

MAY/JUNE 2018

STUDENT NUMBER								

[illegible]

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Subject

Number of paper

Date of examination

Examination centre

Question No	Marks					
	Examiners					
	1		2		3	
1						
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FBE2604

(472103)

May/June 2018

Forms of Business Enterprise

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

MR SN MAKHUBU

SECOND

DR PM LEHLOENYA

Closed book examination

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INSTRUCTIONS:

- 1 This paper consists of 18 pages plus instructions for completing a mark-reading sheet
- 2 The paper is divided into 2 sections
SECTION A consists of 4 questions (with subdivisions) and has to be completed in the space provided on the examination paper itself
SECTION B consists of 10 multiple-choice questions counting 4 marks each. The answers to the multiple choice questions have to be filled in on the mark-reading sheet provided to you
- 3 At the end of the examination you have to hand in both the examination paper as well as the mark reading sheet containing your answers to the multiple choice questions

SECTION A

QUESTION 1

- 1 1 You are one of the directors of Big Projects (Pty) Ltd ('company'), a company specialising in civil construction. During a meeting in which the working conditions of the company's employees are discussed, Sam, a director of Big Projects (Pty) Ltd, suggested that money set aside for increasing salaries of workers and improving their working conditions should instead be used to pay additional dividends to the company's shareholders and for performance bonuses of the executive management. Sam's argument is that the shareholders and executive management are more important to the company than the employees since they contribute more.

As a director of the company, you are of the view that Sam's suggestion and argument are not in line with the concept of *Ubuntu*.

Advise the board on the following:

- The meaning of the concept of *Ubuntu* (2)
- How the concept of *Ubuntu* can be applied in the decision-making of the company on the two issues discussed in the meeting? (1)
- And provide at least TWO elements that apply in business in which the values of *Ubuntu* are embodied (2)

(5)

[TURN OVER]

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- 1 2 Explain the concept of lifting or piercing the corporate veil and list FOUR implications of the principle of separate legal personality as provided in the case of *Salomon v Salomon & Co Ltd* [1897] AC 22 (HL) (6)

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[TURN OVER]

- Advise Tiyan accordingly. In your answer, you should provide the type of a company and at least **FOUR** characteristics of such a company. **(6)**

[illegible]

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- 1 4 Thabo has just filed a notice of incorporation ('NOI') for the registration of a company. He wants to know the duties of the Companies and Intellectual Property Commission (commission) in terms of section 14 of the Companies Act 71 of 2008 ('the Act') once the NOI has been filed.

Advise Thabo accordingly.

(3)

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TOTAL FOR QUESTION 1: [20]

[TURN OVER]

2 1 Victor wants to buy a truck for a company that is not yet incorporated. He is aware that there are several alternatives to the pre-incorporation contract in terms of section 21 of the Act, one of the alternatives being cession and delegation. Victor wants to know more about cession and delegation and comes to you for advice.

- What is cession and delegation?
- How does it work as an alternative to the pre – incorporation contract?
- List TWO other alternatives to a pre - incorporation contract

[illegible]

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[TURN OVER]

- 2.2 Sam is a director of Trix (Pty) Ltd ('company'). The memorandum of incorporation ('MOI') of the company states that only directors have the authority to bind the company contractually. The MOI further provides that, with contracts in excess of R2 million, the directors must first obtain authorisation from the general meeting before concluding such contracts. Sam decides to buy equipment worth R3 million on behalf of the company, but without obtaining the authorisation from the general meeting. The equipment is needed for purposes of production.

Tim, who is a representative of the company supplying the equipment, knows about the requirements of authorisation because he has dealt with the company before. However, he is under the impression that the approval of the general meeting has been obtained since it had always been obtained on the previous transactions.

With reference to the Companies Act 71 of 2008, advise the shareholders of the company on whether the company is bound by the contract. (5)

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[TURN OVER]

(4)

[illegible]

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[TURN OVER]

QUESTION 3

- 3.1 The board of directors of Badiri Badinaladı Ltd ('BB') are in the process of paying dividends to their shareholders. They need advice on the requirements or circumstances under which a distribution may be made.

With reference to the Companies Act 71 of 2008, explain to the board of BB what a distribution is and provide the requirements or circumstances under which a distribution may be made.

(5)

()

[TURN OVER]

Advise Thea and Leya accordingly and provide at least **THREE** decisions that require a special resolution **(5)**

[illegible]

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- 3.3 Tim serves as a director on the board of directors of Geotrust (Pty) Ltd, a company specialising in distributing ceramic tiles. In terms of the company's Memorandum of Incorporation (MOI), Tim is one of the directors authorised to represent Geotrust (Pty) Ltd in all transactions.

TY (Pty) Ltd approaches Geotrust (Pty) Ltd with a request for a supply of ceramic tiles. Geotrust (Pty) Ltd is represented by Tim during the meeting between the two companies. After the meeting, Tim decides to resign as a director of Geotrust (Pty) Ltd and subsequently advises his wife Thembi to contact TY (Pty) Ltd regarding the supply of ceramic tiles. Thembi is a shareholder in Beaceramics (Pty) Ltd, a company that is also in the business of supplying ceramic tiles. As a result of Tim's advice to Thembi, TY (Pty) Ltd eventually concludes the contract for the supply of ceramic tiles with Beaceramics (Pty) Ltd.

With reference to the provisions of the Companies Act 71 of 2008, advise the shareholders of Geotrust (Pty) Ltd on whether Tim has breached any of his duties to the company.

(5)

[TURN OVER]

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TOTAL FOR QUESTION 3: [15]

QUESTION 4

- 4 1 Pam is a member of Tekton CC. She is in the process of drafting her will. In the will, she decides to bequeath her member's interest to her son, Sabelo. Pam would like to know *what the legal position would be should the other members of Tekton CC block the transfer of her member's interest to Sabelo after her death*.

Advise Pam accordingly

(4)

[TURN OVER]

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- 4.2 The members of Siyavuka CC want the corporation to acquire the member's interest belonging to Lucy as she is about to relocate to Europe. Lucy has indicated that she wants to sell her member's interest.

The members of Siyavuka CC come to you for advice on the following:

- a. The requirements that must be complied with before the corporation can acquire the member's interest belonging to Lucy (4)
- b. What the solvency and liquidity test entails (2)

[TURN OVER]

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TOTAL FOR QUESTION 4: [10]

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TOTAL FOR SECTION A: [60]

☐

[TURN OVER]

SECTION B

MULTIPLE-CHOICE QUESTIONS**INSTRUCTIONS**

1. Answer all questions by filling in the answers on the mark-reading sheet provided
2. Use a soft pencil.
3. Please ensure that you fill in your student number on the mark-reading sheet. All the student numbers contain eight digits. In some instances, this includes a "0" at the beginning. You must also use the last pink block.
4. Each correct answer earns four (4) marks. No marks will be deducted for incorrect answer

Question 1

Which of the statements is **INCORRECT**?

- 1 Although it is advisable for members to conclude an association agreement, it is not compulsory
- 2 Members of the CC may arrange their rights to carry on business and manage a close corporation in the association agreement
- 3 Members of the CC may also arrange external affairs of the CC in the association agreement
- 4 Members of the CC may arrange the requirements for making decisions and voting in the association agreement

(4)

Question 2

Which of the statements is **CORRECT**?

- 1 In terms of the duty of care and skill, members of a CC should act honestly and in good faith
- 2 In terms of the duty of care and skill, members of a CC should avoid a conflict between their interests and those of the CC
- 3 In terms of the duty of care and skill, members of should not act without or exceed their powers
- 4 In terms of the duty of care and skill, member's conduct is measured against the conduct that could reasonably have been expected from a person with the same skill and knowledge as the member

(4)

[TURN OVER]

Question 3

Certain types of private companies, state owned companies and _____ are required to appoint an auditor every year at the annual general meeting

Choose the **CORRECT** statement

- 1 close corporations
- 2 personal liability companies
- 3 public companies
- 4 external companies

(4)

Question 4

The secretary of the company is a _____ of his or her company

- 1 principal auditor
- 2 principal administrative officer
- 3 principal director
- 4 principal shareholder

(4)

Question 5

In terms of _____ of the Companies Act 71 of 2008, a shareholder or a director may bring an application for a court to provide relief from oppressive or unfairly prejudicial conduct by the company

- 1 section 164
- 2 section 161
- 3 section 162
- 4 section 163

(4)

Question 6

The appraisal remedy is triggered and becomes available in the following instances

Choose the **INCORRECT** statement.

- 1 Where the company has adopted a special resolution to amend its MOI by altering the preferences, rights, or other terms of any class of its shares in a manner that is materially adverse to the rights or interests of that class of shares
- 2 Where a company is considering adopting a resolution concerning the disposal of the greater part of the assets of the company

[TURN OVER]

- 3 Where a company is considering to enter into a transaction that exceeds R 500 000 00
- 4 Where a company is considering merging or amalgamating with another company

(4)

Question 7

Despite any provision contained in the MOI or any agreement of shareholders, or agreement between the company and the director, removal of a director may be effected by a/an _____ in terms of section 71 of the Companies Act 71 of 2008

Choose the **CORRECT** statement

- 1 ordinary resolution
- 2 special resolution
- 3 special resolution with 85% of the voting rights
- 4 ordinary resolution with 65% of the voting rights

(4)

Question 8

Section 61(8) of the Companies Act 71 of 2008 stipulates that at least the following matters must be transacted at the annual general meeting.

Choose the **INCORRECT** statement.

- 1 Appointment of an auditor for the following financial year
- 2 Appointment of a secretary
- 3 Appointment of an audit committee
- 4 Any matter raised by shareholders

(4)

Question 9

Choose the **CORRECT** statement.

- 1 In *Standard Bank of SA Ltd v Ocean Commodities Inc 1983 (1) SA 276 (A)*, the court held that a share usually entitles its holder to vote at a shareholders' meeting, to share in dividends if declared by the board and to share in any assets of the company after it has been wound up
- 2 In *Lipschitz v UDC Bank Ltd 1979 (1) SA 789 (A)*, the court held that a share usually entitles its holder to vote at a shareholders' meeting, to share in dividends if declared by the board and to share in any assets of the company after it has been wound up
- 3 In *Re Duomatic Ltd [1969] 1 All ER 161 (Ch)*, the court held that a share usually entitles its holder to vote at a shareholders' meeting, to share in dividends if declared by the board and to share in any assets of the company after it has been wound up

[TURN OVER]

- 4 *Dadoo Ltd and others v Krugersdorp Municipality Council 1920 AD 530*, the court held that a share usually entitles its holder to vote at a shareholders' meeting, to share in dividends if declared by the board and to share in any assets of the company after it has been wound up

(4)

Question 10

Choose the **CORRECT** statement.

- 1 In *Manong & Associates (Pty) Ltd v City Manager, City of Cape Town and another 2009 (1) SA 644 (EqC)*, the court held that a juristic person like a natural person enjoys a fundamental right to equality
- 2 In *Fundtrust (Pty) Ltd (in liquidation) v Van Deventer 1997 (1) SA 710 (A)*, the court held that a juristic person like a natural person enjoys a fundamental right to equality
- 3 In *Sonnenberg McCloughlin v Spiro 2004 (1) SA 90 (C)* the court held that a juristic person like a natural person enjoys a fundamental right to equality
- 4 In *Peregrine Group (Pty) Ltd v Peregrine Holdings Ltd 2001 (3) SA 1268 (SCA)*, the court held that a juristic person like a natural person enjoys a fundamental right to equality

(4)

TOTAL FOR SECTION B: [40]**TOTAL [100]****END OF PAPER**

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[TURN OVER]

PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT e.g. PSY100-X
STUDIE-EENHEID by PSY100-X

1

PAPER NUMBER
VRAESTELNOMMER

2

INITIALS AND SURNAME
VOORLETTERS EN VAN

3

DATE OF EXAMINATION
DATUM VAN EKSAMEN

4

EXAMINATION CENTRE (E.G. PRETORIA)
EKSAMENSENTRUM (BY PRETORIA)

5

STUDENT NUMBER
STUDENTENOMMER

6

7

UNIQUE PAPER NO
UNIEKE VRAESTEL NR

8

9

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Vir gebruik deur eksamenopsiener

IMPORTANT

1. USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
2. MARK LIKE THIS
3. CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
4. ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
5. CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
6. CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
7. CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
8. DO NOT FOLD

BELANGRIK

1. GEBUIK SLEGS 'N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
2. MERK AS VOLG
3. KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
4. VUL U STUDENTENOMMER VAN LINKS NA REGS IN
5. KONTROLEER DAT U DIF KORREKTE STUDENTENOMMER VERSTREK HET
6. KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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MARK READING SHEET INSTRUCTIONS

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Consult the illustration of a mark reading sheet on the reverse of this page and follow the instructions step by step when working on your sheet

Instruction numbers ❶ to ❿ refer to spaces on your mark reading sheet which you should fill in as follows

- ❶ Write your paper code in these eight squares, for instance

P	S	Y	1	0	0	-	X
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- ❷ The paper number pertains only to first-level courses consisting of two papers

WRITE

0	1
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 for the first paper and

0	2
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 for the second. If only one paper, then leave blank

- ❸ Fill in your initials and surname
- ❹ Fill in the date of the examination
- ❺ Fill in the name of the examination centre
- ❻ WRITE the digits of your student number HORIZONTALLY (from left to right). Begin by filling in the first digit of your student number in the first square on the left, then fill in the other digits, each one in a separate square
- ❼ In each vertical column mark the digit that corresponds to the digit in your student number as follows [-]
- ❽ WRITE your unique paper number HORIZONTALLY
- NB Your unique paper number appears at the top of your examination paper and consists only of digits (e.g. 403326)
- ❾ In each vertical column mark the digit that corresponds to the digit number in your unique paper number as follows [-]
- ❿ Question numbers 1 to 140 indicate corresponding question numbers in your examination paper. The five spaces with digits 1 to 5 next to each question number indicate an alternative answer to each question. The spaces of which the number correspond to the answer you have chosen for each question and should be marked as follows [-]



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Examination period

Student number

Surname

First Names

Subject

Code of paper

Number of paper

Centre

Date

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That the information supplied by me in this answer book is correct and valid

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Examination period

Student number

Surname

First Names

Subject

Code of paper

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Centre

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