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	:	**09-MAY-06**
TIME	:	**10.00**
TIME ALLOWED	:	**3 Hours 15 Minutes**

TURN OVER

COMPANY LAW

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

PART A

1. "The derivative action is broken-backed by its procedural complexity and it is to be hoped that the relevant provisions contained in the Company Law Reform Bill will at last provide an effective mechanism for shareholder suits."

   Discuss.

2. "Those who seek the benefits of incorporation, principally limited liability for debts incurred by the company, should also be prepared to carry its responsibilities. Nowhere is this more apparent than with the incorporated sole trader. As the debate surrounding the iniquities of *Salomon* demonstrates, there is room for a more flexible approach to piercing the corporate veil where the justice of the case so requires."

   Discuss.

3. "The various rules on capital maintenance are too detailed and in urgent need of simplification."

   Discuss.

4. "The 'stakeholder' doctrine has made little impact in the UK, but the fact is it has little to offer company law. The tacit recognition of this in the Company Law Reform Bill is to be welcomed."

   Discuss.

TURN OVER

PART B

5. Alan, Beatrice, Charles, David and Edwina each hold 20 of the 100 issued shares in Nuvokitchens Ltd, a kitchen installation company. The company was founded by Alan and Beatrice, who were its original directors. Charles, David and Edwina were friends of the founders who invested capital in the business. Charles joined the board in January 2005, and was recently appointed its managing director for a five year fixed term, with generous remuneration terms, because Alan and Beatrice, who were married, wished to semi-retire from running the business in order to concentrate on playing golf.

Charles has held regular board meetings, but Alan never attended and Beatrice attended very rarely. At one such meeting, Charles informed Beatrice that he had obtained a valuation of the company's premises at £100,000 and suggested to her that the company should sell and move to cheaper premises out of town on an industrial estate. Beatrice agreed and left the arrangements to Charles, who sold the premises for £100,000 to X Ltd, a company that he and David had incorporated and in which they were the sole shareholders. The valuer, a relative of David's, valued the premises without reference to the recently published town plan which designated the premises as the site of a new housing development for luxury homes. At the next AGM of Nuvokitchens Ltd, attended by Charles, David and Edwina, held shortly after the sale, a resolution (proposed by Charles) was passed unanimously affirming the transaction.

X Ltd has just agreed to sell the land to a developer for £800,000. The new premises on the industrial estate have proved disastrous for the company as they are too far outside of town and therefore inconvenient for customers to visit.

Alan has recently discovered what has been happening and fears that the company may slide into insolvency, though at present it is just breaking even. He wishes to have Charles removed as managing director and director as he regards him as incompetent. Alan also wonders whether any liabilities have arisen, which the company may enforce, as a result of these events. He has the support of Beatrice and Edwina who agree that the company must be saved.

Advise Alan.

CONTINUED

6. The objects clause contained in the memorandum of association of Engineering Ltd empowers it to make and sell nuts and bolts. It has recently started to manufacture widgets as well, without altering its objects clause.

Engineering Ltd ordered 10,000 sheets of stainless steel from Gilbert Ltd in order to make the widgets, although this purpose was unknown to Gilbert Ltd. Engineering Ltd's headed letter paper, by which the order was placed, described the company as a "leading manufacturer of widgets". The stainless steel could just as easily have been used for making nuts and bolts. Gilbert Ltd had been sent a copy of the memorandum and articles of association of Engineering Ltd some years ago. The stainless steel has been delivered.

Engineering Ltd also borrowed £5,000 from the Big Bank plc for the new venture, correspondence for which transaction was also conducted on the company's headed letter paper. The bank knew that the money was to be used for widget-making, but had never seen the company's memorandum and articles of association. Engineering Ltd now refuses to pay Gilbert Ltd and the Big Bank plc.

Engineering Ltd has sold a quantity of widgets to Tiger Co Ltd for use in its manufacture of beer cans. Tiger Co Ltd now refuses to pay.

Advise the parties.

TURN OVER

7. Taviton Traders Ltd ("Taviton") went into insolvent liquidation on 1 March 2006. Penelope Pincher (an insolvency practitioner) was appointed liquidator. The following facts have come to light:

(a) Taviton's tangible assets are expected to realize £500,000, net of liquidation expenses. Intangible assets, in the form of uncollected book debts, are valued at a further £300,000 net. The aggregate liabilities of the company total £1.7 million, and include £50,000 owed to the company's employees in respect of unpaid salary; £200,000 owed to the Inland Revenue in respect of PAYE deductions; £300,000 owed to Customs and Excise in respect of VAT; £750,000 owed to the Euston Bank plc; and a further £400,000 owed to all other creditors.

(b) The overdraft facility with Euston Bank had been progressively extended over the years since the company's formation in 1998. Although this was originally unsecured, the Bank insisted on taking security as a condition of meeting the directors' request in Autumn 2004 for a doubling of the facility to £750,000, as the company sought a "lifeline" to sustain it through a period of financial difficulty. The security granted to the Bank consisted of a fixed charge over Taviton's current and future book debts while in an uncollected state, combined with a floating charge over all other assets of the company. Taviton was further required, as a condition of granting the extended facility, to pay all proceeds of collection of book debts into a special "clearing" account with Euston immediately on receipt of payment, and to submit quarterly, audited accounts to the Bank. Transfer of funds from the clearing account into the company's ordinary current account was stated to be subject to the authorization of the branch manager of the Bank, based on his assessment of the accounts lodged by the company. When confronting Taviton's directors with these new terms of lending, Bill Bright, the branch manager, offered the reassuring comment that the Bank would in practice operate a "light touch" in applying them, and would try to maintain its traditionally supportive policy towards an established customer such as Taviton. The directors, with some reluctance, accepted these terms and the Bank's charges were duly registered. Thereafter, the company complied with the stated conditions and Bill Bright, for his part, granted approval on a weekly basis for the funds in the clearing account to be transferred into the current account. This practice continued without interruption until the end of February 2006, despite the steadily worsening state of the financial picture conveyed by Taviton's quarterly accounts.

Advise the liquidator of Taviton regarding the issues to which the above facts give rise, and explain how the relevant legal principles apply to determine the process of distribution of the company's assets.

(**Note:** you are not required to attempt to calculate the rates of dividend that might eventually be paid to creditors. It will suffice to indicate the general effect of the operation of the legal rules which you describe in your advice).

END OF PAPER