

GX 1697

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

**Semester II Examinations, 2003/2004**

<b>Exam Code(s)</b>	3BA1, 4BA4
<b>Exams(s)</b>	3 <sup>rd</sup> & 4 <sup>th</sup> Arts
<b>Module Codes(s)</b>	LW378
<b>Module(s)</b>	Company Law II
<b>External Examiner(s)</b>	Mr. D. Prentice
<b>Internal Examiner(s)</b>	Ms. R. Hession
<b>Instructions</b>	Answer <b>THREE</b> questions. All questions and part questions carry equal marks unless otherwise indicated.
<b>Duration</b>	<b>TWO</b> Hours
<b>No. of AnswerBooks</b>	
<b>Requirements:</b>	
<i>Handout</i>	
<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

PTO

1. 1. Nicole is a director and 30% shareholder of a small private company, Hollywood Ltd. The other shareholders/directors are Tom and Penelope, who hold 45% and 25% respectively. Tom is also the managing director. Over the past few months, there have been a number of disagreements due to Tom's business decisions, and his failure to keep Nicole informed of them. In particular, Nicole is furious with Tom and Penelope's decision to amend the memorandum of association of the company to provide for an alteration to the objects clause. A company meeting has been called and notice given of a resolution to remove Nicole from the Board of Directors. Nicole believes she is being victimised; Tom and Penelope believe that they have a right as majority shareholders to remove Nicole from the board.

Advise Nicole on her legal position and rights, if any.

2. Examine the extent to which the law prohibits a company from purchasing its own shares?
3. Comfy Ltd is in the business of manufacturing furniture. On the 1 May 2003 it received a €150,000 debenture loan from ABC Bank plc which was secured by way of a fixed charge over its present and future book debts. It was agreed in the debenture that the book debts would be lodged by Comfy Ltd into a special bank account from which no withdrawals could be made without the Bank's consent.

On 1 October 2003 Comfy Ltd also borrowed €50,000 from XYZ Bank plc in return for which it gave XYZ Bank plc a floating charge over its raw materials and stock-in-trade by way of security for repayment of the loan.

On 10 October 2003 Comfy Ltd received a consignment of resin, valued at €10,000, from Treetops Ltd. The resin was subject to a retention of title clause reserving title in the resin to Treetops Ltd until it had been paid in full. On 15 October, one half of the resin had been used in the manufacturing of furniture by Comfy Ltd.

On 24 October 2003, Comfy Ltd's accountant realised that the floating charge in favour of XYZ Bank plc had not been registered in the Companies Registration Office and the special bank account mentioned in the ABC Bank plc's debenture was never opened.

Advise:

- (a) ABC Bank plc as to the validity of its fixed charge.
- (b) XYZ Bank plc as to the validity of its floating charge.
- (c) Treetops Ltd on the effectiveness of its retention of title clause.
4. Critically assess the merits and deficiencies of the examinership process.
5. Critically discuss the statutory measures which exist to swell the assets available for distribution of an insolvent company by a liquidator.
6. Write a brief essay on any ONE of the following:
  - (a) The Auditor's role and duties.
  - (b) The effect of the Competition Act 2002 on Takeover and Mergers in Ireland.

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