



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

SEPTEMBER 2003

Examination:	Company Law.
Date:	3rd September 2003
Time:	10.00 am – 1.00 pm.
Internal Examiner:	Professor Henry Ellis
External Examiner:	Mr. Lyndon MacCann, S.C.

Instructions

Attempt 4 questions only. Total marks 100. All questions carry equal marks. Answers should be supported by references to statutory and case law sources.

Candidates will be given access to copies of the Companies Acts, 1963 to 2001, in the examination hall.

QUESTION 1

Alan is managing director of Pluto plc, a company listed on the Irish and London Stock Exchanges. Pluto plc recently sold a number of subsidiary companies and has a surplus of cash assets. Rather than expand the business just now, Alan considers that the company should use this surplus cash to buy back its own shares. However, Alan, whilst a commerce student, had heard that the courts at common law deemed any purchase back by a company of its own shares to be ultra vires, void and illegal, because it was an indirect reduction of capital.

Before taking any further action, Alan seeks your advice on:-

- (i) the legality of Pluto plc buying back its own shares (5 marks)
- (ii) if this is feasible, the types of transactions and procedures which would have to be followed to effect such purchases, without having to go to court. (20 marks)

Advise Alan

QUESTION 2

Alpha Ltd is a private limited liability company. It's managing director is Maurice.

During 2002, Alpha Ltd traded with Delta Ltd, another private limited liability company. Whilst Alpha Ltd was trading with Delta Ltd, Maurice was aware that Delta Ltd was a subsidiary of Beta Holdings plc, a well established public company.

By early 2003, Delta Ltd owed Alpha Ltd €400,000. On 1st August, Alpha Ltd sent a registered letter to Delta Ltd demanding payment of this amount, but to date has received no response. From private enquiries made by Maurice, it appears that Delta Ltd are short of cash and perilously close to insolvency.

Maurice considers Delta Ltd. and Beta plc to be, in reality, a single economic or business entity. Accordingly, he wants to know if there is any way by which Alpha Ltd could possibly make Delta Ltd's parent company, Beta Holdings plc, liable for the €400,000.

Advise Maurice as to the circumstances, at common law and pursuant to statute, by which such liability might be established.

QUESTION 3.

Peter is a minority 22% shareholder in Xavial Ltd, a private company. Matthew, Mark and John are the directors of Xavial Ltd.

During the past 4 trading years, Xavial Ltd had not paid any dividends to its shareholders. In fact, from 1998 to 2002, the directors of Xavial Ltd had not called any annual general meetings, nor submitted an annual return to the Companies Registration Office.

Xavial Ltd is now in serious financial difficulty, and the directors, who between them hold 78% of the company's share capital, agreed to sell the business to a newly formed company called Utopia Ltd. The terms of the sale to Utopia Ltd were that the debts of Xavial Ltd would be taken over by Utopia Ltd but, as a result, the shares held by Xavial's members would become valueless.

Matthew, Mark and John are also directors of Utopia Ltd, but there is no evidence to show that the takeover deal was not carried out for the benefit of Xavial Ltd. However, prior to this takeover, Matthew, Mark and John had refused to give Peter information about the proposed deal, and voted it through themselves with their 78% voting power.

Peter is aggrieved and wants to know whether he has any legal rights or remedies in these circumstances.

Advise Peter.

QUESTION 4

Sean is managing director of Western Trading Co. Ltd. , whose board consists of Sean and two non-executive directors, Paul and George. The company is now in liquidation; Lucy having been appointed liquidator.

Following her appointment, Lucy finds that many sales receipt and purchase expenditure items are missing from the company's books of account. Because of these defective records, Lucy and her staff have had to spend extra time costing €75,000 to put together an adequate set of books on which to base the winding up. These revised books of account show that Western Trading Co. Ltd have liabilities of €2,000,000, but assets of only €600,000.

When Lucy asked the directors to explain why the books of account were defective, Sean, Paul and George each claimed, initially, that they had been unaware of this matter, but

then concluded that the cause was probably part-time working by the accounts clerk, Rachel.

Rachel had worked alternate weeks for the three years preceding the liquidation, and the directors considered that the mistakes and omissions in the books of account must have occurred in the weeks when Rachel was not present, when invoices, etc. may have been mislaid or lost.

In response to questioning by Lucy, Rachel said that Sean had at all times been aware of the problems with the accounting records, but she did not know whether or not he had informed Paul and George.

Lucy is meeting the creditors of Western Trading Co. Ltd next week and needs advice as to what remedies (if any) she might pursue against the directors on the creditors behalf.

Advise Lucy.

QUESTION 5

Aruba Ltd is a private limited liability company. It has an authorised share capital of €10 million, of which €1,200,000 is issued and fully paid up in ordinary shares of €1 each.

Of the 1,200,000 issued ordinary shares, Joe owns 800,000. A number of private investors own the remaining 400,000 shares. Joe is also managing director. Jessica and Gerry are the other directors of Aruba Ltd.

Aruba Ltd has been trading successfully for several years and the board are discussing the possibility of a public flotation. The board need advice on several matters at this stage.

Firstly, the board are interested in informing themselves of specific investor and creditor provisions of the Companies Acts relating to:-

- (a) Directors' authority to allot shares (4 marks)
- (b) Restrictions on method of payment for shares (6 marks)

Secondly, the board want to know the extent of an allottee's remedies, both common law and statutory, for any incorrect statements in a prospectus which they might be responsible for issuing. (15 marks)

Advise the board on all the points which they have raised.

QUESTION 6

Larry has been appointed liquidator of Gamma Ltd . He is aware that there is statutory assistance available to allow him to maximise the assets for the general body of creditors by setting aside certain 'antecedent and other transactions'.

Larry is concerned about two transactions in particular. The first took place three months before the company was wound up, when the directors deposited title deeds to company property with the Prosperity Bank plc, by way of an equitable mortgage.

The second transaction took place 18 months before the company liquidation commenced. Here the company granted a fixed charge over its assets to the wife of one of the directors, to secure pre existing borrowings.

Advise Larry of the relevant statutory assistance available to him to deal with these matters, and explain how these legislative measures have been interpreted by the courts.