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NORMAN MANLEY LAW SCHOOL
Council of Legal Education

LEGAL EDUCATION CERTIFICATE EXAMINATIONS 1975

LAW OF ASSOCIATIONS

Instructions to Students

- a) Time: 3½ hours.
- b) Answer any SIX questions.
- c) Students may consult such materials as they have been allowed to bring into the examination room and any materials provided.
- d) It is unnecessary to transcribe the questions you attempt.

QUESTION 1.

The following extract is from a Daily News report of March 23, 1975:

"Caymanas Park Limited, operators of the Caymanas Park Race Track is in serious financial trouble according to a report presented by Chartered Accountant(s)...

The report to the Jamaica Racing Commission is now before the Government for consideration. It states that Lai Corporation, parent company of Caymanas Park Limited is also in financial straits...

The report, which relates "to the position at June 30, 1974 which we understand has not since changed materially", was handed in to the Racing Commission last October.

Of the acquisition of 99 per cent of the Caymanas shares in 1972 by Lai Corporation by pledging Caymanas property and stock units to Caribbean Merchant Bank Limited, a First National City Bank subsidiary to cover a \$1,998,000 loan to purchase the shares, the report said:

"It appears to us that the loan from the Caribbean Merchant Bank Ltd. to the parent company (Lai Corporation) was a temporary loan until such time as certain assets of the company and its subsidiaries were sold in order to repay the loan. In which case the above transaction contravenes the provisions of Section 54 of the Companies Act, 1965."

Advise Lai Corporation Limited whether section 54 of the Companies Act applies.

Would it make any difference to your answer if the Lai Corporation Limited caused its newly acquired company to mortgage its assets to the same merchant bank in order to raise money to pay a dividend to itself,

which Lai Corporation Limited immediately used to pay for the recently acquired Caymanas shares?

NOTE: Students who wish to advise on the assumption that Bahamian or Belizean law applies should construe every reference to "section 54 of the Companies Act, 1965" as if it were a reference to article 10 of the U.K. Table A, which was expressly repeated in the articles of Lai Corporation Limited.

QUESTION 2.

Construcción Azteca Limited (Azteca) is a local subsidiary of a Mexican company specializing in construction and civil engineering. Caribbean Builders Limited (Carib) is a rapidly expanding wholly local construction company. Arawak Contractors Limited (Arawak), a long established local construction company has extensive contacts in government and business circles.

In June 1972 Arawak won a government contract worth several million dollars. Arawak was interested in attracting as an associate a business enterprise with a sophisticated organization, heavy construction equipment and finance. In May 1972 Carib bought 30% of Arawak's shares and was registered as a shareholder.

In July 1972 Azteca indicated it had the necessary expertise and financial backing to assist Arawak. At the same time Carib's directors notified Arawak that they had all the local experience and finance that Arawak would need. The directors of Arawak, however, were unimpressed with the approaches made by Carib. In the meantime the directors of Arawak became very interested in the offer from Azteca, having been invited to discuss the matter with Azteca's parent company in Mexico. Eventually Azteca was given a contract to do all preliminary surveys and drawings, and the directors of Arawak promised to exercise their power to issue shares so as to give Azteca a 35% interest in Arawak.

Carib, which had begun approaching Arawak shareholders with a view to increasing its stake in Arawak, wishes to take court action to challenge the action taken by Arawak and its directors.

Advise Carib as to:

- (1) what proceedings it can take in the circumstances;
 - (2) who would be the parties to those proceedings;
 - (3) what relief would be sought.
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QUESTION 3.

(1) What documents must be filed on seeking registration of a new company?

(2) Explain how the dissolution of a private company may occur without resolutions and without recourse to the court.

(3) In 1968 A. Limited incurred trade debts of \$10,000, but was unable to repay the debts because of continuing losses. Its creditors were persuaded not to take legal proceedings in the hope that the tide of its business would change. However, in September 1973 the company was removed from the register in accordance with the provisions of the Companies Act for failure to comply with its obligations to file statutory returns. A. Limited's creditors have only recently discovered the position.

Advise the creditors of A. Limited.

QUESTION 4.

By a deed of partnership in the usual form made the 30th day of September 1966, A, B and C agreed to carry on in partnership the business of road hauliers under the style and firm name of "A,B,C, & Co."

In October 1971 A ordered on behalf of the partnership vehicle spare parts to the value of \$1,000 from Spares Limited, in breach of the general limit of \$100 on partnership orders without the concurrence of the other partners.

In December 1971 A quarrelled with his partners. Eventually a settlement was reached whereby A assigned his interest in the partnership to C absolutely for \$6,000. A then left the partnership.

In January 1972 immediately after A's retirement a notice was placed in the local newspaper announcing B's retirement from the partnership. In February 1972 D, an employee of A,B,C & Co. since 1970, sustained serious injuries when one of the firm's articulated lorries ran off the road owing to an axle defect. D could not read and was unaware of the change in the firm's membership.

Clause 15 of the partnership deed provided: "In case of death of a Partner the surviving Partner or Partners shall as from the date of such death succeed to all the assets of the partnership (including the goodwill thereof...)...and shall pay to the personal representatives of the deceased Partner the following sums ..." B died in March 1972 and E, B's executor, duly conveyed B's share to C. In May 1972 E considered the partnership had come to an end and set up business as a road haulier, making use of a customer list found among B's papers.

In May 1972 the firm's main creditor, the Jamaica Citizens' Bank began pressing for reduction of the firm's overdraft. In June 1972 in response to this pressure, C, the sole surviving partner, deposited with the Bank the title deeds of certain real estate forming part of the partnership property, and signed a memorandum of deposit in the firm name as security for its overdrawn balance.

Advise C as to all these transactions.

QUESTION 5.

The Articles of Association of National Textiles Limited provide that the share capital of the company is to be divided into 1,500 "A" ordinary shares and 1,000 "B" ordinary shares. Most of the "A" shares are owned by persons participating in the management of the company. The Articles adopt Table A Part I* as far as is material for present purposes.

Recently National Textiles Limited has been in need of more working capital. The directors have agreed to provide substantial loans secured on the assets of the company. However, as part of the arrangement it has been agreed that the "A" shares should be subdivided into 2,000 shares of 50c each and that there should be one vote per share on a poll.

Box, the holder of 15 per cent of the "B" shares, has strongly objected to this arrangement.

Advise the directors of National Textiles Limited

- (1) whether, in spite of the opposition of Box, they should proceed with the above arrangement;
- (2) how they are to proceed in effecting the subdivision.

*NOTE: Students desirous of advising according to Bahamian or Belizean law may assume that the regulations of the U.K. Table A have been adopted by National Textiles Limited.

QUESTION 6.

(1) In the course of take-over bid negotiations the directors of A. Limited, a private company, agreed to recommend an offer of \$1.00 per share. Before the offer was made known to the general body of shareholders the directors of A. Limited informed B and C of the negotiations. B and C immediately purchased 10% of A. Limited's shares.

Before the offer was communicated to all the shareholders B and C sold their shares privately to the company taking over at \$1.50.

D, a director, was also paid \$1.50 when he threatened to expose the irregularity in the take-over. E, a 10% minority shareholder, opposes the take-over in defiance of the directors, and wishes to obtain an injunction restraining the directors from positively recommending the bid.

Advise E.

(2) D, a director of the recently acquired A. Limited has been asked by the new controllers to explain a donation by the company of \$5,000 to a political party. The company's memorandum contains no specific power to make donations, but contains the usual "reasonably incidental" clause, an "independent objects" clause and a Bell Houses clause.

Advise D.

QUESTION 7.

(1) What is the usual practice of the court prior to a final order where the petitioner is a contributory seeking a compulsory winding-up order? Support your answer by reference to authority.

(2) In 1960 Sonny, fresh from school, joined a small chemical manufacturing business then being run by Mac as a sole trader. The business consisted mainly of the manufacture of aromatic essences and cough mixtures. Gradually Sonny became indispensable in the business, and when business began to boom and the time came for incorporation the share capital of the company Macson Chemicals Limited, was divided into non-voting A shares and B voting shares as follows:-

	"A"	"B"
Mac	750	1020
Sonny	750	980

In addition, Mac's three daughters were each given a shareholding of 100 "A" shares.

Mac was appointed managing director and Sonny an ordinary director. The directors had power under the articles to fix their own remuneration, and the articles provided that each member should have one vote on a show of hands and one vote for each voting share on a poll and that the management of the business was to be vested in the directors.

In 1970 disagreements between Mac and Sonny began to surface. At a general meeting of the company Mac announced that in view of difficulties the company was facing both directors would have to face cuts in salary. Sonny's remuneration was substantially reduced whereas Mac took only a nominal cut in salary. Mac also announced that company cars for persons below the level of managing director would be withdrawn. Mac further announced that he would personally take over the supervisory functions formerly exercised by Sonny alone.

Both Mac and Sonny had personally guaranteed a loan to the company for expansion. Immediately after the meeting Sonny wrote the lender, a bank, informing them that his personal guarantee would not extend to future borrowings. On hearing of this letter Mac wrote Sonny a letter dismissing him from the board after an informal consultation with his three daughters.

Sonny is insistent that the matter can only be resolved in the courts. Advise Sonny of his chances of bringing a successful action.

NOTE: Students desirous of advising according to the law of the Bahamas or of Belize may assume that section 79(5) and/or section 86 (Bahamas), or that section 128(f) and/or section 135 (Belize) apply respectively.

QUESTION 8.

In 1973 Kingport Limited, ("Kingport") whose certificate of incorporation is dated June 1, 1971 was granted overdraft and loan facilities at Barclays Bank, secured on certain specific properties owned by the company. A credit limit of \$50,000 was marked for the company but was soon reached. Kingport therefore sought and obtained a further loan of \$10,000 from Askinex Limited ("Askinex"). The loan was in fact made to Kingville Limited, an associated company, which arranged to pass on the money to Kingport, but was secured by a deposit of title deeds of certain real property owned by Kingport. No charge was registered in favour of Askinex.

By December 1974 the directors of Kingport Limited no longer believed that there were sufficient assets to meet all debts, but in order to keep on good terms with the bank agreed to execute a floating charge over all their property except such as was previously specifically mortgaged or charged and all rights present and future.

In May 1975 the company's creditors presented a compulsory winding-up petition, and a liquidator was appointed. The liquidator has obtained leave of the court to appoint an attorney-at-law to advise on certain claims.

Among the proofs is a claim by a company, Decorators Limited, for work done during May 1971. All correspondence with Kingport Limited was signed "Kingport Limited per pro J. Taylor (director)".

Advise the liquidator as to (a) the bank's fixed charge (b) the bank's floating charge (c) the Askinex loan (d) the proof of Decorators Limited.
