

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 : **18-MAY-04**

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. 'The enthusiasm for self-regulation which the City of London has traditionally manifested has actually been thoroughly beneficial in the context of the development of codes of corporate governance. As a result, the UK corporate governance system overall currently faces no significant challenges.'

Discuss.

2. 'The common law has developed appropriate and carefully conceived exceptions to the rule in *Foss v Harbottle*. This area of the law now has a clear and sensible rationale, and there would be little benefit to be obtained by putting the derivative action on a statutory footing.'

Discuss.

3. 'In the context of company law, the word "control" can mean many different things, and it can be obtained in a variety of ways. It is strange that even though control of a company is a prize often fiercely contested, there are virtually no legal restrictions on how this is done.'

Discuss.

TURN OVER

PART B

4. House plc was incorporated in 1995 and has an issued share capital of 500,000 £1 shares. Since incorporation, Ann has held 300,000 shares, and Bob and Colin have each held 100,000 shares. In January 2000 House plc formed a wholly-owned subsidiary Suss Ltd, with an issued share capital of 100 £1 shares, and appointed Davindra and Eric as directors. Since 1995, House plc has operated a successful business as property developers, buying old tenement blocks and converting them into modern flats for resale. Suss Ltd has carried on the business of advising House plc as to the construction costs and general feasibility of proposed conversions.

In August 2003 Davindra approached Buckhursts, a firm of quantity surveyors, asking them to conduct an appraisal of the likely costs of building materials required to convert a group of buildings known as 'Thames Tenements'. Buckhursts agreed to carry out the work by the end of January 2004 in return for a fee of £90,000. The work was duly carried out and in February 2004 Buckhursts asked Suss Ltd for the £90,000 fee.

Suss Ltd has not paid, and last week Buckhursts received a telephone call from Eric, informing them that Suss Ltd was in financial difficulties and that it was probably going to be unable to pay any of the money which it owed to Buckhursts.

Buckhursts have just learnt from an independent source that Suss Ltd is in fact hopelessly insolvent, and has no assets at all.

Buckhursts seek your advice as to whether they might somehow obtain the money, directly or indirectly, from any of the following: Davindra, Eric, House plc, Bob, Colin, or Ann.

Advise Buckhursts.

CONTINUED

5. The memorandum of association of Comp Ltd states that the company is to carry on business as a general commercial company. The articles of association are in the form of the 1985 Table A.

Since its incorporation in January 1994 the company operated a successful business manufacturing computers. Until December 2003 the issued share capital of the company was held by 15 different persons, most of whom took little interest in the company and were content merely to receive the annual dividends which were paid on their shares. Between January 1994 and December 2003 Harry, Jill and Keely were the directors of the company (although they held no shares in the company). In December 2003, all 15 shareholders in Comp Ltd sold their shares to Delta Ltd which then removed Harry, Jill and Keely as directors and appointed a new board of directors.

The new board of directors of Comp Ltd have recently discovered the following:

- (i) In 2002, in the course of negotiating an agreement to supply computers to Zorro plc (a company listed on the London Stock Exchange), Harry learned from one of the directors of Zorro plc that Zorro plc's geologist had recently discovered huge deposits of gold under land owned by Zorro plc. Harry immediately bought shares in Zorro plc on the stock exchange. Later, when news of the gold deposits became public, the share price rose. Harry sold his shares in Zorro plc and made £1 million profit.
- (ii) Keely had rarely attended board meetings and took almost no part in the running of the daily affairs of the company. She had nevertheless continued to draw the same level of directors' fees as the other two directors, Harry and Jill, who were both aware of this. The shareholders of Comp Ltd had never been made aware of this situation when they awarded remuneration to the directors in accordance with article 82 of Table A.

The new board of directors of Comp Ltd seek your advice as to whether any legal action can be taken in respect of the above matters.

Advise the board of directors.

[Candidates are not required to give advice as to action which might be taken by prosecuting or by the regulatory authorities].

TURN OVER

6. Alloy plc operates a factory which manufactures a metal alloy. The company is not listed or quoted on the London Stock Exchange. Alloy plc holds 65% of the issued share capital of both Bin plc, and Cat Ltd. Bin plc holds 68% of the issued share capital of Dot Ltd.

The board of directors of Alloy plc are very anxious to obtain the supply of a much needed new furnace for the company's factory, although they have been finding it difficult because the company has very little spare cash to fund the purchase.

They are now on the verge of concluding a contractual agreement under seal in the following terms: Salman agrees to supply a new furnace to Alloy plc in return for a payment of £150,000 and the transfer to him of Alloy plc's shareholding in Bin plc. Cat Ltd agrees to lend Alloy plc £150,000 repayable in 10 months time, at a rate of interest of 9% per annum. Dot Ltd agrees to guarantee that loan by granting a floating charge over its assets.

The board of directors of all four companies have recently met together with a view to finalising the terms of the agreement prior to entry into it, and at that meeting the company secretary of Alloy plc became worried that the agreement might be in breach of section 151 of the Companies Act 1985. The board of directors of Alloy plc agreed to seek legal advice on the matter on behalf of all the potential parties to the agreement.

Advise the board of directors of Alloy plc.

CONTINUED

7. Industrial plc specialises in the manufacture of heavy-duty electrical cable. The company is not listed or quoted on the London Stock Exchange. The capital structure of Industrial plc is made up as follows:

900,000 £1 ordinary shares
100,000 £1 'Participating' preference shares
100,000 £1 'Non-participating' preference shares

Clause 4 of the memorandum of association of the company provides: "The 'Participating' preference shares shall carry a right to a 5% preference dividend and also a right to participate in the profits of each year rateably with the ordinary shareholders, and shall carry equal rights to share in surplus assets on a winding up."

Clause 15 of the articles of association provides: "The 'Non-participating' preference shares shall carry a right to an 18% preference dividend, and priority as to a return of capital on a winding up, but shall carry no right to vote in company general meetings." Clause 15A of the articles of association provides: "Repayment of shares in a reduction of capital shall be deemed to be a variation of the rights attached to those shares."

Norman, a director, holds 66% of the ordinary shares and 51% of the 'Non-participating' preference shares.

The board of directors of Industrial plc would like to make the following changes to its capital structure:

- (i) Remove from the 'Participating' preference shares their rights to share in surplus assets on a winding up, and instead give them rights to a prior return of capital on a winding up.
- (ii) Reduce the company's capital by paying-off and then cancelling the 'Non-participating' preference shares.

Advise the board of directors of Industrial plc as to whether either or both these changes might be possible, and if so, how they might be done.

TURN OVER

8. In September last year Dalliance Ltd was experiencing a severe cash-flow crisis. In order to continue its business, the company granted a fixed charge over its existing and future book debts to the Woburn Bank plc. The charge secured Dalliance Ltd's existing £1 million overdraft with the Bank and an additional £1 million which Woburn then agreed to lend. The terms of the charge provided that all proceeds of the book debts were to be paid into Dalliance Ltd's account with Woburn Bank. Thereafter Dalliance would be allowed to use this money for its business unless and until Woburn gave notice to the contrary. The company was not permitted to assign or create any competing charge in respect of any uncollected book debts.

Soon after receiving the new loan from Woburn, Dalliance Ltd repaid a debt owed by the company to Cedric, one of its directors, who was himself in financial difficulties.

Dalliance Ltd is now in insolvent liquidation with outstanding debts to Woburn, to its employees, to the Inland Revenue (in respect of PAYE deductions), to Customs and Excise (in respect of VAT), and to its unsecured creditors. The only assets available to meet these claims are the proceeds of book debts collected and paid into the account since the commencement of winding up, amounting to some £100,000. Woburn Bank claims the whole amount.

- (a) Advise the liquidator.

AND

- (b) In what ways would your advice to the liquidator have been different if the above events had occurred during 2000-2001, and your advice was being written in the early months of 2001?

END OF PAPER