



## CHIEF EXAMINER REPORT

**JUNE 2024**

**LEVEL 6 UNIT 16 – COMPANY & PARTNERSHIP LAW (PRACTICE)**

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the June 2024 examinations.

The 'suggested points for responses' sections set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

## Chief Examiner Overview

Strong candidates produced focused answers that effectively applied the law to the facts presented, demonstrating clear analysis and a deep understanding of how the law impacts specific client situations. Candidates should ensure they fully understand and can apply the relevant legislation for substantial property transactions, as well as the complete procedure for allotting new shares, including director authorisation, pre-emption rights, and meeting procedures. Furthermore, a solid grasp of unfair prejudice claims under s994 of the Companies Act 2006, particularly in relation to the removal of a director, is essential.

It is also important to understand and apply the law regarding the authority to bind a partner and the duty to disclose secret profits. Some candidates missed key issues. Additionally, candidates should ensure their answers systematically address all elements of the questions posed and focus on providing in-depth, yet specific advice based on the facts and circumstances given.

## Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates.

|  |         |
|--|---------|
| Question 1a  | 7 marks |
| Candidates generally performed very well on this question. Most successfully identified the key advantages and disadvantages of operating as a private limited company, as well as the correct taxation applicable. While a few candidates discussed the pros and cons of other business structures, such as partnerships, this was beyond the scope of the question.  |         |
| Suggested Points for Response:   |         |
| <ul style="list-style-type: none"> <li>• Advantages of private limited company include – limited liability and separate legal entity – useful because they want to employ people (extra potential liability), can provide more security options (floating charges), companies can also raise equity finance – useful because they will need more money to buy extra equipment.</li> <li>• Disadvantages of Co. include – more filing/disclosure burden so less privacy and more cost, more formalities to incorporate e.g. forms to be filed at Companies House, e.g. register at Companies House and complete IN01 to form the company, need to have at least one director and one share must be issued, identify registered office, accounting reference date, chose company name and register articles of association.</li> </ul> |         |

|   |          |
|---|----------|
| Question 1b   | 17 marks |
| This question proved particularly challenging, with many candidates missing key details, such as identifying the transfer of assets under section 190 of the Companies Act 2006.  |          |
| Suggested Points for Response:  |          |
| <ul style="list-style-type: none"> <li>• This is a substantial property transaction. Ajay and Sangeeta will be directors of the Company prior to the transfer of the business of the partnership by them to the company.</li> <li>• s190 CA 2006: a company may not acquire from a director and a director may not acquire from the company, a substantial non-cash asset unless the arrangement is either first approved or made conditional upon being approved by a members' ordinary resolution.</li> <li>• Here the Company will acquire from both of its directors' various non-cash assets (equipment and vehicles). A 'non-cash' asset is any property or interest in property other than cash (s1163 CA 2006).</li> <li>• s191 CA 2006: a non-cash asset is "substantial" in relation to the company if its value exceeds 10% of the company's net asset value and is more than £5000 (the vans and equipment cost £70,000 in 2021 plus there is goodwill so will be more than 10% of the company's net asset value. The net assets of the Company are effectively nil because the Company is yet to trade, and it will only have issued 100 ordinary shares of £1. The transfer of the partnership business will therefore be substantial in value.</li> <li>• The acquisition requires the approval of members by OR. If not obtained the transaction will be voidable at the instance of the company. Directors who authorise the transaction without such approval are liable to indemnify the company for any loss or damage which results.</li> <li>• Ajay and Sangeeta will be interested in the transaction this will require a disclosure of interest under s177 Companies Act 2006 although there are only two directors, and both are already aware of each other's interest (s177(6)(b) CA 2006).</li> </ul> |          |

- Ajay and Sangeeta will not be permitted to vote at the directors' meeting at which this matter is considered, nor will they count in the quorum (Article 14 MA).
- As the Company will have two directors who will be interested in the transaction quorum will not be achieved. Quorum for a directors' meeting is two under Article 11 MA. Without a quorum business cannot be validly conducted at board meetings.

|  |         |
|--|---------|
| Question 2a  | 5 marks |
| Some candidates effectively advised on the share transfer procedure, with stronger responses detailing the relevant forms, stamp taxes, and registration process. However, other candidates identified the need for a stock transfer form but did not fully explain the registration procedure.          |         |
| Suggested Points for Response:   |         |
| <ul style="list-style-type: none"> <li>• A stock transfer form (STF) needs to be completed by Blessing</li> <li>• no stamp duty is payable because it is a gift</li> <li>• Adebayo will need to submit the STF to the Company, Tinkers will then register Adebayo in the register of members.</li> </ul> |         |

|  |          |
|--|----------|
| Question 2b  | 13 marks |
| Some candidates effectively covered the legal and procedural requirements for allotting ordinary shares. However, a few did not specify whether specific or automatic authority to allot was needed, and only a handful accurately identified and discussed pre-emption rights.  |          |
| Suggested Points for Response:   |          |
| <ul style="list-style-type: none"> <li>• Directors' authority to allot is not required as company has only one class of shares, s550 CA applies and gives automatic authority.</li> <li>• S561 CA applies, requiring shares to be first offered to existing shareholders. S561 could however be disapplied, under s569, by SR (in GM or by written resolution), board will need to approve allotment and call GM or propose WR.</li> <li>• Companies House registrations – SR, Form SH01 - return of allotment and statement of capital, within a month of the allotment (s555)</li> <li>• Internal registration of the allotment in register of members</li> <li>• Shareholders could choose to waive their pre-emption rights to avoid need for specific disapplication of s561 under s569.</li> </ul> |          |

|   |         |
|---|---------|
| Question 2c   | 8 marks |
| Most candidates did not identify pre-emption rights as a relevant restriction on share transfers or advise on the necessary formalities to establish them. However, stronger candidates who recognised pre-emption rights successfully advised on including them in the articles and following the relevant procedure, including passing a special resolution under section 21 of the Companies Act 2006.   |         |
| Suggested Points for Response:  |         |
| <ul style="list-style-type: none"> <li>• A pre-emption provision will be required so that any proposed transfer of shares by Riya or Adebayo in the future will require the shares to be offered to existing shareholders first, provision to be included in the articles, special resolution of the shareholders required to change the articles, 75% majority (s21 CA 2006), board will need to call a GM or propose a WR.</li> <li>• Registration of the special resolution and revised articles with Companies House</li> </ul> |         |

|  |          |
|--|----------|
| Question 3a  | 12 marks |
| <p>Many candidates accurately identified that a shareholder resolution under section 168 of the Companies Act 2006 is required to remove a director and correctly noted that a service contract does not prevent removal and that the right to remove a director is without prejudice to any compensation claim. However, some candidates did not mention that the director could petition the court under section 994 of the Companies Act 2006 or explain the potential court orders if the petition is successful.</p>  |          |
| <p><b>Suggested Points for Response:</b></p>   |          |
| <ul style="list-style-type: none"> <li>• Shirley and Frankie can remove George from office by an OR (s168 CA 2006).</li> <li>• His service contract will not prevent removal; however, the right of the company to remove him will be without prejudice to any claim for compensation (s168(5)), but unless it was approved [by OR s188] at the time, the notice period required to be given to George will be only what is reasonable.</li> <li>• As a shareholder George would have a right under s994(1) to petition the court for a remedy if he feels that by removing him as a director the company's affairs are being conducted in a manner which is unfairly prejudicial to him.</li> <li>• Exclusion from management in a small company, such as this, where the company was formed on the understanding that all those involved will share in the running of the business and the profits is an example of unfair prejudice.</li> <li>• George has a legitimate expectation to be involved in the management (informally agreed when he originally invested).</li> <li>• Court has discretion to make any order it sees fit but is likely to order that the Shirley and/or Frankie and/or AVS buy George's shares.</li> </ul> |          |

|   |          |
|---|----------|
| Question 3b   | 10 marks |
| <p>Stronger candidates effectively identified the statutory provisions requiring directors to contribute the company's assets (sections 213/214 of the Insolvency Act 1986), and further explained the relevant tests and consequences. While some candidates struggled with this aspect and did not fully address the statutory requirements, they were still able to cover other parts of the question.</p>   |          |
| <p>Suggested Points for Response:</p>   |          |
| <ul style="list-style-type: none"> <li>• Potential liability for wrongful trading, claim can be brought against any director, s214(1) Insolvency Act 1986 (IA) by a liquidator, s214 (2)(a) if AVS goes into insolvent liquidation.</li> <li>• Liquidator would have to show that at some point prior to winding up the directors knew or ought to have concluded that there was no reasonable prospect that AVS would avoid going into insolvent liquidation, s214(3). We only know that some suppliers have not been paid.</li> <li>• Court will apply two tests: objective - the reasonably diligent person test, s214(2)(b) and s214(3), s214(4); and subjective, knowledge skill and experience of the director.</li> <li>• If successful may lead to the directors having to contribute to the assets and could lead to disqualification, s6/10 CDDA</li> <li>• To protect themselves the directors should do regular financial checks, call regular BMs and continue to raise concerns, take independent advice from an IP etc.</li> </ul> |          |

|   |          |
|---|----------|
| Question 4a   | 10 marks |
| <p>Overall, candidates effectively advised on the structure of partnerships and sole traders, including the relevant documents and formalities. While some candidates expanded their answers to include other business structures, which was beyond the scope of the question, their thorough understanding of the required structures was commendable.</p>   |          |
| <p>Suggested Points for Response:</p>   |          |
| <ul style="list-style-type: none"> <li>• The structure they are proposing to use for Little People Play is a partnership, it is very easy to establish, no formalities are required because a partnership is defined simply as a relationship between two or more persons carrying on a business in common with a view to making a profit (s1(1) PA 1890).</li> <li>• S2 contains rules for determining the existence of a partnership including profit sharing, which N and L intend to do s2(3).</li> <li>• However, you would recommend a partnership agreement otherwise default provisions in the PA 1890 will apply including that the profits and losses will be shared equally which is not what they want, they plan to share profits and losses 60/40.</li> <li>• PA will apply regardless but a partnership agreement will allow you to set your own terms. PA is old and its default provisions are often unsuited to modern business practices.</li> <li>• The structure being proposed to use for Little Lanes Parties is a sole trader because Nikolai plans to run the business alone. This is also very easy to establish, and no formalities are required.</li> <li>• A limited company is not appropriate because of Nikolai's requirement for privacy.</li> </ul> |          |

|  |          |
|--|----------|
| Question 4b  | 10 marks |
| <p>Most candidates effectively outlined the advantages and disadvantages of each business structure discussed. While some expanded their answers to include additional business structures, which was beyond the scope of the question, their comprehensive analysis of the relevant structures was well-executed.</p>   |          |
| <p><b>Suggested Points for Response:</b></p> <ul style="list-style-type: none"> <li>• Advantages of a partnership and sole trader - no formalities to set up or, no filing or disclosure requirements (in contrast to companies who are heavily regulated) therefore more confidentiality which meets Lesley &amp; Nikolai's requirement for privacy</li> <li>• Disadvantages of a partnership and sole trader - no separate personality and no limited liability so N and L are personally liable in relation to debts/contracts which are binding on the partnership/any other liabilities</li> <li>• Partnership - Liability is joint or joint and several depending on the type of liability (although note s3 Civil Liability (Contribution) Act 1978 – if creditor obtains judgement against one or more of the partners)</li> <li>• Sole trader – no one else to share expenses/losses</li> </ul> |          |

|  |         |
|--|---------|
| Question 4c  | 8 marks |
| <p>Overall, candidates approached this question with a good understanding of potential issues related to the authority of partners and identified relevant sections of the Partnership Act 1890. While the application of the law to the specific facts, such as the similarity in business names, was less common, those who did apply the law effectively demonstrated strong analytical skills.</p>   |         |
| <p><b>Suggested Points for Response:</b></p> <ul style="list-style-type: none"> <li>• Section 5 PA 1890 all partners are agents of each other and the partnership to the extent that it is the usual course of business and the third party contracting with that partner is not aware of the any limitations on the partner's authority.</li> <li>• There may some confusion on the part of third parties because the business names are similar.</li> <li>• Nikolai and Lesley should consider changing name of one of the businesses to avoid confusion. N should make it clear to all third parties that he is operating as a sole trader and is not acting as a partner of Little People Play.</li> <li>• If Lesley does not consent to Nikolai using the equipment, name or connections of the Little People Play business, then the partnership may be able to claim secret profits (section 29 PA 1890) and he uses it without L's consent.</li> </ul> |         |