



THE HONORABLE SOCIETY OF KING'S INNS

ENTRANCE EXAMINATION

AUGUST 2004

Examination: Company Law

Date: Wednesday 25 August 2004

Time: 10.00 a.m. – 1.00 p.m.

Internal Examiner: Professor Henry Ellis

External Examiner: Mr Lyndon MacCann SC

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 2003, in the examination hall.

QUESTION 1

Alpha Ltd. entered into a debenture with the Prudential Bank plc for a loan of €5 million, giving the bank fixed and floating charges over its assets as security. Recently, due to adverse trading conditions, the company is short of money.

Joe is managing director of Alpha Ltd. He asked the bank to agree to defer repayment of an instalment of principal and interest due under the debenture, but was told that if Alpha Ltd. failed to make the repayment on the due date, the bank would appoint a receiver.

Joe considers that as the adverse trading conditions were quite exceptional, all the company needs to restore its financial position is time. Accordingly, he asks you to advise him on the following matters:-

(i) Would the court be likely to appoint an examiner to Alpha Ltd. if petitioned to do so? What are the criteria which the court would use in reaching its decision ?

(5 marks)

(ii) If an examiner was appointed, what would be the consequences for Alpha Ltd. and the Prudential Bank plc. ?

(20 marks)

QUESTION 2

Larry has recently been appointed liquidator of Omega Ltd. On appointment, he finds that the company has liabilities of €4 million, but assets of only €1 million. Of the €3 million shortfall in assets, €2 million of these liabilities are owed to unsecured creditors.

Larry is wondering whether it would be possible to increase the assets available for distribution to the creditors of Omega Ltd. by seeking to render its directors, Mike, John and George, personally liable for the debts of the company. To clarify his thinking on this matter, Larry asks you to advise him on the distinctions between civil liability for (i) reckless and (ii) fraudulent trading.

Advise Larry of these distinctions, explaining to him also how the judiciary have interpreted the relevant statutory provisions.

(25 marks)

QUESTION 3

Ronnie runs a very successful business as a sole trader. However, he now considers the time may be arriving when trading in the form of a private limited liability company might be more appropriate.

Ronnie consults you, asking you to explain fully the consequences of incorporation should he decide to promote and be a subscriber to the memorandum of association of a newly formed company to carry on his business.

Draft a memorandum to Ronnie, giving him the information he is seeking.

(25 marks)

QUESTION 4

Deirdre, the managing director of Romulus Ltd. , was negotiating a €4 million loan for the company with the Western Bank plc. Neville, the manager of Western Bank plc had a copy of Romulus Ltd's memorandum of association. The memorandum contained two independent objects.

The first object limited the business of the company to the promotion of tourism. The second object empowered the company to borrow money, and included a statement to the effect that each objects clause should be treated independently.

Deirdre informed Neville that the company needed the €4 million loan to fund the construction of an office block as part of Romulus Ltd's business expansion into the property development sphere. The bank, on Neville's recommendation, granted the loan to Romulus Ltd.

Neville retired as a bank manager in July 2004, and was succeeded as manager by Pauric. When Pauric read the banks's file on the loan to Romulus Ltd. he became worried about the capacity of the company to enter into that contract.

Advise Pauric as to whether or not you consider the Western Bank plc has a valid enforceable contract for the loan with Romulus Ltd.

(25 marks)

QUESTION 5

Patrick is a law student. His father, Gerry asks him to explain the meaning of a company 'share'. Patrick diligently checks through the Companies Acts, 1963 to 2003, without finding a definition of a share.

Advise Patrick of a case law based analysis of the company share concept, so that he can respond to his father's query.

(25 marks)

QUESTION 6

Harry is official liquidator of Delta Ltd. He finds that the company has assets of €1.9 million in the form of shop premises. The Southern Bank plc loaned Delta Ltd. €1 million, and had been granted a fixed charge over these shop premises as security.

The only other assets which Harry can find consist of stock in trade and other goods, all subject to a floating charge. Harry estimates that these assets will realise €120,000.

The Revenue Commissioners are owed €1 million in respect of unpaid PAYE taxes deducted from employees during the twelve months prior to the making of the winding up order. 100 employees are each owed €2,000 in respect of arrears of wages which relate to the four months prior to the making of the winding up order.

Prudential Ltd., a finance house, had loaned Delta Ltd €200,000 and hold the floating charge over the company's assets.

Frank, an unpaid supplier of goods to Delta Ltd. seeks to recover these goods from Harry because the contract of sale contained a reservation of title clause which stated that property in the goods would only pass when Delta Ltd. had paid the supplier in full for them. These goods are valued at €20,000.

There were sixteen unsecured creditors owed a total of €500,000, and the costs of the liquidation, including Harry's remuneration, will amount to €200,000.

Advise Harry how much, if anything, each of Delta Ltd's. creditors should be paid out of the company assets realisable by him, and whether or not he should accede to Frank's request and return the goods to him.

(25 marks)