

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW
BACHELOR OF LAWS EXAMINATION, YEAR IV - 2020
COMPANY LAW
Three (03) Hours

Answer any **FOUR (04)** Questions only.

This paper comprises of **SEVEN (07)** questions in total, printed on **FOUR (04)** pages.

Candidates will be penalized for illegible handwriting.

1. COVID-19 outbreak has resulted in closure of many businesses. This scenario has therefore given rise to significant challenges for companies to continue their businesses in order to prevent insolvency due to this global pandemic. Hence, reviving the business and getting back to the profit track are the current and important tasks upon companies.

Discuss the above statement referring to the corporate rescue mechanisms available for Sri Lankan companies under the Companies Act of No. 07 of 2007.

(25 Marks)

2. "...Most advanced legal systems recognise corporate legal personality while acknowledging some limits to its logical implications. In civil law jurisdictions, the juridical basis of the exceptions is generally the concept of abuse of rights... English law has no general doctrine of this kind. But it has a variety of specific principles which achieve the same result"

Per Lord Sumption, in *Prest v Petrodel Resources Limited and others* [2013] UKSC 34

Critically analyse the specific principles under which English Law limits or disregards the corporate legal personality. Your answer should be supported by decided cases and practical examples.

(25 Marks)

3. Creo360 (Pvt) Ltd (Creo) owns 65% stake of Brightstar Ltd (company) while 25% of the shares are owned by Ram Fernando and the remaining 10% of the shares are equally owned by Sunil and Indran. The Articles of Association of the company provides that the

directors shall be appointed by any shareholder/s who hold/s more than 50% of the voting rights. Ram Fernando suspects that the company improperly motivated distribution of dividends to its shareholders. It is due to the rumours that at the time of such dividends by the company, Creo was in serious financial distress. Sunil and Indran find that the board of the company has entered into a sale agreement with Creo to purchase its business building which is subjected to encumbrances for a price higher than the market value. Further, they learn that the company always follow the instructions of the company CEO whose wife and two sons own Creo.

Discuss the possible remedies available to the parties with reference to relevant statutory provisions and decided cases.

(25 Marks)

4. "Corporate governance is a process that aims to allocate corporate resources in a manner that maximizes value for all stakeholders; and holds those at the helms to account by evaluating their decisions on transparency, inclusivity, equity and responsibility. It is the set of processes, customs, policies, laws, and institutions affecting the way a corporation is directed, administered or controlled".

Critically evaluate the above statement with reference to Sri Lankan Company Law.

(25 Marks)

5. Nimal was engaged in the business of dealing with mineral deposits. In January 2017, he purchased a graphite mine for 50 million rupees. Nimal, together with his friend Bimal, decided to form a company to carry on the same business. In January 2018, the proposed company was duly incorporated under the name of Raini Private Limited (Raini) in which Nimal and Bimal were initial directors. In March 2018, Nimal entered into an agreement with Raini to sell them the graphite mine owned by him for 60 million rupees. On the sale being effected, prospectus was issued by Raini offering shares to the public to carry out exports. The prospectus expressed the directors' opinion that the company acquired the graphite mine at a favorable price. It also contained a statement of Mr. Sanuka who is a well-known mineralogist expressing his confidence in company earning huge profits soon due to the valuable graphite deposits. The public issue was oversubscribed and, the

company proceeded with its business which was initially profitable. Thereafter the company suffered losses as the market price of natural graphite dropped unexpectedly resulting in a correspondent decline in the company's share price. Shareholders learnt later that the company purchased the mine at an exorbitant price and there available a new scientific research that revealed that the graphite deposit belonging to the company was low in quality.

Discuss the liability of Nimal and Bimal under the provisions of the Companies Act No. 7 of 2007 and the principles of common law where applicable.

(25 Marks)

6. Arul, Banu and David formed a partnership under the name of Top Attires to engage in the business of providing uniforms to school children. Arul was requested to look for a suitable location for the partnership business and he found one at a reasonable price. However, Arul did not disclose the commission that he earned through the transaction. Amongst other things, the Partnership Agreement of Top Attires provided that Banu was authorized to purchase goods for the firm, but she should not purchase anything over Rs. 1 million without the approval of the other partners. Banu purchased uniform materials worth over Rs. 2 million from Modern Fabric Ltd without such approval. As Top Attires appeared to have some cash-flow problems, it borrowed money from Nalin who was repaid the loan with interest according to a percentage of the profits earned by Top Attires. Nalin later claimed that he had become a partner of Top Attires. David wished to bring his brother Stanly as a partner, but the other partners opposed to it as Stanly was an unpopular businessman. Later, Arul and Banu found that David bore loose morals and wanted to expel David from the partnership.

Discuss the legal issues that have arisen in the above scenario with reference to the statutory provisions and decided cases.

(25 Marks)

7. Tiran and Hemal are directors of the five-member board of Speed Codes Ltd (the company) that manufactures computers. Tiran, the managing director, enters into a contract on behalf of the company with Comtop Ltd to supply computers. Tiran receives

a significant commission from Comtop Ltd, but conceals that to the board. Unknown to the other directors, Hemal runs his own company that sells computers and laptops. The company sells one of its commercial land worth Rs. 75 million to Hemal's father for Rs. 70 million.

After COVID -19 outbreak the company faces financial difficulties. The employees are not paid and there is a shortfall of funds available to creditors. When the other directors suggest that the company should go for winding up Tiran obtains a loan from a Bank without consulting the board. Tiran also suggests that he is willing to buy one of the buildings belongs to the company, in order to provide funds for the company to survive. Consequently, Rs. 50 million worth building is sold to Tiran for Rs. 40 million. Although the board is concerned about the low price, they accept it as an attempt to improve company's financial position.

Evaluate the liabilities of the directors individually and the responsibility of the board in the above scenario with reference to appropriate authorities.

(25 Marks)
