

Examination Question and Answer Book

CIMA

Write your full examination number, your contact ID and your name on a double-sided card, which must be attached to this booklet here.

Foundation Level

Business Law

3b

FBLW

17 November 2003

Monday early afternoon

INSTRUCTIONS TO CANDIDATES

Read this page before you look at the questions

THIS QUESTION PAPER BOOKLET IS ALSO YOUR ANSWER BOOKLET. Sufficient space has been provided for you to write your answers and also for notes where questions require them. For section B questions, you must write your answers in the shaded space provided. Please note that you will NOT receive marks for your notes. Do NOT remove any sheets from this booklet: cross through neatly any work that is not to be marked. Avoid the use of correction fluid.

You are allowed two hours to answer this question paper. All questions are compulsory.

Answer the ONE question in section A (this has 25 sub-questions)

Answer the THREE questions in section B

You are advised to spend 10 minutes reading through the paper before starting to answer the questions.

You should spend no more than 55 minutes on answering the ONE question in section A, which has 25 sub-questions.

You should spend no more than 55 minutes on answering the THREE questions in section B.

You are advised that, in section B questions, you will receive no marks if you exceed the word limits indicated.

Hand this entire booklet to the invigilators at the end of the examination. You are NOT permitted to leave the examination hall with this booklet.

Do NOT write your name or your contact ID anywhere on this booklet.

SECTION A — 50 MARKS

ANSWER ALL TWENTY-FIVE SUB-QUESTIONS – 2 MARKS EACH

Each of the sub-questions numbered from **1.1** to **1.25** inclusive, given below, has only **ONE** correct answer.

REQUIRED:

Place a circle "O" around the letter **A, B, C** or **D** that gives the correct answer to each sub-question.

If you wish to change your mind about an answer, block out your first answer completely and then circle another letter. You will **NOT** receive marks if more than one letter is circled.

Question One

1.1 Which of the following statements is **INCORRECT**?

- (i) Common law and equitable principles can be applied by all the courts.
- (ii) A wrong committed by one person cannot result in both civil and criminal liability.
- (iii) To be found guilty, the prosecution must prove beyond reasonable doubt that the accused committed the offence.

- A** (i) only.
 - B** (ii) only.
 - C** (i) and (iii) only.
 - D** (ii) and (iii) only.
-

1.2 Which of the following statements is **CORRECT**?

- (i) A contract is entered into voluntarily, whereas criminal offences are imposed by the state.
- (ii) A contract is entered into voluntarily, whereas a tort is imposed by the state.
- (iii) A tort is entered into voluntarily, whereas criminal offences are imposed by the state.

- A** (i) only.
 - B** (i) and (ii) only.
 - C** (i) and (iii) only.
 - D** (ii) and (iii) only.
-

1.3 Which ONE of the following statements is **CORRECT**?

In the tort of negligence, a defendant has broken his/her duty of care if he/she

- A has failed to take every step to avoid harming the claimant.
 - B has failed to take all necessary care.
 - C has failed to take all reasonable care.
 - D has failed to act to the best of his/her abilities.
-

1.4 Anne offered to sell her computer to Ben for £600. Which of the following would terminate the offer?

- (i) Before Ben had replied, Anne wrote to Ben withdrawing her offer. Anne's letter was not received by Ben.
- (ii) Ben offered Anne £500 for her computer.
- (iii) Anne told Carl that she had changed her mind about selling the computer to Ben. Carl told Ben before he had accepted Anne's offer.

- A (i) only.
 - B (i) and (iii) only.
 - C (ii) and (iii) only.
 - D (i), (ii) and (iii).
-

1.5 Following Carol's retirement as a senior employee, Tee plc offered her an "ex gratia payment" of £50,000 "in recognition of Carol's excellent service to the company". Carol accepted.

Which of the following statements is **INCORRECT**?

- (i) Although there is agreement between Tee plc and Carol, Carol has no contractual right to the payment, as her consideration is past.
- (ii) Although there is agreement between Tee plc and Carol, Carol has no contractual right to the payment because by using the expression "ex gratia", the company is stating that it has no intention to create legal relations.
- (iii) As there is agreement between Tee plc and Carol, the payment is enforceable as any agreement between an employer and an employee is presumed to have legal intent.

- A (i) only.
 - B (ii) only.
 - C (iii) only.
 - D (ii) and (iii) only.
-

1.6 Which ONE of the following statements is **INCORRECT**?

- A An unreasonable delay by the victim of a misrepresentation in claiming rescission will cause the remedy to be lost.
 - B If the victim of a misrepresentation affirms the contract, the remedy of rescission is lost.
 - C A victim of a misrepresentation is entitled to rescission even if damages would compensate the victim for his loss.
 - D If the victim of a misrepresentation has acted inequitably, the remedy of rescission is lost.
-

1.7 A Ltd is under contract to manufacture machinery for B Ltd for £200,000.

Which ONE of the following is a valid legal reason for A Ltd failing to complete the contract on time?

- A A Ltd's factory was flooded.
 - B A Ltd had taken on too many orders and had to give priority to its regular customers.
 - C A Ltd's employees went out on strike.
 - D A number of A Ltd's key workers were absent through illness.
-

1.8 Which of the following statements is **CORRECT**?

- (i) A condition is a term which the parties intended to be of fundamental importance.
- (ii) A warranty is a term which the parties did not intend to be of fundamental importance.
- (iii) If an innominate term is broken the innocent party has the option whether or not to terminate the contract.

- A (i) only.
 - B (i) and (ii) only.
 - C (ii) and (iii) only.
 - D (i), (ii) and (iii).
-

1.9 DE Ltd contracted to deliver a quantity of goods to F Ltd to the value of £5,000. The goods were delivered and DE Ltd submitted an invoice to F Ltd for the amount due which contained a number of new terms.

Which ONE of the following statements is **INCORRECT**?

- A The invoice is a contractual document and F Ltd is bound by the terms on the invoice.
 - B F Ltd is only bound by the terms if it was given notice of them at or before the time of contract.
 - C F Ltd is only bound by the terms if there has been a sufficient course of dealings between DE Ltd and F Ltd so that F Ltd is assumed to know of the terms.
 - D If F Ltd is unaware of the terms, it can only be bound by them if it agrees to be so.
-

1.10 Which ONE of the following remedies is NOT available for a breach of a contract to provide personal services?

- A** Damages.
 - B** A decree of specific performance.
 - C** An injunction.
 - D** Rescission.
-

1.11 Which ONE of the following remedies is NOT available for claims of unfair dismissal?

- A** Compensation.
 - B** Re-instatement.
 - C** Re-engagement.
 - D** Specific performance.
-

1.12 Dan agreed in his contract of employment that he would not work for a competitor of Gee Ltd within the first 12 months after leaving the company's employment. On leaving Gee Ltd, Dan worked for Zed Ltd, a competitor of Gee Ltd.

If the restriction in Dan's contract with Gee Ltd should be found to be reasonable, which of the following remedies would Gee Ltd be entitled to?

- (i) A decree of specific performance forcing Dan to comply with his contract with Gee Ltd.
- (ii) Damages in respect of any loss caused by Dan's breach of contract.
- (iii) An injunction to stop Dan working for Zed Ltd.

- A** (i) only.
 - B** (i) and (ii) only.
 - C** (ii) and (iii) only.
 - D** (i), (ii) and (iii).
-

1.13 Bernard's employment as a part-time store manager with Exe Ltd commenced three years ago. Following a meeting with other employees of Exe Ltd, it was agreed that Bernard be appointed Health and Safety Representative. Bernard agreed that as part of this role he would insist on having monthly meetings with the management of Exe Ltd. Exe Ltd considered this to be excessive and dismissed Bernard giving him one week's notice.

What is the legal position?

- A** Bernard cannot claim unfair dismissal because he does not have the relevant period of continuous employment.
 - B** Bernard cannot claim unfair dismissal because he is a part-time worker.
 - C** Bernard can claim unfair dismissal.
 - D** Bernard can claim wrongful dismissal.
-

1.14 Which ONE of the following statements is **INCORRECT**?

- A In order to register a company, promoters must include a Memorandum of Association in the documents submitted to the Registrar of Companies.
 - B A company cannot be registered with the same number as a company already on the register.
 - C A company must include a statement of authorised capital in its Articles of Association.
 - D The directors of a newly-registered company cannot also act as directors of another company.
-

1.15 Which ONE of the following statements is **CORRECT**?

- A A company can enter into any transaction as the doctrine of *ultra vires* has been abolished.
 - B The directors may ratify an *ultra vires* transaction.
 - C A third party who has acted in good faith may enforce an *ultra vires* transaction against the company.
 - D The shareholders in a public company may change the objects clause by passing a written resolution.
-

1.16 Which of the following statements is **CORRECT**?

- (i) Purchasing a "shelf company" enables business to commence more quickly.
 - (ii) It is generally cheaper to purchase a "shelf company" than to arrange for a solicitor or accountant to register a new company.
 - (iii) Incorporating a company by registration enables the company's documents to be drafted to the particular needs of the incorporators.
- A (i) and (ii) only.
 - B (ii) and (iii) only.
 - C (i) and (iii) only.
 - D (i), (ii) and (iii).
-

1.17 Which ONE of the following statements is **CORRECT**?

- A The shares of all public limited companies are quoted on the Stock Exchange.
 - B The company secretary of a public limited company must be qualified.
 - C A private limited company must have at least two shareholders.
 - D A public limited company cannot trade until it has paid-up share capital of at least £50,000.
-

- 1.18** Which of the following clauses in the Articles of Association of Dee Ltd would NOT be enforceable against the company as a breach of contract?
- A** Shareholders shall be paid dividends in cash.
 - B** All shareholders are entitled to attend and vote at general meetings of the company.
 - C** Tom (a shareholder) shall be the company's managing director for life.
 - D** Shareholders wishing to sell their shares shall offer them to the directors who will purchase them at a fair price as determined by the auditors.
-

- 1.19** Bee Ltd has an issued share capital of 1,000 ordinary shares of £1 each. Some of the shareholders would like to pass an elective resolution in order to dispense with the need to re-appoint the auditor annually.

What is the minimum number of votes which must be cast in order to pass the resolution?

- A** 500
 - B** 501
 - C** 750
 - D** 1,000
-

- 1.20** Which ONE of the following statements is **INCORRECT**?

- A** A floating charge is a charge over a class of company assets which the company is unable to deal with freely in the ordinary course of business.
 - B** A floating charge must be registered at Companies House within 21 days of its creation otherwise the charge is void against the other creditors.
 - C** A floating charge must be registered at the company's registered office, but a failure to do so does not affect the validity of the charge.
 - D** The proceeds from the sale of the assets comprised in the floating charge must first be used to pay off the preferential creditors.
-

- 1.21** Which ONE of the following statements does NOT apply to a private company which intends to provide assistance for the purchase of its own shares?

- A** The shareholders must pass a special resolution.
 - B** The directors must make a declaration of solvency.
 - C** The financial assistance must be approved by the court.
 - D** The company must have authority to provide financial assistance in its Articles of Association.
-

1.22 Which ONE of the following statements is **INCORRECT**?

- A** A private company must have at least two directors.
 - B** The board usually has the power to appoint a managing director.
 - C** A board usually reaches its decisions by majority vote.
 - D** The first directors of the company are those persons who are named as directors on Form 10.
-

1.23 Which ONE of the following statements is **INCORRECT**?

- A** Individual directors cannot contract on behalf of the company unless they are authorised by the board.
 - B** The board is the agent of the company.
 - C** If the company has appointed a managing director, he or she is able to contract on behalf of the company.
 - D** The board is appointed to act as the agent of the shareholders.
-

1.24 Which of the following are NOT owed fiduciary duties by the directors?

- (i) The company as a whole.
 - (ii) Individual shareholders.
 - (iii) All the present and future shareholders.
- A** (i) and (ii) only.
 - B** (ii) only.
 - C** (i) and (iii) only.
 - D** (iii) only.
-

1.25 Which of the following may be liable to contribute to the assets of the company in the event of the company carrying on business at a time when the directors ought to have known that insolvency was inevitable?

- A** The current directors and shareholders of the company.
 - B** The current and former directors of the company.
 - C** The current directors of the company.
 - D** The current directors and former shareholders of the company.
-

Total = 50 Marks

End of Section A

SECTION B – 50 MARKS

ANSWER ALL THREE QUESTIONS

Question Two

Purchaser Ltd ("Purchaser") contracted with Builder Ltd ("Builder") for the construction of new luxury business premises at a cost of £3 million. The building was to contain office accommodation and a "leisure suite" including a conference centre, restaurant, fitness centre and indoor swimming pool. Builder departed from the strict specifications of the contract and used sub-standard materials. After using the building for only six months, Purchaser had to move to alternative premises in order that repairs could be carried out. In consequence, Purchaser claimed damages in respect of the following:

- (i) The cost of the only alternative office accommodation available for the four months that the building had to be closed for repairs: Total £200,000.
- (ii) Purchaser had contracted with Consultant plc to use the building as the venue for the "International Consultant Conference 2003". Purchaser had to withdraw due to the non-availability of the building: Total amount of profit lost £50,000.

Do not write in these columns below

	Marks available	For use by the first marker	For use by the second marker
<i>Required</i>			
(a) Delete as appropriate* and complete this sentence. "Purchaser will* /will not* be entitled to recover the £200,000 cost of alternative accommodation from Builder because ." (Maximum of 30 words)	1		
sub-total:	4		
(b) Delete as appropriate* and complete this sentence. "Purchaser will* /will not* be entitled to recover the loss of profit of £50,000 from Builder if ." (Maximum of 30 words)	1		
sub-total:	4		

Question Three

DEF plc is a manufacturer and wholesaler of office furniture. The board decided that the company should extend operations into retailing its products and, in consequence, is proposing to do the following:

- (i) To register Retailer Ltd as a wholly-owned subsidiary to own and operate the retailing business.
- (ii) DEF plc to obtain finance for Retailer Ltd by borrowing £3 million from Lender Bank plc, subject to a fixed charge over its factory premises; and by raising £2 million in share capital by issuing a further one million ordinary £1 shares at a price of £2 per share.

Do not write in these columns below

	<i>Required:</i>	Marks available	For use by the first marker	For use by the second marker
(a)	State the four documents that DEF plc will arrange to be sent to the Registrar of Companies in order to register Retailer Ltd.			
	(i)	1		
	(ii)	1		
	(iii)	1		
	(iv)	1		
	sub-total:	4		
(b)	State the two characteristics of a fixed charge.			
	(i)	1		
	(ii)	1		
	sub-total:	2		
(c)	Delete as appropriate* and complete these sentences. "The new shares must first be offered to [redacted] [redacted] (maximum of 4 words). The difference between the nominal value of the shares and the price charged is called a [redacted] (maximum 1 word) and this must be transferred to a [redacted] (maximum of 3 words) and [may*/may not*] be distributed as a dividend."	1		
		1		
		1		
		1		
		sub-total:	4	
(d)	Delete as appropriate* and complete this sentence. "If retailing should prove unsuccessful so that Retailer Ltd has to be liquidated, DEF plc [will*/will not*] be liable for the debts of Retailer Ltd because	1		
	[redacted]			
	[redacted]			
	[redacted]			
	[redacted]			
	[redacted] ." (Maximum of 30 words)	3		
	sub-total:	4		

Question Three continued

Do not write in these columns below

	<i>Required</i>	Marks available	For use by the first marker	For use by the second marker
(e)	Delete as appropriate* and complete this sentence. "DEF plc */Retailer Ltd *" will be legally responsible for the actions of employees of Retailer Ltd, so long as they were acting ." (Maximum of 30 words)	1		
	sub-total:	3		

Total for Question Three = 17 Marks

Question Four

The Board of XYZ Ltd has resolved to carry out the following transactions:

- (i) To appoint Imran as a director and Kim as Company Secretary.
- (ii) To alter the company's constitution to facilitate the purchase of its own shares.
- (iii) To purchase the business of Zed Ltd and provide consideration in the form of ordinary £1 shares.

Do not write in these columns below

<i>Required:</i>	Marks available	For use by the first marker	For use by the second marker
(a) Delete as appropriate* and complete this sentence. "Subject to the company's Articles */Memorandum * of Association, the board may appoint Imran as a director. His appointment must be confirmed by the shareholders by or resolution." (maximum 1 word in each space)	1 1 + 1		
(b) Delete as appropriate* and complete these sentences. "Kim may be appointed Company Secretary by the (maximum 1 word) as this is a company, (maximum 1 word) Kim must* /need not* be professionally qualified."	1 1 1		
(c) Delete as appropriate* and complete these sentences. "The Articles of Association must be altered by the board* / shareholders* by or resolution (maximum 1 word in each space). If the board ignores the rights of shareholders as set down in the Articles, the shareholders may sue the (maximum 1 word) for breach of contract."	1 1 + 1 1		
(d) Delete as appropriate* and complete these sentences. "The business of Zed Ltd must* /need not* be valued by XYZ Ltd's auditor. If the valuation were to be carried out negligently, the auditor could be liable to the directors* / company* for ." (maximum of 3 words).	1 1 1		
(e) Complete this sentence. "Although a company's auditors do not have a (maximum of 1 word) relationship with shareholders, the latter may be able to sue the auditors in the (maximum of 3 words) if they can establish that the auditors owed them ." (maximum of 4 words).	1 1 1		

Total for Question Four = 16 Marks

End of Paper