

**Ollscoil na hÉireann, Gallimh**  
**National University of Ireland, Galway**

**Semester II Examinations, 2002/2003**

<b>Exam Code(s)</b>	2BL1, 2BL2, 2CL1, 2CW1, 3BC1, 3BL1, 3BL2, 4BC3, 4BC4, 4BC5, 4BL2, 1EM1, 1OA1.
<b>Exams(s)</b>	2 <sup>nd</sup> 3 <sup>rd</sup> & 4 <sup>th</sup> LL.B. 2 <sup>nd</sup> Bachelor of Civil Law 2 <sup>nd</sup> Bachelor of Corporate Law 3 <sup>rd</sup> & 4 <sup>th</sup> Bachelor of Commerce Erasmus & Occasional Students
<b>Module Codes(s)</b>	LW378
<b>Module(s)</b>	Company law II
<b>Paper No.</b>	1
<b>Repeat Paper __ Special Paper</b>	
<b>External Examiner(s)</b>	Professor D. Prentice
<b>Internal Examiner(s)</b>	Professor Liam O'Malley
<b><u>Instructions</u></b>	Answer any <b>THREE</b> questions All questions and part questions carry equal marks unless otherwise indicated.
<b>Duration</b>	<b>TWO</b> Hours Erasmus student may have 2½ Hours
<b>No. of AnswerBooks</b>	6
<b><u>Requirements:</u></b>	
<b>Handout</b>	
<b>MCQ</b>	
<b>Statistical Tables</b>	
<b>Graph Paper</b>	
<b>Log Graph Paper</b>	
<b>Other Material</b>	Unannotated Companies Acts 1963-2001
<b>Department(s)</b>	LAW

1. Sally's father Andrew, together with her uncles Peter and James, formed a shipping company – West Coast Ferries Ltd – (the 'Company') in 1964, which has since been very successful. They were the only directors of the Company and were equal shareholders. Andrew died last December, and Sally inherited his shares. She applied to the Company to have the shares registered in her name, and after three months delay, she received a brief letter from the company secretary indicating that her application was considered by the board of directors and unanimously refused. The articles of association of the Company include a provision in the same form as model Regulation 3 of Part II of Table A, which provides: 'The directors may, in their absolute discretion, and without assigning any reason therefor, decline to register any transfer of any share, whether or not it is a fully paid share.'  
Advise Sally on the options open to her to challenge the directors' decision citing all relevant case and statute law in your answer, and explain what difference it would make to your advice, if any, if Sally (a) already held 3% of the Company's shares, and (b) had grounds to believe that her application was refused in order to prevent her raising objections to the inflated salaries and expenses paid to her uncles Peter and James.
2. Critically examine the legal duties and responsibilities of EITHER the auditor OR the receiver with particular reference to their duty of care and the persons to whom such duties are owed.
3. Answer **EITHER** part (a) **OR** part (b):
  - (a) Mrs. Lowe inherited 10,000 6% preference shares in Calico Ltd, a successful textile company, which has issued both ordinary and preference shares. The shares in both classes have a face value of €1 and 40,000 of each class were issued in total. From 1998 to 2002 no dividend was declared. In May 2003 the directors recommended a 6% dividend on the preference shares and a 12% dividend on the ordinary shares. The company is a very profitable one and the shareholders resolve to voluntarily liquidate it. It is estimated that there will be a surplus of about €80,000 after the capital has been repaid. When Mrs. Lowe enquired about her rights she was told:
    - (1) that she was not entitled to any dividend because none had been declared by the company in general meeting;
    - (2) that she had no cumulative rights to a preference dividend, and
    - (3) that she would not be entitled to participate in the surplus which would remain after repayment of capital. The articles and terms of issue make no reference to these matters.

Briefly explain what is meant by a 'preference share' and how it is different from other shares, and advise Mrs. Lowe as to her rights in her situation.

**OR**

(b) 'Running through the Companies Acts is a principle that a limited company must maintain its share capital intact.' Discuss.

PTO

4. Components Ltd is in the business of manufacturing electronic circuits for the computer industry. On 1 April 2002 it borrowed €500,000 from Alpha Bank Ltd on the security of a fixed charge over its present and future book debts. It was anticipated in the debenture that the book debts would be channelled by Components Ltd into a special bank account from which no withdrawals could be made without Alpha Bank Ltd's consent.

On 1 September 2002 Components Ltd received further finance from Beta Bank Ltd and on the same day granted a floating charge over its raw materials and stock-in-trade to Beta Bank Ltd as a security for the loan.

On 15 September 2002 Components Ltd received a one million euro consignment of microprocessors from Dotell plc subject to a retention of title clause reserving title in the microprocessors in Dotell plc until it had been paid in full. Half of the microprocessors had been used by Components Ltd by 30 September.

On 1 October 2002, there are rumours that Components Ltd is in financial difficulty. Beta Bank Ltd's solicitor realises that the floating charge (1 September 2002) in its favour has not been registered in the Companies Registration Office. Alpha Bank Ltd's solicitor is doubtful that the special bank account required in respect to its fixed charge (1 April 2002) was ever in fact opened.

Advise, with reference to case and statute law as appropriate,

- (a) Alpha Bank Ltd as to the likely validity of its fixed charge.
- (b) Beta Bank Ltd as to whether or not its floating charge is valid.
- (c) Dotell plc on the effectiveness of its retention of title clause.

5. Angela has been appointed liquidator of Insolvent Ltd ('the company') and consults you on a number of legal difficulties she has encountered. Advise her as regards the following, referring to legal authority to support your advice where appropriate:
- (a) Angela suspects that company property may have been removed prior to her arrival - she suspects that a director called Smith is the culprit, and that Macken, the accountant, knows about it, but neither will admit of any knowledge;
  - (b) One month before the liquidation commenced, Smith arranged for the company to discharge a debt of €150,000 to his brother-in-law who, he claims, was threatening to sue the company unless he was paid forthwith;
  - (c) Seven months prior to the commencement of the liquidation, a floating charge was given by the company to Local Bank plc in respect of all its indebtedness,
  - (d) Angela has reason to believe that in the preceding two years the business of Insolvent Ltd was run down in favour of an associated company, Boom Ltd, which is thriving. Smith (director) and Macken (accountant) have a substantial shareholding interest in Boom Ltd and,
  - (e) Angela has found that the company's books of account and accounting system generally is and has been in 'an appalling state' and that this has made her task exceptionally difficult.

PTO

6. Answer **EITHER** part (a) **OR** part (b):

(a) Critically examine the merits and deficiencies of the system of appointing an examiner to failing companies as adopted in Ireland by means of the Companies (Amendment) Act 1990 and amended by the Companies (amendment) (No 2) Act 1999.

**OR**

(b) Write a brief essay on one of the following topics:

- i. Company Law Compliance and Enforcement
- ii. The Law's Regulation of Accounting;
- iii. Directors' Duties on Company's Insolvency.

**END**