Section A

Question 1

(a)

The Enterprise Act 2002 contains a series of significant reforms designed to make administration more attractive.

The Enterprise Act makes provision for two ‘out of court’ routes to administration. Under the old law, an administrator could only be appointed by an order of the court, on a petition by the company, its directors or any creditors (IA 1986, s.9 (1) and it was necessary to show that the company was, or was likely to become, unable to pay its debts. However, under the Enterprise Act a company is able to enter administration not only by means of a court order but also by a) an appointment by a floating charge holder or b) an appointment by the company or its directors.

The Enterprise Act enables the holder of a floating charge to appoint an administrator, provided that their security has become enforceable (Insolvency Act 1986, Sch.B1, para.16) and that their security interest relates to the whole or substantially the whole of the company’s property (Insolvency Act 1986, Sch.B1, para.14(3). The power to make an appointment must be specified by the instrument creating their security (Insolvency Act 1986, Sch.B1, para.14(2). The second gateway to administration is by means of an appointment by the company or its directors.

The administration procedure provides for an interim moratorium, whereby the administrator is allowed to perform his functions “free from the burden of fending off attacks on the company and its assets by individual creditors”. Crucially, the moratorium will prevent the enforcement of any claims against the company pending the granting or the dismissal of an administration application. A remarkable change introduced by the Enterprise Act is with regards to the purpose of administration. The administrator must hierarchically perform his functions with the objective of a) rescuing the company as a going concern, or b) achieving a better result for the company’s creditors as a whole than would be likely if the company were wound up or c) realizing property in order to make a distribution to one or more secured or preferential creditors” (Insolvency Act 1986 Sch. B1, Para 3(1) a-c).

Additionally, the administrator must perform his functions “in the interests of the company’s creditors as a whole” (para. 3(2)) and as “quickly and efficiently as is reasonably practicable” (para.4). In exercising his functions, the administrator acts as the company’s agent (para. 69). Upon his appointment, the administrator has the power to do anything necessary or expedient in relation to the management of the affairs, business or property of the company (para. 59(1).
The term debenture refers to a document creating a debt or acknowledging it—Levy v Abercorris (1888). In addition, with regard to the meaning of the term, section 738 Companies Act 2006 states that ‘debenture’ includes debenture stock, bonds and any other securities of a company, whether or not constituting a charge on the assets of the company.

There are some key differences in both the characteristics and effect of a fixed and floating charge.

In particular, a fixed charge or mortgage is a form of security that relates to a specific asset or assets. A fixed charge attaches to the asset in question as soon as the charge is created.

A floating charge is a type of security that relates to the company’s current and future assets. The charge floats on top of the company’s assets until it is converted into a fixed charge. In Re Yorkshire Woolcombers (1904) it was held that an ‘element in the definition of a floating security, that it is something which is to float, not to be put into immediate operation, but such that the company is to be allowed to carry on its business. It contemplates not only that it should carry with it the book debts which were then existing but it contemplates also the possibility of those book debts being extinguished by a payment to the company, and that other book debts should come in and take the place of those that had disappeared.’

In addition, in Re Spectrum Plus Ltd (2004) a floating charge was described as: ‘the asset subject to the charge is not finally appropriated as a security for the payment of the debt until the occurrence of some future event. In the meantime the chargor is left free to use the charged asset and to remove it from the security’.

With regard to the enforcement of charges, it should be noted that in order to enforce a floating charge, it is necessary for crystallisation to occur, that is to say, the charge must first crystallise into a fixed charge—Re Panama, New Zealand and Australian Royal Mail Co (1870). However, there are problems associated with the crystallisation of floating charges, as there is a need to crystallise as quickly as possible. Furthermore, problems may occur with creating fixed charges over book debts—Siebe Gorman & Co. LTD v Barclays Bank Ltd (1979), Agnew v Inland Revenue (2001).

Both types of security (floating charge & fixed charge) aim to enable the secured creditor to have priority of claim in the event of the insolvency. Floating charges have lower priority than fixed charges in the context of liquidation.

Because of the lower priority of a floating charge, security documents that create floating charges may also seek to create fixed charges over as many assets of the company as they reasonably can. Of course this may cause uncertainty as to the characterisation of the charge as it will have to be ascertained whether the charge created should be treated as a fixed charge or as a floating charge.

It is interesting to note that in the landmark case of Re Spectrum Plus Ltd (2004) the House of Lords confirmed that a charge over book debts could be a
fixed charge, provided that the secured creditor exhibited the necessary degree of control over the proceeds of the book debts.

**Question two**

In general, the doctrine of capital maintenance protects creditors from unforeseen risks. The general principle is that a company’s share capital must be raised and that it must be maintained for the benefit of creditors. The general rule arising from the case of *Trevor v Whitworth* (1887) is that the company’s share capital cannot be reduced without the sanction of the court. Moreover, McCarthy J stated in *Jenkins v Harbour View Courts Ltd* (1966) that "the prohibition against a return of capital blocks any transfer whatever the form, whether it be by a payment of money, by a transfer of assets in specie, or in any other way, unless the procedures stipulated by the relevant statute...have been observed”.

Sections 641-643 Companies Act 2006 make provision for a procedure of lawful reduction of capital. Section 641(1) states that a limited company having a share capital may reduce its share capital in one of two ways:

(a) in the case of a private company limited by shares, by special resolution supported by a solvency statement;
(b) in any case, by special resolution confirmed by the court.

With regard to the first method, all of the company’s directors must provide a solvency statement. This requirement ensures that there cannot be a reduction of capital unless the company is able to pay its debts as they fall due- section 643 Companies Act 2006. In addition, where the directors make a solvency statement pursuant to section 643 ‘without having reasonable grounds for the opinions expressed in it’ they commit a criminal offence under section 643(4).

A public company is prevented from using the first method and is instead expected to use the second.

**The role of the court:** Once a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction- section 645(1). However, if the proposed reduction of capital involves either: (a) diminution of liability in respect of unpaid share capital, or (b) the payment to a shareholder of any paid-up share capital, creditors are entitled (under section 646 Companies Act 2006) to object to reduction applies unless the court directs otherwise. Where section 646 applies the court may list the creditors who are entitled to object. Moreover, creditors who object to a reduction must be paid off or the company must secure payment of their claims. The court has the power to fix the amount to be paid- section 646 Companies Act 2006. Under section 648(1) Companies Act 2006 the court may make an order confirming the reduction of capital on such terms and conditions as it thinks fit. The court shall not confirm the reduction unless it is satisfied, with respect to every creditor of the company who is entitled to object to the reduction of capital that either:
(a) his consent to the reduction has been obtained, or
(b) his debt or claim has been discharged, or has determined or has been secured- section 648(2).

A copy of the order of reduction and a minute approved by the court showing the amount of the share capital, the number of shares into which it is divided, the amount of each share and the amount, if any, deemed to be paid on each share, must be registered with the Registrar- section 649.

Section 994- incidental reduction-where court makes an order as a remedy for unfair prejudice claim.

In addition under section 658, there is a general prohibition against voluntary acquisition of own shares. This provision confirms the common law rule in Trevor v Whitworth (1887).

Exceptions:
(a) section 684- Power to issue redeemable shares- See BDG Roof-Bond Ltd v Douglas and ors (2000)
(b) sections 659, 690,692- buy back own shares – Acatos v Hutcheson(1995)
(c) sections 709-710- permissible capital repayments.

**Question three**

Following the decision in Salomon v Salomon (1897), a company upon formal registration, becomes a separate legal person. That is to say upon incorporation, the company is distinct from its members and has its own rights and obligations. Members are obscured by a corporate veil surrounding the company, while the company is trading. Members will generally be able to take advantage of limited liability (subject to wrongful trading liability) and it will be easier for them to raise finance. However, limited liability could also be regarded as ‘illusory liability’ as far as small businesses are concerned because of the need to provide investors (i.e. banks) with personal guarantees.

In addition, section 3 of the Companies Act 2006 defines the liability members of limited companies may incur. It states that:

(1) A company is a “limited company” if the liability of its members is limited by its constitution.

It may be limited by shares or limited by guarantee.
(2) If their liability is limited to the amount, if any, unpaid on the shares held by them, the company is “limited by shares”.
(3) If their liability is limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up, the company is “limited by guarantee”.
(4) If there is no limit on the liability of its members, the company is an “unlimited company”.

The implications of the decision in Salomon are further illustrated in MacAura v Northern Assurance Ltd (1925), where it was held that has a right to own property; also in Lee v Lee’s Air farming (1961) it was found that a company has a right to sue and be sued on its own name; finally, a company enjoys perpetual
succession and is not affected by the death or insolvency of an individual member.

However, it could be argued that the corporate personality doctrine could be abused by dishonest members to the creditors’ detriment, as illustrated in Welton v Saffrey (1897). Although the courts are very reluctant to intervene so as to impose liability, they are prepared to lift the veil of incorporation under certain circumstances, so as to hold unscrupulous members liable Adams v Cape (1991).

There are both common law and statutory exceptions to the Salomon rule. However, with regard to the common law, Adams re-affirmed the circumstances where the courts may pierce the veil of incorporation, so as to expose the company’s members to personal liability. It was stated that the veil may be lifted where there is evidence of: a) fraud; b) agency; and c) a single economic entity.

Firstly with regard to fraud, in Woolfson v Strathclyde (1978) the court stated that the veil may be lifted when incorporation has been used as a mean of avoiding existing legal obligations. Similar cases include Jones v Lipman(1962), Trustor AB v Smallbone (2001), Guilford Motor v Horne (1933), Creasy v Breachwood (1993), Ord v Belhaven Pubs Ltd. (1998).

Secondly, with regard to agency, in Smith, Stone & Knight v Birmingham Corporation (1939), Atkinson J stated six points which are deemed relevant for the determination of whether or not in a group structure, a company is acting as an agent of its parent company. The first point was: Were the profits treated as the profits of the company? Secondly, was the person conducting the business appointed by the parent company? Thirdly was the company the head and the brain of the trading venture? Fourthly, did the company govern the adventure, decide what should be done and what capital should be embarked on the venture? Fifthly, did the company make the profits by its skill and direction? Sixthly, was the company in effectual and constant control?

Finally, with regard to a single economic unit, in DHN Food Distributors Ltd v Tower Hamlets London Borough Council (1976), where three companies were treated as one, it was held that the economic reality of the case demonstrated that the corporate group was operating as a single entity.

**Question four**

(a)

The ability of a company director to bind the company depends on their authority. There are three main types of authority a director may hold, such as: a) express actual authority; b) implied actual authority; and c) apparent or ostensible authority- Criterion Properties PLC v Stratford UK Properties LLC (2004).

Where an agent has the actual authority, that means that it was expressly stated that he/she has been given the power to act on behalf of the principal.
This is for instance, where a board of directors passes a resolution which authorises the director to enter into contracts the value of which does not exceed a particular amount i.e. £10,000.

Furthermore, an agent may bind their company where they have been given implied actual authority. Implied authority can be inferred by virtue of a position held by an agent, for instance where he/she is appointed as managing director. In *Hely-Hutchinson v. Brayhead Ltd* (1967) it was held that two factors had to be considered prior to ascertaining whether or not an agent had implied authority: a) the director’s course of dealings; and b) acquiescence by the board of directors.

Furthermore, an agent may bind the principal, where they have apparent or ostensible authority. Apparent authority exists where the principal’s conduct leads a third party to believe that the agent had the authority to act. In *Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd* (1964) it was stated that: “... ‘apparent’ or ‘ostensible’ authority...is a legal relationship between the principal and the contractor created by a representative made by the principle to the contractor, that the agent has authority to enter on behalf of the principle liable to perform any obligations imposed on him by such contract”. In other words, the company may be forced to honour a contract with an innocent third party, where a representation was made by the principal and where the third party has suffered loss.

It is important to note that a representation should be made by the company and not the purported agent - *Armogas Ltd v. Mundogas* (1986). Nevertheless, it worth mentioning the case of *First Energy Ltd v. Hungarian International Bank Ltd* (1993), where the director was held to have apparent authority even though no representation was in fact made by the principal.

(b)

In the 19th century the courts have developed a rule, known as the *ultra vires* rule. This provided that, where the company’s objects were restricted, the company had no capacity to enter into a transaction which fell outside the scope of its articles. Accordingly, if the company acted beyond its capacity, the transaction would be void (*ultra vires*) and would not bind the company- *Ashbury Railway Carriage v Riche* (1875).

However, this rule has now been nullified by the Companies Act 2006. In particular, section 39 provides that ‘the validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company’s constitution’.

The Companies Act 2006 gives companies unrestricted capacity unless a company’s articles specifically restrict its objects – section 31(1). Companies will not need to state any objects in their constitution, if registered after that part of the Act is in force. Only if they do state objects, there will be any restriction on their capacity.
Moreover, it is important to note also section 171 Companies Act 2006, which imposes a duty on directors to act within powers and to exercise their power for a proper purpose.

Finally, section 40 Companies Act 2006 is designed to afford protection to innocent third partied that enter into transactions with the company, and provides that: ‘in favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed free of any limitation under the company's constitution’.

That is to say, the board of directors or those they authorise bind the company in any dealing with a person who is in good faith and no constitutional limitations affect this.

**Section B**

**Question one**

With regard to the sale of the jet, it could be said that pursuant to section 238(4) Insolvency Act 1986, this transaction could be challenged, as it is a transaction at an undervalue.

Section 238 (2) Insolvency Act 1986, states that where the company has entered into a transaction with any person at an undervalue, the office-holder, such as an administrator or a liquidator, may apply to the court for an order of restitution.

In *Re M.C. Bacon* (1990) it was stated that in order to ascertain whether a transaction is at an undervalue, a comparison must be made between the value obtained by the company for the transaction and the value of consideration provided by the company. Both values must be measurable in money or money's worth and both must be considered from the company's point of view.

In addition, with regard to the payment of the loan, section 239(2) Insolvency Act 1986 provides that where the company transfers assets or pays a debt shortly before it reaches insolvency, such transaction may be invalidated on the ground that it is an unfair preference- *Re Exchange Travel Holdings* (1996); *Re M.C. Bacon* (1990).

Section 239 (4) states that a company gives a preference to a person if:
(a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and
(b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.

Following the decision in *Re M.C. Bacon* (1990) it is no longer necessary to establish a dominant intention to prefer. It is sufficient that the decision was influenced by the requisite desire. That is the first change. The second is that it is no longer sufficient to establish an intention to prefer.
Section 239(6) Insolvency Act 1986 provides that the statutory period for both sections 238 and 239 Insolvency Act 1986 will be two years where a connected party is involved - *Weisgard v Pilkington* (1995).

Furthermore, directors could incur liability for wrongful trading under section 214 Insolvency Act 1986 and be ordered to personally contribute to the company’s assets - *Re Produce Marketing Consortium Limited (No. 2)* (1989).

There is nevertheless, provision for a defence under section 214 (3), and the court may relieve a director from liability, if it is satisfied that...that person took every step with a view to minimising the potential loss to the company’s creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.

In addition, the two directors could be disqualified pursuant to section 6 Company Director Disqualification Act 1986 on the ground of unfitness.

(1) The court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied-
(a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and
(b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.- *Re Sevenoaks Stationers Ltd* (1991).

**Question two**

A business may be set up by means of using different forms of partnership.

Rupinder has a choice to set up either an ordinary partnership i.e. a partnership governed by the Partnership Act 1890 or a limited liability partnership i.e. a partnership governed by the Limited Liability Partnership Act 2000.

In deciding which structure to set up, Rupinder will have to take into account a wide range of factors:

**Formation**

Varying degrees of formality.

An ordinary partnership will come to existence when Rupinder and the other three investors comply with the provisions of section 1 of the Partnership Act 1890 no intent to form a partnership is required.

Need to show a “relation between persons carrying on a business in common with a view to profit”.

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To form a limited liability partnership, an incorporation document and fee must be filed with the Registrar of Companies (Section 2 Limited Liability Partnership Act 2000), this is a more formal formation that for a partnership under the Partnership Act 1890. Details of the partners (members) (names, addresses, dates of birth etc) will be publicly available from the Registrar.

**Liability**

Max, Damien and R’s mother should be advised that if they invest in an ordinary partnership, they would be equally liable without limit for debts and obligations of the firm having joint and several liability with the other partners (Section 9 and 12 Partnership Act 1890).

Each partner of the partnership will have the ability to bind the partnership either through actual or ostensible authority, in the event that partnership is bound, a third party will have the right to sue any or all of the partners for the whole amount of the debt.

Although Rupinder’s mother does not wish to be involved in the management of the business, she should still be aware that the other partners could expose her to personal liability.

A limited liability partnership is, like a limited company, a separate legal entity to its members/partners (Section 1(2) Limited Liability Partnership Act 2000) and therefore third parties would pursue the partnership rather than the individual partners.

Max and Damien would enjoy the benefit of limited liability, under section 1(4) Limited Liability Partnership Act 2000, in the event of a winding up, they would only be liable to contribute up to what has been agreed between the partners (Limited Liability Partnership Regulations 2000 Regulation 5: Section 74 Insolvency Act 1986 modification)

**Ability to exit**

If, following their investment, Damien and Max decide to leave the partnership, they could do so.

Realisation of their investment:

With an ordinary partnership (under Partnership Act 1890, the default position under the act, is that their exit from the partnership would constitute retirement. Where a “partnership at will” has been formed, the consequence of such retirement would be the dissolution of the partnership under section 26 Partnership Act 1890

The partnership assets would be distributed pursuant to the statutory order set out in Section 44 Partnership Act 1890, this distribution is likely to result in a loss of goodwill. This would reduce the value of the partnership assets to be distributed.

However, it is for the partners to vary this provision by providing that a partner can exit the partnership by giving notice and imposing an obligation on the remaining partners to purchase the outgoing partners shares (Section 19 Partnership Act 1890)
In a limited liability partnership, their (Max & Damien) ability to exit is subject to the consent of other members (Limited Liability Partnership Regulations 2000 Regulation 7), unless there is an alternative agreement. It would be sensible to agree an express provision on exit when joining the partnership.

Management

Both types of partnership would allow partners to participate in the management, although this is not obligation. Whether or not they participate in the management of an ordinary partnership, as partner they will still be liable for the actions/debts of the partnership (Section 9 and 12 Partnership Act 1890). If they participate in the limited liability partnership, they will be liable as discussed above.

The Limited Liability Partnership Act 2000 will require two designated members who will be responsible for filings etc.

As Max and Damien are concerned about their liability, they should consider investing a limited liability partnership incorporated under the Limited Liability Partnership Act 2000.

Question three

The Companies Act 2006 provides a clear list of directors’ fiduciary obligations. Sections 171-182 define the scope and nature of these duties.

Under sections 170–172 Companies Act 2006, directors have a duty to act within powers-Smith v Fawcett (1942) and to promote the success of the company. Directors’ duties are owed to the company Percival v Wright (1902) as a whole and not to individual shareholders.

Under section 176 Companies Act 2006, Emma has a duty to avoid secret profits- Boston Deep Sea v Ansell (1888). Accordingly, she is accountable to return any profits made to the company. Emma is in breach of her obligation to disclose her conflicting interest under section182 (Declaration of interest in existing transaction or arrangement). In addition, Emma failed to promote the success of the company under section 172 Companies Act 2006.

Also under section 177 Companies Act 2006 (Duty to declare interest in proposed transaction or arrangement) Tina has a duty to disclose her interest in a proposed transaction. MediaWorld may choose to ratify (section 239 Companies Act 2006) the contract with Tina’s company, provided that, beyond her personal gain, she acted in good faith and in the best interests of MediaWorld.

Section 178 Companies Act 2006 deals with the civil consequences of breach of general duties (i.e. section 177). Following Tina’s failure to declare an interest in the transaction, she is accountable to return any profits made- Regal Hastings v Guliver (1942).

It should be noted that, the director commits a criminal offence if she fails to disclose her interest in an “existing” contract with the company- section 182 Companies Act 2006.
Under section 174 Companies Act 2006 Billy is potentially in breach of his duty to exercise reasonable care, skill and diligence- Brazilian Rubber (1911), Dorchester Finance v Stebbing (1989). An objective or subjective test can be applied in order to define the standard of care require by him. The test to be applied by the court has become one under which the director in question is to be judged by the standards of what can be expected of a person fulfilling his functions, and showing reasonable diligence in doing so.

In addition, it could be said that Emma and Tina are in breach of the same duty under section 174 Companies Act 2006. Also under section 173 Companies Act 2006 they may be in breach of their duty to exercise independent judgment.

The legal consequences of the above and possible remedies include: Ratification by members, section 1157 Companies Act 2006 relief from court, and ability for directors to authorise e.g.S175 Companies Act 2006.

It is important to note that under section 232 Companies Act 2006 the company is prohibited from giving directors indemnity in respect of breach of duty.

**Question four**

**(a)**

This part concerns a pre-incorporation contract.

Although there is no legal definition of a promoter, the courts have provided guidance in relation to their role and obligations. In Whaley Bridge Coliaco Printing Co. v Green (1880) it was stated “the term promoter is a term not of law but of business, usefully summing up a single word a number of business operations, familiar to the commercial world, by which the company is generally brought into existence”. Moreover, the promoter is entrusted with undertaking the necessary activation in relation to the company’s registration. In Twycross v Grant (1877) it was stated that a promoter “undertakes to form a company with a reference to a given project and to set it going, and who takes necessary steps to accomplish that purpose”.

Beth has entered into a contract prior to the company’s incorporation and purports to act for and on behalf of a non-existent company. However, Beth would be personally liable as in Kelner v Baxter (1866) it was stated that: “the promoter cannot be treated at law as an agent because no principal exists”. Also the company exists only from the time of its incorporation – Jubilee Cotton Mills v Lewis (1924).

In addition, section 51 Companies Act 2006 imposes personal contractual liability on the promoter in respect of a transaction with a third party, subject to an agreement to the contrary. In particular it states: “A contract that purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.”
The third party may enforce the contract against the promoter, who purports to act on behalf of a company that is not yet incorporated- *Phonogram Ltd v Lane* (1982).

(b)

Section 51 (1) Companies Act 2006 provides that liability can be negated, where an agreement to the contrary exists. However, *Phonogram Ltd v Lane* (1981) confirmed that such a provision must be expressly and unambiguously included in the agreement and will not be implied.

It should be noted that after its formation, a company is prevented from retrospectively ratifying a pre-incorporation contract so as to achieve ‘unilaterally’ a transfer of the liability under the contract from the promoter to the company. The contract remains binding between the promoter and the third party *Natal Land & Colonization Co v Pauline Colliery Syndicate* (1904). However, there are ways in which a promoter may transfer liability to the company once this has come into existence. In particular, ‘novation’ entails the entering into of a new contract between the newly formed company and the third party under terms that are identical or very similar to those of the pre-incorporation contract, therefore relieving the promoter from personal liability. Accordingly, if novation took place Beth could potentially avoid liability.

(c)

Although promoters are not agents, they stand in a fiduciary position and owe legal duties towards the company- *Erlanger v New Sombrero. Phosphate Co.* (1878). A promoter must avoid conflicts of interest. Accordingly, Beth has a fiduciary duty to avoid secret profits- *Gluckstein v Barnes* (1900) and has an obligation to disclose her interest in a transaction. A promoter must disclose to an independent board of directors- *Erlanger v New Sombrero. Phosphate Co* (1878) or to the existing and intended shareholders. *Salomon v Salomon* (1897) stipulates that disclosure may not be sufficient if the shareholders or the board directors are not truly independent.

Remedies for breach of duty include the right of the company to rescind the contract and recover the amount paid. Accordingly, with regard to the transfer of land by Beth to AFL Ltd, it could be said that following Beth’s failure to disclose her interest in the transaction, AFL Ltd could rescind the contract and recover the amount paid.

Additionally, if the company has lost its right to rescind the contract it could hold Beth accountable for the profits made- *Gluckstein v Barnes* (1900) or could sue Beth in damages for breach of fiduciary duty and recover the profit she unlawfully made- *Re Leeds & Hanley Theatres of Varieties Ltd* (1902).