

Fundamentals Level – Skills Module

Corporate and Business Law (English)

Tuesday 8 December 2009

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 (ENG)

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

ACCA

ALL TEN questions are compulsory and MUST be attempted

- 1** In relation to the courts' powers to interpret legislation, explain and differentiate between:
- (a) the literal approach, including the golden rule; and (5 marks)
 - (b) the purposive approach, including the mischief rule. (5 marks)
- (10 marks)**
- 2** In relation to the law of contract, explain:
- (a) the postal rule; (5 marks)
 - (b) the doctrine of privity. (5 marks)
- (10 marks)**
- 3** In relation to remedies for breach of contract, explain:
- (a) the difference between liquidated damages and penalty clauses; (7 marks)
 - (b) the duty to mitigate losses. (3 marks)
- (10 marks)**
- 4** In relation to the law of negligence, explain the extent of a company auditor's duty of care and to whom any such duty is owed.
- (10 marks)**
- 5** In relation to company law:
- (a) explain the meaning of limited liability. (3 marks)
 - (b) Explain and distinguish between:
 - (i) unlimited companies; (2 marks)
 - (ii) companies limited by guarantee; (2 marks)
 - (iii) companies limited by shares. (3 marks)
- (10 marks)**
- 6** In the context of companies in financial difficulty, distinguish between and explain the operation of:
- (a) compulsory winding up; (4 marks)
 - (b) administration. (6 marks)
- (10 marks)**

7 In the context of contracts of employment, explain the common law duties imposed on:

(a) employers; (6 marks)

(b) employees. (4 marks)

(10 marks)

8 Whilst at work Andy always parked his car in a car park operated by Bash Ltd. On the entry to the car park just in front of the payment machine there is a large sign in fluorescent red paint which states:

‘These premises are not staffed by our employees and may be dangerous. Clients use these facilities strictly at their own risk and Bash Ltd accept no liability whatsoever for any damage or injury sustained by either those using this facility or their vehicles or property, no matter how caused.’

Andy was aware of the sign, but had never paid much attention to it. However, one day he returned to his car to find that it had been badly damaged by a towing vehicle driven by an employee of Bash Ltd. Whilst on his way to the car park office to complain he was hit by the same towing vehicle, which was clearly being driven dangerously by one of Bash Ltd’s employees. As a result, not only was his car severely damaged, but he suffered a broken leg and was off work for eight weeks.

Bash Ltd has accepted that its employee was negligent on both counts but denies any liability, relying on the exclusion clause.

Required:

On the understanding that the clause excluding Bash Ltd’s liability was incorporated into its contract with Andy, advise Andy whether there is any action he can take against Bash Ltd.

(10 marks)

9 Caz is a director of Dull plc, but she also carries out her own business as a wholesale supplier of specialist metals under the name of Era Ltd.

Last year Dull plc entered into a contract to buy a large consignment of metal from Era Ltd. Caz attended the board meeting that approved the contract and voted in favour of it, without revealing any link with Era Ltd.

Required:

Analyse the situation explaining any potential liability that Caz may have in relation to the sale of the metal to Dull plc by Era Ltd.

(10 marks)

10 Fran, Gram and Hen registered a private limited company Ire Ltd in January 2005 with a share capital of £300, which was equally divided between them, with each of them becoming a director of the company.

Although the company did manage to make a small profit in its first year of trading, it was never a great success and in its second year of trading it made a loss of £10,000.

At that time Fran said he thought the company should cease trading and be wound up. Gram and Hen, however, were insistent that the company would be profitable in the long-term so they agreed to carry on the business, with Fran taking less of a part in the day-to-day management of the business, although retaining his position as a company director.

In the course of the next three years Gram and Hen falsified Ire Ltd's accounts to disguise the fact that the company had continued to suffer losses, until it became obvious that they could no longer hide the company's debts and that it would have to go into insolvent liquidation, with debts of £100,000.

Required:

Advise Fran, Gram and Hen as to any potential liability they might face as regards:

(a) fraudulent trading, under both criminal and civil law; (5 marks)

(b) wrongful trading under s.214 of the Insolvency Act 1986. (5 marks)

(10 marks)

End of Question Paper