CHAPTER 15: BUSINESS ORGANISATIONS

QUESTION 1

Explain the core rights and duties of general partners set out in the Partnership Act 1890.

Answer:

- The Partnership Act section 24 sets out the rights of partners however partners can agree not to be bound by the rights set out in the Act and instead make their own arrangements.
- If the partners have not made an agreement on all or some of the issues covered by section 24 then the section applied in default.
- To share equally in the capital and profits of the business (also to contribute equally to losses).
- To be indemnified by the firm for any liabilities incurred or payments made in the course of the firm's business.
- Entitled to interest of 5% on payments made to the partnership which are beyond the amount of capital which it was agreed that the partner would contribute.
- To take part in the management of the business.
- A partner is not entitled to a salary. The basic rule is a partner will take a share of the profits rather than be entitled to a salary (although in many partnerships it is agreed that one or more of the partners should take a salary).
- No person can be introduced to a partnership without the consent of all the existing partners.
- No changes can be made to the nature of the partnership business unless all partners agree, (ordinary matters connected with the partnership can be decided by a majority of partners).
- The firm's books must be kept at the firm's place of business or the principle place of business if there is more than one, and every partner must have access to the books to inspect and copy any of them.

QUESTION 2

Outline the differences between a registered limited company, a general partnership, and a limited liability partnership.

Answer:

- A general partnership (GP) is not a legal entity separate from its partners whereas both a limited liability partnership (LLP) and a registered limited company (Ltd) are legal entities separate from their members.
- GP partners' liability is unlimited and GP dissolves when partner leaves. LLP and Ltd members' liability is limited and change in membership does not alter its existence.
- GPs and LLPs partners/members manage the partnership affairs. The directors of a Ltd manage the company affairs.

- GPs and LLPs partners/members cannot transfer interests to others but Ltd members (shareholders) can transfer interests to others.
- Partners/members of GPs and LLPs pay income tax on share of profits received. Ltds pay corporation tax.
- In LLPs and Ltds assets belong to the LLP/Ltd. In GP assets belong to the partners jointly.
- LLPs and Ltds can create a floating charge over assets but GPs cannot.
- GPs can be created without formalities and financial details are private, LLPs and Ltds require registration of documents with Companies House and must file annual confirmation statements and accounts.

QUESTION 3

Gita and Luis are partners in a catering business called Meals4U. They regularly order fresh fish from Bespoke Foods Ltd. To cut costs, Gita asks Luis not to order any more fish from Bespoke but instead to buy it at the local supermarket. The next day Luis gets a new customer and, wanting to make a good impression, she again orders fish from Bespoke, who know nothing of Gita's request. Two months later, Bespoke's bill has not been paid and Bespoke is threatening to sue Gita and Luis as the partners of Meals4U. Gita blames Luis for the situation.

a) Advise Gita whether she will be liable to pay the debt from her personal resources if Meals4U has insufficient assets to pay it.
b) If Meals4U was a limited company rather than a partnership, explain, giving reasons, who would be liable for the debt to Bespoke.

Answer:
a)

- A partnership has no legal existence distinct from its partners, and each partner is the agent of the other partners. All the partners in a firm will be personally liable on a contract with a third party if the partner who made the contract had authority to do so, s 5 Partnership Act 1890.
- This authority may be actual or apparent. Actual authority means that the other partners authorised the transaction. Even if there is no actual authority, a partner will have apparent authority to enter a transaction relating to the usual business of the firm, *Mercantile Credit v Garrod* (1962). In a commercial business such as Meals4U a partner would have apparent authority to buy the supplies needed for the business to operate. Unless the other party to the transaction knows about the lack of actual authority, the lack of it makes no difference.
- Given the nature of Food4U's business, Luis had apparent authority to order fish from Bespoke for the partnership. Bespoke had no reason to think Luis was acting outside his authority or that Luis was not a partner. So both partners are bound by the contract with Bespoke.
- The personal liability of the partners for partnership debts is joint, s 9 Partnership Act 1890. This means that both Gita and Luis can be sued for the full amount of the debt to Bespoke. If Gita pays it, she can seek a contribution from Luis.

(b)

- If Meals4U was a limited company the business would be a separate legal entity, distinct from its shareholders and directors, *Salomon v Salomon & Co. Ltd* (1897). The company would own all the business assets and be responsible for the business debts.
- The company, not Luis or Gita, would have entered into the contract with Bespoke.
- Bespoke would have to sue the limited company, Meals4U.

QUESTION 4

For some years Zadie carried on a computer repair business as a sole trader. In 2016 she expanded into computer sales and incorporated the business, assigning the whole of its assets to the company, Comdeal Ltd. Payment was effected by the allotment to Zadie and her husband of £5,000 fully paid shares in Comdeal Ltd. Zadie continued to insure the business assets in her own name as she had done prior to the incorporation of Comdeal Ltd. This year, the premises of Comdeal Ltd were burgled and some £30,000 worth of equipment stolen. Zadie has made a claim on the policy but the insurance company refuses to meet her claim.

Advise her.

Answer:

- Once a company is formed it has its own separate legal personality, district from its shareholders and directors. The business debts and liabilities are the responsibility of the company, *Salomon v Salomon & Co Ltd* (1897).
- Comdeal Ltd exists as a separate legal entity. Zadie and her husband are shareholders.
- Business assets are owned by a company in its own name and the company is responsible for insuring them.
- A shareholder does not have an insurable interest. The insurance for the equipment should have been taken out in Comdeal Ltd. *Macaura v Northern Assurance Co Ltd* (1925)
- Zadie will not be able to make a claim as she did not have an insurable interest in the property.