

Applied Business

Advanced GCE

Unit **F256**: Business Law

Mark Scheme for January 2011

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Abbreviations, annotations and conventions that are used in this Mark Scheme vary from paper to paper. The following annotations are available for this paper.

| | |
|---|---------------------------|
|  | Tick |
|  | Cross |
|  | Benefit of doubt |
|  | Unclear |
|  | Repeat |
|  | Level 1 |
|  | Level 2 |
|  | Level 3 |
|  | Level 4 |
|  | Own figure rule |
|  | Accepted as context |
|  | Not answering question |
|  | Candidate's response seen |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|--|----------------|------|--|
| 1 (a) | <p>Describe two documents which the Carters would have had to produce in order to set up their hot air ballooning business as a private limited company.</p> <p><i>One mark for each correct document, up to a maximum of two documents, plus up to one further mark for each of two developments.</i></p> <p>Documents:</p> <ul style="list-style-type: none"> • Memorandum of Association • Articles of Association • Form 10 • Form 12. <p>Eg Memorandum of Association (1) which regulates the relationship of the company with the outside world (1). It includes the company name with Ltd after it (1), the registered office (1), objects (1), liability of the members (1) and authorised share capital (1).</p> <p>Eg Articles of Association (1) which states the internal rules which govern the company's organisation (1). It includes the rules about meetings (1) and the voting rights of shareholders (1).</p> <p>Eg Form 10 (1) which includes the name of the company's first registered office (1) and the names of the director(s) and company secretary (1).</p> <p>Eg Form 12 (1) A statutory declaration which needs to be signed by a qualified person stating that all the requirements of the registration process has been complied with (1).</p> | AO1 2 AO2 2 | 4 | <p>Acceptable annotation = ✓</p> <p>1 mark for name of document. 1 mark for development.</p> <p>Accept any correct detail as to content or purpose of the document for award of the development marks.</p> <p>Do not accept "Certificate of Incorporation" as this is not produced by the applicant - it is issued by Companies House. It is not essential to the commencement of trading in a private limited company.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|---|-------|------|---|
| 1 (b) | <p>What is the legal role of a company director?</p> <p><i>Up to two marks for stating the legal role of a company director.</i></p> <p>The legal role of a company director is to manage the company's affairs for the interest of shareholders in accordance with the law and the company's own Articles of Association.</p> <p>Eg To ensure the company meets legal obligations (1) such as submitting its tax returns (1).</p> <p>Eg To submit necessary documents to Companies House (1).</p> <p>Eg To make strategic policy decisions (1) in line with the company's Articles of Association (1).</p> <p>Eg A company director must act in the interest of the shareholders (1).</p> | AO1 2 | 2 | <p>Acceptable annotation = ✓</p> <p>Must be legal role.</p> <p>Accept an example of legislation which a director must ensure is met, if used to exemplify.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|--|-------|------|--|
| 1 (c) | <p>Give one reason why a company may have to go into compulsory liquidation.</p> <p><i>One mark for a correct reason.</i></p> <p>Possible answers may include:</p> <ul style="list-style-type: none"> • Insolvency • Creditors' petition • Receipt of court order. <p>Eg A company might have to enter compulsory liquidation because it cannot pay its debts (1).</p> <p>Eg If it gets into financial difficulty (1).</p> <p>Eg If the creditors are unwilling to wait any longer and take the company to court (1).</p> <p>Eg It receives a court order instructing it to do so (1).</p> | AO1 1 | 1 | <p>Acceptable annotation = ✓</p> <p>The answer must relate to compulsory liquidation rather than voluntary liquidation, receivership or administration.</p> <p>The answer must relate to compulsory liquidation. Do not award marks for references to it being a decision of the company or its directors.</p> <p>Do not award 'bankrupt', 'bust' or 'being in debt'.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|---|----------------|------|---|
| 1 (d) | <p>Explain four steps which must be carried out if a company such as the Carters' hot air ballooning company goes into compulsory liquidation.</p> <p><i>One mark for each correct step up to a maximum of four steps, plus up to one further mark for each of four explanations.</i></p> <p>Compulsory liquidation is when the court makes an order for a company to be wound-up, on the petition of an appropriate person. This often happens when the company is insolvent and cannot pay its debts.</p> <p>Procedure for compulsory liquidation:</p> <ul style="list-style-type: none"> • Court order received (1) • Liquidator appointed (1) – takes over directors' powers (1) • Directors dismissed (1) • Employees' contracts terminated (1) (unless liquidator decides to re-employ them) (1) • Publication in the London Gazette (1) informing creditors of company difficulty (1) • Liquidator sells firm's assets(1) to raise funds to pay creditors (1) • Liquidation fees paid (1) • Pay creditors (1) in order of preference wages, tax, secured creditors, unsecured creditors (1) • Remaining funds divided between shareholders (unlikely). (1) • Inform Companies House. <p>Eg Directors are relieved of their duties (1) and control is passed to the appointed liquidator (1).</p> <p>Eg Firm's assets are sold (1) in order to raise money to pay off the company's debts (1).</p> | AO1 4 AO2 4 | 8 | <p>Acceptable annotation = ✓</p> <p>NB the question relates to compulsory liquidation. Do not award the voluntary route.</p> <p>The answer must relate to compulsory liquidation rather than voluntary liquidation, receivership or administration.</p> <p>No attempt is made to save the firm.</p> <p>Must be steps, i.e. actions not statements. The steps do not have to be in order.</p> <p>No specific context required.</p> <p>Do not award 'administrator' or 'receiver'.</p> <p>Do not award 'stops trading'.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|---|-------|------|---|
| 2 (a) | <p>State three legal provisions of the Partnership Act.</p> <p><i>One mark for each correct identification, up to a maximum of three identifications.</i></p> <p>No context required.</p> <p>Responses:</p> <ul style="list-style-type: none"> • All profits or losses to be shared equally • No capital withdrawal allowed • If a partner leaves or dies, the partnership must be dissolved • No partner can be paid a salary • Sick pay cannot be paid • All partners are jointly and severally liable for the debts of the partnership • All partners are allowed a say in the running of the business • Each partner is an agent of the firm making decisions on behalf of all other partners • No interest is payable on capital • Partners can be indemnified for expenses. <p>Eg Partners must get an equal share of the profit (1).</p> <p>Eg If Elspeth or Janette is sick they cannot receive sick pay (1).</p> <p>Eg No partner can receive a salary (1).</p> | AO1 3 | 3 | <p>Acceptable annotation = ✓</p> <p>Must be provisions.</p> <p>Do not accept "2 -20 members" as this is a provision of the Companies Act.</p> <p>Do not accept 'Deed of Partnership'.</p> <p>Do not accept 'unlimited liability'.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|--|----------------------------------|------|--|
| 2 (b) | <p>Evaluate the issues Elspeth and Janette are likely to face from having to operate their sandwich business as a partnership rather than as a limited company.</p> <p>Level 1 – (1 - 2 marks) Candidate shows knowledge of limited companies/partnerships or states the advantage(s) and/or disadvantage(s).</p> <p>Level 2 – (3 - 5 marks) Candidate describes the advantage(s) and/or disadvantage(s) of operating as a limited company/partnership.</p> <p>Level 3 – (6 - 9 marks) Candidate analyses the disadvantage(s) and/or advantage(s) to Elspeth and Janette of operating as a partnership/limited company.</p> <p>Level 4 – (10 - 14 marks) Candidate evaluates the issues Elspeth and Janette will face from having to operate as a partnership rather than as a limited company.</p> <p>Issues include: Limited Company: Limited liability Separate legal entity Weaker control Financial institutions more willing to lend Greater access to capital via shareholders Pay dividends Corporation Tax Many legal requirements Must publish accounts Governed by Companies Acts</p> | AO1 2 AO2 3 AO3 4 AO4 5 | 14 | <p>Required annotation = L1, L2, L3, L4.</p> <p>L1 Statements about limited companies/partnerships or advantages/disadvantages. Eg A partnership will have unlimited liability.</p> <p>L2 Benefits/drawbacks/ differences described. Eg This means that in the event of financial difficulty the sisters could lose their personal possessions.</p> <p>L3 Advantages and disadvantages analysed. Eg ... This may mean that the sisters do not pursue rapid growth policies as they would if they were a limited company because of the increased risk.</p> <p>To award L4 a candidate must give a comparative analysis of the disadvantage(s) and/or advantage(s) in order to make a fully supported judgement as to the magnitude (or otherwise) of the problem, the relative importance of the component issues, or the short-run/long-run implications.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|---|----|------|---------------------|
| | <p>Partnership: Unlimited liability Jointly and severally liable Tight control Difficulty obtaining finance from banks Capital sourced from partners' savings Share profits with partners Income Tax No start-up requirements documentation wise No published accounts Governed by Partnership Act</p> <p>Eg Partnerships have unlimited liability (L1). Trading as a partnership means Elspeth and Janette could lose their personal assets if the business got into financial difficulty, but if they were a company they could only lose the value of their investment (L2). As they are forced to trade as a partnership the risks are much higher, this may make the partners cautious when making business decisions (L3). They may turn down opportunities which in fact would have been very successful, thus stunting the business' growth (L3). Given their apparent lack of market research, this caution may actually be no bad thing and may stop the partners from making a very large and expensive mistake in the long run (L4).</p> <p>Eg A company is seen as a separate entity in the eyes of the law (L1). Because Elspeth and Janette are forced to operate as a partnership this is not the case for them, <i>Lightening Lunches</i> and the partners are seen as one and the same (L2). If a customer wishes to sue the sandwich business it will be Elspeth and Janette who are sued (L3). However this is not the greatest problem of not being incorporated.</p> | | | |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|---|----|------|---------------------|
| | By far the biggest problem is unlimited liability which means if the business goes wrong, as Elspeth's business did last time, they could end up losing everything including their family homes (L4) . As soon as the five year restriction is over Elspeth and Janette should consider changing the legal status of the business to a private limited company to safeguard both themselves and their families (L4) . | | | |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|--|-------|------|---|
| 2 (c) | <p>Elspeth and Janette bought the delivery van on credit. State two provisions of the Consumer Credit Act.</p> <p><i>One mark for each correct identification to a maximum of two identifications.</i></p> <p>Responses:</p> <ul style="list-style-type: none"> • Providers of credit must be licensed. • Advertisements must show the true cost. • APR must be stated. • All terms must be stated clearly in the agreement. • To be signed by both parties only when all details completed. • Minimum age for credit is 18 year. • Debtor must be given a written copy of the agreement. <p>Eg The interest rate charged must be stated.</p> <p>Eg A written copy of the credit agreement must be given to <i>Lightening Lunches</i>.</p> | AO1 2 | 2 | <p>Acceptable annotation = ✓</p> <p>No context required.</p> <p>Do not award £25000 limit as this is out-of-date.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|--|----------------|------|--|
| 2 (d) | <p><i>Lightening Lunches</i> has a contract with Origin Ltd for the rental of the catering unit.</p> <p>Outline four ways in which the contract between <i>Lightening Lunches</i> and Origin Ltd could be terminated.</p> <p><i>One mark for each correct identification up to a maximum of four identifications, plus up to one further mark for each of four developments.</i></p> <p>Termination of contract by:</p> <ul style="list-style-type: none"> • Mutual agreement • Event that frustrates performance • Breach of contract • Discharge by performance. <p>Eg The contract could be terminated by breach (1) if <i>Lightening Lunches</i> did not pay the rent when due (1).</p> <p>Eg Through the passage of time (1) the contract has reached the end of its 3 year term (1).</p> <p>Eg The contract can be terminated by mutual agreement (1). Origin Ltd and <i>Lightening Lunches</i> both decide that they would prefer the contract for the rental of the catering unit to be ended (1).</p> <p>Eg An event that frustrates the contract would terminate the contract (1), such as the liquidation of Origin Ltd (1).</p> | AO1 4 AO2 4 | 8 | <p>Acceptable annotation = ✓</p> <p>1 mark for method. 1 mark for example.</p> <p>Example must be specific to the contract between Origin Ltd and <i>Lightening Lunches</i> for the rental of the catering unit.</p> <p>Candidates do not need to use the actual legal terms eg: Accept “both sides agree” for “mutual agreement”. Accept “impossible to complete the contract” for “frustration”. Accept “party failing to meet conditions of contract” for “breach”. Accept “by completing what they had to do” for “discharge by performance”. Also accept “passage of time” for “discharge by performance” as this contract is time limited.</p> <p>Example mark can be awarded even if method is not stated. However, watch out for repetition – eg if marks are awarded for breach by one party, do not allow extra marks for a breach example by the other party as this could lead to 4 marks awarded for breach – maximum award for each method of termination is 2.</p> |

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|-----------|--|----------------|------|--|
| 3 (a)(i) | <p>Describe how common law is created.</p> <p><i>Up to two marks.</i></p> <p>Common law is created by judges in court cases where, at the time of the case, no legislation to cover the case was in force. Common law evolves over a period of time but is always based on the principle of fairness and equity. Judicial precedent then becomes binding in lower courts for future similar cases.</p> <p>Eg Common law is created by judges (1) and is built up over a period of time (1).</p> <p>Eg Legal principles are laid down by judges (1) where no specific legislation exists (1).</p> | AO1 2 | 2 | <p>Acceptable annotation = ✓</p> <p>No context required.</p> <p>Do not accept examples.</p> |
| 3 (a)(ii) | <p>Explain two common law duties <i>Lightening Lunches</i> has as an employer.</p> <p><i>One mark for each common law duty correctly identified up to a maximum of two identifications, plus up to one further mark for each of two explanations.</i></p> <p>Responses include:</p> <ul style="list-style-type: none"> • Pay employees on time • Provide safe working conditions • Duty of care • Not undermine trust and confidence. <p>Eg Employers must provide a safe working environment for their staff (1). If an employee alerts them to a faulty, potentially dangerous machine, the employer must take action to minimise the risk (1).</p> <p>Eg <i>Lightening Lunches</i> must pay its employees (1) for the work that they have done (1).</p> | AO1 2 AO2 2 | 4 | <p>Acceptable annotation = ✓</p> <p>Must be common law not statute.</p> <p>Development marks can be awarded for explanation or context.</p> <p>Accept examples if used to exemplify.</p> <p>Award 'pay employees' as this is common law but do NOT accept 'pay employees according to contract' as this is <u>contract law</u>.</p> <p>'Employers have to pay employees their wages as agreed on contract' (0)</p> <p>'pay employees' (1).</p> <p>'Pay them the right amount as stated in contract' (0).</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|------------|--|----------------|------|--|
| 3 (a)(iii) | <p>Explain two common law duties the kitchen staff have as employees of <i>Lightening Lunches</i>.</p> <p><i>One mark for each common law duty correctly identified up to a maximum of two identifications, plus up to one further mark for each of two explanations.</i></p> <p>Responses include:</p> <ul style="list-style-type: none"> • Carry out their work with reasonable skill and care • Obey reasonable orders • Act in good faith. <p>Eg Employees should obey all reasonable instructions from their employers (1) and not ignore any safety training given (1).</p> <p>Eg Employees of <i>Lightening Lunches</i> should act with integrity towards the business (1) and should not tell its secrets to the competition (1).</p> | AO1 2 AO2 2 | 4 | <p>Acceptable annotation = ✓</p> <p>Development marks can be awarded for explanation or context.</p> <p>Accept examples if used to exemplify.</p> <p>Do not award 'safe'.</p> <p>'Obey orders' is not acceptable, must be 'obey <u>reasonable</u> orders'.</p> <p>'Fulfil duties given in contract' is not acceptable as it is contract law.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|-----------|---|-------|------|--|
| 3 (b)(i) | <p>What is the maximum length of time the law gives an employer to issue a contract of employment to a newly appointed member of staff?</p> <p>Up to one mark.</p> <p>Within 8 weeks of starting work.</p> <p>Eg Within 56 days (1).</p> <p>Eg 2 months (1).</p> | AO1 1 | 1 | <p>Acceptable annotation = ✓</p> <p>Accept 2 months.</p> <p>Accept 56 - 62 days.</p> |
| 3 (b)(ii) | <p>Suggest three specific items Elspeth and Janette should include in their employees' contracts of employment.</p> <p><i>One mark for each appropriate item, to a maximum of three.</i></p> <p>Responses include:</p> <ul style="list-style-type: none"> • Names of parties • Duties of employee • Date job commenced • Disciplinary/grievance procedure • Rate of pay • Hours • Holiday entitlement • Sick pay entitlement. <p>Eg Name of <i>Lightening Lunches</i> as employer (1).</p> <p>Eg Date the employee started working for <i>Lightening Lunches</i> (1).</p> <p>Eg The rate of pay, in this case, minimum wage (1).</p> | AO2 3 | 3 | <p>Acceptable annotation = ✓</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|--|----------------|------|--|
| 3 (c) | <p>Explain one way in which <i>Lightening Lunches</i> can avoid breaking the law relating to wrongful dismissal.</p> <p><i>One mark for a correct identification plus up to one further mark for explanation.</i></p> <p>Responses include:</p> <ul style="list-style-type: none"> • Instant dismissal only in cases of gross misconduct • Warnings to be given – first, second and final written • Statutory requirement for meeting to discuss the situation • Must follow contractual disciplinary procedure • Notice period or payment in lieu • Right of appeal. <p>Eg An employee can only be dismissed instantly if they have committed gross misconduct (1). The kitchen worker who is frequently late for work would need to be taken through the statutory warning procedure (1).</p> <p>Eg <i>Lightening Lunches</i> needs to offer a right of appeal to anyone they are attempting to dismiss (1), this is so that the employee's side of the story can be heard (1).</p> <p>Eg An employee who commits gross misconduct can be instantly sacked (1), therefore if the van driver used the van to transport stolen goods, Elspeth and Janette could instantly dismiss him/her (1).</p> <p>Eg They must give a verbal warning (1) followed by a written warning (1).</p> <p>Eg If appropriate warnings are given (1) and the employee continues to behave inappropriately the business can legally terminate the employment (1).</p> | AO1 1 AO2 1 | 2 | <p>Acceptable annotation = ✓</p> <p>Do not award answers relating to unfair dismissal.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|---|----------------------------------|------|--|
| 3 (d) | <p>Other than the impact of the law on wrongful dismissal, evaluate the likely effects of employment protection legislation on <i>Lightening Lunches</i> now that staff have been employed.</p> <p>NB This question is assessed for QWC.</p> <p>Level 1 – (1 - 2 marks) Candidate demonstrates knowledge of employment protection legislation in theoretical terms.</p> <p>Level 2 – (3 - 5 marks) Candidate describes the likely impact(s) of employment protection legislation on <i>Lightening Lunches</i>.</p> <p>Level 3 – (6 - 9 marks) Candidate analyses the likely impact(s) of employment protection legislation on <i>Lightening Lunches</i> now that staff have been employed.</p> <p>Level 4 – (10 - 14 marks) Candidate evaluates the likely impact(s) of employment protection legislation on <i>Lightening Lunches</i> now that staff have been employed.</p> <p>May refer to:</p> <ul style="list-style-type: none"> • Common law • Disability Discrimination Act • Race Relations Act • Sex Discrimination Act • Equal Pay Act • The Employment Equality (Age) Regulations • Employment Rights Act • Employment Relations Act • Minimum Wage Act | AO1 2 AO2 3 AO3 4 AO4 5 | 14 | <p>Required annotation = L1, L2, L3, L4.</p> <p>Do not accept references to health and safety or consumer protection legislation.</p> <p>Do not award wrongful dismissal as it is excluded by the question.</p> <p>L1 Statements about employment protection legislation with no context. Eg The working time regulations set out rules that employers must obey.</p> <p>L2 Employment protection legislation applied to <i>Lightening Lunches</i>. Eg <i>Lightening Lunches</i> must ensure that they give their staff regular breaks.</p> <p>L3 Analysis of the effect of employment protection legislation on <i>Lightening Lunches</i> Eg ... Giving staff regular breaks will mean <i>Lightening Lunches</i> has to pay the staff even when they are not producing packed lunches.</p> <p>L4 Evaluation of the effect of employment protection legislation on <i>Lightening Lunches</i>. Look out for a decision as to the overall effects of employment protection legislation, a judgement as to the greatest benefits/drawbacks, short-run versus long-run implications and counter-arguments.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|--|----|------|---------------------|
| | <ul style="list-style-type: none"> • Working Time Regulations. <p>Issues include:</p> <ul style="list-style-type: none"> • Equal opportunities • Discrimination • Contracts of employment • Common law duties • Dismissal – fair/unfair, constructive • Minimum wage • Entitlement to breaks/working time. <p>Eg All businesses must abide by Sex Discrimination Act (L1). <i>Lightening Lunches</i> cannot state that a job, say in the kitchen, is only available to women (L2), if they did this they would be breaking the law and face prosecution (L3). Because they are new employers it will take them a lot of time and effort to begin with to set up the appropriate procedures and policies to ensure that the legislation is followed. However in the long run the effect should be less disruptive as the policies will already be in place (L4).</p> <p>Eg New employers need to know about employment legislation (L1). At least one of the partners at <i>Lightening Lunches</i> may have to attend a training course (L2) and this will cost both time and money (L3). Time and money they cannot really afford when going through a rapid business expansion (L3). Nevertheless they have no choice and the business should benefit greatly from such knowledge in the long term. Not only will they avoid getting themselves into legal difficulty, but they will secure for themselves a more contented workforce (L4), hopefully one that repays itself in terms of goodwill (L4).</p> | | | |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|---|----------------|------|---|
| 4 (a) | <p>Explain three ways in which the Health and Safety at Work Act may impact on <i>Lightening Lunches</i>.</p> <p>One mark for each correct identification up to a maximum of three identifications, plus up to one further mark for explaining each of three impacts.</p> <p>Issues include:</p> <ul style="list-style-type: none"> • Provide a safe plant • Safe use, handling, storage and transportation of items • Regular safety inspections • Keeping an accident book • Safety signs • Risk assessments • Fire procedures • Provision of first aid kits • Trained first aiders. <p>Impacts include:</p> <ul style="list-style-type: none"> • Time involved in implementation • Cost involved in implementation • Threat of court action • Remedies for breach • Potential business closure for non-compliance • Improved reputation • Fewer accidents • Higher staff morale. <p>Eg Fire exits must be kept clear at all times (1) reducing the space available for kitchen equipment (1).</p> <p>Eg Complying with the legislation should lead to a safe working environment (1), minimising the number of accidents experienced at <i>Lightening Lunches</i> (1).</p> | AO1 3 AO2 3 | 6 | <p>Acceptable annotation = ✓</p> <p>1 mark for impact. 1 mark for consequence or reason.</p> <p>Looking for practical impacts/actions/effects.</p> <p>Impacts can be positive as well as negative.</p> <p>Accept examples if used to exemplify.</p> |

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| 4 (b) | <p>Explain how the law relating to vicarious liability would make <i>Lightening Lunches</i> liable for the damage caused to the hospital's property in Incident One.</p> <p>Vicarious liability makes an employer responsible for an employee's actions whilst at work carrying out their duties. The employer is liable for any torts the employee may commit during the course of their employment but not when on a frolic of their own.</p> <p>Level 1 (1 - 2 marks) Candidate shows knowledge of the principle of vicarious liability but with no application to Incident One.</p> <p>Level 2 (3 - 4 marks) Candidate explains how the principle of vicarious liability would make <i>Lightening Lunches</i> liable for the damage caused to hospital property in Incident One.</p> <p>Eg Vicarious liability states that an employer is responsible for an employee's actions (L1) but only during the course of their employment (L1). Sanjeera crashed the van and damaged hospital property whilst doing her job delivering sandwiches (L2) therefore <i>Lightening Lunches</i> is clearly liable for any potential damages from Sanjeera's negligence (L2).</p> <p>Eg Vicarious liability is when an employer is responsible for the actions of an employee (L1) during working hours (L1) when not on a frolic of their own (L1).</p> <p>Eg In this case Sanjeera was carrying out her duty of delivering sandwiches when the accident occurred (L2). As Sanjeera is clearly an employee, <i>Lightening Lunches</i> will be held legally responsible for the damage to the hospital property (L2).</p> | AO1 2 AO2 2 | 4 | <p>Required annotation = L1 and L2.</p> <p>No matter how accurate/detailed a candidate's explanation of vicarious liability is, if it is not applied to Incident One it must be awarded L1 and a maximum of 2 marks.</p> <p>A candidate who has given a simple, but accurate explanation applied to Incident One must be awarded L2 and a minimum of 3 marks.</p> <p>Do not accept 'lack of training'. Do not accept 'because it was <i>Lightening Lunches' van</i>'.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
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| 4 (c) | <p>Connor injured himself at work. Explain two reasons why contributory negligence may apply in Incident Two.</p> <p><i>One mark for each correctly identified reason up to a maximum of two reasons, plus up to one further mark for each of two explanations.</i></p> <p>Contributory negligence is when a person has an accident in the workplace and in some way contributes to the cause or outcome. Their actions may have caused the accident or made the accident more serious.</p> <p>Reasons include:</p> <ul style="list-style-type: none"> • Competing between themselves • Ignoring training • Removing guard • Operating at incorrect speed • Ignoring warning signs • Operating with wet hands. <p>Eg Connor operated the slicer at a much higher speed than normal (1) making his injury more serious than it otherwise would have been (1).</p> <p>Eg Connor removed the guard (1) his actions allowed his finger to be able to slip under the blade (1).</p> <p>Eg Ali and Connor were having a competition between themselves (1) Connor was not therefore concentrating on following safe procedures but rather on winning the race (1).</p> | AO1 2 AO2 2 | 4 | <p>Acceptable annotation = ✓</p> <p>Answer must be related to Connor's actions.</p> <p>Must relate to Connor being negligent rather than <i>Lightening Lunches</i> being negligent.</p> |

| Question | Expected Answers | AO | Mark | Additional Guidance |
|----------|---|----------------------------------|------|--|
| 4 (d) | <p>Evaluate the extent to which Elspeth and Janette ought to be concerned about the recent increase in health and safety related incidents at <i>Lightening Lunches</i>.</p> <p>Level 1 (1 - 2 marks) Candidate demonstrates knowledge of health and safety issues with no reference to the case.</p> <p>Level 2 (3 - 5 marks) Candidate outlines reasons for concern.</p> <p>Level 3 (6 - 9 marks) Candidate analyses reasons for concern at <i>Lightening Lunches</i>.</p> <p>Level 4 (10 - 14 marks) Candidate evaluates the extent to which Elspeth and Janette ought to be concerned about the recent increase in health and safety incidents at <i>Lightening Lunches</i>.</p> <p>Issues include:</p> <ul style="list-style-type: none"> • Effect on reputation • Bad publicity • Recruitment problem • Falling market share • Effects on sales/profits • Training needs • Staff obedience • Increasing trend? • Too busy? • Increased number of accidents – trend? Blip? • Cost of H&S provision • Cost of indemnification • Time spent on inspection and training • Avoidance of court action | AO1 2 AO2 3 AO3 4 AO4 5 | 14 | <p>Required annotation = L1, L2, L3, L4.</p> <p>Award L1 to a candidate who makes general statements about H&S issues or states principles with no reference to <i>Lightening Lunches</i>. Eg The HASWA says that employers must provide a safe working environment.</p> <p>Award L2 to a candidate who mentions actions that a business should/should not take or makes statements about legal concepts in context. Eg <i>Lightening Lunches</i> did not cause Sanjeera to crash the van.</p> <p>Award L3 to a candidate who analyses the current H&S position of <i>Lightening Lunches</i>. Eg However just because they did not cause the crash does not mean that the partners have nothing to worry about. Vicarious liability will make <i>Lightening Lunches</i> liable for the damage caused.</p> <p>Award L4 to a candidate, who following on from their analysis, judges the extent to which Elspeth and Janette ought to be concerned.</p> |

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| | <ul style="list-style-type: none"> • Potential compensation claims • Avoidance of legal fees • Increased sicken levels • Fall in productivity • Unwanted HSE attention • Loss of personal possessions of partners • Potential bankruptcy of partners. <p>Eg Businesses aim to minimise the chances of accidents happening (L1). The increased number of accidents may just be a blip or may be a sign that the business has taken on too much (L2). Either way the partners ought to be concerned as all accidents have the potential to cost the business money whether in lost orders, employees off sick or repair bills to vehicles and machines (L3). All of these will have a negative impact on cash flow, and since they are trading as a partnership with unlimited liability they ought to be very concerned (L4). Elspeth and Janette risk losing their homes if a very serious accident were to occur so it would be in their interest to seek advice from a health and safety consultant possibly Dave, as he now works as a health and safety officer and may provide his services free of charge. The knowledge gained from this may reduce the number, or at least the severity, of future incidents and stop the potential ruin of not only the business but the partners' personal wealth. (L4).</p> <p>If a business breaks H&S legislation it may face a fine or be closed down (L1). <i>Lightening Lunches</i> on the face of it appears to have done all that it can in the kitchen – providing guards for the machines, H&S training and appropriate warning signs (L2). However it is not simply enough to supply the equipment and training, Elspeth and Janette need to control the way their staff work (L3). Connor most definitely contributed to his own injury but it is still the common law responsibility of an employer to ensure the safety of their staff (L3). If something similar happens again and Elspeth and Janette have taken no action to manage their staff they could face a court case for negligence and have to pay heavy compensation (L4).</p> | | | <p>Eg However <i>Lightening Lunches</i> should be well covered by insurance for this type of incident and if this is the extent of their H&S problems they should not be overly concerned.</p> <p>NB To award Level 4 the candidate must have produced some analysis (L3) and the evaluative judgement they make must match this analysis.</p> |

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| | This should be of great concern to them because even though they may be able to make the payout via their employers' liability insurance, it will cause bad publicity and affect the reputation of the business (L4) . | | | |

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