

# **CORPORATIONS LAW**

## **MODEL EXAM**



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## ***IRAC method of completing exams***

- Issues** - Outline the issues that you are going to discuss.
- Rules** - Define the legal rules that are relevant to the question.
- Application** - Apply the legal rules to the facts of the question (this is the important part).
- Conclusion** - Tie things up by suggesting the most likely outcome, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts. Planning will help to avoid following desperate exam strategies that unprepared students commonly resort to, such as:

- i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best: or
- ii) 'the garden path' i.e. going off on an irrelevant tangent.

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The marker will be most interested in *how you arrived at your conclusion*.

If you are sitting an open book exam, be sure to have concise notes with only the main points for each topic. Too much time will be wasted searching through thick textbooks.

*Try to answer the question yourself first before looking at the answer. Do not worry if you do not come up with the same amount of text as is in the answer below. The student who wrote this answer had a considerable amount of time in which to write. Good luck!*

### **Question One**

Matilda and Bianca are executive directors of Getting Hitched Ltd, a Sydney based business that performs makeovers on young singles and matches them up with eligible mates who, in most cases, they end up marrying. Matilda and Bianca began the business in 2002, initially as a small dating service. Due to rapid success, Matilda and Bianca wish to expand their operations interstate and eventually nationally and hope to provide wedding planning services. Combined, Matilda and Bianca hold 70 per cent of the issued share capital in Getting Hitched Ltd. The chairperson of Getting Hitched Ltd, Bridget, owns 5 per cent, and the remaining 25 per cent of issued shares are held by private individual shareholders, the majority of whom are success stories of Matilda and Bianca's enterprise.

Bianca and Matilda are currently heavily involved in and responsible for the daily operations of Getting Hitched Ltd. They manage and organise all the company's advertising, employees and subcontractors who administer the company's extensive computer systems, and the daily financial and operating costs of the business including the lease of their premises in Surrey Hills. Bridget became involved as Chairperson when Matilda and Bianca, long-time friends of Bridget, fixed Bridget up with her current wealthy husband as their first client. Bridget has little involvement in the company other than purely ceremonial roles of chairing the board meetings and signing off on monthly accounts. Bridget's time is filled by her full time role as a lady of leisure and sophisticated socialite.

To fund their expansion plans to Melbourne, Bianca and Matilda arrange for Getting Hitched Ltd to enter into a deal with Financin' Expansions, a top Australian finance and loan provider. The loans officer with Financin' Expansions is particularly interested in this venture. The loans officer sets up a deal whereby Financin' Expansions will provide cheap loans for customers of Getting Hitched Ltd to pay for wedding planning services which Bianca and Matilda are hoping to expand into and establish in Sydney and then launch in Melbourne. They are both excited about this deal as they see it as a way in which to dramatically increase their business rather than referring successful clients to other services. Furthermore, the loans officer, believing they will be able to increase their presence as a leading loans provider, offers Bianca and Matilda a 7 per cent bonus for all loans they secure in offering wedding planning services. Bianca and Matilda call

Bridget in for a meeting to discuss the deal but she is more concerned with her upcoming spa date and says, "Dahlings!!! You know I hate making decisions that don't involve either what brand of champagne or what facial treatment to have! I support whatever you both think is best!" .....

### **Question Two**

Fabian Fabuleaux is a long-time client of yours and you are currently assisting him in his liquidation of Barking Dog Pty Ltd. The court issued a writ for the winding up of the company on 1 June 2013. Fabian's instructions to you are that members of Ordinary Brothers Pty Ltd hold 80 per cent of the shares in Barking Dog. Specifically, Grapevine Pty Ltd, Rosewine Pty Ltd, Merlots r us Pty Ltd and Verdelho Hill Pty Ltd each own 20 per cent of Barking Dog. Grapevine, Rosewine, Merlot and Verdelho Hill are all fully owned subsidiaries of Ordinary Brothers Wine Pty Ltd. InsuredaGrape Ltd is an insurance company which owns a further 15 per cent of the shares in Barking Dog. The remaining shares are divided amongst various minor investors.

InsuredaGrape Ltd lent money to Barking Dog in 2012. As security for the loan, InsuredaGrape Ltd was granted a circulating security interest over Barking property. Fabian is aware that one of the directors of Barking Dog, Kiki Chardonnay, holds a large shareholding in InsuredaGrape Ltd which she has disclosed to Barking Dog and the other directors. ....

### **Question Three**

Mark, Dave and Philippe have together been running Grand Master Dragon Landscapes for a number of years. The business is a small scale landscaping business which is unincorporated. They recently decided to incorporate a proprietary company which will run the landscaping business. The three had a conversation before incorporating the company to decide whether the company should expand to include a retail and wholesale nursery to supply plants propagated at the nursery for the landscaping part of the business. Mark was keen to set up such an expansion but Dave and Philippe were concerned that the project would be too much of a financial risk but did not think the idea was wholly bad. The conversation did not yield a decision on whether to expand into the nursery business.

Dave and Philippe took it upon themselves to arrange registration of the company to be known as Grand Master Dragon Pty Ltd. Dave and Philippe decided to use the replaceable rules in the *Corporations Act 2001* (Cth) as the basis for the company's constitution. They made a couple of amendments to the constitution to make it 'more personal'. One clause restricts the company's business to operate as a landscaping design and service business (as had been for a number of years), and it specifies that it was not a nursery business. Another clause concerns how many director signatures are required on corporate contracts which provide that no single director could bind the company to contracts, leases or large purchases, and that the decision is to be unanimous.

Mark was busy designing corporate logos to promote the company and took it upon himself, prior to registration of the company, to negotiate for the lease of a site which could be used for setting up a retail and wholesale nursery. The lease was to commence on 1 February 2011. Mark signed the lease on this date as a representative of "Grand Master Dragon Pty Ltd". However, ASIC did not approve the proposed name for the business as a Chinese restaurant was already trading under this name and the addition of "Landscaping" to the name was not sufficiently different. This delayed registration of the company as Philippe and Dave needed to re-register the company with a new name. The company was registered on 27 February 2011 under the name "Master Class Garden Designs Pty Ltd". The information provided with the application form to ASIC showed that Philippe, Dave and Mark are the directors. There are four shareholders in the company: Mark, Dave, Philippe and Estelle. Estelle is going to act as a consultant for colour schemes considering her artistic background and experience as a top florist. She is not a director of the company.....

**Question Four**

Mark owns five acres of land which he once worked as a market garden. He successfully grew a range of organic vegetables that he sold locally. Growing older himself, Mark ran out of energy and gradually allowed the land to become idle and overgrown.

In 2009, Hayden and Samantha were retrenched and given a severance payment of \$12,000. Having been regular customers of Mark in the past, they proposed to him that they use their retrenchment pay to buy seeds, fertiliser and equipment and that they employ their time working Mark's land, to return it to its glory as a market garden once again. They agreed that Mark should get half the gross profits, and themselves one quarter each. They said they would contribute \$4,000 each, annually, to cover expenses such as water, petrol, seed and fertiliser. Mark agreed to their proposal and told Hayden and Samantha not to purchase new equipment but rather to use his which was still in good order. Hayden and Samantha agreed to that. Mark also said he would advise Hayden and Samantha about suitable crops and fertilisers, and he did so from time to time.

For three years, the agreement worked well and the market garden was again profitable. In early 2012, Hayden suggested to Mark and Samantha that they should purchase a new improved watering system. Mark and Samantha were reluctant but Hayden was insistent. Finally, Samantha said, "If you are so keen Hayden, you go off and get it." Hayden ordered the watering system in his own name. It was installed and Hayden was personally sent the account for \$8,000. Mark and Samantha refused to contribute towards the debt. Hayden had no savings with which to pay the account and when the supplier threatened legal action against him, he was forced to borrow the entire sum to settle the debt.....

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