Question 1
The law of agency and Corporations Act, act as guides on how contracts made through an agent should be enforced. According to section 126 of the Corporations Act an agent is given implied or express authority by the company he or she is representing. The principal under this section of the Act is understood to have authorised the agent to carry out transactions and get into contracts on behalf of the company. This authority is referred as actual authority because the agents are said to act within their authority. A company is bound by any contract that is made by their agents who were acting within their powers. This means that an outsider can enforce the contract and the principal company cannot avoid the contract. The agent who does not act within their power act in a way that convinces the other parties that they have the authority to represent the company. This authority is referred as apparent authority. The outsiders in this case would need to show that the agent used a representation to convince them that they had proper authority to represent the company.

The principal company has the obligation of honouring the contracts made by their agents whether they are made with apparent or actual authority. In the Hely-Hutchison v Brayhead Ltd [1968] 1 QB 549, the agent has implied authority to represent the company under the same capacity as its managers. This means that the agents have to present the mind of the principal because the failure to do so makes the contract null and void and it can be avoided. The representation by the agent should have induced the outsider to enter into the contract believing that the agent had actual authority to manage the affairs of the company. Therefore, in this case an outsider will fail in enforcing a contract if the principal provides evidence that the agent was not acting within their authority. According to s129 a person may assume that an agent has the authority to enter into contracts on behalf of the company. The principal company will need to provide evidence that the agent did not have act within their authority so as to avoid the contract. The outsider must have relied on the principal of good faith. The outsider will need to rely on s129 of the Corporation Act.

Question 2.a
Issues
The issue in this case is to determine whether action taken by Jack can make Jill and Yuen liable. There is also need to determine whether Jack was acting on behalf of the company in the transactions he undertook.

Rules
In order to solve the issues there is need to the Corporation Act of 200. According to the partnership law all partners should take responsibility of all transaction undertaken by any partner who has authority. The law requires a partner to be authorised by the company so that they can enter into transactions on behalf of the business. The action taken by a partner should be in the same line with general company activities. According to S10 all the actions related to general activities of the firm taken by a partner bind the firm to settle the obligations. This will help in solving the case of Jack, Jill and Yuen.

Application of the law
The application of the law involves using of precedents which have already been set. This will by use of case law. In the case Mercantile Credit Co Ltd v Garrod, Garrod were partners who dealt with selling and
repairs of second hand vehicles. They would act under equal capacities in
decision making. The partners had a dispute where one of the partners
sold a car to a third party and yet the car was not supposed to be sold9.
The partner argued that his partner acted without authority and
therefore, the transaction could not make him liable. The sold car did
not belong to the partners but it was brought in order to be repaired.
This led to the person who bought the car want to recover the whole
transaction price from the partners.
The issue before the court was to decide whether the partner was acting
in the general line of the company10. The court’s decision was that the
company dealt with selling and repair of second hand cars and this is
what the partner did. This was in line with the general operations of the
company. This made the other partner liable for the action taken by his
partner because his has authority to carry out such transactions. This
means that the partners could not avoid the contract. Therefore, the
innocent party is liable11.
In another case, Polkinghorne v Holland12, the plaintiff was a
client of Holland solicitors and she sought advice from one e of the
partners on a certain investment. The partner had vested interest in the
investment, the advice given to their client incurring huge losses. She
brought action against the company because of the misleading advice. The
court decided that all the partners were liable for the losses because
the partner had authority to represent the company and the advice was in
line with the company general activities. The only way they can avoid to
be liable is by providing evidence to show that their partner had vested
interest in the investment13.

Conclusion
In referring to the cases Mercantile Credit Co Ltd v Garrod and
Polkinghorne v Holland they will help in solving Jack, Jill and Yuen
case. The law makes all the partners liable for the actions taken by
their other partners who has authority and who undertook the activities
that are in the same line with the company activities. Therefore, it is
very hard for partner to avoid the contracts undertaken by Jack because
they gave him authority to ensure that the company was ready for
operations. This involved buying the necessary equipment. Therefore, the
partners will be liable for decision taken by Jack because it was in line
with the company activities. The reason behind this is that Jack had
authority from other partners. He did not have any vested interest in
transactions and he thought the transactions were of the best interest
AHVG.

Question 2. B
Issue
The issue in this case is to determine whether Jack should be removed as
a director of the company.
Rules
According to the CA section 131 a director should be liable for all the
contracts made before registration and which have not been ratified by
other members.
Application
This means that Jack will have to pay for the transactions which have not
been ratified by other directors. For Yuen to be successful in his
argument he will need evidence that Jack acted in neglect. Under section
131 of the Corporations Act a director must act with care and
diligence14. Therefore, Yuen will have to show that Jack did not practice
care and diligence in carrying out the transactions. This will be tested
through a reasonable person test. This means that would be another person
in the same position would have carried out the transactions15. This
means that in applying the business rule judgement a director or partner
should have good faith in all transactions and to have any vested
interests.
Conclusion
There is no evidence that Jack had any vested interest in the transactions.16 The rational decision will be that the transactions were in the best interest of the company. Therefore, Yuen is not right in his accusation and Jack should not resign as a director of the company.

Reference List
Book
Legislation
Partnership Act of 1963
Corporations Act 2001
Cases
Mercantile Credit Co Ltd v Garrod
Polkinghorne v Holland
Hely-Hutchison v Brayhead Ltd [1968] 1 QB 549

References