Answers

1 The question tested the candidates' knowledge of the Constitution of the Russian Federation and the role of codes within the Russian legal system.

(a) The Constitution of the Russian Federation was introduced in 1993, having been adopted following a referendum of the Russian people. It serves several purposes.

Firstly, it is the foundation on which the legal system is based. It sets down the basic features of the constitutional system and lays down the framework through which laws are created. This includes the organs of government such as the President, the two houses of the legislature and subordinate law-making bodies. The Constitution also creates some lines of demarcation between the powers of the President and the legislature.

Secondly, it guarantees the human rights of Russian citizens. In common with constitutions of other countries, it serves as a bill of rights.

Thirdly, it defines the nature of the state as a federal republic and confirms the crucial distinctions between the respective roles of the legislature, the executive and the judiciary.

Fourthly, it makes provisions for how the Constitution itself may be amended and defines the scope and limits of constitutional law.

The Constitution applies throughout the entire territories of the Russian Federation. All laws created within these territories are subordinate to the Constitution.

(b) International law is not a body of legislation enacted by a single authority but comprises treaties and conventions entered into by different nations. These treaties and conventions may be created by agreements between two or more nations or by supra-national institutions such as the United Nations and the World Trade Organisation.

International law has an increasingly important role in the affairs of the Russian Federation, but it is necessary to understand its position in the hierarchy of laws. Article 125 of the Constitution confirms that where the provisions of international law conflict with the Constitution, the latter will prevail. However, international law overrides domestic legislation subordinate to the Constitution, including federal laws.

A dilemma may arise if the government wishes to commit the Russian Federation to an international law that conflicts with the provisions of the Constitution. In such cases it may propose altering the Constitution. In practice, amendments to the Constitution are rare.

(c) The Russian legal system is often described as a civil law, or codified, system. The features of the system bear resemblance to those in France, Germany and many Latin states and differentiate it from common law systems such as those applicable in the USA and the UK.

Codes are enacted in order to lay down fundamental principles applicable to certain branches of law, such as penal law and civil law. They establish guiding principles which may then be reinforced by statute law. For example, the Civil Code describes three distinct models into which each type of economic entity may be categorised. The role of statute law is then to lay down detailed and less generic provisions relating to each specific type of entity, such as the federal laws on companies limited by shares and limited liability companies.

Codes may be administrative in nature, setting down guiding principles on matters such as procedures to be adopted by the courts and municipal planners.

Some codes apply to interrelationships between humans, and between humans and legal entities. They include the Labour Code, which regulates employer–employee relations, and the Family Code.

Some codes are specific to natural resources, such as forestry and land.

2 This question tested the candidates' knowledge of the principles of contract law. The first part related to acceptance of offer and the second part required an explanation of the consequences of breach of contract.

(a) Contractual relationships are governed by the Civil Code. Article 420 of the Civil Code states that in order for a valid contract to be formed, there must be acceptance by one party of an offer made by another. The basis of any contract is an element of bargain.

Not all forms of acceptance will bring a contract into force. The following rules are generally applicable.

The acceptance must be unambiguous and assent to all the conditions of the offer. If an acceptance is made subject to modification of the terms of the offer, this is regarded as a counter-offer. The effect of the counter-offer is to make the original offer incapable of acceptance. In effect, the original offeree becomes an offeror, whose counter-offer can now be accepted or rejected.

If the offer is made subject to acceptance within a specified time, any acceptance after the time has expired may be regarded as not binding on the offeror. If the offer does not specify a time limit, then any acceptance must be made within a reasonable time, though what is considered to be reasonable may be determined by the subject matter of the proposed contract.

The offer may specify that acceptance must be made in a particular form. For example, the offer may state that the acceptance must be submitted in writing or through a particular medium, such as by letter, fax or e-mail. Failure to submit the offer through the specified medium may again render it unacceptable to the offeror.

Acceptance must comprise some form of action on the part of the offeree. Silence may not usually be construed as acceptance. Therefore, if the offeror states that failure to return goods by a particular date will be taken to be an acceptance, this will not normally be binding on the offeree if no response is made. However, certain actions unrelated to the offer may be regarded as acceptance. For example, if goods are delivered for inspection and the recipient sells them to a third party, this action would be regarded as acceptance.

Some contracts must be in written form and comply with additional laws in order to be legally binding. For example, the Civil Code requires that conveyances of land must be executed in writing, notarised and registered with the state authorities.

Finally, the contract must be based on the free will of both parties. An individual who is coerced into acceptance may set aside the bargain if it can be established that this occurred.

(b) A breach of contract occurs when one party fails to meet the obligations specified in the contract. In such cases the other party may be faced with a financial loss or some other form of loss or inconvenience.

Article 309 of the Civil Code states that the legal obligations that arise under a contract must be performed fully, consistent with all of the terms and conditions of the contract.

It is usual for contracts to be drafted precisely, taking into account different potential outcomes, including the consequences of breach of the contract by either party. Therefore, many contracts explicitly state these specific consequences of breach. A commonly used condition is the inclusion of a forfeit, or financial penalty, that will be applicable in the event that either party fails to perform the obligation. The financial penalty may compromise losses suffered, missed profits that have arisen as a direct consequence of the breach and any expenses incurred.

Contracts may be secured by various means, including the forms of security described in the Civil Code. These include mortgage, surety, bank guarantee and money advance payment (earnest money). In the event of breach, the injured party may rely on the security and enforce it where necessary through the courts.

If a contract is partially performed, the court may award compensation on a *pro rata* basis. For example, if an author writes three chapters of a book that is intended to include twelve chapters, but the commission is then withdrawn by the publisher, the author may be entitled to one-quarter of the full fee, plus expenses.

In most cases the courts are reluctant to demand that the person or entity in breach actually performs the contract. However, this remedy may be applied in respect of breaches of contract relating to sales of unique items or defaults of payment in respect of transactions in land.

Where there is fault on the part of both parties to the contract, the court may decide that the contract be cancelled, entitling both parties to walk away from the contract as if it had not been made.

The contract will usually also envisage potential events that will excuse either party from performing the obligation. These are sometimes described as *force majeure* clauses. In the event that such an event occurs, the party in default of the obligation will be excused from performance without penalty or other consequence.

3 The question required candidates to explain what is meant by redundancy and to give examples of instances in which redundancy arises. It also required an explanation of the employee's rights when made redundant.

(a) The right of an employer to dismiss an employee is governed by Article 80 of the Labour Code. Redundancy specifically refers to dismissal of an employee where the individual's job no longer exists, or where the essential characteristics of the job have changed significantly. It is brought about by internal and external changes that affect the ways in which work is done.

The employer is not entitled to use redundancy as a pretext for dismissal for other motives. Therefore, if the employee is made redundant only to be replaced immediately by a person of similar ability doing precisely the same job, then the employer may be potentially acting unlawfully.

The clearest example of redundancy occurs when a company ceases to trade or when a part of the operation is closed down. The business may, for example, relocate to another region or town, or even a different country.

Redundancy may be caused by new processes being introduced, such as when advanced manufacturing technologies are deployed to replace jobs hitherto performed manually.

Finally, redundancy may occur if the employer benefits from greater efficiencies, which result in a need for a smaller workforce.

(b) The Labour Code imposes specific obligations on the employer when redundancy is proposed.

When the employer decides that redundancies are necessary, employees must be warned personally and against their signature of an impending discharge in connection with the liquidation, and a reduction of the staff, at least two months before discharge.

The employer must offer alternative employment to the affected employees if such opportunities exist within the company. This will depend on the manning level of other functions within the organisation and perhaps the geographical dispersal of the different parts of the company.

Article 178 of the Labour Code states:

' … an employee being discharged shall be paid a severance allowance in the amount of the average monthly earnings; also, he shall retain the average monthly earnings for a period of job placement but not more than two months from the day of discharge (taking into account the severance allowance).

In exceptional cases, the average monthly earnings shall, by a decision of a public employment service agency, be retained by an employee for three months from the day of a discharge, provided that the employee applied to that agency within a two week period of the discharge and had not been placed in a job by it.'

The redundant employees are entitled to pay in full for any accrued holiday leave not taken prior to the termination of their contracts.

4 The question asked candidates to explain the nature of a limited liability company and to set out the matters that must be included in the constitutional documents of a limited liability company.

(a) The Civil Code envisages three generic types of economic entity. Limited companies are organisations that have a personality separate from that of their owners and have the right to hold assets, incur liabilities and engage in entrepreneurial activity in their own name. The limited liability company is an economic entity that is formed under the Federal Law on Limited Liability Companies. It may be distinguished from open and closed companies limited by shares, or joint stock companies, which are governed by the Federal Law on Companies Limited by Shares.

The limited liability company is the simplest type of limited company, and is generally subject to less stringent regulatory requirements than those imposed on companies limited by shares. This reflects a greater level of direct involvement of the participants in the affairs of the company. The capital contributions are not permanent capital and there is greater ease of exit for participants.

Limited liability companies have less complex formation requirements than other types of limited company, such as a lower statutory capital threshold and the right to adopt a relatively simple Charter.

The limited liability company is owned by participants who contribute to the Charter capital. This capital is divided into participating shares representing their equity in the business. The minimum number of participants is one person. The maximum number of participants is 50 persons. If the company wishes to attract capital from a larger number of investors it should be reorganised as a company limited by shares.

In common with other types of limited company, the liability of participants is limited to the value of their contribution to the Charter capital. Participants may contribute in cash or *in specie* provided the non-cash contribution can be appraised in monetary terms. However, unlike the other forms of limited company, the participants in a limited liability company may withdraw from the company at any time by transferring their stake in the business. The remaining participants in the company have a pre-emptive right to purchase the stake before it can be offered to outsiders.

(b) When a limited liability company is formed the promoters must prepare a founders' agreement and a Charter. There is no need to prepare detailed inner rules, though the participants may choose to do so.

The prescribed content of the founders' agreement and the Charter are set out in the Law on Limited Liability Companies.

The founders' agreement confirms the intention of establishing an association among the participants to carry out a business in this form. It sets out how the company will be formed and commits the founders to create the Charter and any other formal supporting documents.

The Charter states the following:

The name and registered address of the company.

The statutory capital, the contributions of the participants and the form these will take.

How the company will be managed, powers of management bodies and decision-taking protocols.

If the participants choose to draft internal rules, the Law on Limited Liability Companies provides that these may include matters such as how general meetings will be conducted, voting methods and internal controls, such as the procedures to be followed by internal auditors.

5 The question asked candidates to compare the rights of ordinary shareholders and those of preference shareholders, and to explain how a company's relationship with its shareholders differs from its relationship with long-term creditors.

(a) Ordinary shares are the main form of owners' equity in a company. They represent permanent risk capital, contributed in return for rights laid down in the Charter of the company. These rights are reinforced by the provisions of the Law on Companies Limited by Shares.

Ordinary shares entitle the holder to a dividend in the company if a dividend is recommended by the directors. The dividend is usually dependent on the underlying financial performance of the company, so the ordinary shareholder runs the risk that there will be a disappointing dividend in bad years, and perhaps no dividend at all if the company fails to make a profit. In addition, the directors may recommend that the profits be retained and reinvested rather than distributed. In practice, although the directors make a 'recommendation', this cannot be overruled in a general meeting.

Preference shareholders have the right to a fixed dividend, expressed as a percentage of the nominal value of the shares. This dividend must be paid ahead of any distribution to ordinary shareholders. Therefore, until the preference shareholder is paid the fixed dividend in full, the ordinary shareholder receives no dividend. Most preference shares carry a right of accumulation, which means that if a dividend is not paid or is only partly paid in a given year, the right to this dividend is carried over to the next year. The cumulative dividend also ranks ahead of payments to ordinary shareholders.

Ordinary shareholders have a right to a notice of general meetings and to attend and speak at these meetings.

The shares carry voting rights on the terms set down in the Charter of the company. For the routine business of the annual shareholders' meeting, the vote will be made in person, but for other matters the vote may be cast *in absentia*.

Depending on minimum thresholds laid down in the Law on Companies Limited by Shares, ordinary shareholders may have further rights. For example, any individual shareholder, or group of shareholders who collectively own 1% of the shares, may obtain a list of participants in the general meeting and details of the nature of their holdings. At the 2% threshold the shareholder has the right to place items on the agenda of the general meeting. Shareholders with 10% or more of the voting shares may call a general meeting. Shareholders with 25% or more of the voting shares may inspect the records of management meetings and the accounting records.

By contrast, preference shareholders have limited voting rights. They may not vote at all at general meetings except when the meeting is to decide on reorganisation or liquidation of the company, proposals to alter the rights of preference shareholders or where the dividends due to them have not been paid.

On liquidation of a company, the Charter determines the order of repayment of capital to different classes of shareholder. Preference shareholders may rank ahead of ordinary shareholders, thereby exposing them to less risk to their capital when a company ceases to trade.

(b) The relationship of a company with its shareholders is one of membership, through which the rights of shareholders and obligations of the company are established by the Charter of the company, reinforced by statutory rights contained in the Law on Companies Limited by Shares. As described above, the rights relate to information on the company's financial affairs, participation in management through general meetings and payment of dividends. As owners of the company, the shareholders have substantial power, including the right to appoint and dismiss management bodies, and ultimately bring the existence of the company to an end if they choose to do so.

The relationship of the company with those who lend it money on a long-term basis is contractual and is shaped by the provisions of the Civil Code. Lenders have no rights of participation in general meetings or management of the company, except when the company is subject to insolvency proceedings, in which case they may participate in creditors' meetings.

Lenders have a contractual right to receive payments of interest and repayment of capital according to the formally agreed schedule. Failure by the company to make such payments represents a breach of contract, thereby crystallising the relationship and invoking rights to recover the debt.

Although those who lend the company money on a long-term basis do not have automatic rights to receive information from the company, they may reserve such rights in the contract. They may, for example, insist on the inclusion of financial and non-financial covenants in the contract. Furthermore, if the company proposes reorganisation or a reduction in capital, these events also crystallise the debt.

6 The question tested the candidates' knowledge of the law in relation to external auditors and the internal audit commission.

(a) The role of the external auditor is to provide an independent opinion on the financial statements of the client company. The primary responsibility of the external auditor is to the shareholders, to whom the auditor's report is addressed at the general meeting of shareholders.

Article 103 of the Civil Code states that the role of the external auditor is to verify and confirm the accuracy of the financial statements of the company. It also states that the external auditor must not be connected in any way with the company.

In discharging this role, the external auditor must carry out checks in order to verify that the financial statements of the company are a true and accurate record of transactions made during the relevant period. The auditor may request any documents of the company and seek explanations from directors and managers as necessary.

The internal audit commission is a management body. As such, it is not entirely independent of the company, though its duties are discharged independently of other management bodies.

To a degree, one role of the internal audit commission bears some similarity to that of the external auditor as it has to carry out the investigations necessary to verify that the information on which financial statements are based can provide reasonable assurance of their integrity. If this can be verified, the commission must confirm this in a report to the board of directors not less than one month before the general meeting.

The role of the internal audit commission is however somewhat broader than that of the external auditor. The terms of reference will normally be established by the general meeting of shareholders and formalised in a written document. The internal audit commission is responsible for monitoring activities of directors and other executive bodies and for oversight of control systems. In addition, the commission may be required to carry out examinations at the request of the directors or the shareholders.

If deemed appropriate, the internal audit commission has the right to call a general meeting of the shareholders.

In common with the rights of external auditors, the internal audit commission has an unfettered right to obtain documents and seek explanations in pursuit of its objectives.

(b) Only open companies limited by shares and specified types of organisation are subject to mandatory external audit requirements.

The Civil Code imposes an obligation to appoint external auditors on:

Open companies limited by shares.

Other companies limited by shares with annual turnover exceeding 500.000 times minimum monthly pay, closing assets exceeding 200.000 times minimum monthly pay or foreign investments.

All banks, insurance companies and investment companies irrespective of size.

The Law on Companies Limited by Shares empowers shareholders holding 10% or more of the capital of a company to demand that an external auditor be appointed.

The federal laws 'On Companies Limited by Shares' and 'On Limited Liability Companies' lay down provisions in relation to the appointment of an internal audit commission.

All companies limited by shares and any limited liability company with more than 15 participants must appoint an internal audit commission. The commission is appointed by the general meeting of shareholders by simple majority vote.

Appointment is for a specified term, though there is no restriction on rolling over the appointment for future terms. Those holding management positions may not vote on the appointment.

Where the federal government holds equity in a company, it may appoint a member of the commission.

Those who serve on the internal audit commission must be independent of management and may not be directors or occupy other management positions.

7 This question tested the candidates' knowledge of the observation process.

(a) Observation is the first stage of the insolvency process following the acceptance of the court of arbitration of an application for insolvency. The process is governed by the Law on Insolvency.

Observation protects the assets of the company for the immediate future by freezing any claims by those who are owed money by the company. In this way, the assets of the company are protected.

An interim manager is appointed to analyse the true financial position of the company. The interim manager gathers information on the balances payable by the company to third parties. From this information, a complete list of creditors' demands is compiled and a creditors' meeting is convened. The company is obliged to furnish the interim manager with all documents necessary to obtain and verify this information.

(b) Under the provisions of the Law on Insolvency, the commencement of observation strictly limits the transactions that can be made by the company.

Although obligations to creditors cannot be discharged for the time being, the company is entitled to pay its employees their regular remuneration as well as any compensation due to them. However, the company may not make payments to shareholders and cannot offset monies due to the company against its obligations.

Subject to the consent of the interim manager, the company may make payments in respect of loan repayments and guarantees, and may also dispose of or purchase assets valued at 5% or more of total assets recorded at the date of commencement of observation.

Observation does not require dismissal or redundancy of the management or employees of the company (though the interim manager may petition the court for leave to dismiss the management). However, the management is limited in respect of decision-taking. No reorganisation may be instigated and the company cannot create separate legal entities or participate in them. Even if the company is capable of sourcing new loan capital, the management is forbidden from issuing debt.

Consistent with the duty to preserve the company's assets, the interim manager has extensive powers. Claims by creditors can be set aside. The interim manager can also ask the court to invalidate claims against the company and petition the court if it is necessary to authorise actions to protect the company's assets.

(c) There are four possible outcomes of the observation process.

Firstly, financial rehabilitation may be introduced. This is formalised by the court of arbitration and is carried out under the authority of an administrative manager. The order is based on a plan for financial recovery submitted by the company to the creditors, together with information on how the decision was taken and supporting evidence that the company will be able to make payments to creditors. Rehabilitation therefore provides an opportunity for the company to remain in business. Payments of debts to creditors are made according to a schedule proposed by the company. If rehabilitation is successful, the company can continue to operate.

If rehabilitation fails, the second possible outcome of external management arises. The arbitration court may sanction external management if there is still a prospect that the company may recover. An external manager is appointed and is responsible for managing the business for a period determined by the court. This is normally limited to 18 months, though the period can be extended by a further six months. The external manager has wide discretion in implementing measures to restore the company's solvency, including cost reduction measures and suspension or closure of parts of the business. If successful, the company continues in business and the external manager is succeeded by a conventional management structure.

The third potential outcome of observation is liquidation of the company. This is an irreversible decision to wind up the company by disposing of its assets and discharging obligations from the proceeds of sale.

Lastly, the company may reach a compromise with its creditors. The compromise may be between the creditors and the company, the external manager or the liquidator. It is subject to approval of the court of arbitration. Once a compromise is finalised, the company continues to operate without supervision.

8 The question sought to test the candidates' understanding of the obligations of a lender when it is seeking to enforce its security against a mortgagor in default.

(a) A mortgage is one of the six means of securing contractual obligations under the Civil Code. It is a secured lending arrangement in which the owner of an asset, usually real estate, confers a right to the lender to sell the asset if the owner fails to repay the obligation or otherwise breaches any other condition in the contract.

Under a mortgage contract, the property is not legally transferred to the lender at any time. Therefore, the lender does not have an unfettered right to do as it pleases with the property and is subject to the rigorous rules laid down in the Law on Mortgages.

In the event of default the lender must sell the property at public auction at no lower a price than that set by the court. This guide price may also be set by agreement between the mortgagee and the mortgagor. A sale by private bargain is not permitted.

Under the public auction process, several outcomes are possible.

The sale may realise a surplus, in which case any funds in excess of the outstanding debt and accumulated costs must be passed to the borrower.

The sale may be successful, but at a price that is insufficient to discharge the debt and accumulated costs. If this occurs, the borrower remains liable for the outstanding sum due.

If there is no acceptable bid at public auction, the process must be repeated.

The lender is able, only with the consent of the borrower, to make alternative independent arrangements for sale, and may even acquire the property for its own use or for eventual sale when market conditions are more favourable.

(b) The two proposed courses of action should not be considered without the prior agreement of the borrower.

As a general rule, the lender must follow the processes stipulated in the Law on Mortgages in respect of realisation of the security. Any other courses of action must be agreed with the borrower.

Yuri is entitled to refuse to permit a sale by private bargain if it is not in his interest. If the price proposed under such an agreement is the best possible outcome from his point of view he may consent to this. It may be preferable, for example, to clear the debt under this arrangement than to leave himself with an outstanding obligation if the property is sold for a lower than anticipated price at public auction, leaving him with an outstanding liability.

The second proposal to purchase the property at 80% of the price set by the court can be contested by Yuri. Under the Law on Mortgages, the consideration paid by the lender to acquire the property may not be less than 90% of the price set by the court. Again, Yuri may agree to a deeper discount if it is in his interest to do so.

The mortgage company should consider declaring the public auction process as having failed and then purchasing the property for 90% of the price in order to avoid the risk of further failures to sell. It must also bear in mind the potentially greater losses that may arise as the outstanding debt will continue to accumulate.

9 The question tested the candidates' ability to apply the principles of partnership and contract law to a situation in which a partner had exceeded her authority.

(a) The Civil Code regards a partnership as a business form with no legal personality distinct from its partners. The relevant laws are set down in sections 66–81 of the Civil code. This contrasts with the various types of limited company, all of which have a separate personality in law. Therefore, while a company can own assets, bear obligations and sue or be sued in its own name, these attributes do not apply to a partnership. For these reasons, the partnership form relies on a high degree of mutual trust between the participants in the business.

As a general rule, the partners bear responsibility for the obligations of the partnership on a joint and several basis. This means that each partner is liable for the whole obligation. So in this case, each partner can be held individually accountable for the whole debt, not one-third of it.

The supplier of raw materials cannot be expected to have a detailed knowledge of the internal rules of the partnership. Therefore, it would not be aware of the constraint that business dealings should be confined to the Moscow metropolitan area or of the limit to each partner's mandate to make transactions on behalf of the business. Provided the supplier has acted in good faith without knowledge of these matters, it can enforce the contract against the partnership. The company can therefore take action against one partner or any combination of partners to enforce the obligation and recover the monies due to it.

(b) The termination of a partnership does not extinguish the outstanding liabilities to third parties at the time of termination. As described above, these fall to the individual partners, though not always in equal proportions.

If the partnership is dissolved, the three partners remain liable for the obligation to the supplier in Ekaterinberg, as well as all other outstanding liabilities of the partnership due to other third parties. The precise way in which the liabilities are apportioned may be set down in the partnership agreement. If this is not stipulated in the partnership agreement, the liabilities would be divided between the partners, subject to the limitation on Alexei's contribution.

As the investing (commandite) partner, Alexei's liability is limited to his original contribution to the business. Therefore, the maximum sum that he may be required to contribute is 500.000 roubles. His liability may be less than this if Iulia and Leonid are compelled to make *pro rata* contributions to meet the obligations. The only way in which Alexei's liability may exceed 500.000 roubles is if he has participated in the management or entrepreneurial activity of the partnership, contrary to the restrictions placed on investing partners by the Civil Code.

Iulia has clearly acted outside her authority, so the other partners can take action against her due to her breach of the partnership rules. She would be liable for the transaction with the supplier of raw materials. It is immaterial that she has resigned, as leaving the partnership does not absolve her of responsibility for obligations incurred while she was a partner.

10 The question asked candidates to analyse two situations in which individuals made transactions in company securities in order to derive financial gain for themselves. It required them to conclude whether the behaviour described was legal and ethical.

In the first situation, Anna is a senior IT executive who learns of a possible merger between her company and a competitor. Based on a supposition that this would eventually result in an increase in the share price once it became public, Anna purchased shares in the company with a view to making a future capital gain by selling the shares at a higher price.

Anna obtained this information from a confidential internal meeting. The information was not in the public domain and could be assumed to be sensitive, in that disclosure could affect the prices of securities traded on the stock exchange.

This activity is generally described as insider dealing. It arises in relation to companies whose securities are listed and where trades based on such information could potentially destabilise the market. The Law on Securities prohibits the buying and selling of securities based on information that is not publicly available, and as such Anna's actions were illegal.

Were Anna's actions unethical? Though widely regarded in many countries as a 'victimless crime', insider dealing has numerous undesirable effects. It affects the prices of the securities that are traded, so investors may buy or sell when they otherwise would not have done so. It affects the company by making the share price less stable, thereby affecting the expectations of various stakeholders. It undermines the confidence of the general public and regulators in capital markets. Those adopting a teleological perspective would certainly conclude that Anna's actions were unethical. From the alternative deontological viewpoint, using confidential information in this manner would also suggest that Anna's integrity is questionable.

Nikita was not involved in insider dealing. The transactions that he made are sometimes referred to as a 'pump and dump' scheme that will inflate share prices to enable a quick gain to be made. As such, he is a buyer and seller in a market and has chosen to make transactions that will probably, but not certainly, increase his wealth. In a free market investors are able to make choices to buy and sell securities of their own volition. Nikita has done nothing illegal in this respect, though he has undoubtedly created a temporarily artificial market situation. The crucial difference between the trades of Anna and Nikita is that the former was based on insider information and therefore likely to be regarded as a criminal act, whereas the latter was intuitive and not based on specific information relating to the company or its securities.

If they come to light, Nikita's actions may invoke the anger of his employer, who may regard his transactions as unethical. It is the duty of employees to act in the best interests of the employer, though some might argue that his private dealings are nothing to do with the employer if made in his own time. Although the transactions are not insider deals, they are most certainly a form of market manipulation. This is not illegal in Russia, even though it can have a similar effect to insider dealing. For this reason, market manipulation (sometimes alternatively referred to as market abuse) is treated as an offence in some countries.

Insofar as Nikita has put personal gain ahead of his duty to the company, it must be concluded that he has acted unethically in this situation.

Fundamentals Level – Skills Module, Paper F4 (RUS)
Corporate and Business Law (Russia) **June 2008 Marking Scheme**

1	**(a)**	Purpose and scope of the Constitution	Up to 3 marks
	(b)	Discussion of impact of international law	Up to 2 marks
		Correct conclusion	1 mark
	(c)	Explanation of nature of codes	Up to 2 marks
		Explanation of position in legal framework	Up to 2 marks
			(Total 10 marks)
2	**(a)**	Explanations of conditions for acceptance	1 mark per condition Maximum 5 marks
	(b)	Forfeit	1 mark
		Part performance	1 mark
		Performance	1 mark
		Rescission	1 mark
		Force majeure	1 mark
			(Total 10 marks)
3	**(a)**	Explanation of redundancy	Up to 3 marks
		Examples	Up to 2 marks
	(b)	Offer of alternative employment	1 mark
		Rights to payments	Up to 2 marks
		Right to remain on payroll	Up to 2 marks
			(Total 10 marks)
4	**(a)**	Explanation of features of limited liability company	1 mark per feature Maximum 6 marks
	(b)	Content of Charter	Up to 2 marks
		Inner documents	Up to 2 marks
			(Total 10 marks)
5	**(a)**	Dividends	Up to 2 marks
		Participation in meetings	Up to 2 marks
		Voting	Up to 2 marks
		References to Charter/statutes	1 mark
	(b)	Relationship of company to shareholders	1 mark
		Relationship of company to long-term creditors	Up to 2 marks
			(Total 10 marks)
6	**(a)**	Role of external auditor	Up to 2 marks
		Role of internal audit commission	Up to 3 marks
	(b)	Appointment of external auditor	Up to 2 marks
		Appointment of internal audit commission	Up to 3 marks
			(Total 10 marks)

7	**(a)**	Purposes of observation	1 mark per purpose Maximum 3 marks
	(b)	Limitations applicable to company	1 mark per limitation Maximum 3 marks
	(c)	Rehabilitation External management Liquidation Compromise	1 mark 1 mark 1 mark 1 mark **(Total 10 marks)**
8	**(a)**	Obligation to sell by auction Repeat auction Setting sale price Agreement with borrower Other rights of borrower	1 mark 1 mark 1 mark 1 mark 1 mark
	(b)	Evaluation of sale to cover costs Evaluation of obtaining ownership Reasoned conclusions	1 mark 1 mark 3 marks **(Total 10 marks)**
9	**(a)**	Obligations of partnership to third parties Reasoned conclusions	Up to 2 marks Up to 3 marks
	(b)	Liability of investing partner Liabilities of full partners	Up to 2 marks Up to 3 marks **(Total 10 marks)**
10		Insider dealing Reasoned conclusions on transactions Reasoned conclusion of ethical considerations	Up to 4 marks Up to 4 marks Up to 2 marks **(Total 10 marks)**