Answers

Section A

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

Section B

1 (a) The first issue to determine is whether Ann's advertisement was an offer or an invitation to treat. An offer is a promise to be bound on particular terms. The offer may, through acceptance, result in a legally enforceable contract. Alternatively, an invitation to treat is an invitation to others to make offers. The person extending the invitation is not bound to accept any offers made to them. Usually, advertisements only amount to an invitation to treat and cannot be accepted to form a binding contract (*Partridge* v *Crittenden* (1968)). There are occasions, however, when an advert can amount to a genuine offer capable of acceptance by anyone to whom the offer is addressed (*Carlill* v *Carbolic Smoke Ball Co* (1893)). The wording of Ann's advert was in sufficiently categorical terms for it to have been an offer to the world at large, stating her unreserved commitment to enter into a contract with the first person who accepted it.

(b) Once an offeree accepts the terms offered, a contract comes into effect and both parties are bound.

Usually, acceptance must be communicated to the offeror. However, there are exceptions, one of which arises where acceptance is through the postal service. In the latter circumstances, acceptance is complete as soon as the letter, properly

addressed and stamped, is posted (*Adams* v *Lindsell* (1818)). The postal rule will only apply, however, where it is in the contemplation of the parties that the post will be used as the means of acceptance.

Con has clearly tried to accept the offer but his reliance on the postal rule would be to no avail as the use of the post was clearly an inappropriate mode of acceptance. He, therefore, has no right of action against Ann.

(c) In order to form a binding agreement, acceptance must correspond with the terms of the offer. Thus the offeree must not seek to introduce new contractual terms into their acceptance (*Neale* v *Merritt* (1830)). Any attempt to do so amounts to a counter-offer and leaves the original offeror at liberty to accept or reject the new offer as they choose (*Hyde* v *Wrench* (1840)).

Ann's advertisement clearly stated that she wanted cash for the print and, therefore, Di's attempt to pay with a cheque did not comply with the original offer and leaves her with no grounds for complaint. The decision in *D & C Builders Ltd* v *Rees* (1966) as to cheques being equivalent to money is not to the point, as Ann wanted immediate payment for the print.

2 **(a)** Section 15 Companies Act (CA) 1963 provides for the alteration of articles of association by the passing of a special resolution, requiring a 75% vote in favour of the proposition. Consequently, the directors of Glad Ltd must call a general meeting of the company and put forward a resolution to alter the articles as proposed. Fred will be entitled to attend the meeting, speak and vote on the resolution.

If the resolution is successful, a copy of the new articles must be sent to the Companies Registration Office within 15 days (s.143 CA 1963).

(b) Any such alteration, as is proposed, has to be made '*bona fide* in the interest of the company as a whole'. This test involves a subjective element, in that those deciding the alteration must actually believe they are acting in the interest of the company. There is additionally, however, an objective element requiring that any alteration has to be in the interest of the 'individual hypothetical member' (*Greenhalgh* v *Arderne Cinemas Ltd* (1951)). Whether any alteration meets this requirement depends on the facts of the particular case. In *Brown* v *British Abrasive Wheel Co Ltd* (1919), an alteration to a company's articles to allow the 98% majority to buy out the 2% minority shareholders was held to be invalid as not being in the interest of the company as a whole. However, in *Sidebottom* v *Kershaw Leese & Co* (1920), an alteration to the articles to give the directors the power to require any shareholder, who entered into competition with the company, to sell their shares to nominees of the directors at a fair price was held to be valid.

(c) It is extremely likely that the alteration will be permitted. Fred only controls 20% of the voting power in the company and so he is no position to prevent the passing of the necessary special resolution to alter the articles as proposed. Additionally, it would clearly benefit the company as a whole, and the hypothetical individual shareholder, to prevent Fred from competing with the company, so Fred would lose any challenge he subsequently raised in court.

3 **(a)** There is no requirement that companies should require their shareholders to immediately pay the full value of the shares. The proportion of the nominal value of the issued capital actually paid by the shareholder is called the paid up capital. It may be the full nominal value, in which case it fulfils the shareholder's responsibility to the company; or it can be a mere part payment, in which case the company has an outstanding claim against the shareholder. It is possible for a company to pass a resolution that it will not make a call on any unpaid capital. However, even in this situation, the unpaid element can be called upon if the company cannot pay its debts from existing assets in the event of its liquidation.

Applying this to Ho's case, it can be seen that he has a maximum potential liability in relation to his shares in Ice Ltd of 50 cents per share. The exact amount of his liability will depend on the extent of the company's debts but it will be fixed at a maximum of 50 cents per share.

(b) It is common for successful companies to issue shares at a premium, the premium being the value received over and above the nominal value of the shares. Section 62 Companies Act (CA) 1963 provides that any such premium received must be placed into a share premium account. The premium obtained is regarded as equivalent to capital and, as such, there are limitations on how the fund can be used. Section 62(2) CA 1963 provides that the share premium account can be used for the following purposes:

(i) to pay up bonus shares to be allotted as fully paid to members;
(ii) to write off preliminary expenses of the company;
(iii) to write off the expenses, commission or discount incurred in any issue of shares or debentures of the company;
(iv) to finance the payment of any premium due on the redemption of redeemable preference shares pursuant to s.220 Companies Act 1990 or of any debentures of the company.

(c) Applying the rules relating to capital maintenance, it follows that the share premium account cannot be used for payments to the shareholders.

Applying the rules to Ho's situation, it can be seen that he cannot get any of the premium paid for the shares in Jet plc back from the company in the form of cash.

Ho would not even be able to recover the money indirectly as the shares are currently trading at below the nominal value, and at half of the premium price he paid.

4 **(a)** This question requires candidates to consider the authority of company directors to enter into binding contracts on behalf of their companies.

Article 80 of Table A of the model articles of association for private companies provides that the directors of a company may exercise all the powers of the company. It is important to note that this power is given to the board as a whole and not to individual directors and consequently individual directors cannot bind the company without their being authorised, in some way, so to do.

(b) There are three ways in which the power of the board of directors may be extended to individual directors.

(i) The individual director may be given express authority to enter into a particular transaction on the company's behalf. To this end, Article 5(?) allows for the delegation of the board's powers to one or more directors. Where such express delegation has been made, then the company is bound by any contract entered into by the person to whom the power was delegated.

(ii) A second type of authority which may empower an individual director to bind his company is implied authority. In this situation, the person's authority flows from their position. Article 112 of Table A enables the directors to delegate their authority to the managing director. Thus, the board of directors may expressly confer any of their powers on the managing director as they see fit. If Article 112 is adopted, it is important to ensure that Article 80 is also adopted because this provides that the directors exercise all the powers of the company which are not exercised by the company in a general meeting. It seems therefore that, if these articles adopted, and a managing director is appointed, the managing director has as much authority as the board, i.e. they will have the implied authority to bind the company in the same way as the board, whose delegate they are. Outsiders, therefore, can safely assume that a person appointed as managing director has all the powers usually exercised by a person acting as a managing director. Implied actual authority to bind a company may also arise as a consequence of the appointment of an individual to a position other than that of managing director. In *Hely-Hutchinson* v *Brayhead Ltd* (1968), although the chairman and chief executive of a company acted as its *de facto* managing director, he had never been formally appointed to that position. Nevertheless, he purported to bind the company to a particular transaction. When the other party to the agreement sought to enforce it, the company claimed that the chairman had no authority to bind it. It was held that, although the director derived no authority from his position as chairman of the board, he did acquire such authority from his position as chief executive and thus the company was bound by the contract he had entered into on its behalf.

(iii) The third way in which an individual director may possess the power to bind his company is through the operation of ostensible authority, which is alternatively described as apparent authority or agency by estoppel. This arises where an individual director has neither express nor implied authority. Nonetheless, the director is held out by the other members of the board of directors as having the authority to bind the company. If a third party acts on such a representation, then the company will be estopped from denying its truth. In *Freeman and Lockyer* v *Buckhurst Park Properties (Mangal) Ltd* (1964), although a particular director had never been appointed as managing director, he acted as such with the clear knowledge of the other directors and entered into a contract with the plaintiffs on behalf of the company. When the plaintiffs sought to recover fees due to them under that contract, it was held that the company was liable; a properly appointed managing director would have been able to enter into such a contract and the third party was entitled to rely on the representation of the other directors that the person in question had been properly appointed to that position.

The situation in the problem is very similar to that in *Freeman and Lockyer* v *Buckhurst Park Properties (Mangal) Ltd*. The board of Kut Ltd has permitted Leo to act as its chief executive, and he has even used that title. The board has therefore acquiesced in his representation of himself as their chief executive and consequently Kut Ltd is bound by any contracts he might make within the scope of a chief executive's implied authority. As the contract in question is in the ordinary run of business, it would clearly come within that authority. Consequently Kut Ltd will be liable to pay Max or face an action for breach of contract.

5 **(a)** Money laundering was first made a criminal offence under the Criminal Justice Act (CJA), 1994. The Criminal Assets Bureau (under the Proceeds of Crime Act, 1996) and the Director of Public Prosecutions were given responsibilities in respect of seeking orders freezing, forfeiting and confiscating assets. Certain relevant provisions of CJA 1994 were repealed and replaced by the Criminal Justice (Money Laundering and Terrorist Financing) Act (CJ(ML&TF)A) 2010. Layering is one of the stages in the overall process of money laundering designed to disguise the illegal source of money. It involves the transfer of money made from illegal sources from place to place and from one business to another in order to conceal the initial illegal source of the money. The layering process may involve many inter-business transfers in an attempt to confuse any potential investigation of the original source of the money.

(b) The CJ(ML&TF)A 2010 seeks to control money laundering by creating three categories of criminal offences in relation to that activity.

– laundering
The first category of principal money laundering offences relates to laundering the proceeds of crime in the State. This is contained in s.7(1) CJ(ML&TF)A 2010. A person who aids or abets the commission of such an offence is liable to prosecution under s.7 Criminal Law Act 1997.

Under s.7 CJ(ML&TF)A 2010, it is an offence to conceal, disguise, convert, transfer or remove criminal property from the State. These offences are punishable on conviction by a maximum of 14 years imprisonment and/or a fine.

The handling of such property is also an offence under s.7. Furthermore, a person is deemed to handle property if s/he receives or arranges to receive the property or they retain, remove, dispose of or realise the property, or arrange to do any of the foregoing, for the benefit of another person (s.7(6)).

Section 33 CJ(ML&TF)A 2010 requires that a body which is designated by the Act must take reasonable measures to establish the identity of any person for whom it proposes to provide particular services in a variety of circumstances which include where it suspects that a service is connected with the commission of an offence under s.7. A body which identifies such a person is required to retain documents for evidence in any money laundering investigation. An offence under s.33 carries a maximum penalty of five years imprisonment and/or a fine.

– **failure to report**
  The second category of offence relates to failing to report a suspicion of money laundering and is contained in s.42(9) CJ(ML&TF)A 2010. Section 42(1) CJ(ML&TF)A 2010 requires that certain designated bodies must report to An Garda Síochána and the Revenue Commissioners where they know, suspect or have reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering.

  Failure to so report is an offence under s.42 and punishable by a maximum of five years imprisonment and/or a fine.

– **tipping off**
  The third category of offence relates to tipping off and is contained in s.49 CJ(ML&TF)A 2010, which makes it an offence to make a disclosure which is likely to prejudice any investigation under the Act. The s.49 offences are punishable by a maximum penalty of five years and/or a fine.

It is apparent from the scenario that all three people involved in the scenario are liable to prosecution under the CJ(ML&TF)A 2010 as they are involved in money laundering. If the original money to establish the taxi company was the product of crime, then that transaction itself was an instance of money laundering. However, even if that were not the case and the taxi company had been bought from legitimate money, it is nonetheless the case that it is being used to conceal the fact that the source of much of Nit's money is criminal activity.

Nit would therefore be guilty on the primary offence of money laundering under s.7 CJ(ML&TF)A 2010.

Whether or not Owen is also guilty of an offence in relation to the CJ(ML&TF)A 2010 depends on the extent of his knowledge as to what is actually going on in the company. As he knows what is taking place, then, as he is clearly assisting Nit in his money laundering procedure, his activity is covered by s.7(1)(a)(i) CJ(ML&TF)A 2010, as he is actively concealing and disguising criminal property. He would also be liable under s.7 Criminal Law Act 1997, as he is clearly assisting Nit in his money laundering procedure.

Pat is also guilty under the same provisions as Owen, in that he is actively engaged in the money laundering process, by producing false accounts. Had he not been an active party to the process, he might nonetheless have been liable, under s.42 CJ(ML&TF)A 2010, for failing to disclose any suspiciously high profits from the taxi business.

Section A

1–45 One or two marks per question, total marks 70

Section B

1 This question requires an explanation of the rules relating to the formation of contracts, especially the distinction between offers and invitations to treat and the rules of acceptance of offers.

(a) 2 marks Good analysis and explanation of the nature of Ann's advertisement.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.

(b) 2 marks A good explanation of Con's situation in law.
1 mark Some, but limited, explanation.
0 marks No knowledge or explanation.

(c) 2 marks A good explanation of Di's situation in law.
1 mark Some, but limited, explanation.
0 marks No knowledge or explanation.

2 This question requires an explanation of the rules relating to the alteration of a company's articles of association generally. It also requires an understanding of the way in which individual shareholders can have their right expropriated.

(a) 2 marks Good analysis and explanation of the procedure for altering articles of association.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.

(b) 2 marks Good explanation of what is meant by in the interest of the company as a whole.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.

(c) 2 marks Good analysis of the likely outcome with reasons.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.

3 This question requires an explanation of the rules relating to shareholders' liability for shares.

(a) 2 marks Good analysis and explanation of the nature of Ho's potential liability.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.

(b) 2 marks A good explanation of the share premium account and what it can be used for.
1 mark Some, but limited, explanation.
0 marks No knowledge or explanation.

(c) 2 marks A good explanation of Ho's inability to access the share premium account.
1 mark Some, but limited, explanation.
0 marks No knowledge or explanation.

4 This question requires a consideration of the powers of individual directors to bind their company in contracts.

(a) 2 marks Good explanation of the directors' powers collectively and individually.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.

(b) 3–4 marks A good explanation of express, implied and apparent authority plus appropriate application of that knowledge.
1–2 marks Some, but limited, explanation or application.
0 marks No knowledge or explanation.

5 This question requires a consideration of the law relating to money laundering.

(a) 2 marks Good explanation of the process of layering in the context of money laundering.
1 mark Some explanation, but lacking in detail or application.
0 marks No knowledge whatsoever of the topic.

(b) 3–4 marks A good explanation of the potential crimes under the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 and s.7 Criminal Law Act 1997 plus appropriate application of that knowledge.
1–2 marks Some, but limited, explanation or application.
0 marks No knowledge or explanation.