



Paper 3 – Corporate and Other Laws

Attempt all questions.

1. Answer the following questions: (5×5=25)

- a) Skyshop Nepal Pvt. Ltd. dismissed its CEO, Sisir Chand, as against the service contract between them. He filed a case for compensation as against the wrongful dismissal. Shortly thereafter, Heritage Nepal ceased trading. The company paid of all its creditors and then transferred its remaining assets to another company Shop Nepal Pvt. Ltd. Sisir Chand obtained a default judgment against the Skyshop Nepal but by that name it had no assets and stood dissolved. Therefore, he charged against the transferee company, Shop Nepal. Decide whether Sisir Chand can recover compensation from the transferee company.

Answer

Facts of the Case

When a company is incorporated, it is treated as a separate legal person from its shareholders. This veil of corporate personality can be lifted and the natural person behind it can be made liable where the separate legal existence of company has been used to commit some fraud or misconduct. In other words, the separate legal existence of a company cannot be used as a means to achieve some illegal or fraudulent purpose. The courts will refuse to uphold the separate existence of the company where it is formed to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

Case Law

In Creasey vs. Breachwood Motors Ltd. 1993 BCLC 480, it has been decided by the Court that if the takeover of the company's assets had been carried out with an intention to avoid legal duty and as against the interest of its creditors, the court can disregard the separate entity of the company.

Conclusion

In this case, therefore, the transferee company is liable to pay compensation because the remaining assets of Skyshop Nepal Pvt.Ltd. has been received by the transferee company. As being created unjust result to the interest of the plaintiff, Mr. Sisir Chand, the transferee company Shop Nepal Pvt. Ltd. cannot be treated as a separate legal person than its transferor company Skyshop Nepal Pvt. Ltd. It means that the two companies are not treated as separate entities but same and single. So, Mr. Sisir Chand can recover compensation from the transferee company to the extent of liability as per the agreement of transfer of assets.

(Note: "Heritage Nepal" was written mistakenly in place of Skyshop Nepal Ltd. Students who have identified the mistake and answered accordingly will be awarded marks.)

- b) A deed of mortgage was executed by the secretary and the working director on behalf of a company, Divya Agro Pvt. Ltd., while securing a loan from a bank. The mortgagee has acted in good faith and the money borrowed applied for the purpose of the company. When the bank brought an action against the company being failed to repay the loan it was claimed that the company should not be held liable as the articles required that all documents should be signed by the managing director, secretary, and the working director on behalf of the company. Examine the validity of the transaction and give answer to the following issues with the relevant principle.
- Is the transaction between the bank and company valid?
 - Can the bank entitle to recover the loan issued to the company?

Question Paper Nmercantile Law June 23

R Sandford



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to traditional dispute resolution methods as it entails parties often located in different parts of the world making contracts with each other at the click of a mouse. The use of traditional litigation for disputes arising in this forum is often inconvenient, impractical, time consuming and expensive due to the low value of the transactions and the physical distance between the parties. Thus modern legal systems face a crucial choice either to adopt traditional dispute resolution methods that have served the legal systems well for hundreds of years or to find new methods which are better suited to a world not anchored in territorial borders. Online Dispute Resolution (ODR) originally an offshoot of Alternative Dispute Resolution (ADR) takes advantage of the speed and convenience of the Internet becoming the best and often the only option for enhancing consumer redress and strengthening their trust in e-commerce. This book provides an in-depth account of the potential of ODR for European consumers offering a comprehensive and up-to-date analysis of the development of ODR. It considers the current expansion of ODR and evaluates the challenges posed in its growth. The book proposes the creation of legal standards to close the gap between the potential of ODR services and their actual use, arguing that ODR if it is to realise its full potential in the resolution of e-commerce disputes and in the enforcement of consumer rights must be grounded firmly on a European regulatory model.

The Bulletin of the Commercial Law League of America, 1917 **Commercial Law for Accountant Students** Meyer Barnard Cushner, 1913 *The Solicitors' Journal & Reporter*, 1863 **Making Commercial Law** Ross Cranston, 1997. This is a collection of essays written in honour of Roy Goode, the Norton Rose Professor of English Law at Oxford and highly esteemed commercial law scholar. The essayists are themselves a distinguished international group of the world's most distinguished commercial lawyers. The topics covered include international contracts and sales, credit and security and commercial arbitration. This is a truly international collection which will be of great interest to scholars of commercial law world-wide and to practitioners working in the areas of finance and international banking.

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Table of Contents Question Paper Nmercantile Law June 23

1. Understanding the eBook Question Paper Nmercantile Law June 23
 - The Rise of Digital Reading Question Paper Nmercantile Law June 23
 - Advantages of eBooks Over Traditional Books
2. Identifying Question Paper Nmercantile Law June 23
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Question Paper Nmercantile Law June 23
 - User-Friendly Interface
4. Exploring eBook Recommendations from Question Paper Nmercantile Law June 23
 - Personalized Recommendations
 - Question Paper Nmercantile Law June 23 User Reviews and Ratings
 - Question Paper Nmercantile Law June 23 and Bestseller Lists
5. Accessing Question Paper Nmercantile Law June 23 Free and Paid eBooks

- Question Paper Nmercantile Law June 23 Public Domain eBooks
- Question Paper Nmercantile Law June 23 eBook Subscription Services
- Question Paper Nmercantile Law June 23 Budget-Friendly Options
- 6. Navigating Question Paper Nmercantile Law June 23 eBook Formats
 - ePub, PDF, MOBI, and More
 - Question Paper Nmercantile Law June 23 Compatibility with Devices
 - Question Paper Nmercantile Law June 23 Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Question Paper Nmercantile Law June 23
 - Highlighting and Note-Taking Question Paper Nmercantile Law June 23
 - Interactive Elements Question Paper Nmercantile Law June 23
- 8. Staying Engaged with Question Paper Nmercantile Law June 23
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Question Paper Nmercantile Law June 23
- 9. Balancing eBooks and Physical Books Question Paper Nmercantile Law June 23
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Question Paper Nmercantile Law June 23
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Question Paper Nmercantile Law June 23
 - Setting Reading Goals Question Paper Nmercantile Law June 23
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Question Paper Nmercantile Law June 23
 - Fact-Checking eBook Content of Question Paper Nmercantile Law June 23
 - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development

- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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