Fundamentals Level - Skills Module

Corporate and Business Law (English)

Specimen Exam applicable from December 2014



Time allowed: 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and MUST be attempted

Section B – ALL FIVE questions are compulsory and MUST be attempted

Do NOT open this paper until instructed by the supervisor.

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





Section A - ALL 45 questions are compulsory and MUST be attempted

Please use the space provided on the inside cover of the Candidate Answer Booklet to indicate your chosen answer to each multiple choice question.

eac	n mı	litiple choice question.				
1	Wh	Which of the following may imply terms into contracts?				
	A B C	Statute Third parties The parties to the contract				
		(1 mark)				
2		ere are a number of ways in which investors can take an interest in a company and such different interests have erent rights attached to them.				
	Wh	ich of the following NORMALLY participate in surplus capital?				
	A B C D	Preference shares Ordinary shares Debentures secured by a fixed charge Debentures secured by a floating charge				
		(2 marks)				
3	In t	he context of the English legal system, which of the following courts ONLY has civil jurisdiction?				
	A B C	Magistrates' court County court High Court				
		(1 mark)				
4	In the context of employment law, which of the following is an AUTOMATICALLY fair ground for dismissing ar employee?					
	A B C D	Unofficial industrial action Redundancy Refusal to join a trade union Legal prohibition				
		(2 marks)				
5	Wh	ich of the following business forms does the use of the abbreviation 'Ltd' after the name of a business indicate?				
	A B C	A limited partnership A limited liability partnership A private limited company				

(1 mark)

6 Jas has been continuously employed for six years.		has been continuously employed for six years.
Which of the following states the minimum period of notice she is entitled to?		
	A B C	One month Six weeks Three months
		(1 mark)
7	Wh	ich of the following is indicated by the abbreviation 'Ltd' at the end of a company's name?
	A B C	The shares are not transferable The shares may not be offered to the public The shares are freely transferable on the stock exchange
		(1 mark)
8		tion 122 Insolvency Act 1986 specifically provides a distinct ground for applying to have a company wound up the ground that it is just and equitable to do so.
Which of the following parties may petition to have a company compulsorily wound up under that		
	A B C D	Shareholders of the company Creditors of the company Debentureholders of the company The Secretary of State
		(2 marks)
9 Mo has a significant holding in the shares of Nova Ltd. He wishes to use his shar board of directors but is not sure how to do so.		has a significant holding in the shares of Nova Ltd. He wishes to use his shareholding to remove Owen from the rd of directors but is not sure how to do so.
	Wh	ich of the following must be used to remove a director from office?
	A B C D	An ordinary resolution An ordinary resolution with special notice A special resolution A written resolution
		(2 marks)
10	Αw	ritten ordinary resolution requires the approval of which of the following?
	A B C	More than 50% of those actually voting More than 50% of those entitled to vote Unanimous approval of those entitled to vote
		(1 mark)

11	Em	ployment law is a mixture of common law and statutory provisions.		
	Which of the following is purely based on statute law?			
	A B C	Summary dismissal Unfair dismissal Wrongful dismissal		
			(1 mark)	
12		contract of employment states that she is employed in Glasgow. When her employer tells her that she hondon, some 500 miles away, Jo immediately resigns.	as to work	
	Wh	ich of the following may this be considered an example of?		
	A B C	Unfair dismissal Constructive dismissal Summary dismissal		
			(1 mark)	
13	Wh	ich parties are bound by the terms of the tender when one party submits a tender?		
	A B C D	The person submitting the tender The person requesting the tender Both parties Neither party		
			(2 marks)	
14	In t	the context of contract law, a bid at an auction is which of the following?		
	A B C D	An invitation to treat An offer A counter-offer An acceptance		
			(2 marks)	
15		e injured her eye after failing to close a safety gate on a machine as instructed. She was also not wearing rety goggles as required by her contract of employment.	mandatory	
	Which of the following is this an example of?			
	A B C D	Novus actus interveniens Volenti non fit injuria Res ipsa loquitur Contributory negligence		
			(2 marks)	

16	Wŀ	What is the effect of a finding of contributory negligence in the law of tort?			
	A B C	It removes the requirement to pay damages It reverses the payment of damages It decreases the level of damages			
			(1 mark)		
17	In ¹	the context of the English legal system, which of the following courts ONLY has criminal jurisdiction	?		
	A B C	Magistrates' court Crown Court County court			
			(1 mark)		
18	lmı	ran claims that Zak owes him £1,000 as a result of a breach of contract.			
	In [•]	which court will Imran start his action against Zak?			
	A B C	The magistrates' court The county court The High Court			
	·	The High Court	(1 mark)		
10		the contest of consistency of the following the consequence of the first of the following the consequence of the first of the following the consequence of the first of the fi			
19	_	the context of case law, which of the following applies to an obiter dictum?			
	A B	It is binding on all future courts It is binding on all lower courts			
	C D	It is not binding on any courts			
	ט	It is not binding outside the court it was issued in			
			(2 marks)		
20	Coi	ntributory negligence arises as a result of the fault of which of the following?			
	Α	The claimant			
	B C	The respondent A third party			
			(1 mark)		
			(I IIIaik)		
21		n got trapped in a public toilet due to the lock being faulty. Rather than wait for help, she tried to climb adow but fell and broke her leg.	out of the		
	Wŀ	nich of the following is this an example of?			
	A B C	Res ipsa loquitur Volenti non fit injuria Novus actus interveniens			
	D	Contributory negligence			
			(2 marks)		

5

22 The law treats employees differently from the self-employed and has established a number of tests to distinguish between the two categories.

Which of the following is NOT a test for establishing an employment relationship?

- **A** The subordinate test
- **B** The control test
- **C** The integration test
- **D** The economic reality test

(2 marks)

- 23 Breach of which of the following terms does NOT allow the possibility of the aggrieved party terminating the contract?
 - **A** A condition
 - **B** A warranty
 - **C** An innominate term

(1 mark)

- 24 Which of the following, in the context of entering into a contract, constitutes a binding offer to sell a unique item of furniture?
 - **A** Placing an advert in a newspaper with a price attached
 - **B** Placing it on display inside a shop with a price attached
 - **C** Telling someone the price you may be willing to accept for it
 - **D** Telling someone you will reduce the marked price on it by 10%

(2 marks)

25 Mark has received the agenda for the annual general meeting of Rova Ltd, a company he has shares in. The agenda contains a number of resolutions to be proposed at the meeting, but being a new member Mark is not certain as to what is exactly involved.

In the context of company meetings, which of the following must be passed by a 75% majority to be effective?

- **A** An ordinary resolution with special notice
- **B** A special resolution
- **C** A written resolution

(1 mark)

26 Section 122 Insolvency Act 1986 provides a number of distinct grounds for applying to have a company wound up on a compulsory basis.

Which of the following is NOT a ground for the compulsory winding up of a company under that provision?

- **A** The company has not received a trading certificate within its first 12 months
- **B** The company has not started trading within the first 12 months
- **C** The company has suspended its business for 12 months
- **D** The company has altered its primary business within the first 12 months

(2 marks)

27 Abe issued an invitation to tender for a contract and Bea submitted her terms. Which of the following statements is accurate? Abe made an offer which Bea accepted Abe made an invitation to treat and Bea made an offer Both Abe and Bea made invitations to treat **D** Abe made an offer and Bea made a counter-offer (2 marks) 28 In the context of statutory interpretation, which of the following requires judges to consider the wrong which the legislation was intended to prevent? Α The mischief rule The literal rule The golden rule (1 mark) 29 It is not unusual for some company investments to carry cumulative dividend rights. Which of the following statements about the declaration of cumulative dividends is correct? They are not paid until profits reach a certain percentage They are paid in the form of a bonus issue С They are paid out of capital They are paid when profits are available for that purpose (2 marks) 30 Which of the following statements in relation to effective consideration is correct? It must be both adequate and sufficient **B** It must be adequate but need not be sufficient **C** It must be sufficient but need not be adequate (1 mark)

31 In the context of the English legal system, which of the following defines the ratio decidendi of a judgement?

7

- The decision in a previous case
- В The facts of the case
- The legal reason for deciding the case
- The future application of the case

(2 marks)

32		n has been accused of a criminal offence and is due to be tried soon. He denies responsibility, claiming secution has no evidence that he committed the offence in question.	g that the
Which of the following describes the standard of proof in a criminal case?			
	A On the balance of probability		
	В	On the balance of certainty	
	С	Beyond reasonable doubt	
	D	Beyond evident doubt	
			2 marks)

33 Which of the following statements relating to limited liability partnerships is correct?

- **A** They are limited to a maximum of 20 members
- **B** They must have a minimum of two members
- **C** They must have at least one unlimited member

(1 mark)

34 Ho subscribed for some partly paid-up shares in lo Ltd. The company has not been successful and Ho has been told that when lo Ltd is liquidated, he will have to pay the amount remaining unpaid on his shares. However, he is not sure to whom such payment should be made.

In limited liability companies, shareholders are liable to which party for any unpaid capital?

- **A** Creditors
- **B** The directors
- **C** The company
- **D** The liquidator

(2 marks)

- 35 Which of the following CANNOT petition for the compulsory winding up of a company on the grounds of INSOLVENCY under s.122 Insolvency Act 1986?
 - **A** The board of directors
 - **B** The members of the company
 - **C** The company's creditors
 - **D** The Secretary of State

(2 marks)

36 Money laundering involves a number of phases in the overall procedure. Which TWO of the following are recognised phases in money laundering? (1) Relocation (2) Layering (3) Integration (4) Distribution 1 and 2 **B** 1 and 4 2 and 3 **D** 3 and 4 (2 marks) 37 Which TWO of the following are AUTOMATICALLY unfair grounds for dismissing an employee? (1) Engaging in trade union activity (2) Constructive dismissal (3) Dismissal on transfer of employment to a new undertaking (4) Redundancy **A** 1 and 2 **B** 2 and 3 3 and 4 **D** 1 and 3 (2 marks) 38 In the context of the law of agency, an agent will NOT be liable for a contract in which of the following instances? Where the agent fails to disclose that they are acting as such Where the agent intends to take the benefit of the contract and does not disclose they are acting as an agent Where the agent acts on their own behalf although claiming to be an agent (1 mark) 39 The Employment Rights Act (ERA) 1996 sets out remedies in relation to unfair dismissal. Which of the following is NOT a potential remedy for unfair dismissal under the ERA 1996? Reinstatement В Re-engagement Re-employment (1 mark)

9

40	Whi	Which TWO statements are correct in relation to designated members in limited liability partnerships (LLPs)?			
	(2) (3)	They must not take part in the day-to-day operation of the business They are responsible for filing the LLP's accounts They are fully liable for partnership debts They have limited liability			
	Α	1 and 4			
	B C	2 and 4 2 and 3			
	D	1 and 3			
			(2 marks)		
			(2 marks)		
41	The	term insider dealing relates to a number of potential criminal offences.			
	Whi	ich TWO of the following are crimes in relation to insider dealing?			
	(2) (3)	Encouraging someone to engage in insider dealing Failing to report insider dealing Concealing insider dealing Passing on inside information			
		Passing on inside information			
	A B C	1 and 2 1 and 4 2 and 3			
	D	2 and 4			
			(2 marks)		
42	Whi	ich of the following can be accepted so as to form a binding contract?			
	Α	A supply of information			
	В	A statement of intent			
	C D	A quotation of price An agreement to enter into a future contract			
			(2 marks)		
43	Con	tracts are legally enforceable agreements.			
Which of the following statements regarding contractual agreements is true?		ich of the following statements regarding contractual agreements is true?			
	A B C	They must be in writing They must be evidenced in writing They need not be in writing			
			/1		
			(1 mark)		

	following?		
	A B C D	The claimant The respondent A third party An unforeseeable event	(2 marks)
45		he context of the law of contract, which TWO of the following statements in relation to a lette rect?	er of comfort are
	(2) (3)	It is a binding promise to pay a subsidiary company's future debts It is a non-binding statement of present intention to pay a subsidiary company's future debts It is issued by a parent company It is issued by a parent company's bank 1 and 3	
	B C D	2 and 3 2 and 4 1 and 2	
			(2 marks)
			(70 marks)

44 In relation to the law of negligence, a finding of volenti non fit injuria arises from the action of which of the

Section B - ALL FIVE questions are compulsory and MUST be attempted

Az Ltd operates a shipbuilding business which specialises in constructing and modifying ships to order. In 2011, Az Ltd entered into an agreement with Bob to completely rebuild a ship to Bob's specification for a total contract price of £7 million. However, after completion, Bob informed Az Ltd that, due to the downturn in the world economy, he no longer needed the ship. Az Ltd had already expended £5 million on altering the ship, and immediately started an action against Bob for breach of contract.

However, in the week before the case was to be decided in the court, Az Ltd sold the ship for the same amount of money which they would have received from Bob.

Required:

(a) State the purposes of awarding damages for breach of contract. (2 marks)

(b) State the duty to mitigate losses. (2 marks)

(c) State the level of damages Az Ltd can claim for breach of contract. (2 marks)

(6 marks)

Clare, Dan and Eve formed a partnership 10 years ago, although Clare was a sleeping partner and never had anything to do with running the business. Last year Dan retired from the partnership. Eve has subsequently entered into two large contracts. The first one was with a longstanding customer, Greg, who had dealt with the partnership for some five years. The second contract was with a new customer, Hugh. Both believed that Dan was still a partner in the business. Both contracts have gone badly wrong, leaving the partnership owing £50,000 to both Greg and Hugh. Unfortunately the business assets will only cover the first £50,000 of the debt.

Required:

(a) State the liability of Clare as a sleeping partner. (2 marks)

(b) Identify the liabilities of Dan as a retiring partner. (2 marks)

(c) State from whom Greg can claim the outstanding debt. (2 marks)

(6 marks)

3 Jon, who is 65 years of age, has just retired from his employment with a pension and a lump sum payment of £100,000. He is keen to invest his money but has absolutely no knowledge of business or investment. He does not wish to take any great risk with his investment but he would like to have a steady flow of income from it.

He has been advised that he can invest in the following range of securities:

- (1) Preference shares
- (2) Ordinary shares
- (3) Debentures secured by a fixed charge
- (4) Debentures secured by a floating charge.

Required:

In relation to the above investment forms:

(a) Identify which is the most secure.

(2 marks)

(b) State which may have a cumulative right to dividends.

(2 marks)

(c) State which NORMALLY participates in surplus capital.

(2 marks)
(6 marks)

4 In 2008 Ger was disqualified from acting as a company director for a period of 10 years under the Company Directors Disqualification Act 1986 for engaging in fraudulent trading.

However, he decided to continue to pursue his fraudulent business and, in order to avoid the consequences of the disqualification order, he arranged for his accountant Kim to run the business on his instructions. Although Kim took no shares in the company, and was never officially appointed as a director, he nonetheless assumed the title of managing director.

Required:

- (a) Identify which of the following categories of directors apply to Ger and Kim:
 - (i) De facto
 - (ii) De jure
 - (iii) Non-executive

(iv) Shadow. (4 marks)

(b) State the working relationship and duties of non-executive directors.

(2 marks)

(6 marks)

5 Fran and Gram registered a private limited company, Ire Ltd, in January 2009, 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, however, was 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 company, although retaining his position as a company director.

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

Required:

- (a) State whether criminal or civil action, or both, can be taken in relation to fraudulent trading and wrongful trading. (2 marks)
- (b) Explain whether Fran or Gram will be liable for either of the following:
 - (i) Fraudulent trading under s.213 Insolvency Act 1986;
 - (ii) Wrongful trading under s.214 Insolvency Act 1986.

(4 marks)

(6 marks)

End of Question Paper

Answers

Fundamentals Level – Skills Module, Paper F4 (ENG) Corporate and Business Law (English)

Specimen Exam Answers

Section A

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

Section B

45 B

- 1 (a) Damages in contract are intended to compensate an injured party for any financial loss sustained as a consequence of another party's breach. The object is not to punish the party in breach, so the amount of damages awarded can never be greater than the actual loss suffered. The usual aim of the award of damages is to put the injured party in the same position they would have been in had the contract been properly performed (expectation loss).
 - (b) The duty to mitigate losses ensures that the injured party is under a duty to take all reasonable steps to minimise their loss. As a result, the seller of goods, which are not accepted, has not only to try to sell the goods to someone else but is also required to get as good a price as they can when they sell them (*Payzu* v *Saunders* (1919)). If goods are not delivered under a contract, the buyer is entitled to go into the market and buy similar goods, paying the market price prevailing at the time. They can then claim the difference in price between what they paid and the original contract price as damages.

- (c) Applying the foregoing to the contract between Az Ltd and Bob, it can be seen that Az Ltd managed to recoup all of the costs and potential profit it would have made on the contract with Bob, so is not in a position to claim any further damages from Bob.
- 2 (a) Her status as a sleeping partner gives Clare no additional protection from the unlimited liability which applies to all ordinary partners in an ordinary partnership. It simply means she has left her personal wealth open to clams over which she has no practical control through her own inaction.
 - **(b)** He remains liable to *existing* customers until those customers are informed that he has left the partnership.

 He also remains liable to *new* customers who knew he was a member of the partnership, unless he has made public his withdrawal.
 - (c) Greg can claim from all three parties: Clare, Dan and Eve.
- 3 (a) As loans, debentures are more secure than shares. Debentures secured by fixed charges are more secure than those secured by floating charges. Consequently, debentures secured by fixed charges are the most secure form of investment of those listed. They do, however, receive the least in terms of return.
 - **(b)** Of the four investment forms only shares receive dividends, as debentures receive interest due to the fact that they are forms of loan. Of the share forms only the preference share can carry a right to a cumulative dividend, as ordinary shares only get a return on the profits generated by the company in any particular year.
 - (c) Only shares have any claim against surplus capital, as debentures are only secured against the amount loaned.

 Of the two types of shares, preference shares MAY have rights to enjoy access to surplus capital but ONLY ordinary shares have such facility as a right.
- **4 (a)** Ger acts behind the scenes and is clearly operating as a shadow director. Kim has not been appointed as such but acts as a director, which makes him a *de facto* director.
 - **(b)** As with all directors, non-executives owe fiduciary duties (now stated in statute) to their company. They are also subject to all legal regulation applying to ordinary directors. They may attend company meetings and have full voting rights.
- **5 (a)** Criminal liability is only applicable to fraudulent trading under the Companies Act 2006. However, civil action is open under ss.213 and 214 Insolvency Act 1986 in relation to both fraudulent and wrongful trading.
 - **(b)** As a consequence of his falsification of the accounts, Gram is potentially liable under s.213 Insolvency Act 1986 fraudulent trading provisions.
 - Fran, on the other hand, may not have been liable for fraud but is certainly liable for wrongful trading for not taking the appropriate action to prevent the subsequent losses sustained by the company.

Fundamentals Level – Skills Module, Paper F4 (ENG) Corporate and Business Law (English)

Specimen Exam Marking Scheme

Section A

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

Section B

- 1 (a) 1 mark for each relevant point made relating to damages up to the maximum 2 marks.
 - **(b)** 1 mark for each relevant point made relating to the duty to mitigate losses, up to the maximum 2 marks.
 - (c) 1 mark for correct application and 1 mark for explanation.
- 2 (a) 1 mark for each relevant point made relating to the potential liability of Clare as a sleeping partner, up to the maximum 2 marks.
 - (b) 1 mark for each relevant point made relating to the potential liability of Dan as a retired partner, up to the maximum 2 marks.
 - (c) Full 2 marks only to be given to a fully correct answer.

Partial answers to be limited to 1 mark.

- **3 (a)** 1 mark for correct statement and 1 mark for explanation.
 - **(b)** 1 mark for correct statement and 1 mark for explanation of cumulative rights.
 - (c) 1 mark for correct statement and 1 mark for explanation of surplus capital.
- 4 (a) 3-4 marks for a complete explanation of the different types of director and a correct application to Ger and Kim.
 - $1\!-\!2$ marks for some understanding but lacking either application or explanation.
 - O marks for no understanding of the substance of the question.
 - (b) 1 mark for each relevant point made relating to the role/function of non-executive directors, up to the maximum 2 marks.
- 5 (a) A full answer distinguishing between fraudulent and wrongful trading is required for both marks to be given.
 - 1 mark for any relevant point made relating to either action.
 - **(b)** 4 marks for a full answer clearly distinguishing the two types of activity and correctly applying them.
 - 1 mark each for correctly stating how each provision will be applied to the parties.
 - 1 mark for any relevant point made relating to either party's action.