



ACCA

F4 (ENG)

Corporate and Business Law

December 2014

Final Assessment – Answers



To gain maximum benefit, do not refer to these answers until you have completed the final assessment questions and submitted them for marking.

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SECTION A

1 B

It is not a requirement for a contract to be in writing.

2 A

3 A

4 D

This is a statutory requirement under the Employment Rights Act 1996.

5 C

Companies Act 2006 requires all directors to be at least aged 16 and over.

6 A

Statute law is an Act of Parliament.

7 C

This was established in *Donoghue v Stevenson*.

8 B

9 A

10 B

11 B

Private companies are not required to hold an AGM.

12 B

13 D

A director could be guilty of fraudulent trading which is a criminal offence.

14 D

15 B

16 A

17 C

18 D

19 B

20 B

21 C

22 A

23 B

24 D

As established in Twycross v Grant.

25 D

26 B

27 D

What is reasonable will depend on the subject matter.

28 A

Action can only be taken by the company itself.

29 B

30 D

31 B

32 A

33 A

A company is a separate legal personality and owns property in its own name.

34 D

35 A

36 D

37 D

Shareholders will only be liable if they know the dividend is unlawful.

38 A

39 D

40 B

The extra work would justify the extra consideration.

41 A

42 A

43 D

44 B

This would require an ordinary resolution with special notice (28 days).

45 C

The presumption is that there is an intention to create legal relations for a commercial contract.

SECTION B

1 INFO LTD

- (a) The general rule is that advertisements are regarded as invitations to treat and not offers. However, where it is clear that no further negotiations were intended or expected then an advertisement can be an offer (*Carlill v Carbolic Smoke Ball*).

The advert placed by Info Ltd has the characteristics of an offer as opposed by an invitation to treat. The use of the words 'will be sold' indicates a definite willingness to be bound without further negotiations as does confining the total number of possible acceptances to 20.

- (b) Alan, in posting an order together with his cheque, has clearly accepted the offer.

The general rule is that acceptance is effective only when it has been communicated to the offeror, in the sense of being received by the offeror (*Entores v Miles Far Eastern*). However, if the postal rule applies, acceptance by post is effective as soon as the letter, properly stamped and addressed, is posted (*Adams v Lindsell*). The postal rule will apply only if it is reasonable to use the post as a means of communication, i.e. the post is within the contemplation of the parties.

The terms of the advertisement appear to envisage the use of the postal services and it therefore follows that Alan's acceptance was complete when he posted his order and cheque on the Wednesday.

- (c) The contract between Alan and Info Ltd was formed when Alan posted his acceptance letter. Alan's later fax cancelling his order is a breach of contract.

Marking scheme		
		<i>Marks</i>
(a)	General rule – adverts are an invitation to treat	1
	This advert has characteristics of an offer	1
	Total	2
(b)	Explanation of postal rule (1 mark for each relevant point)	
	Total	2
(c)	Conclusion that there is a valid contract	
	Total	2

2 ATKINSON LTD

- (a) Companies Act 2006 sets out the duties that directors owe to the company. S175 states that a director must avoid a situation in which he has or can have a direct or indirect interest which conflicts with the interests of the company. This applies to any exploitation of any property, information or opportunity. Where a director makes such a profit he is liable to account to the company for the profit made. This comes from his position as a director. It is not a question of whether the company has been damaged or suffered loss as a result of the actions of a director. This can be illustrated by a number of cases (*IDC v Cooley*).

Raymond has been given this opportunity in his capacity as a director of Atkinson Ltd and is therefore in breach of his duty.

- (b) As the profit has been made in breach of S175 Companies Act 2006, Raymond will be liable to account to the company for the profit made. The action must be brought by Atkinson Ltd.

Marking scheme		<i>Marks</i>
(a)	Explanation of the duty to avoid conflict of interest	2
	State that Raymond has breached his duty	2
	Total	4
(b)	Account for profit made	1
	Action brought by company	1
	Total	2

3 ALVIN, SIMON AND THEODORE

- (a) The partners' authority can be actual or apparent. The actual authority of the partners is that given to them by the other partners in a meeting or in the partnership agreement. The apparent authority is the authority it would be expected by an outsider for a partner to have. According to the Partnership Act 1890 all partners have the implied authority to buy and sell goods, to engage employees and to receive debts on behalf of the partnership.

The apparent authority of the partners can exceed the actual authority. In *Mercantile v Garrod*, even though the partnership agreement stated that the partnership could not sell cars, when a partner did so he was acting within the expected authority of a partner within that type of business and thus the firm was bound.

It is likely that Simon will be held to have acted within his apparent authority. It is likely that an outsider would believe he had the authority to enter into such a contract.

- (b) As full partners Alvin and Simon will be fully liable for the debts with Dave and Brittany. Both these suppliers will be able to sue them individually or jointly.

As a retiring partner Theodore must give notice of his retirement for his liability to customers of the firm to cease.

He must give actual notice to any current customers at the time of his retirement, so his liability to Dave will only have ended if he was informed of Theodore's retirement. If he has done this then any contracts entered after this date Theodore will not be liable for.

He is deemed to give constructive notice to everyone else by posting a notice in the London Gazette (Partnership Act 1890) so if this has been done his liability to Brittany will have ceased.

Marking scheme		
		<i>Marks</i>
(a)	Actual authority	1
	Apparent authority	1
	Simon has apparent authority	1
	Total	3
(b)	Alvin and Simon fully liable	1
	Theodore – retirement notice (1 mark for each relevant point)	2
	Total	3

4 ATTA LTD

The debts will rank in the following order of repayment:

- (i) The mortgage of £200,000 secured by a fixed charge.
- (ii) The liquidator's fee of £7,000.
- (iii) The wages and salaries of the previous month, though this will be limited to £800 per employee.
- (iv) The loan of £50,000 from Peter secured by a floating charge.
- (v) The loan of £40,000 from Sandra secured by a floating charge.
- (vi) Trade creditors of £150,000 which rank equally amongst themselves.

Marking scheme		
		<i>Marks</i>
	1 mark for putting each debt in correct order	
	Total	6

5 SAMSON

- (a) The Proceeds of Crime Act 2002 created three categories of criminal offence – laundering, failure to report and tipping off.

Laundering

It is an offence to conceal, disguise, convert, transfer or remove criminal property from England, Wales, Scotland or Northern Ireland.

Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership, or any rights connected with it.

Failure to report

Under S330 individuals carrying on a 'relevant business' may be guilty of an offence of failing to disclose knowledge or suspicion of money laundering where they know or suspect, or have reasonable grounds for knowing or suspecting, that another person is engaged in laundering the proceeds of crime.

This offence only relates to individuals, such as accountants, who are acting in the course of business in the regulated sector.

Any individual who is covered by S330 is required to make disclosure to a nominated money laundering reporting officer within their organisation, or directly to the National Crime Agency, as soon as is practicable.

Tipping off

S333 states that it is an offence to make a disclosure likely to prejudice a money laundering investigation. It therefore covers the situation where an accountant informs a client that a report has been submitted to the National Crime Agency.

- (b) It would appear from the information given in the scenario that Samson could reasonably suspect that Timothy has obtained the balance of £50,000 from an illegal source. By using the money to buy property, Timothy has committed the offence of money laundering. Samson, as a solicitor, is required to report this matter to a nominated money laundering officer within his firm or directly to the National Crime Agency. If he fails to do so, Samson commits a criminal offence. If Samson informs Timothy that he has done so, Samson will commit a criminal offence.

Marking scheme		<i>Marks</i>
(a)	State each offence – 1 mark each	
	Total	3
(b)	Timothy committed offence of money laundering	1
	Report to MLO or NCA	1
	Should not tip off	1
	Total	3

