



National University of Ireland, Galway
Ollscoil na hÉireann, Gaillimh

FACULTY OF LAW

SEMESTER 1 EXAMINATIONS 2002/2003

**PLEASE MAKE SURE THAT YOU HAVE
RECEIVED THE CORRECT EXAMINATION
PAPER.**

MODULE CODE: LW377

MODULE TITLE: COMPANY LAW I

LECTURER: PROFESSOR LIAM O'MALLEY

COURSE GROUPS: BACHELOR OF CIVIL LAW – SECOND
YEAR
BACHELOR OF CORPORATE LAW –
SECOND YEAR
BACHELOR OF COMMERCE - THIRD
YEAR
LL.B – ALL YEARS
ERASMUS/OCCASIONAL STUDENTS

EXAMINERS: PROF. LIAM O'MALLEY
PROF. D PRENTICE

TIME ALLOWED: TWO HOURS
ERASMUS STUDENTS HAVE 2½ HOURS

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COMPANY LAW I (LW377)

Professor D. Prentice
Professor L. O'Malley

Time Allowed: **2 hours.** (Erasmus Students **2½ hours.**)

Please answer any **THREE** questions.

All questions and part questions carry equal marks unless otherwise indicated.

1. When you consider the essential legal differences between a partnership and a private company limited by shares, it can be argued that these differences are of such significance that a competent lawyer would never recommend that partnership be used as a vehicle for the conduct of any commercial enterprise today. Discuss with reference to case and statute law as appropriate.

2. Answer either part (a) **OR** part (b):

(a) Although the articles of association can be altered by special resolution of the company, there are limits to the extent to which such alterations are valid. Discuss.

OR

(b) The memorandum and articles of association of a company are deemed by the Companies Act 1963 to constitute a contract. Examine the nature of this 'statutory' contract, and the extent and limits of its power to bind the parties to it.

3. (a) The main object of Success Ltd is the business of renting videos and DVDs, but the business has been unsuccessful and has been closed. The company, however, has subsidiary objects that include ones that authorise it to borrow money and to 'carry on any business which the directors believe to be profitable'. The directors have now taken out a loan of €500,000 from the Connacht Regional Bank plc to build a leisure complex in Galway. Discuss the legal implications.

(b) Assuming that the loan is in fact ultra vires, advise the bank on its remedies if any, and advise the directors of Success Ltd as to any liability which would attach to them personally as directors.

PTO

4. Charles is a successful businessman who is a director and shareholder of a number of companies. He has read that directors' duties are now being more rigorously enforced and seeks your advice on the following:

- (a) Philip, a landowner, approached Developer Ltd with an offer to sell it some prime building land which he owned near Dublin. Charles is a member of the board of directors and joined with a majority of the board in rejecting the offer as not in line with the company's current business plan. A week later, Charles approached Philip and bought the land privately with a view to its development.
- (b) Charles is a director of both Alpha Ltd and Beta Ltd, two companies in the same line of business. Alpha Ltd's board has resolved to bid for the shares of Beta Ltd and suggest to Charles that he use his best endeavors to prevail on Beta Ltd's board to recommend the offer. He agrees to do so.
- (c) Charles is a shareholder and director of Indecline Ltd, a bottling company which is in financial difficulty. The board entered into two disastrous contracts last year, and the company's financial controller absconded with two million euro of its funds. Charles has been very busy and only attended three of the last seven board meetings.

Advise Charles.

5. Answer either part (a) OR part (b):

- (a) Examine the manner and extent to which an incorporated company is held liable for torts and crimes in our legal system.

OR

- (b) Discuss, citing all relevant case and statute law, the duties imposed on promoters who establish companies and examine their liabilities, if any, in respect of contracts entered into on behalf of the company prior to its incorporation.

6. 'The principle of majority rule is enshrined in company law, but a majority of members in a company may behave in a way which is damaging to the interests of a minority of members but is nevertheless within the majority's lawful powers. While recognising the majority's right to conduct the company's business in what they see as its best interests, the law gives some protection to the minority both under common law and by statute.' (Howard Linnane, "Oppression of members..." *Commercial Law Practitioner*, Jan. 1995 p3).
Discuss.

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