

UNIVERSITY OF LONDON

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LLB EXAMINATION

for External Students

PARTS I AND II EXAMINATIONS (Scheme A)

THIRD AND FOURTH YEAR EXAMINATIONS (Scheme B)

GRADUATE ENTRY LEVEL II (Route A)

GRADUATE ENTRY THIRD YEAR (Route B)

BSc DEGREES

for External Students

MANAGEMENT WITH LAW, LAW WITH MANAGEMENT, ACCOUNTING
WITH LAW AND LAW WITH ACCOUNTING FOR STUDENTS IN THE
EXTERNAL PROGRAMME

Company Law

Friday 22 May 2009: 2.30 - 5-45 pm

Candidates will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their answer books. They then have the remaining **THREE HOURS** in which to answer the questions.

Candidates should answer **FOUR** of the following **EIGHT** questions, including at least **ONE** from **Part A** and at least **TWO** from **Part B**.

Candidates should answer all parts of a question unless otherwise stated.

1. 'Section 172 of the Companies Act 2006 represents a clear and welcome acknowledgement that the interests of a company's shareholders cannot be allowed to triumph over the interests of other "stakeholders" in the company.'

Discuss.

2. Discuss whether company law should always 'think small first'.

3. 'The Combined Code on corporate governance has been a great success.'

Discuss.

4. 'The new statutory derivative action is an unnecessary addition to company law.'

Discuss.

5. Simon and Rebecca are former employees of Rubber plc, an international energy company based in London. They were recruited to work as scientists at Rubber plc 10 years ago and, although originally based in London, they spent most of the 10 years working in mines in various countries in Africa. Having recently retired because of ill health and returned to London, they have discovered that their health problems are related to exposure to dangerous substances in the course of their employment. Having checked their employment contracts, they have found that they were employed in Africa by Rubber (South Africa) Ltd, a wholly owned subsidiary of Rubber plc, which has subsequently gone into insolvent liquidation. They have also discovered that Rubber plc is directly responsible for the safety policy of all its subsidiaries and that a number of directors of the two companies were the same people.

Discuss the veil-lifting issues that arise in the above situation.

6. Sam has been acting as managing director of Earthways Ltd for two years, although he has in fact never been properly appointed a director of the company. The company has an objects clause which states that the company shall manufacture and sell organic products. Its articles of association say that the remuneration of any director shall be settled by the company's shareholders in general meeting, by ordinary resolution.

Sales of the company's products have declined in recent months and Sam decides that drastic action is needed. He agrees with Grizzle and Bone Pies plc to manufacture a range of non-organic pies for them. The contract is initially for six months, but Sam expects to renew it when it expires. It is also decided that Dave, a non-executive director of the company, should take on a full-time position as a sales director, to explore the opportunities for selling other, non-organic, products. Sam decides the company will give Dave a three-year employment contract, at £60,000 per year, which Dave accepts.

Josh, a minority shareholder in Earthways, has just discovered the foregoing. He seeks your advice whether either he, or the company itself, might challenge the salary payable to Dave, and the contract with Grizzle and Bone Pies (including its renewal).

Advise Josh.

7. Until two years ago, Alan and Bernie were the only directors of Zennon Ltd. They each owned 50% of the company's shares. Catherine, who had worked for the company for 10 years, was offered a well-paid job with a competitor of Zennon. To persuade Catherine not to accept that offer, Alan and Bernie each transferred to Catherine 10% of the company's shares. They also appointed Catherine a director of the company, and altered the company's articles to state that Catherine would be entitled to remain a director of Zennon for so long as she was a shareholder. Finally, it was also agreed that, if Alan or Bernie wished to sell their shares, they would offer them first to Catherine (although the articles were never altered to reflect this last agreement).

Alan and Bernie now wish to retire from the company and sell their shares. Xerxes has made Alan and Bernie a very generous offer for their shares, which Alan and Bernie wish to accept. They are prepared to call a shareholders' meeting to pass whatever resolutions may be necessary to enable them to sell their shares to Xerxes. Xerxes has made it clear that if he takes over Zennon, he will immediately remove Catherine as a director of the company.

Catherine seeks your advice as to whether she can:

- (a) prevent Alan and Bernie selling their shares to Xerxes; and
- (b) prevent her removal as a director in the event of Xerxes taking over Zennon.

Advise Catherine.

8. Steve is a director of Egrit Plc, and owns 10% of the company's shares. The company hopes to secure a large contract from Power Plc. If it does, it will need some new machinery. Steve and his wife, Belinda, own all the shares of Toolit Ltd, a company that sells such machinery. Toolit offers to sell Egrit the machinery it will need for £200,000. Egrit's board considers this offer. Steve speaks strongly in favour of it and the board agrees to purchase the machinery from Toolit.

When Charles, a minority shareholder in Egrit, subsequently discovers this, he objects strongly. He claims the price paid to Toolit was too high. In response, the board of Egrit calls a shareholders' meeting, which approves the purchase from Toolit and also agrees to 'ratify any breach of duty by the directors'. Steve votes in favour of both resolutions. Egrit has now learnt that it has failed to get the contract from Power Plc, and no longer needs the machinery bought from Toolit. Egrit has been advised that the resale value of the machinery is only £120,000.

Advise Charles whether:

- (a) the company would have any recourse against Toolit, Steve or Belinda in respect of the contract with Toolit;
- (b) he (Charles) could bring a derivative action against Steve, or any other director of Egrit, in respect of the foregoing events.

END OF PAPER