



CORPORATE LAW

PROFESSIONAL LEVEL EXAMINATION

APRIL 2021

Notes:

Section A:

You are required to answer **Questions 1 and 2** from this Section. Both questions are compulsory.

Section B:

You are required to answer **any two** questions from this section. Should you provide answers to more than two questions in this section, only the answers to Questions 3 and 4 will be marked.

TIME ALLOWED:

3.5 hours, plus 10 minutes to read the paper. This is a closed book examination.

INSTRUCTIONS:

During the reading time, candidates are encouraged to use this time to read each Question carefully. Please note, however, candidates will not be prevented from using this time to start typing notes and solutions.

Marks for each question are shown. The pass mark required is 50% in total over the whole paper.

You are reminded to pay particular attention to your communication skills, and care must be taken regarding the format and literacy of your solutions. The marking system will take into account the content of your answers and the extent to which answers are supported with relevant legislation, case law or examples, where appropriate.

N.B. Please note that the right click function has been disabled during your examination. Should you wish to copy and paste, please use the following shortcuts: Copy (Ctrl + C) and Paste (Ctrl + V).

Section A:

You are required to answer **Questions 1** and **2** from this Section.

Both questions are compulsory.

Question 1

- (a) Brady booked a luxury weekend stay at the *Kiljordan County House and Spa Hotel*. He made this booking over the phone, for a two-night stay including breakfast, dinner on one evening and afternoon tea on the other for a total cost of €1,200. At the time of making the booking, he was notified that he would have to provide his credit card details to secure the booking and that any cancellation within 48 hours of the proposed stay would result in 50% of the cost of the stay being deducted from his credit card. Brady agreed to this, as he wanted the trip to be a babymoon with his wife before the arrival of their first child. Unfortunately, the night before his intended stay his wife went into premature labour at 34 weeks, and he had to cancel the booking. He has since discovered that €600 has been charged to his credit card. Brady contacted the hotel to explain why he cancelled the booking, but he was informed that this was not relevant as the contract terms had been clearly explained to him. Brady told the hotel that he does not believe that any contract existed between them as there was no written agreement, and the price he was quoted was €300 more than was quoted on the hotel's website one week before his intended stay. He told them that he intends to sue them for the refund of his €600. The *Kiljordan County House and Spa Hotel* has contacted you seeking advice in relation to this matter.

REQUIREMENT:

- (i) In the context of the law of contract and in relation to intention to create legal relations, appraise the presumptions made in relation to social contracts and commercial contracts, providing a definition of both, and advise the *Kiljordan County House and Spa Hotel* as to whether their contract with Brady would be classified as a social or commercial agreement. **(5 marks)**
- (ii) State whether it is a legal requirement that a written agreement must exist in order for a contract to be legally enforceable. **(1 mark)**
- (iii) Discuss the rule that states that *consideration must be sufficient but need not be adequate*. **(3 marks)**
- (iv) Advise the *Kiljordan County House and Spa Hotel* as to whether their contract with Brady is legally enforceable, providing reasons for your answer. **(1 mark)**

(b) Carson, one of the employees of the *Kiljordan County House and Spa Hotel*, was seriously injured when the door of a walk-in freezer slammed shut on his hand, due to a faulty hinge. Carson suffered a number of broken bones in his hand which required surgery to insert pins to fix some of the breaks. It is possible that he will have limited mobility in his hand in the future and that it will become arthritic. Carson's solicitor has contacted the *Kiljordan County House and Spa Hotel* notifying them that his client intends to sue them for negligence. The *Kiljordan County House and Spa Hotel* plans on countering this claim by alleging contributory negligence as Carson was not wearing his required insulated freezer gloves at the time of the incident.

REQUIREMENT:

(i) Advise *Kiljordan County House and Spa Hotel* on the elements that Carson will have to prove in order to succeed in a claim for negligence.

(3 marks)

(ii) Discuss the defence of contributory negligence and assess the likelihood of this defence succeeding, as well as the impact of successfully raising this defence in respect of Carson's claim.

(5 marks)

(iii) Identify and explain briefly any types of damages that Carson could be awarded if he is successful in his claim.

(2 marks)

(c) Following this incident, the Health and Safety authority carried out an inspection of the *Kiljordan County House and Spa Hotel*. Arising from this inspection the hotel has been notified that a criminal case is being brought against them for their breaches of health and safety legal obligations. The *Kiljordan County House and Spa Hotel* does not understand the distinction between criminal and civil law and has contracted you seeking advice. Identify and explain **FIVE** differences between civil and criminal law in Ireland.

(10 marks)

(Total: 30 Marks)

Question 2

- (a) Sorcha was recently appointed as the statutory auditor to *The Good Bean Coffee Company DAC*. While undertaking this audit, she discovered that even though most of the outlets of this company were closed to sit-in customers during the COVID-19 lockdown in 2020, they appeared to generate more income from take-out orders than they had in the whole of 2019. When she then reviewed the stock purchased during this period, she realised that they purchased less stock than their receipts say they sold. Consequently, she is concerned that this company may be a front for money laundering, and she has contacted you seeking advice in this regard.

REQUIREMENT:

- (i) Define the meaning of the term 'Money Laundering' and outline the elements of the offence of money laundering as established by the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 - 2018. **(6 marks)**
- (ii) Describe the processes by which money laundering can take place. **(3 marks)**
- (iii) Identify and discuss the sanctions/penalties that can be imposed where a person is found guilty of money laundering or the ancillary money laundering related offences. **(3 marks)**
- (iv) Review the potential liability of *The Good Bean Coffee Company DAC* for money laundering and advise Sorcha as to how she should proceed in this situation, in order to limit her exposure to potential liability. **(3 marks)**
- (b) Sorcha is also the statutory auditor to *Wallace Technologies Ltd*. The company manufactures technology for online teaching, and as a consequence of COVID-19, its sales have trebled in the last year. As a result, the company is proposing to reduce its authorised share capital by adopting the summary approval procedure and to issue additional shares at a premium. The company is also proposing to pay dividends to the current members. *Wallace Technologies Ltd* has asked Sorcha for guidance regarding these proposals and she has contacted you seeking advice.

REQUIREMENT:

- (i) Define the meaning of the term 'Authorised Share Capital' and state the steps involved in invoking the summary approval procedure. **(5 marks)**
- (ii) Discuss the meaning of the term 'Share Premium' and outline permissible uses of the share premium account. **(5 marks)**
- (iii) Define the meaning of the term 'Dividend' and discuss the rules regarding the payment/distribution of a dividend, as prescribed by the Companies Act 2014. **(5 marks)**

(Total: 30 Marks)

Section B:

You are required to answer any two questions from this section.

Question 3

Abbey commenced employment as the operations manager of the *Amistad Private Members Club DAC* in 2015. In 2020, Abbey was absent from her employment on a period on maternity leave and returned to work in October 2020. In March 2021, she informed her employer that she was pregnant again and intended to commence her maternity leave in October 2021. In May 2021, she received an email from the Human Resource Manager of *Amistad Private Members Club DAC*, calling her to a meeting. She was not notified of the purpose of this meeting and assumed that it concerned her upcoming maternity leave. However, this was not the case, and at the meeting she was informed that *Amistad Private Members Club DAC* was not happy with Abbey's performance since her return to work in October 2020. In particular, they highlighted the fact that she had not ensured that the club had renewed its gambling licence and that as a consequence the club had been unable to hold its monthly casino night in April 2021, which usually brings in a revenue of €18,000 for the club. Abbey tried to explain that this oversight arose as she had not received notification from the company's solicitors about this renewal, but the HR manager told her that this was ultimately her responsibility as the operations manager and that consequently, they had no choice but to dismiss her for negligent performance. Abbey was shocked by these events as she had an excellent working relationship with her employer and no issues of discipline or performance had ever been levied against her in the past. She believes that the real reason for her dismissal is her upcoming maternity leave and as a consequence she has initiated a claim against *Amistad Private Members Club DAC* for unfair dismissal.

Last week, the *Amistad Private Members Club DAC* was placed into compulsory liquidation by the Courts on the grounds of insolvency.

Amistad Private Members Club DAC has now contacted you for advice in relation to these matters.

REQUIREMENT:

(a) In the context of the Unfair Dismissals Acts 1977-2015:

(i) Review the main eligibility requirements to initiate a claim for unfair dismissal to the Workplace Relations Commission. **(2 marks)**

(ii) Critically examine any THREE grounds upon which a dismissal is presumed to be fair. **(6 marks)**

(iii) Assess whether Abbey's dismissal is likely to be classed as fair or unfair, providing reasons for your answer. **(2 marks)**

(b) In the context of compulsory liquidation:

(i) Describe the meaning of the term 'Liquidation' and state its effect.

(2 marks)

(ii) Excluding insolvency, identify and explain other grounds under which a company may be placed into compulsory liquidation.

(3 marks)

(iii) Outline any FIVE powers or duties of a company liquidator pursuant to the Companies Act 2014.

(5 marks)

(Total: 20 Marks)

Question 4

Mason and Henley are both day to day partners in the firm of *Prestige Accountants*. Mason's sister Kate is also a partner in the firm and invested €50,000 when the business was established. However, she has had no further involvement in the firm, since making this investment. Three months ago, *Prestige Accountants* received a data subject access request from a former employee, Turner. The firm failed to comply with this request as they were unsure of their obligations in this regard. Turner has lodged a complaint against *Prestige Accountants* for breach of their obligations as a data controller under the Data Protection Acts 1988-2018 and the General Data Protection Regulation (G.D.P.R). Turner made the request as he believes that *Prestige Accountants* have given potential employers an unfair and inaccurate reference regarding his work performance, which has resulted in him being rejected for a variety of positions that he has applied for. If this is the case, he intends to sue them in negligence and contract law for his losses.

REQUIREMENT:

(a) In the context of data protection law:

(i) Define the meaning of the term 'Data Controller' and determine whether *Prestige Accountants* are likely to be classed as a data controller. (2 marks)

(ii) Outline and discuss the main obligations imposed upon a data controller upon receipt of a data subject access request (SAR). (5 marks)

(iii) List and explain **THREE** other rights of a data subject under the Data Protection Acts 1988-2018 and the General Data Protection Regulation. (3 marks)

(b) In the context of partnership law:

(i) Define a partnership. (2 marks)

(ii) Critically examine the **THREE** main classifications of partners that may exist in a partnership, commenting, specifically on their liability. (6 marks)

(iii) If it turns out that Henley gave a factually incorrect reference to Turner that prevented him obtaining employment, assess the potential liability of Mason, Henley and Kate in respect of these losses. (2 marks)

(Total: 20 Marks)

Question 5

Wilton has been running a successful electronics store for the past six years as a sole trader. He has recently decided to sell his goods on credit and has applied to the Central Bank for a credit licence. The Central Bank has agreed to provide Wilton with the licence on condition that he establish his business as a company. Wilton has agreed to do this and has contacted you seeking advice in relation to these matters.

REQUIREMENT:

(a) In the context of the Consumer Credit Act 1995:

(i) Critically analyse the meaning of a '*cooling off period*' in relation to a consumer credit contract, and the obligations imposed by the legislation in relation to this period.

(3 marks)

(ii) Evaluate any **SEVEN** terms (excluding the cooling off period) that must be included in a credit sale agreement under the terms of this legislation.

(7 marks)

(b) In the context of company law and formation:

(i) Explain any **THREE** advantages to Wilton of operating his business as a company, as opposed to a sole trader.

(6 marks)

(ii) Outline to Wilton any **THREE** documents that he will have to submit to the Registrar of Companies if he wants to register the company as a Designated Activity Company (DAC).

(3 marks)

(iii) Advise Wilton of any **TWO** pieces of information that will be contained in the Certificate of Incorporation if his company is legally registered as a DAC.

(1 mark)

(Total: 20 Marks)

Question 6

Celtic Properties DAC is a nationwide company that owns a variety of holiday properties in Ireland. Three years ago, *Celtic Properties DAC* appointed Nelson as their agent to manage their holiday properties in Galway. It has recently come to the attention of *Celtic Properties DAC* that Nelson has been notifying them that some of the properties are vacant, when in fact they are being let, and that Nelson has been pocketing this payment and not reporting it to *Celtic Properties DAC*. Consequently, *Celtic Properties DAC* has appointed Dixon, a qualified CPA, to review the accounts of the company and to ascertain the level of Nelson's fraudulent activity. Since his appointment Dixon has also informed *Celtic Properties DAC* that they are due to file an annual return within the next six weeks and based on their current turnover that they are no longer eligible for an audit exemption.

Celtic Properties DAC has contacted you seeking advice in relation to these matters.

REQUIREMENT:

(a) In the context of the law of agency:

(i) Identify and discuss any **FOUR** duties owed by an agent to the principal. (8 marks)

(ii) Assess whether Nelson has breached his duties to *Celtic Properties DAC* providing reasons for your answer, commenting also on the consequences of such a breach. (2 marks)

(b) In the context of the company accounts:

(i) Advise *Celtic Properties DAC* of the prescribed content of the Annual Return, commenting specifically on the significance of the information included in this document. (6 marks)

(ii) Outline the main eligibility requirements to obtain an audit exemption. (4 marks)

(Total: 20 Marks)

END OF PAPER

SUGGESTED SOLUTIONS

THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND

CORPORATE LAW

PROFESSIONAL LEVEL - APRIL 2021

SOLUTION 1

- (a) (i) **Contractual Intention:** a social contract is an agreements between family members and friends – the presumption is on a lack of intention to create legally binding relations in these agreements as the law assumes that they are binding in honour only – this is because the law is reluctant to become involved in family disagreements – examples include: *Balfour v Balfour* (1919), *Mackey v Jones* (1959), etc (0-2 marks) – whereas commercial contracts are agreements where one or both of the contracting parties is a business/commercial entity – in these contracts the presumption of intention to create legally binding relations exists – commercial contracts are even enforceable amongst family members – as per *Snelling v John G. Snelling Limited* (1973) (0-2 marks)

Conclusion: the contract between the Kiljordan County House and Spa Hotel and Brady would be classified as a commercial agreement, as they are a business entity (0-1 mark)

(ii) **Written Contracts:** save limited exceptions, there is no requirement that a contract needs to be deduced into a written agreement to be legally binding, a verbal agreement is as enforceable as a written agreement (0-1 mark)

(iii) **Consideration – Sufficiency and Adequacy:** this rule recognises that consideration must be sufficient (recognised by law) but need not be adequate (the quantum amount is irrelevant) – provided there is consideration in the contract and it is a minimum economic value then the consideration is valid – it is not a question of a “good bargain”, but rather an honest one – in effect, this means that the consideration does not have to equate to market value of the goods/services) – this principle has been applied in cases such as *Chapple v Nestle* (1960) and *Thomas v Thomas* (1842) (0-3 marks)

(iv) **Conclusion:** the contract between Brady and the Kiljordan County House and Spa Hotel is legally enforceable as it is a commercial agreement, there is no requirement that it be concluded in writing, and the value of the consideration (cost of the accommodation) is irrelevant – therefore Brady is not entitled to the return of his deposit (1 mark)

- (b) (i) **Negligence:** to succeed in a claim for negligence the following elements must exist: (1) the respondent must owe the claimant a duty to take reasonable care, (2) the respondent must have acted in breach of that duty by acting below the requisite standard, and (3) the breach must have caused the claimant’s injuries or losses (3 = 0-3 marks)

(ii) **Defence of Contributory Negligence:** (1) this defence arises where a person contributes to their own injuries by failing to exercise reasonable care in relation to their own personal safety or the safety of their property – the Court views it as a breach of duty of care towards oneself – (2) the defence is governed by the Civil Liability Act 1961 which allows for the apportionment of damages based on the degree of fault of the respective parties – (3) the defence may also arise by a failure to mitigate damages, such as in *Jones v Livox Quarries* (1952), and in *Froom v Butcher* (1976) and (4) in allowing a defence of contributory negligence the Court will take into consideration the age and experience of the person, as well as the actions of a reasonable person – such as in *Hegarty v Donegal County Council* (1998) and *O’Reilly v Iarnrod Eireann* (2002) (any 3 = 0-3 marks)

Conclusion: that the Court may allow the hotel to succeed in this defence if they believe that Carson’s injuries would not have been as severe if he had been wearing the requisite gloves – if this defence succeeds Carson’s compensation will be reduced by an amount that the Court believes represents his contribution to his own injuries (0-2 marks)

(iii) Damages: Carson may be entitled to damages for his physical injuries, medical costs, loss of income, loss of future income, loss of quality of life or loss of enjoyment of life, pain and suffering, as well as damages for any psychological damages arising from his injuries (any 2 = 0-2 marks)

(c) Distinction Between Civil and Criminal Law:

(1) Definitions	Civil law is deemed to be private law – and it generally concerns disputes between individuals, where one person sues another person for a wrong – a civil claim is called an action and the parties are known as the plaintiff and the defendant – whereas criminal law is deemed to be public law – which involves the state imposing codes of conduct and prosecuting an individual for breaching that code – a criminal case is called a prosecution and the parties are known as the prosecution and the defence (accused)
(2) Objectives	The main objective of civil law is compensation and ceasing the unwanted conduct – whereas criminal law’s objective is punishment (as well as incapacitation, retribution, deterrence & rehabilitation)
(3) Tests	For a civil court to find a defendant liable the test is <i>the balance of probabilities</i> – for a criminal court to find a defendant guilty the test is <i>beyond all reasonable doubt</i>
(4) Commencement of proceedings	In civil law an action is initiated by way of pleadings – in criminal law a prosecution is initiated by the State/ People/DPP either through a summons or an indictment
(5) Representatives:	The representative of the State in civil cases is the Attorney General – the representative of the State in criminal cases is the Director of Public Prosecutions
(6) Courts	There are different hierarchies of civil and criminal courts – the main civil courts are the District, Circuit, High (differentiated by monetary jurisdiction), Court of Appeal and the Supreme Court (appellate court) – whereas the main criminal courts are the district criminal, circuit criminal, central criminal, special criminal (differentiated by the nature of the offence), the court of appeal and the Supreme Court (appellate courts)

(any 5 x 2 marks = 0-10 marks)

SOLUTION 2

(a) **(i) Money Laundering:** this is the way in which criminals attempt to turn cash and other assets obtained from criminal activities into genuine assets through the financial services system and through established businesses (0-1.5 marks) – elements of the offence: the offence is regulated in Ireland by the Criminal Justice (Money Laundering and Financing Terrorism) Act 2010 – according to Section 7(1) money laundering arises where a person: (1) conceals or disguises the true nature, source, location, disposition, movement or ownership of property or rights in relation to property connected to criminal activity, (2) converts or transfers that property (or provides advice or assistance in relation to conversion or transfer), for the purpose of avoiding prosecution or handles any property (receives it, or undertakes or assists in its retention, removal, disposal or realisation – or arranges to do any of these things), or (3) removes it from the State or brings it into the State, knowing or believing or acting in reckless disregard as to whether that property is, in whole or in part, directly or indirectly representing another person's proceeds of drug trafficking or other criminal activity (3 x 1.5 = 0-4.5 marks)

(ii) Processes of Money Laundering: the offence can be achieved by (1) placement: this is the initial disposal of the proceeds of criminal activity into an apparently legitimate business activity or property, (2) layering: this involves the transfer of money from business to business, or place to place in order to conceal its initial source, and (3) integration: this is the culmination of the previous procedures through which the money takes on the appearance of coming from a legitimate source (3 x 1 = 0-3 marks)

(iii) Sanctions: a person guilty of a money laundering offence is liable to imprisonment for a term not exceeding 14 years and/or a fine where prosecuted on indictment – where prosecuted summarily they can be liable to a class A fine or a term of imprisonment not exceeding 12 months, or both (0-2 marks) – a person found guilty of failure to report a suspicion of money laundering or tipping someone off that they have been reported is liable to the imposition of a fine or a term of imprisonment of up to five years, or both (0-1 mark)

(iv) Conclusion: (1) The Good Bean Coffee Company DAC appear to be guilty of money laundering as they seem to be falsifying income, and it is assumed that this is to conceal and disguise the proceeds of criminal activity, and (2) in this situation Sorcha is legally obliged to report her suspicions to An Garda Síochána and the Revenue (she should also notify her professional body) and (3) she must not tip-off The Good Bean Coffee Company DAC that she has made this report (3 = 0-3 marks)

(b) **(i) Authorised Share Capital:** this is the total amount of capital that can be issued by a company as stated in its Constitution (0-1 mark) – in order to effect the reduction of the authorised share capital by adopting the summary approval procedure Sections 202-208 CA 2014 require that the following steps are taken: (1) a declaration of solvency must be made by the directors of the company, (2) a special resolution of the shareholders at a general meeting must be passed within 12 months of effecting the reduction, (3) a report of an independent person qualified to act as a statutory auditor must confirm that the declaration of solvency is not unreasonable, and (4) a copy of the declarations and resolutions must be forwarded to the Registrar of Companies (CRO) (0-4 marks)

(ii) Share Premium Account: where a company issues shares above their par nominal value (at a premium) the nominal value is lodged to the issued capital account and the excess in value, which is known as the share premium (profit above nominal) must be lodged into the share premium account – this account comprises part of the un-denominated capital of the company and is defined as the excess of company capital over the nominal value of issued shares (0-2 marks) – the exceptions to the rule regarding this account being classed as undistributable capital are as follows: (1) mergers – where one company has secured at least 90% equity share capital holding in another company, (2) group re-constructions – where a company allots shares to its holding company in consideration for the transfer of assets, other than cash, and (3) acquisition of shares of a body corporate – where a company, “A”, allots shares to the members of another company, “B”, in exchange for all of the issued shares of “B” so that “B” becomes a wholly-owned subsidiary of “A” – other miscellaneous uses include to (4) finance a bonus issue of shares (Section 83(1)(e)) and (5) to pay/repay a premium due on the acquisition of own shares (Section 105(3)) (any 3 = 0-3 marks)

(iii) Dividends: the term dividend relates to a payment (or profit) to a shareholder as a percentage of the nominal value of their shares from the company's distributable profits (0-1 mark) – the rules regarding the payment of dividends are governed by Section 124 CA 2014 as follows: (1) dividends are generally declared by an ordinary resolution of the directors at a general meeting of the company, (2) although interim dividends can be declared (subject to Section 117), (3) generally the declaration of the dividend and the amount paid is at discretion of the directors, as per *Bond v Barrow Haematite Steel Co. (1902)* – although they are paid at a fixed rate for preference shares and at a variable rates for ordinary shares, (4) no distribution can exceed the amount recommended by the directors, (5) members can sue for non-payment, where the dividend has been declared and after the date for payment has elapsed, (6) dividends are payable on paid-up amounts of shares only, (7) Section 117 requires that the payment must be made from distributable profits, (8) although dividends are generally paid in cash, Section 125(1) provides that they can also be paid other than in cash, (9) the directors may deduct from any dividend payable to any member, all sums of money (if any) immediately payable by him or her to the company on account of calls or otherwise in relation to the shares of the company, and (10) no dividend will bear interest against the company (Section 125(6)) (any 4 = 0-4 marks)

SOLUTION 3

(a) **(i) Eligibility Requirements for Unfair Dismissal:** in order to make a claim the following prerequisites apply: (1) the employee must have more than one year's continuous service (except where the dismissal results from maternity, trade union membership, a protected disclosure or exerting the right to minimum wage), (2) the person must be employed under a contract of service (2 = 0-2 marks)

(ii) Fair Dismissal Grounds: these include the following: (1) a lack of competence to complete the work – this generally relates to the intellectual ability/skills of the employee to complete the work and is generally seen as poor performance – in *Moriarty v Greenes (Falcarragh) Ltd (1983)* a dismissal for gross incompetence was deemed fair on this ground, (2) a lack of capability to complete the job – this generally relates to the employees mental and physical ability to perform the required tasks, (3) a lack of qualifications – this relate to either academic, professional, technical, occupational or other qualifications – for example, a haulage driver who loses his driving licence as a consequence of drink driving may be dismissed for lack of suitable qualifications, (4) employee misconduct – an act of gross misconduct (such as criminal activity) or continuous acts of misconduct (such as absenteeism/tardiness etc), and (5) redundancy – where the position no longer exists (downsizing, relocation, re-structuring etc) or the company no longer exists – subject to the redundancy being genuine and the selection being fair (any 3 x 2 = 0-6 mark)

(iii) Conclusion: Abbey's dismissal is likely to be classed as unfair, as (1) the allegations regarding her poor performance should at worst have resulted in a warning and she should have been given the opportunity to improve – in addition, (2) fair procedures were not applied to her dismissal (no notification, no representation, no real right to reply, disproportionate penalty etc) – and (3) unless Amistad Private Members Club DAC can demonstrate that her pregnancy was not a relevant factor in her dismissal then this is an automatically unfair dismissal ground (0-2 marks)

(b) **(i) Liquidation:** the term liquidation refers to the dissolution of the company, wherein the assets of the company are sold, the proceeds of this sale are used to repay the company's debts and if there is any remainder it is distributed to the shareholders (0-1 marks) – the effect of liquidation is that the company will no longer exist as a legal entity (0-1 marks)

(ii) Compulsory Liquidation Grounds: the statutory grounds for compulsory liquidation are: (1) the company has failed to commence trading within 12 months of formation or (2) has failed to trade in the last 12 months, (3) if the members of the company are all deceased or no longer exist, (4) if the court considers it just and equitable to have the company liquidated, (5) where the members have passed a special resolution for compulsory liquidation, (5) if the Court is satisfied that it is in the public interest that the company be liquidated, or (6) where the court considers it necessary to protect the interests of minority shareholders who are being treated in an oppressive manner – the just and equitable grounds for compulsory liquidation: (7) failure in substratum, (8) deadlock in corporate management, (9) illegal or fraudulent objectives, (10) where the company is a corporate instrument of fraud, or (11) where the company is in reality a quasi-partnership (any 3 = 0-3 marks)

(iii) Duties of a Liquidator: the main powers and duties of a Liquidator are contained in Sections 624-633 of the Companies Act 2014, and include: (1) to take possession of the company's assets, including debtors for the purpose of sale, (2) to execute all necessary documents on the company's behalf, including bills of exchange, promissory notes or mortgages on the company's assets, (3) to arrange a list of creditors and contributors and seek monies due (the liquidator can also institute legal proceedings to recover monies due, where necessary), (4) to resolve all disputed claims and where necessary request the Court to adjudicate on them, (5) to bring or defend an action in the company's name, (6) to provide security for costs in the name of the company, (7) to apply the proceeds of the sale of company assets to the payment of the company's debts and liabilities in accordance with the rules governing the priority of payments, (8) where the asset realisation creates a shortfall the liquidator may make any compromise or arrangement with creditors, (9) if there is a surplus after asset realisation, the liquidator must distribute any surplus amongst the shareholders in accordance with the provisions of the Companies Act 2014, and the company's Constitution, (10) to appoint agents to do such work that the liquidator himself is unable to do, (11) he must call a meeting of creditors and company at the end of first year of liquidation, and on each successive year, within three months of the end of the year – to accounts for his actions – and he must send a copy of the accounts to the CRO – in effect the liquidator is obliged to do all things necessary for the orderly wind-up of the company – (12) following liquidation the liquidator must fulfill

the various filing and notification requirements under the Companies Acts, including notification to the CRO to strike the company off the Register – (13) to report to the ODCE within 6 months of his appointment, or as required, regarding insolvent companies (Section 682 CA 2014), (14) to apply for the Restriction of Directors (Section 683 CA 2014) unless excused by the ODCE (any 5 = 0-5 marks)

SOLUTION 4

(a) **(i) Definition of a Data Controller:** this is defined as: (1) any person who controls the content and use of personal data, or (2) determines the manner in which the data is to be processed, and (3) a data controller can be a person or a corporate body (any 1 = 0-1 mark) – therefore, Prestige Accountants is likely to be classified as a data controller as they control employee and client data (0-1 mark)

(ii) Data Subject Access Request (SAR): upon receipt of the request the following obligations are imposed upon Prestige Accountants: (1) they must verify the identity of the person making the request by obtaining appropriate evidence, (2) they must undertake extensive efforts to find and retrieve the relevant information, (3) data that is relevant to the request should be communicated to the data subject in an intelligible form, and a copy should be supplied in a permanent form (unless otherwise agreed or where it would involve disproportionate effort), (4) the data controller is required to respond to the request within one month, and (5) the data controller cannot charge the data subject a fee for the provision of the data, unless the request is manifestly unfounded or excessive in nature – in this situation the fee must be reasonable (0-5 marks)

(iii) Rights of the Data Subject: these include the following: (1) the right to information when personal data is collected, (2) the right to establish whether personal data is being held, (3) the right to have personal data corrected or erased, where appropriate – this specifically encompasses a right to be forgotten (de-listed), (4) the right to restriction of processing, including a right not to be subject to a decision based on profiling, (5) the right to data portability, (6) the right to object to disclosure of data to third parties, (7) the right to lodge a complaint to the Data Protection Commission where they believe that the actions of a data controller are in breach of his rights under GDPR, and (8) the right to an effective judicial remedy against a decision of the Data Protection Commission (any 3 = 0-3 marks)

(b) **(i) Definition of a Partnership:** a partnership is defined by Section 1 of the Partnership Act 1890 as an association of two or more people carrying on a business together with a view to making a profit (0-2 marks)

(ii) Classifications of Partners: these include the following: (1) an active partner is a person who has invested money in the partnership and is fully involved in the day-to-day running of the firm – their duties are stated in the Partnership Agreement and governed by Partnership law – as such they have unlimited liability for partnership debts – (2) a silent/sleeping partner is a person who has invested money in the partnership – but is in no way involved in the day-to-day running of the firm – this partner has unlimited liability – (3) a limited liability partner is a person who has invested capital in the firm and is entitled to a share of the profits made, but who is not involved in the day to day running of the business – this partner also has his liability for any debts of the partnerships fixed at a certain amount by registering himself with the CRO as a limited liability partner (3 x 2 = 0-6 marks)

(iii) Conclusion: if it turns out that Henley gave a factually incorrect reference to Turner that prevented him obtaining employment, then Mason, Henley and Kate are all potentially liable in respect of these losses – it is irrelevant which partner caused the loss and joint and several liability applies – Mason and Henley as active partners have unlimited liability for this loss – Kate also has unlimited liability if she is a silent partner, but will not if she is registered as a limited liability partner (0-2 marks)

SOLUTION 5

(a) **(i) Cooling Off Period:** this is a period of time during which a consumer has the right to withdraw from the agreement without penalty, provided the consumer gives written notice to this effect to the creditor (0-2 marks) – the minimum cooling off period prescribed by Section 30 of the legislation is 10 days from the date of receipt by the consumer of a copy of the agreement (although this right may be waived by the consumer) (0-1 mark)

(iii) Credit Sale Agreement: as per Section 32(3) of the Consumer Credit Act 1995 a credit-sale agreement should contain a statement that includes the following: (1) the total cost of credit, (2) the cash price of the goods to which the agreement relates, (3) the amount of each of the instalments by which the total cost of credit is to be paid, (4) the date, or the method of determining the date, upon which each instalment is payable, (5) the number of instalments, (6) the cost of any termination of the agreement by the buyer before final payment, (7) a description of the goods to which the agreement relates sufficient to identify them, (8) in a prominent position the words “Credit-Sale Agreement”, and where applicable: (9) the rate of interest charged and the APR, (10) the conditions under which the APR may be changed – in addition, Section 30(3) requires that the following information is also included in the agreement (10) the names and addresses of all the parties to the agreement, and (11) any costs or penalties to which the consumer may become liable for any failure by the consumer to comply with the terms of the agreement (any 7 = 0-7 marks)

(b) **(i) Advantages of a Company:** the main advantages of operating the business as a company as opposed to a sole trader include the following: (1) separate legal existence – a company is viewed as a separate legal entity to the members who own it, this means that it can contract in its own name, acquire assets, sue and be sued, as well as be subject to criminal liability – a sole trader does not possess separate legal existence, (2) limited liability – the shareholders of a company may be entitled to limited liability, which means that their personal assets are not in jeopardy if the company enters insolvent liquidation – whereas a sole trader has unlimited liability, (3) perpetual succession – companies exist in perpetuity, until they are liquidated and struck off – whereas the death of the sole trader automatically brings the business to an end, (4) taxation – companies pay corporation tax on their profits – whereas a sole trader pays income tax, (5) access to capital – a company may raise capital by issuing shares or debentures – whereas a sole trader is limited to capital raised from personal savings and borrowings (any 3 or similar x 2 = 0-6 marks)

(ii) Registration of a DAC: to register a DAC the following documents must be submitted to the Companies Registration Office: (1) a Memorandum of Association, (2) an Articles of Association (or a statement that the company has accepted the optional provisions of the Companies Act 2014), (3) a statement outlining the name and registered office of a company, (4) a statement of the particulars of the directors and secretary of the company, including their signatures, (5) a statement that the company’s issued share capital, (6) a statutory declaration that all the terms of the Companies Act 2014 have been complied with (made by a company director, secretary or the company solicitor), and (7) a declaration that all particulars contained in the statements and declarations are correct (any 3 = 0-3 marks)

(iii) Certificate of Incorporation: this document contains the following information: (1) the name of the company, (2) a statement as to whether it is a public or private company, (3) the registered number of the company, and (4) the date of incorporation (any 2 = 0-1 mark)

SOLUTION 6

(a) **(i) Duties of an Agent:** these include the following: (1) a duty to act with due care and skill: an agent should apply a reasonable standard of care and if he holds himself out to have expertise then the agent must apply the appropriate standard that a reasonable person with that skill would do, as per *Chariot Inns v Assicurazioni Generali SPA* (1981), (2) a duty to obey instructions and duty not to exceed authority: an agent should carry out his instructions as laid out in the contract or as stated to him by the principal and should not exceed his authority as he may be held liable under the contract, (3) a duty to avoid conflicts of interests and make full disclosure: an agent is under an obligation to make full disclosure of all facts material to the contract, including any potential conflicts of interest, as per *McPherson v Watt* (1877), (4) a duty not to make a secret profit: an agent is under a duty not to make a profit out of the transactions he carries out on behalf of his principal – although he is entitled to keep any profits if the principal has knowledge of these profits, as per *Sherrard v Barron* (1923), (5) a duty not to delegate: an agency relationship is usually a personal relationship and the agent should not delegate his duties unless authorised to do so by the principal, as per *John McCann & Co v Pow* (1974), (6) a duty to Account: an agent is under a duty to keep proper accounts of all dealings and provide accounts for all monies received from transactions – the agent must be prepared to disclose his accounts to the principal upon request, (7) a duty to communicate and keep confidentiality: an agent should communicate all relevant information to the principal and keep all information confidential – any authorised disclosure to a third party is actionable, and (8) a duty to act in good faith and in the best interest of the principal – and not to put their own objectives above those of the principal, act in a fraudulent or illegal manner, or for an ulterior motive, or to the detriment of the interests of the principal, or to allow their judgment to be unduly fettered (any 4 x 2 marks = 0-8 marks)

(ii) Conclusion: Nelson has breached his duties to Celtic Properties DAC as he acted in breach of his duty of fidelity, for his own personal purpose and in a fraudulent and illegal manner, and as a result he made a secret profit (0-1 mark) – consequently, he may be sued for breach of duties and required to compensate Celtic Properties DAC for their losses or account to them for the profit he has made – he may also be removed and his fraud reported to An Garda Síochána (0-1 mark)

(b) **(i) Annual Return:** the prescribed content of the annual return includes: (1) the name and registered number of the company, (2) the address of the registered office of the company, (3) the financial period covered by the return, (4) details of all shares issued for cash or other consideration, any calls made on shares that have been received or remain unpaid, any commission paid or discounts given on shares or debentures, (5) particulars of the total amount of indebtedness of the company that is secured by mortgages or charges, which are required to be registered, (6) a list of all persons, including names and addresses, who are members of the company, and of persons who have ceased to be members since the date of the last return, (7) details of shares held by each of the existing members, specifying the shares transferred since the date of the last return, and (8) particulars of the directors and secretaries to be entered in the company's Register of Directors and Secretaries (any 6 = 0-6 marks)

(ii) Audit Exemption Eligibility Requirements: in order to obtain an audit exemption two or more of the following requirements must be satisfied: (1) the amount of the turnover of the company cannot exceed €12 million, (2) the balance sheet total of the company cannot exceed €6 million, (3) the average number of employees of the company cannot exceed 50 – in addition, the following requirements must also be fulfilled: (4) the company cannot be a subsidiary, a bank, insurance company, stock-broking or investment company, (5) all filings with the CRO must also be up to date – in addition, (6) a dormant company is also eligible for an audit exemption, and (7) the company cannot be a holding company if any member of the group is an ineligible entity, or (8) a PLC or (9) a PULC (any 4 = 0-4 marks)