



ACCA

F4 (GLO)

Corporate and Business Law

March 2017

Revision Mock – Answers



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

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SECTION A

1 D

2 A

3 A

4 B

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 B

Article 14 UNCCISG.

8 B

9 A

10 B

11 B

Private companies are not required to hold an AGM.

12 A

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 C

Art 78 UNCCISG.

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 D

30 D

31 C

32 A

33 A

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

34 A

35 A

36 D

37 D

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

38 A

39 D

40 A

41 A

42 C

43 D

44 B

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

45 A

Art 14 UNCCISG

SECTION B

1 BRIAN FOODS LTD

- (a) According to *Twycross v Grant*, a promoter is a person who ‘undertakes to form a company and who takes the necessary steps to accomplish that purpose’.

The definition of promoter excludes people acting in just a professional capacity, such as an accountant or solicitor.

A promoter is bound by various fiduciary duties such as to disclose any interest in transactions to the company and not to make a ‘secret profit’.

In this scenario, it can be established that Brian is a promoter of Brian Foods Ltd.

- (b) The contract was entered into on 15 March 2014, however, the certificate of incorporation was dated 1 April 2014. This has very important implications as it means that the contract entered into with Benco Ltd was a pre-incorporation contract, as it was made before Brian Foods Ltd came into legal existence.

A pre-incorporation contract is where a person enters into a contract before the company has been registered.

The position at common law is that a company, prior to its incorporation, does not have contractual capacity and after its formation, it cannot ratify or formally adopt a pre-incorporation contract. The effect is that the promoter becomes personally liable for any such contract (*Kelner v Baxter*).

S61 of CA 2006 reinforces the common law position by providing that, subject to any agreement to the contrary, the person making the contract is personally liable.

Based on the above, it can be established that Brian Foods Ltd will not be liable for the contract with Benco Ltd. As the promoter of the proposed company, Brian entered into a pre-incorporation contract with Benco Ltd and will therefore be personally liable for the contract.

Marking scheme		Marks
(a)	Explanation of promoter	1
	Brian is a promoter	1
	Total	2
(b)	Explanation of pre-incorporation contract (1 mark for each relevant point)	2
	Contract with Benco Ltd was a pre-incorporation contract	1
	Brian will be personally liable	1
	Total	4

2 ATKINSON LTD

- (a) Companies Act 2006 sets out the duties that directors owe to the company. S175 states that directors 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 (*IDC v Cooley*).

In the situation 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.

In the case of *Mercantile Credit Company v Garrod (1962)* it was held that the apparent authority of the partners can exceed the actual authority. Thus 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) All partners are jointly and severally liable for the debts of the partnership. Thus outsiders can sue them collectively, or just sue one partner.

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		Marks
(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		Marks
	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.

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) 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

