

GX 1664

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

**SEMESTER 1 Examinations, 2003/2004**

<b>Exam Code(s)</b>	2CW, 2CL, 34BC, 234LL.B, 1OA, 1EM.
<b>Exams(s)</b>	Second Bachelor of Civil Law Second Bachelor of Corporate Law Third & Fourth Bachelor of Commerce Second Third & Fourth LL.B. Erasmus & Occasional
<b>Module Codes(s)</b>	LW377
<b>Module(s)</b>	Company Law I
<b>Paper No.</b>	1
<b>External Examiner(s)</b>	Mr. D. Prentice
<b>Internal Examiner(s)</b>	Professor L. O'Malley
<b><u>Instructions</u></b>	Answer <b><u>THREE</u></b> questions All questions and part questions carry equal marks unless otherwise indicated.
<b><i>Duration</i></b>	<b><u>TWO</u></b> Hours
<b>No. of AnswerBooks</b>	
<b><u>Requirements:</u></b>	
<b><i>Handout</i></b>	
<b>MCQ</b>	
<b>Statistical Tables</b>	
<b>Graph Paper</b>	
<b>Log Graph Paper</b>	
<b>Other Material</b>	Companies Acts 1963-2001. Companies (Amendment) Act 1990 OR bastow Charleton's "Combined Companies Acts".
<b>Department(s)</b>	Law

PTO

1. When a company is formed by registration under the Companies Acts, there is strong judicial precedent to show that it is to be treated in law as a distinct legal person or entity. Examine the truth of this statement and discuss how, if at all, the consequences of treating the company as a legal entity confers substantial benefits on businessmen and women using the company for commercial purposes.
2. Answer either part (a) OR part (b):
  - (a) Discuss the legal obligations of promoters of companies to the companies they form and the enforceability of any pre-incorporation contracts they allegedly enter into with such companies.

OR

(b) As regards the Articles of Association of a company, Ross J in *Clark v Workman* [1920] 1 IR 107, said they 'constitute a contract between every shareholder and all the others, and between the company itself and all the shareholders. It is a contract of the most sacred character, and it is on the faith of it that each shareholder advances his money.' Examine the nature of this 'statutory' contract, the extent and limits of its power to bind the parties to it, and whether it precludes the company from binding the members to the company by other secondary contracts.

3. Examine the legal issues arising in the following circumstances and advise accordingly:
  - (a) Mr. Cassidy is managing director for life of Abacus Ltd. a private company. A disagreement has arisen between him and the other members of the board who intend to seek an alteration of the Articles so as to remove Cassidy as managing director. Advise Mr Cassidy as to whether such an alteration is possible, and on his rights, if any. What difference would it make to your advice if Mr. Cassidy had a six-year contract of employment with Abacus Ltd?
  - (b) Briefly describe the limits of a company's powers to validly alter its Articles of Association.

PTO

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

- (a) John is managing director of Microchip Ltd. His fellow directors become anxious about some of the recent contracts he has made on the company's behalf and they pass a resolution that he is not to borrow any sums in excess of €150,000 without the approval of the board of directors. John borrows €270,000 from the City Bank without informing the Board. When the company encounters financial difficulty, the bank demands repayment but the company disclaims liability on the grounds that John had no power to make the borrowing. It is also noted that the power to borrow money is not referred to in the objects clause of the company's Memorandum of Association. Discuss the legal issues involved. Will the bank be entitled to recover?

OR

- (b) Examine the extent to which, if at all, the uncertainty relating to ultra vires contracts has been resolved by section 8 of the Companies Act 1963 and Regulation 6 of the European Community (Companies) Regulations 1973?

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

- (a) Examine the power of the court to disqualify a person from acting as director or other officer under section 160 of the Companies Act 1990. To what extent, if at all, is the court entitled to take account of the gravity of the conduct of a director or officer in making such a disqualification order?

OR

- (b) Joe and Pat were shareholders and directors of Fast Service Ltd, a company providing engineering services. The company's best customer was Union Engineering Ltd, a customer introduced and 'managed' by Joe. Some time later Joe suffered a stroke and was incapacitated for a time. In the course of his recovery, Pat asked Joe to step down as director, and when he refused, Pat effectively excluded him from the management of the company and blocked his remuneration. Joe eventually resigned his directorship, and when he recovered he formed his own successful company doing sub-contract work for Union Engineering Ltd. Joe has now been sued by Fast Service Ltd seeking an account of profits on the grounds that Joe is in breach of his fiduciary duties to his former company and is in a conflict of interest position. Advise Joe

PTO

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

- (a) Examine, with reference to statute and case law as appropriate, the extent to which a company as a legal entity can be made liable for criminal offences.

**OR**

- (b) Discuss, with reference to statute and case law as appropriate, the extent to which minority shareholders can rely on section 205 of the Companies Act 1963 to protect them from exploitation at the hands of the majority. Is the section in need of reform?

**END**