

**UNIVERSITY COLLEGE LONDON**

*University of London*

**EXAMINATION FOR INTERNAL STUDENTS**

*For The Following Qualification:-*

*LL.B.*

**LL.B. Part II: Company Law**

**COURSE CODE : LAWSII06**

**DATE : 13-MAY-03**

**TIME : 10.00**

**TIME ALLOWED : 3 Hours 15 Minutes**

## **COMPANY LAW**

Answer **FOUR** questions including at least one question from **PART A**, and at least two questions from **PART B**.

### **PART A**

1. 'Stakeholder doctrine has made little impact in the UK but the fact is that it has little to offer company law. The tacit recognition of this in the draft Companies Bill is to be welcomed.'

Discuss.

2. 'The law on financial assistance contained in sections 151-158 of the Companies Act 1985 has never been satisfactory. Nor has the common law helped. The area is in need of reform, but it is difficult to know what should be done.'

Discuss.

3. 'Judicial decisions which are supposed to be examples of piercing the corporate veil can almost always be explained in terms of other established legal doctrines. So the hunt for the golden thread of veil-piercing is doomed to failure; there is no overall rationale.'

Discuss.

**TURN OVER**

## **PART B**

4. Replenish Ltd was incorporated in 1998. It had an issued share capital of 100 £1 shares of which Ann and Bob held 40 each and Calum held 20. All three were appointed directors. At the time of formation, the three directors agreed that the company would set up and operate a restaurant in order to provide all-day meals for thousands of construction workers engaged in building a suspension bridge nearby. Clause 7 of the articles of association of the company provided that Calum was to be employed for 7 years as head chef at a salary of £35,000 per annum. The restaurant business quickly became very profitable.

Early in 2002 the suspension bridge was completed and most of the construction workers moved from the area. However, the restaurant had become quite popular in the locality and at a meeting in March 2002 the three directors decided that the business should continue, although on a smaller scale.

On 1 April 2003 the directors were approached by a fast-food chain who offered to purchase the restaurant and the other assets of the company for £1 million. The offer was expressed to remain open for 12 weeks. On 3 April 2003 the directors met to consider the offer and a bitter quarrel ensued. Ann wanted to accept the offer and then wind up the company. However, Bob and Calum decided to reject the offer and to continue to operate the restaurant business. They have now written to Ann threatening to remove her as director and offering to buy her shareholding for £50,000.

Advise Ann.

**CONTINUED**

5. Industrywise Ltd is a company which is engaged in offering a wide range of construction services to industrial enterprises and employs engineers, project managers and architects. Its memorandum of association states that the object of the company is to carry on business as a general commercial company.

In 1998 the company appointed Kapoor, a qualified architect, as one of its directors. Some time prior to that, Kapoor had held several jobs as an architect in the gas industry. His appointment as a director of Industrywise Ltd was intended to help the company obtain new business in the gas industry. In July 2002, Eagle, the procurement director of Eagas plc, a major gas extraction company, made a tentative approach to Kapoor with a view to securing his interest in designing a new processing plant. Kapoor felt that he had a good chance of securing the contract for himself if he resigned from Industrywise Ltd and so he resigned his directorship. He then went on holiday for two weeks and on his return he called in on Eagle. At that meeting with Eagle, Kapoor secured the contract for himself and has been paid £250,000 for the services which he has subsequently rendered.

After a thorough investigation, the board of directors of Industrywise Ltd have recently discovered all the above facts. They have also been told that Industrywise Ltd is facing a legal claim for £70,000 in respect of a storage tank which Kapoor had designed for a client of theirs, and which has developed cracks in its structure.

Advise the board.

**TURN OVER**

6. Answer **BOTH** (a) **AND** (b).

(a) 'The concept of shareholder class rights is of great significance, although it can sometimes prevent a company from adapting itself to changed circumstances.'

Discuss.

(b) In 1997 Eric formed Holdings Ltd and its subsidiary, Sub Ltd. Eric holds all the shares in Holdings Ltd. Holdings holds all the shares in Sub Ltd. Fred is the only director of Holdings Ltd, and Gina is the only director of Sub Ltd. Since 1997, Holdings Ltd has made fax machines and has flourished so that it now has assets of over £3 million and employs 50 people.

Sub Ltd. is mainly (but not exclusively) engaged in supplying Holdings Ltd with components. After 1998 Sub Ltd did not develop any new products and the prices it could fetch for them fell. For the first three years Sub Ltd made profits of £12,000, £34,000 and £9,000 respectively and various dividend payments were made. However, in 2001 it made a loss of £15,000 and in 2002 a loss of £81,000. Since December 2001 Fred and Gina have had monthly meetings to discuss co-operation between Holdings Ltd and Sub Ltd. Occasionally Eric has attended these meetings.

Sub Ltd was wound up by the court as an insolvent company on 28 April 2003. The assets of Sub Ltd fall short of its liabilities by £96,000. Advise the liquidator as to whether proceedings could be brought under 214 of the Insolvency Act 1986 and against whom.

**CONTINUED**

7. Answer **BOTH** (a) **AND** (b).

Crafty Construction Ltd (CC) went into insolvent liquidation on 1 March 2003. Penelope Pincher (an insolvency practitioner) was appointed liquidator. The following facts have come to light:

After provision for the expenses of liquidation, the assets of CC are valued at £200k, of which £100k consists of uncollected book debts. The claims of preferential creditors total £150k, of which £130k consists of debts due to Customs and Excise (for VAT) and to the Inland Revenue, while the remaining £20k is in respect of arrears of salary due to CC's employees. The aggregate of all non-preferential debts owed by CC is £450k, of which the largest single creditor is the company's bank, First City Finance plc (FCF), with which CC had an overdraft facility on its current account. On 1 March 2003, the overdraft stood at its permitted maximum of £300k.

Until October last year, the overdraft with FCF was limited to £150k, supported only by a personal guarantee of £100k furnished by the company's chairman, Bill Bright. When Bill and his fellow directors sought a doubling of the overdraft facility to help overcome severe cash-flow problems, FCF insisted on taking security over the assets of CC. Reluctantly, the directors acceded to this, and the bank was granted a fixed charge over the uncollected book debts then and in the future owing to CC, plus a floating charge over all other assets of the company including the proceeds of collection of the book debts. As a further condition, CC were required until further notice to pay all receipts of cash or cheques into the account with FCF within 24 hours of receipt. During the negotiations with FCF, Bill Bright persuaded the bank to release his personal guarantee as soon as the charges to be granted by the company were duly executed and registered. This was effected by the end of October.

(a) Advise the liquidator, Penelope, regarding the issues to which the above facts give rise and explain how the relevant legal principles currently apply to determine the process of distribution of the assets of CC.

(b) What would be the main effect upon the process of distribution in this case if CC were to have gone into liquidation after the coming into force of the reforms to insolvency law effected by Part 10 of the Enterprise Act 2002?

(Note: in your answers to (a) and (b) you are not required to attempt to calculate the actual rates of dividend that might be paid to the various groups of creditors. You should however indicate the implications of the applicable legal principles for the various groups of creditors concerned.)

**TURN OVER**

8. Alpha plc makes a takeover bid for Beta plc. Both companies are listed on the London Stock Exchange. Beta plc is approximately the same size as Alpha plc in terms of turnover and profits. Both companies operate in the retail sector through multiple outlets.

There are eight directors of Beta plc: an independent chairman, a chief executive with three other executive directors, a non-executive representing an investor, Cad, who has a 27% stake in the company (investor Cad also having a 15% stake in Alpha plc), and two other non-executives.

The four executive directors of Beta plc want to continue to manage a substantial proportion of the company's outlets and have secured financial backing for an offer to buy those outlets from Beta plc through a new company they have formed, Delta Ltd. They are not able to secure sufficient backing to make a competing takeover bid for the whole of Beta plc (which would have enabled them, if they succeeded, to sell off the outlets they did not want).

The four publicly announce their (as they see it) generous offer for the part of Beta plc's business which they seek. Alpha plc responds by going into the market and buying 12% of the share capital of Beta plc.

A financial journalist, Jerry, wishes to write a piece on the situation and seeks your advice as to the position concerning the duties of the different groups of directors on the board of Beta plc, the need for any extraordinary general meetings of Alpha plc and Beta plc, and the use of votes at those meetings (including the possibility that investor Cad is one of the group providing financial support to the management team's offer). Jerry would also like general advice on any Takeover Code and UK Listing Authority requirements bearing on the legal position.

Advise Jerry.

**END OF PAPER**