



**THE HONORABLE SOCIETY OF KING'S INNS**  
**ENTRANCE EXAMINATION**

***AUGUST 2006***

<b>Examination:</b>	<b>Company Law</b>
<b>Date:</b>	<b>Wednesday 23 August 2005</b>
<b>Time:</b>	<b>10.00 am – 1.00 pm</b>
<b>Internal Examiner:</b>	<b>Professor Irene Lynch Fannon</b>
<b>External Examiner:</b>	<b>Mr. Lyndon McCann SC</b>

**Instructions.**

**Answer 4 Questions. Total marks: 100. All questions carry equal marks. Answers should be supported by reference to statutory materials and case law.**

*Candidates will be given copies of the Companies Acts 1963-2005 in the examination hall.*

## Question 1

“...apart from the distinctions which may be drawn between this and other cases, the crucial feature of *Power Supermarkets Ltd. v Crumlin Investments Ltd.* is that Costello J. did not purport to question the authority of *Salomon v Salomon & Co.* [1897] AC 2....Costello J. had not intended in *Power Supermarkets Ltd. v Crumlin Investments Ltd.* to lay down any revolutionary principle of law...”

Explain the significance of this statement by Murphy J. in the case of *Allied Irish Coal Supplies Ltd. v Powell Duffryn International Fuels Ltd.* [1998] 2 IR 519 and the context in which it was made.

## Question 2

Harry owns 10% of the shares in Omega Trading Ltd. a company that started manufacturing computer components in 1989. The company has done extremely well since that time. Harry was appointed Financial Controller in 1995 and is also a member of the Board of Directors.

However, since 2004 Harry has found himself increasingly isolated on the Board. He has disagreed with his fellow directors over a number of important issues and believes that at this point the profitability of the company is being eroded with a consequent loss in value to his shares. Even though he is the Financial Controller of the company he is of the view that he is not privy to all of the strategic information available to other members of the Board, who have ignored requests made by Harry for specific items of information. The final straw for Harry occurred last week when the Board made a decision to reject an opportunity to begin manufacturing in India. This would have represented significant cost savings to the company, in addition to providing opportunities for future growth. Harry is of the view that this decision was motivated in part by a desire on the part of the directors to retain jobs at the Irish plants and in part, more seriously, as part of a ‘gentleman’s agreement’ with the Board of Alpha Trading Ltd. (their only Irish competitor) concerning division of market share. Harry did his best to persuade the rest of the Board not to make this decision but he was ignored by an overwhelming majority of the 10 member Board.

Harry seeks your advice on two specific aspects of this problem.

- (a) What action can he take to address his isolation on the Board? **(15 marks)**
- (b) Can he get compensation for the loss caused to the value of his shareholding? **(10 marks)**

### Question 3

**Consider the following statement:**

“There is an enormous body of old case law concerned with the obligations of a promoter towards the company which he forms and the investing public whose capital he seeks to attract; but to all intents and purposes this law has become obsolete.”

L.S. Sealy: Cases and Materials on Company Law (7<sup>th</sup> Ed.) p. 35.

**Describe why the case law relating to the protection of the ‘investing public’ has become obsolete and describe a promoter’s principle obligations towards the investing public under modern company law?**

### Question 4

Jack is a director of Generic Ltd., a very successful family run company. He was involved as the lead team figure in preparing a bid for work to be done in response to a tender sent out by the relevant local authority. In his attempts to secure the contract for Generic Ltd. Jack made some ‘payments’ to Sheila and Mick, two local authority officials to, as he put it, ‘sweeten the deal.’ The total figure for these payments came to almost Euro 100,000 which was entered in the cost structure for the contract under ‘miscellaneous items.’ As it happened the bid was successful and when the contract was performed it yielded a substantial net profit of about Euro 500,000 for Generic Ltd. However, a number of shareholders have raised queries regarding this payment, which they contend is unlawful for a number of different reasons. These shareholders represent about 10% of the votes at the general meeting. In addition Jack’s sister Sue, who is also a director, is outraged. Nevertheless it would seem that the majority of the Board and the shareholders are not concerned about this item and intend to approve the accounts at the AGM.

Both Sue and the shareholders who hold 10% seek your advice on the following question.

Can the money be recovered from Sheila and Mick by Generic Ltd. and how will this be achieved? Your clients firmly believe that Generic Ltd. would have received the contract in any event, even though Sheila and Mick were somewhat instrumental in deciding to award the contract to Generic Ltd. The objects clause of the company contains the usual sub-clause regarding ‘the making of payments and other donations which, in the opinion of the Board, are reasonably incidental to the business of the company.’

### Question 5

Describe the prohibition contained in s. 60 of the 1963 Companies Act, (as amended) its purpose and exemptions generally, the consequences of its breach and the exemptions available for private companies thereunder.

Answer this question with reference to relevant case law and statutory materials.

### Question 6

Sally, together with her brother Bill, is the beneficial owner under the Mackay Family Trust of 25% of the shares in Jamestown Beer and Wines Ltd. The sole trustees of the trust are her grandparents. Generally Sally and her brother Bill, who lives in Australia, are dissatisfied with their treatment by Jamestown Beer and Wines Ltd. and she seeks your advice on a number of matters which are going to arise at the next AGM of the company.

- Firstly, even though the company is highly profitable the Board of Directors of Jamestown Beer and Wines Ltd. has not declared any dividends in the last five years. Sally wants to know whether the Board can be obliged to declare a dividend. She is short of money and wants to buy a house in Dublin. **(10 marks)**.
- Secondly, there is a proposal to pass a resolution removing the pre-emption rights from the Articles of Association. Sally seeks your advice as to the significance of this proposal and wants to know whether this is legal and whether this resolution can be defeated. **(5 marks)**.
- Thirdly there is a proposal to issue additional ordinary shares which will have the effect of diluting the Trust's holding to 20% if the Trust does not or cannot buy additional shares. In any event the trust may have insufficient funds to purchase shares. There is a final proposal (in the event that the second proposal is successful) to allot the new shares to named individual investors. Sally seeks your advice on this matter also. **(10 marks)**

She specifically does not want to trouble her grandparents about these matters.

### **Question 7**

Jeremy and Greg are the sole directors and shareholders of M Properties Ltd. an Irish property development company which has become spectacularly successful in the last five years. Arising from their astonishing successes, Jeremy and Greg decided in January of last year to expand into the Monrovia property market and borrowed €20 million from Redbank plc to finance their development of a luxury seaside resort in that country. The borrowing was secured by a mortgage on a number of M Properties Ltd.'s Irish holdings. The company has no other secured borrowing, has a cash balance of about €750,000 and owes creditors including the Revenue Commissioners a total of €2 million.

Last month a military coup in Monrovia changed the landscape somewhat. Following a number of rather heated meetings, Redbank plc appointed a receiver to the company yesterday and he has already taken over management of the Irish parent company under the terms of the loan debenture document.

Jeremy and Greg are beside themselves and seek your advice urgently as to how to proceed. Specifically they seek your advice as to whether appointing an examiner to the company might help matters and what the likely outcomes might be.

### **Question 8**

Joyce is a director of Virago Capital Ltd., a venture capital company. Her husband is the only other shareholder and director of this company. Virago Capital Ltd. is a 30% shareholder of Blackout Travel Ltd., a travel agency which has recently gone into liquidation. Initially Virago Capital Ltd. invested in Blackout Travel Ltd. in 2000 and continued to increase its investment to the current level of 30% over the six years since then. Between 2003-2005 Virago Capital Ltd. became heavily involved in planning a significant expansion of the travel company. In fact Joyce has become quite close to all five members of the Board of Blackout Travel Ltd. and often sat in on their meetings, although neither she nor her company, Virago Capital Ltd. are formally elected as directors to the Board of Blackout Travel Ltd.

In a surprise move the liquidator of Blackout Travel Ltd. has sought a restriction order against Virago Capital Ltd. under s. 150 of the 1990 Companies Act (as amended) claiming that the company is a shadow director of Blackout Travel Ltd.

Joyce seeks your advice as to the consequences for Virago Capital Ltd. if the liquidator is successful and as to how the company should defend itself against this application.