

## COMPANY LAW

### **!!DUMMY EXAM PAPER!!**

*This is simply intended to give QM students an idea in 2009 of what the exam paper will look like. This is not intended to make any sort of representation as to what will be coming up. Instead it is intended to show you the format of the paper, including the fuller style of problem question.*

### **Open book**

Answer ANY three questions.

1. “English courts should be more prepared to lift the veil of incorporation than they have been in the past. Their reluctance to do so only encourages artificiality in commercial life.”

Discuss.

2. “Corporate governance policies have tended to show that directors still have the effective power within companies and that it is only by non-legal means that their power can be controlled.”

Discuss.

3. **EITHER**

(A) “Information is central to company law in the modern era.”

Discuss.

**OR**

(B) “The development of an understanding of corporate social responsibility is essential to the development of a feasible and just modern form of company law.”

Discuss.

4. MegaCorp plc was the holding company in a group of trading companies: one subsidiary (Shop Ltd) operated small, city-centre supermarkets; another subsidiary (Snack Ltd) manufactured pre-packaged sandwiches sold at petrol garages; and the other subsidiary (Zip Ltd) manufactured zips used in clothing.

Due to his own negligence, one of the buyers for Zip Ltd, Billy, acquired a consignment of metal for use in the manufacture of zips which caused nasty skin rashes when worn next to the skin. Billy reported directly to a director of Zip Ltd, but that director did not sit on the board of directors of Zip Ltd. MegaCorp Ltd has been sued for damages in negligence by a woman who suffered such a skin rash.

The board of directors of MegaCorp plc had decided to sell Snack Ltd to a competitor, Chubby Ltd. None of Snack Ltd's directors would remain on the board of directors after the business and all of its plant and premises were sold to Chubby Ltd. MegaCorp plc did not disclose that a multi-million pound writ for damages for negligence had been served on Snack Ltd as the result of a consignment of prawn sandwiches which caused mild dioxin poisoning.

The leases over Shop Ltd's supermarkets all expire on 30<sup>th</sup> May 2003. Shop Ltd is to be wound up on 25<sup>th</sup> May 2003. MegaCorp plc wishes to renew all the leases in its own name.

MegaCorp, by the service contracts of the directors, has agreed to indemnify the directors personally against any liability occasioned during the course of their directorships.

Advise MegaCorp plc on its various rights and liabilities.

5. Wire plc is intending to issue shares to the public at large by admission of those shares to trading on the Main Market of the London Stock Exchange. Wire plc is in the business of manufacturing covert surveillance equipment for use by police and security services.

Wire plc has developed a new genre of surveillance devices known as “The Super Bugs” which have a common design feature which makes them particularly robust. The Super Bug has no patent yet. Director of Research and Development, Herc, believes that the patent will not be awarded because it is very similar to a process used by another company; although Carver, Director of Scientific Processes, believes that there are enough differences between the two designs to constitute a separately patentable process.

Greggs has commissioned a report from expert accountants, the Barksdale Group, which suggests that if the Super Bug design receive a patent and has successful field tests, then it should acquire about 50% of the market for “bugs”, and so should generate annual profits of £40 million. If the patent application or the field tests are unsuccessful, then it is suggested that Wire plc will not establish such a large market share and consequently that its annual profits are likely to be less than £5 million. The report mentions the name of Stringer, a senior partner of the Barksdale Group, although he did not approve the final version of the report despite being involved in much of its preparation.

The board of directors of Wire plc is hopeful that Bunk will join the company as its chief research officer. Bunk is very well known in the law enforcement community in Europe and the USA, and so would grant Wire plc an enormous amount of goodwill and investor confidence, even though the company is new. Bunk is still haggling over his salary and so he has not yet signed a contract of employment with Wire plc; he has told the board of directors that he is considering alternative offers.

McNulty, the solicitor advising the company, prepared language for the prospectus which read:

“The board of directors of Wire plc are confident that the pending patented process for the Super Bug will establish the company as one of the leading surveillance equipment companies in Europe. The level agreement reached with Mr Bunk to act as to the way in which he will become involved with the future of Wire’s business plan demonstrates the standing of this company in the international surveillance equipment marketplace. Mr Stringer of the Barksdale Group has therefore been able to predict profits of at least £50 million per annum.”

McNulty overstated the predicted profits as a result of a negligent typographical error. Wire plc did not acquire its patent. Its profits are only £10 million.

Advise Bernard who acquired shares in Wire plc in the after-market.

6. Consider the following:

Carcetti, Chief Executive of the Italian company “Baltimori”, an electronics giant in Europe and competitor of Wire plc, met with Daniels, Chief Executive of Wire plc, in Milan on 1 November 2008 to discuss the possibility of a takeover of Wire by Baltimori. This meeting was held in secret at the house of a mutual friend of both parties. Carcetti bought himself 100,000 shares in Wire plc on 2 November after the meeting seemed promising.

Daniels encouraged his brother-in-law, Joe, to buy shares in Wire plc over lunch on 3 November – by which time the price had risen only to 130 pence – because Joe was in danger of going bankrupt. Joe did not buy the shares because he thought Daniels was an idiot.

Greggs learned of the success of Daniels’ meeting with Carcetti by telephone on 2 November and so bought a “call option” from Monster Bank in the name of a company which she controlled, which entitled her company to buy 200,000 shares in Wire plc from Monster Bank for 140 pence at any time she should choose. Greggs exercised her right on 4 November and made £30,000 profit.

## 7. EITHER

(A) Dibble was a minority shareholder in Bright Lights Ltd, holding one-sixth of the shares in that company. The company sold package tours to American tourists wanting to visit London. The four directors (Pugh, Pugh, Barney and McGrew) held one-sixth each of the total shareholding in the company. The other shareholder holding one-sixth of the shares was Cuthbert. Cuthbert was Barney's brother-in-law but not a director of the company. Dibble had no personal connection to any of the other shareholders.

With the dip in the American tourist market from 2002 onwards, the company's directors decided to diversify and to take over another company, Fishy Ltd, which ran a chain of fish restaurants on the South coast of England. The takeover was conducted in January 2003.

At the time of the takeover Fishy Ltd had a market capitalisation of £10 million, whereas Bright Lights had a market capitalisation of £40 million. The articles of association provided that "no acquisition shall be made of the shares in any company which has a market capitalisation more than one-fifth of the market capitalisation of Bright Lights Ltd without the prior agreement of three-quarters of all of the shareholders." No vote of the shareholders was taken before the purchase.

In February 2003, the directors decided at a meeting of the board not to pay a dividend to the shareholders but rather to distribute the company's profits entirely to the four directors personally by way of bonuses "to recompense them for their hard work during this difficult time".

At a meeting of the shareholders, Pugh, Pugh, Barney, McGrew and Cuthbert all agreed to ratify both of the directors' decisions. Dibble objected that none of the directors knew anything about the restaurant business, that Cuthbert had a large shareholding in Fishy Ltd which he was seeking to support with Bright Lights Ltd's money, that Cuthbert and Barney were conspiring together because Barney owed Cuthbert a lot of money, and that Dibble was being forced out of the company by the other shareholders.

Advise Dibble.

## OR

(B) 'The concepts of "unfair prejudice" and of "legitimate expectations" have proved inadequate in bolstering the needs of the minority shareholders, and the changes contained in the Companies Act 2006 are unlikely to have any material impact on the needs of shareholders.'

Discuss.

## 8. EITHER

(A) Peter was the managing director of Reality TV Ltd, a private company. He became extremely well-known personally as the public face of the company which specialised in providing technological and logistical support for fashionable reality television programmes. Peter held no shares in the company.

In 2005, while working for the company, Peter attended a weekend conference at the country home of a senior television executive, Reg, who revealed to Peter and his other guests that his TV channel was developing a programme which was to have been called *Footballers' Lives*. For this programme, Reg was negotiating contracts to film Premiership footballers 24 hours a day. He needed Reality TV Ltd's support in the technology involved.

Reg and Peter talked about this idea frequently thereafter. As a result of their growing relationship, Reg commissioned a large amount of work through Peter from Reality TV Ltd on various other programmes shown on his channel. *Footballers' Lives* itself was never made.

In February 2008, Reg approached Peter with a new idea for a programme which had been developed from the *Footballers' Lives* project. Combining popular interest in cookery programmes and football, Reg intended to produce a programme called *Footballers' Knives* in which celebrity footballers would be filmed secretly while cooking. Reg told Peter that if Peter could provide technological support he would "guarantee a hefty fee in advance".

Peter presented this idea to his fellow directors at a Reality TV Ltd board meeting as "something which may or may not show a profit and which would probably only pay a fee in proportion to its ratings success after work was completed". This was the usual way in which the company was paid. The unanimous view of the board of directors was that cookery programmes and football would not be as popular in future and therefore that the company should not be involved in the programme at all.

In March 2008, Peter resigned from his position as managing director and sought to develop the idea for himself. He has been paid £250,000 so far.

Advise the remaining directors of Reality TV Ltd.

OR

(B) "The "corporate opportunity" doctrine has effectively operated as a defence to liability for directors' duties in relation to conflicts of interest. The new code of directors' duties in the Companies Act 2006 will do nothing to increase the liabilities borne by directors, but instead have tended to offer directors ways of reducing their liabilities."

Discuss.