

Ollscoil na hÉireann, Gallimh
National University of Ireland, Galway

Semester II Examinations, 2003/2004

Exam Code(s)	2BL1, 2BL2, 2CL1, 2CW1, 3BC1, 3BL1, 3BL2, 4BC3, 4BC4, 4BC5, 4BL2, 1EM1, 1OA1.
Exams(s)	2 nd 3 rd & 4 th LL.B. 2 nd Bachelor of Civil Law 2 nd Bachelor of Corporate Law 3 rd & 4 th Bachelor of Commerce Erasmus & Occasional Students
Module Codes(s)	LW378
Module(s)	Company law II
Paper No.	1
Repeat Paper __ Special Paper	
External Examiner(s)	Professor D. Prentice
Internal Examiner(s)	Professor Liam O'Malley
Instructions	Answer any THREE questions All questions and part questions carry equal marks unless otherwise indicated.
Duration	TWO Hours
No. of AnswerBooks	
Requirements:	
Handout	
MCQ	
Statistical Tables	
Graph Paper	
Log Graph Paper	
Other Material	Unannotated Companies Acts 1963-2003
Department(s)	LAW

PTO

1. Answer EITHER part (A) OR part (B):

(A) 'Companies must maintain their capital intact and must adhere strictly to the rule in Trevor v Whitworth (1887).'

Discuss the accuracy of this statement with reference to relevant case and statute law.

OR

(B) Alpha Ltd (the 'company') is a profitable private limited liability company which wishes to expand its business. The proposed expansion includes the acquisition by purchase of the business of Beta Ltd, most of whose shares are owned by Mr. Smith. The board of directors of Alpha Ltd has resolved to raise extra capital by the issue and private placing of its shares. You are asked to advise the directors on the following transactions which are planned in connection with the share issue:

- (i) The directors propose to declare a large dividend, partly in the belief that some shareholders will use the dividend to purchase extra shares in Alpha Ltd;
- (ii) They propose to borrow €1.5 million from Easy Bank plc, to be secured by a fixed charge on company assets, in order to acquire Beta Ltd for cash. They are confident that Mr. Smith, who owns most of Beta Ltd's shares, will use some of the purchase money received by him to subscribe for the new shares in Alpha Ltd;
- (iii) They propose to make generous loans to employees to enable them to purchase shares as part of an employee share scheme, and to make additional loans available to 'worthy' employees who wish to invest additional monies in Alpha Ltd's shares;
- (iv) Malcolm, the managing director of Alpha Ltd, also wishes to invest in the shares, and the other board members agree that the company will lend him the necessary finance on current money market interest rates and conditions.

Advise the directors on whether these transactions can be legally implemented. Refer to relevant case and statute law, and to section 60 of the Companies Act 1963 in particular, to support your answer as appropriate.

2. Answer EITHER part (A) OR part (B):

(A) Discuss the legal implications of the following situations:

- (i) BigCity Bank claims it has a lien, by virtue of its articles, on those of its bank shares which are registered in Mr. Higgins's name because he has failed to repay a bank loan of €9,000. The bank had notice, however, that Mr. Higgins held the shares in trust for Mrs. Wilson but it claims that it is allowed to disregard Mrs. Wilson's equitable interest by virtue of section 123 of the Companies Act, 1963.
- (ii) Angelo is the company secretary of Effective Industries plc. He executes an instrument of transfer for 1,000 shares in the company (shares he does not own) in favour of his nephew Paulo. A properly signed and sealed share certificate is sent to Paulo who believes the shares are a legitimate gift to him. Paulo later sells the shares on the stock exchange to Nigel. The company discovers the fraud when the transfer is presented for registration. Discuss the legal position of the company, Paulo, and Nigel.

OR

PTO

(B) Ms. Jones is a qualified accountant who has been approached by City Bank plc to act for the bank as receiver in the case of Ironsides Ltd (the 'Company') which has defaulted on its secured debenture loan obligations to the bank. This will be the first receivership for which she will be totally responsible, and she asks for your advice on the following:

- (i) It is intended that she be appointed as both manager and receiver, and will be appointed as the agent of the company: she wishes to know what this manner of appointment means in regard to her legal powers and duties, and her obligations to the directors, if any.
- (ii) She understands that one of her main duties relates to the sale of the charged assets, and wishes to know to whom these duties are owed and what is their extent.

Advise Ms. Jones having regard to relevant case and statute law.

3. Answer **EITHER** part (A) **OR** part (B):

(A) E-Widgets Ltd (the 'Company') manufactures the 'I-Widge', a compact digital music and games device. On 1 April 2003 the company obtained a €600,000 bank loan facility from Industrial Bank plc secured by the grant of a fixed charge to the bank over the Company's present and future book-debts, and a floating charge over its raw materials and stock-in-trade. It was anticipated in the debenture that money received in payment of the book-debts would be channelled by the Company into a special bank account, and that no withdrawals could be made from the account without the bank's consent. The debenture contained a negative pledge clause in favour of the bank.

On 10 September 2003, the Company received a consignment of computer chips, valued at €500,000, from Inteli-Chips Ltd subject to a retention of title clause reserving title in the chips supplied in Inteli-Chips Ltd until it received full payment for them. On 15 September, half of the chips were used in the manufacture of a batch of 'I-Widges'.

By the 23 September, the Company was in serious financial difficulty and obtained an additional €200,000 loan from Local Bank Ltd secured by a fixed charge over the company's stock in trade.

The Company went into insolvent liquidation on 1 October before Local Bank Ltd had registered its charge, and it was then discovered that the special bank account mentioned in Industrial Bank plc's debenture was never in fact opened.

Advise Industrial Bank plc and Local Bank Ltd as to the validity and effectiveness of their respective charges.

OR

(B) Critically examine the role and duties of the company auditor in modern company law.

4. Answer **EITHER** part (A) **OR** part (B):

(A) Alan is managing director of Sports Kits Ltd, a company with a successful record in the business of manufacturing sports and out-door clothing. This once profitable company is now effectively insolvent and Alan suspects that the appointment of a receiver or liquidator is quite likely. He believes that the main business of the company is still profitable, and that its present difficulties are due to an ill-considered investment in merchandising endorsements from famous sporting figures, and an expensive, associated advertising campaign.

PTO

Alan consults you on the advisability of making an application to have an examiner appointed with a view to salvaging the company. He has heard that it is more difficult to have an examiner appointed following the changes introduced by Companies (Amendment) (No. 2) Act, 1999.

Advise Alan on the changes introduced by the Act, and in particular on what the court will require to be established before it will now grant an examinership petition. If a receiver has already been appointed to the company, will this debar the appointment of an examiner?

OR

(B) Describe the principal ways in which the law attempts to protect investors who subscribe for shares in public companies.

5. Answer, with reference to case and statute law as appropriate, **BOTH** parts (a) **AND** (b)

(a) Examine the necessary requirements that must be fulfilled in order to successfully petition for the winding up of a company by the court (a compulsory winding up) on the ground that the company is unable to pay its debts. Who may petition the court for such a winding up order?

(b) Trade Ltd bought used machinery from KOT plc for one million euro with a view to its resale in the U.S.A. Although a payment of €500,000 had been made, the machinery was detained by the customs authorities due to a dispute about distribution rights in America. KOT plc has now informed Trade Ltd that a winding up petition will be brought against it if the €500,000 balance still due on the machinery is not paid immediately. Trade Ltd inform you that KOT plc had agreed to waive the payment of the balance until the dispute about distribution rights had been settled and the machinery released. Advise Trade Ltd as to whether it can successfully oppose the winding up petition.

6. Answer **EITHER** part (A) **OR** part (B):

(A) Critically discuss the statutory measures which exist to swell the assets available for distribution of an insolvent company by a liquidator.

OR

(B) Write a brief essay on **ONE** of the following topics:

- i. 'Gone are the days when companies could be indifferent about the state of their accounts.'
- ii. 'The Companies (Auditing and Accounting) Act 2003 – A Pragmatic Response to the Problem of Corporate Governance'
- iii. The Director of Corporate Enforcement – too much, too late!
- iv. Directors' Duties when their Companies are Insolvent

END

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