on protecting her investment, she too could be a commandite partner, but this would prevent her from participating in the business.

By joining as an investing partner, Maria's desire to fund the business on an arm's length basis could be achieved. She has no wish to participate in the operations of the business, and this is consistent with the rules governing this type of partnership. Further, her financial liability would be confined to her investment in the partnership, and any liabilities in excess of this would fall to the two unlimited partners.

- 3 (a)** Konstantin's demands could partially be met by enabling him to invest in shares.

If Konstantin's investment took the form of ordinary shares, his stipulation that he would expect a minimum 8% annual return on his investment would be dependent on the dividend recommended by the directors each year, but this in turn would depend on the profitability of the company and whether it was in a position to pay such a dividend. If profits proved to be inadequate, Konstantin could not be paid out of capital. If the investment was in preference shares, these could carry a fixed coupon of 8% per annum as required, but even then, the company could not guarantee the payment, as dividend payments are contingent on sufficient earnings.

For both ordinary shares and preference shares, Konstantin's capital could not be guaranteed.

By investing in ordinary shares, Konstantin would be able to exert influence by voting at the shareholders' meetings, but his right to vote would be limited if he invested in preference shares, as these shareholders may only vote in instances provided for by legislation. With the approval of the shareholders, he could become a director, subject to annual re-election.

- (b)** Konstantin's demands could partially be met by enabling him to invest in bonds.

Bonds are loan capital and are based on a contract between a debtor and a creditor. As such, any terms could be included with the agreement of both parties. It is quite usual for bonds to carry fixed interest, so Konstantin's desired 8% per annum return could be one of the conditions agreed.

Although interest payable to bondholders is a contractual obligation of the company, there is a possibility that the company may not be in a position to pay this every year. To this extent, his wish to protect his capital is served better by investing in bonds, but not guaranteed.

Bondholders have no constitutional rights while the company remains a going concern, as all decisions concerning management and administration are the ultimate responsibility of the shareholders. Konstantin would only have a significant influence if he was nominated and elected as a director, and in the event of the company becoming insolvent, in which case he would have a voice at the creditors' meeting.

- 4 (a)** The shareholders could act on their concerns in three ways.

First, the shareholders could directly question the business model adopted by the directors and seek more direct involvement in operational decisions. The extent to which this would be achievable would depend on how many shareholders have concerns and whether their collective voting powers were sufficient to achieve these aims. As the company is an open joint-stock company (public company), it could have hundreds or perhaps thousands of shareholders who would have practical difficulties in coordinating their efforts. The shareholders could also propose specific resolutions to be passed at a general meeting if they believed that the business plans of the company were fundamentally flawed.

Second, the shareholders could intervene by proposing changes to the management structure. This could involve removing some or all of the existing directors, appointing new directors or demanding other changes in the senior executive structure.

Third, the shareholders could mobilise the internal audit commission or an independent external body to carry out an in-depth analysis of the company's financial performance. This could reveal whether the disproportionate contribution of non-core activities is a temporary phenomenon or should be expected to continue. Such an analysis would also consider whether the decisions and actions of directors were in the company's best interests, or whether the directors were using the company's resources as an investment vehicle.

- (b)** If a company becomes over-reliant on investments of surplus funds and profits from deals in non-current assets, it could be argued that it is in violation of the provisions of the charter. This contravenes Article 11 of the Federal Law on Joint-Stock Companies. The shareholders could therefore compel the directors to act to address this situation, or alternatively could change the provisions in the charter if it was deemed appropriate to do so.

The directors could be exposed to personal liability if it was established that their actions were not in the best interests of the company. The same federal law states that directors can be held personally accountable to the company for such actions.

Deals made with third parties remain valid, provided they were made in good faith. So as long as the company remains a going concern, external third parties have a reassurance that any contracts entered into by the company which are inconsistent with the provisions of the charter cannot be nullified, provided the external third parties were not aware of this.

- 5 (a)** Money laundering is often carried out in three overlapping stages: placement, layering and integration.

Placement occurs when Leo deposits illegal funds alongside his legitimate earnings, thereby combining legal and illegal sources of income.

Layering occurs when Leo invests funds in long-term life assurance policies.

The funds are integrated when these funds mature. Each of these stages represents an opportunity to further conceal the funds, so that on maturity of the investments it will be difficult or impossible to ascertain whether the funds are the proceeds of crime or not.

- (b)** Two separate offences have been committed.

Leo has deliberately used his company as a vehicle through which the proceeds of illegal activities are concealed or disguised. This is the essence of money laundering as an offence, and if it can be proven that illegal funds have been channelled through different transactions for the purpose of making the funds appear to be legitimate, an offence is committed.

It should be noted that Leo's illegal activities from which criminal proceeds are derived are not money laundering. However, he would be guilty of at least one other criminal offence.

Maxim has also committed an offence through his inaction. As he deals with Leo's financial transactions and has a suspicion that money laundering is taking place, Maxim has failed to report his concerns to an appropriate authority. This duty arises when an individual has grounds for suspicion, not necessarily proof, that illegal transactions are taking place.

Section B

- 1 (a)** Tests to determine liability 2 marks
- (b)** Vicarious liability 1 mark
Regress action 1 mark
Application – Mikhail’s liability 1 mark
Application – liability of company 1 mark
(4 marks)
(Total 6 marks)
- 2 (a)** General features of unlimited partnership 1 mark
Per reason why unsuitable 1 mark, maximum 2 marks
(3 marks)
- (b)** General features of commandite partnership 1 mark
Per reason why suitable 1 mark, maximum 2 marks
(3 marks)
(Total 6 marks)
- 3 (a)** Extent to which shares guarantee return 1 mark
Extent to which shares guarantee capital 1 mark
Extent to which shares offer influence in company 1 mark
(3 marks)
- (b)** Extent to which bonds guarantee return 1 mark
Extent to which bonds guarantee capital 1 mark
Extent to which bonds offer influence in company 1 mark
(3 marks)
(Total 6 marks)
- 4 (a)** Direct intervention in operational matters 1 mark
Right to call meeting or pass resolutions 1 mark
Right to influence composition of the board 1 mark
(3 marks)
- (b)** Impact on company 1 mark
Impact on directors 1 mark
Impact on third parties 1 mark
(3 marks)
(Total 6 marks)
- 5 (a)** General definition of money laundering 1 mark
Per discussion of specific actions as money laundering 1 mark, maximum 2 marks
(3 marks)
- (b)** Offences under money laundering laws 1 mark
Offence committed by Leo 1 mark
Offence committed by Maxim 1 mark
(3 marks)
(Total 6 marks)