Candidates should answer four questions, including at least one of those marked with an asterisk, except for candidates for the Diploma in Legal Studies, who should answer three questions, including at least one of those marked with an asterisk.
1. ‘The capital maintenance rules are wholly unsatisfactory. The sooner UK company law can be rid of them the better.’

   Discuss.

2. ‘The unfair prejudice petition should be available only where wrongs have been done directly to the minority shareholder, not where the wrong in question is done to the company itself, and therefore the wrong to the shareholder is only indirect.’

   Discuss.

3. How far can directors take account of the interests of non-shareholder stakeholders when determining how to run a solvent company? How far should they be able to do so?

4. Is it misleading to describe a company’s constitution as binding ‘the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions’? What are the advantages and disadvantages of the contractual analogy in the Companies Act 2006, s. 33?

5. ‘Limited liability invites manipulation by directors and shareholders, to the detriment of creditors, and should not be available as a matter of course.’

   If this claim is correct, what alternative mechanisms are available for the protection of creditors?

6. ‘[A] member has no right to sue directly in respect of a breach of duty owed to the company or in respect of a tort committed against the company. Such claims can only be brought by the company itself or by a member in a derivative action under an exception to the rule in Foss v. Harbottle (1843) … [W]here there is an independent duty owed to [an individual] and a breach of that duty occurs, the resulting loss may be recovered by [that individual]. The fact that the loss may also be suffered by the company does not mean that it is not also a personal loss to the individual. Indeed, the diminution in the value of [an individual’s] shares in the company is by definition a personal loss and not a corporate loss’ (THOMAS J., Christensen v. Scott (1996)).

   Discuss.

7. To what extent does English company law confer protection upon non-controlling shareholders as opposed to leaving it to such shareholders to contract for the protection they wish to have?

8. Why do potential conflicts between directors and their companies need to be regulated? Does the current law regulate this issue appropriately?
Aloysius, Bertram, Cressida, and Delilah own respectively 10%, 45%, 10%, and 35% of the shares in Troilus Ltd, which has provided interior design services to the more discerning end of the market since 2015. Each member is also an executive director. Their directorship contracts provide that ‘in the event of a resolution to remove any director, that director’s shares will carry ten times the usual number of votes’. Bertram and Cressida are siblings; Aloysius and Cressida have been romantically involved.

In early 2016, the four owner-operators decided that they wished to open a shop to sell ‘gorgeous things’ to the wider public. To this end, they incorporated Priam Ltd, a wholly-owned subsidiary of Troilus Ltd. Priam Ltd purchased premises for the shop and all the stock necessary to operate the business, in particular a pair of diamond-encrusted candelabra. Cressida was appointed the sole director of Priam Ltd and left in charge of running the shop.

The new business was a success, but Cressida, believing that her home contents insurance covered Priam Ltd’s stock, only insured the shop premises. In early May 2016, the shop was gutted by fire with the only salvageable items being the candelabra. Having retrieved these, Cressida decided that she might as well keep them for herself, since nobody would buy fire-damaged stock. Exhausted by recent events, however, she fell asleep on the tube ride home and her bag (containing the candelabra) was stolen.

Devastated at the loss of their flagship shop, Aloysius blames Cressida (who broke off their relationship the day before the fire) for the whole situation. Aloysius called a general meeting of Troilus Ltd for mid-May 2016, at which he proposed that Cressida be removed from the board. Aloysius, Bertram and Delilah voted in favour of the resolution, but Cressida objected. Aloysius also called a meeting of Troilus Ltd’s board, at which he proposed that both Troilus Ltd and Priam Ltd commence proceedings against Cressida personally to recoup some of their losses. Upset at being jilted, only Aloysius voted in favour of that second resolution.

Cressida refuses to accept any responsibility for her actions or to reimburse Priam Ltd for its losses.

Advise Aloysius.
Argent Ltd has four equal shareholders, Denise, Elaine, Fiona and Gary. Each is also a director. The company’s capital is made up of 1,000 shares, each with a one-pound par value. Argent Ltd’s Articles of Association provide inter alia:

‘(1) Argent Ltd’s sole line of business is the buying and selling of precious metals;

(2) Argent Ltd can borrow funds and grant security over its assets;

(3) Contractual or financial commitments below £20,000 may be agreed by Argent Ltd’s board, but commitments above that threshold must be approved by the general meeting;

(4) The quorum for any company meeting is three;

(5) The company shall have a corporate seal, which the directors alone have authority to use.’

As part of its plans to diversify Argent Ltd’s business, Denise, Elaine and Fiona resolve at the February 2014 board meeting to enter into a loan agreement with Bidwell Bank for £100,000. Their intention is to use the funds to build a pottery workshop and a kiln for firing pots. A letter is put before the board meeting indicating that Gary also happens to support the resolution.

As conditions precedent to advancing the funds, however, Bidwell Bank insists that Argent capitalize its £8,000 of distributable profits and the £2,000 in its share premium account by issuing 10 bonus shares for every one share held by the existing shareholders and also insists that it be granted security over Argent Ltd’s assets.

With a view to satisfying these conditions precedent, Denise and Elaine resolve at the March 2014 board meeting to issue the bonus shares as requested by the bank and to grant a floating charge over the company’s entire undertaking. A copy of the resolutions is sent to Bidwell Bank, which in return sends out a copy of the loan agreement and security documentation to be executed by Argent Ltd. As all the directors are away on Easter vacation when the documents are received, Helen, Argent Ltd’s company secretary, executes each document by signing her own name and forging Denise’s signature. Helen also issues each shareholder with a certificate, to which she attaches the company’s seal, representing their new bonus shares.

Advise Bidwell Bank as to the enforceability of the loan documentation and as to whether the loan agreement’s conditions precedent have been satisfied.
11*. Greengrow plc is a mail-order company specializing in gardening equipment. Elaine, Fredrik and John are all directors. The Articles of Association provide inter alia: ‘Upon any board resolution to issue further shares or cancel existing shares, any director holding “C” shares will have triple votes as director.’ The company has an issued share capital of 1,000 shares, each with a par-value of one pound. Greengrow plc’s capital is divided into the following classes: Elaine holds 100 ‘A’ shares with a 10% preferential dividend; Fredrik holds 300 ‘B’ shares with a preferential right to any capital repayments, together with a right to participate in any surplus capital, but no voting rights; and John holds 600 ‘C’ ordinary shares. Each ‘A’ and ‘C’ share carries one vote in a general meeting. Each share was issued at its par value.

John causes Greengrow plc to pass a board resolution issuing 400 ‘D’ shares to Luke: each ‘D’ share has a one-pound par value, carries one vote per share in the general meeting and has a 5% cumulative preferential dividend payable ahead of the ‘A’ shares. Although the ‘D’ shares have a market value of five pounds per share, Greengrow issues each share to Luke for £1.50. In full payment for those shares, Luke transfers his favourite wheelbarrow to Greengrow and undertakes to provide his expert accounting services to the company for the following financial year.

Following the issue of the new ‘D’ shares, John wishes to use the extra funds available to reduce Greengrow plc’s capital by paying off the ‘B’ shares in their entirety followed by the ‘A’ shares in their entirety.

Advise John.

How, if at all, would your advice to John differ in EACH of the following INDEPENDENT scenarios:

(a) Before resolving to issue the ‘D’ shares, John was able to secure the passing of a resolution re-registering Greengrow plc as a private company;

AND

(b) Fredrik loaned £10,000 to Greengrow plc the previous year and the loan is yet to be repaid;

AND

(c) Greengrow plc’s Articles of Association provide: ‘The elimination of any particular class of shares upon a reduction of capital is deemed to be a variation of the rights attached to that class of shares.'
Mike, Simon and Emma are directors of Oxbikes Ltd, which owns and runs a number of bicycle shops in Oxford. They each own 30 per cent of the shares of Oxbikes Ltd, with the remainder held by Robert. The company has been through a period of expansion, acquiring a number of new premises in Oxford in the last two years, but this has put a strain on the finances of the company and at a board meeting it was agreed that they should not contemplate any further expansion until the company’s finances have improved.

At Mike’s birthday party, his friend, Charles, who works for the city council, mentioned that a shop in a prime location in central Oxford was coming available as he thought it would be of interest to Oxbikes Ltd. Mike decided to pursue this opportunity himself, given Oxbikes Ltd’s financial position, and set up his own company, BikesGalore Ltd, to acquire the lease of the premises and open a bike shop on the site. Mike mentioned to Emma and Simon in passing one day that these premises had become available and Simon replied ‘What a shame we can’t open a shop on the site – it is a great opportunity for someone.’ Mike goes ahead with his plans and the shop has been a huge success, with considerable profits for BikesGalore Ltd.

Simon has been approached by Cyclecentral Ltd, a national chain of bike shops, to act as a consultant for them. They do not currently have any bicycle shops in Oxford and are keen to move into the Oxford bicycle market. Simon thinks that Oxbikes Ltd’s financial difficulties are very serious and that the company is likely to be wound up in the near future and so takes on this role.

Emma has been offered a post as director of Joe’s Repairs Ltd, a company specialising in repairing bicycles in Oxford. Emma does not see any conflict between this role and her position as director of Oxbikes Ltd, since Oxbikes Ltd is only engaged in selling bicycles. Nevertheless, she sends Mike and Simon an email explaining that she intends to take on this post. She receives no reply, which she assumes means that they have no objection to her plans.

Advise Robert, who has recently heard about these projects