

Fundamentals Level – Skills Module

Corporate and Business Law (Scots)

Monday 9 December 2013



Time allowed

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

Do NOT open this paper until instructed by the supervisor.

During reading and planning time only the question paper may be annotated. You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (SCT)

The ACCA logo, consisting of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black square.

ALL TEN questions are compulsory and MUST be attempted

- 1 In the context of the Scottish legal system, explain:**
- (a) the meaning of statutory interpretation; (2 marks)
 - (b) the literal approach, including the golden rule; and (4 marks)
 - (c) the purposive approach, including the mischief rule. (4 marks)
- (10 marks)**
- 2 In relation to the law of contract:**
- (a) explain the circumstances in which writing is necessary for the creation of a contractual obligation. (5 marks)
 - (b) explain the circumstances in which a third party may acquire rights under a contract between two other parties. (5 marks)
- (10 marks)**
- 3 In relation to the delict of negligence, explain**
- (a) the meaning of 'duty of care'; (5 marks)
 - (b) the standard of care owed by one person to another. (5 marks)
- (10 marks)**
- 4 (a) In relation to partnership and company business forms, explain the meaning of limited liability. (4 marks)**
- (b) In relation to registered companies, explain and distinguish between:**
- (i) unlimited companies; (2 marks)
 - (ii) companies limited by guarantee; (2 marks)
 - (iii) companies limited by shares. (2 marks)
- (10 marks)**
- 5 State and explain the grounds upon which a person may be disqualified under the Company Directors Disqualification Act 1986.**
- (10 marks)**
- 6 In the context of the formation of companies, explain:**
- (a) the statement of capital and initial shareholdings; (4 marks)
 - (b) the articles of association, paying particular regard to how these can be altered. (6 marks)
- (10 marks)**

7 In relation to employment law:

(a) explain the meaning of constructive dismissal; (5 marks)

(b) describe the remedies available in relation to a successful claim for unfair dismissal. (5 marks)

(10 marks)

8 Abid regularly took his car to be serviced at his local garage, Bust Ltd. On the four previous occasions, before handing his car over to the garage, Abid had always been required to read and sign a contractual document which contained the following statement in bold red type:

‘Bust Ltd accepts no responsibility for any consequential loss or injury sustained as a result of any work carried out by the company, whether as a result of negligence or otherwise.’

On the most recent occasion, due to the fact that the garage was very busy when he arrived, Abid was not asked to sign the usual document. He was, however, given a receipt for the car, which he accepted without reading. Bust Ltd’s usual business terms were printed on the back of the receipt, including the statement above.

On driving the car home after its service, Abid was severely injured when the car suddenly burst into flames. It subsequently emerged that the fire had been the result of the negligent work by one of Bust Ltd’s mechanics. Bust Ltd has accepted that its mechanic was negligent but denies any liability for Abid’s injuries, relying on the exclusion clause above.

Required:

Advise Abid:

(a) whether the exclusion clause was incorporated into his contract with Bust Ltd; (7 marks)

(b) as to the possible impact of the Unfair Contract Terms Act 1977 regarding any claim Abid might make against Bust Ltd in relation to his injuries. (3 marks)

(10 marks)

9 Chu, a suitably qualified person, was appointed as the company secretary of Do plc. Since his appointment, Chu has entered into the following contracts in the name of Do plc:

(a) an extremely expensive, long-term contract with Ex plc for the maintenance of Do plc’s photocopiers;

(b) an agreement to hire a car from Far plc which Chu used for his own, non-business related purposes;

(c) an agreement with Gro plc to landscape the garden of his, Chu’s, personal house.

The directors of Do plc have only recently become aware of these contracts.

Required:

In the context of company law, with specific regard to the authority of company secretaries, advise the directors of Do plc whether the above agreements are binding on the company.

(10 marks)

- 10** At the start of 2010, Hot Ltd entered into the following transactions in an endeavour to sustain its operation:
- (a) It borrowed £50,000 from Ina, secured by a floating charge. The floating charge was created on 1 April and it was registered on 15 April;
 - (b) It borrowed a further £50,000 from Jo. This loan was secured by a floating charge created on 3 April and registered on 12 April;
 - (c) It borrowed £100,000 from Ko-Bank. This loan was secured by a standard security over Hot Ltd's office premises. It was created on 5 April and was registered on 16 April.

Unfortunately, the money borrowed was not sufficient to sustain Hot Ltd and, in August 2013, compulsory liquidation proceedings were begun. It is extremely unlikely that there will be sufficient assets to pay the debts owed to all of the secured creditors.

Required:

Advise Hot Ltd as to the order of security and payment of the above debts and explain why they are placed in that order.

(10 marks)

End of Question Paper