

SUMMER EXAMINATIONS 1998/1999

LL.B. EXAMINATIONS - SECOND, THIRD & FOURTH YEARS
B.COMM. EXAMINATIONS - THIRD YEAR
BACHELOR OF CORPORATE LAW SECOND YEAR
OCCASIONAL STUDENTS

COMPANY LAW (LW314)

Professor D. Prentice
Professor L. O'Malley

Time Allowed: THREE hours

Please answer any FIVE questions; Occasional Students please answer FOUR questions.

1. The Companies Acts permit the formation of single member private companies, private limited companies and public limited companies. Critically analyse the essential legal requirements and characteristics of each of these company types and explain the function each of them fulfils.
2. Helen and Andrea entered a partnership with a view to establishing a ferry service across Lough Corrib and took options on ferry vessels and on land suitable for terminals. They then proceeded to raise capital from the public to finance a company which they planned to incorporate for the purpose of taking over and operating the business. The lands and vessels were later purchased for the partnership with the exception of the ferry vessel, *Connemara Queen*, which was bought on behalf of the proposed company (Corrib Transport Ltd) although this company was not yet formed.
Helen and Andrea made a profit of £50,000 by entering into a contract with the new company after its formation whereby they sold the vessels, (with the exception of the *Connemara Queen*), and the land to the new company. They were, however, the sole shareholders and directors of Corrib Transport Ltd at that time and approved the transaction on behalf of the company. They also resolved that the company adopt the pre-incorporation contract to purchase the *Connemara Queen* for the agreed price of £80,000 although it was already apparent that the vessel was completely unsuitable for its intended purpose and would have to be disposed of at a substantial loss. In the following month the company was converted from a private to a public company and most of the shares were allotted to investors. Some of the new shareholders are unhappy with the manner in which the company was promoted.
Analyse and discuss the legal issues involved.
3. *"The statutory requirement that the objects of a company shall be specified in the memorandum marks one important difference between objects and powers. In my judgment, however, whether a particular transaction, carried out in purported exercise of an express or implied power contained in a company's memorandum of association, is within the capacity of the company must still depend on the true construction of that memorandum."* (Slade LJ, *Rolled Steel Products v British Steel Corporation* [1985] 2 WLR 908)
Explain the difference between the objects and powers of a company (express and implied), and discuss the extent to which Slade LJ's views are relevant to and apply in Irish Company Law.
4. Analyse and discuss the duty of care and skill imposed by law upon company directors.
5. Mackin was a founding director of Netproducts Ltd and assumed a role equivalent to managing director of the company although not appointed as such. He negotiated a franchise agreement with Sassy plc and entered an agreement to borrow £100,000 from the Local Bank - both on behalf of the company. Sassy plc is now refusing to implement the agreement on the ground that Mackin had no authority to enter it. Similarly, Local Bank's attempts to appoint a receiver to the company under the terms its agreement have been contested by Netproducts Ltd for the same reason.
Analyse and discuss the legal issues raised by Mackin's actions.

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6. While recognising the right of the majority shareholders to conduct the company's business in what they see as its best interests, the courts have developed legal rules which give some protection to minority shareholders. Discuss. (Note a consideration of minority rights under statute law is NOT required).
7. Answer **BOTH** part (a) AND part (b).
- (a) Briefly outline the role and function of shareholders' meetings in regard to the governance of companies.
 - (b) The Board of Directors of Alpha Ltd passed a resolution to bring legal proceedings against Beta Ltd for alleged patent infringement. A general meeting of the shareholders of Alpha Ltd disagreed with such proceedings and passed a resolution instructing the board of directors to drop the action. Alpha's Articles of Association contains an article which is identical to Article 80 of the Table A model articles. Advise the Board of Alpha on the legal position.
8. Explain the scope and purpose of the rules which prohibit a company from giving financial support for the purchase of its own shares.
9. Answer **BOTH** part (a) AND part (b).
- (a) Compare and contrast the legal characteristics of the fixed and floating charge.
 - (b) Explain
 - (i) the consequences for a charge holder where a charge has not been registered as required by the Companies Act, 1963, and
 - (ii) the extent to which (if at all) reservation of title clauses must be registered to render them effective.
10. Write a brief essay on ONE of the following:
- (a) The changing nature of the auditor's legal duties.
 - (b) The legal regulation of accounting and financial disclosure.
 - (c) The problem of the company as criminal.