

**LML4806**

October/November 2014

**COMPANY LAW**

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

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PROF A LOUBSER

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**Closed book examination.**

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This paper consists of 4 pages.

**ANSWER ALL QUESTIONS.**

**QUESTION 1**

- 1 1 The Memorandum of Incorporation of Guns 'n Roses (Pty) Ltd ('the company') provides that the main business of the company is the manufacturing and sale of toy guns. Mr Hoodlum, one of the directors, has been authorised by a board resolution to act on behalf of the company. While acting on behalf of the company Mr Hoodlum concludes a contract with Mr Brothel for the purchase of a nightclub. Mr Brothel has no knowledge of the contents of the Memorandum of Incorporation of the company. Mr Orthodox, a majority shareholder of the company, is upset about the purchase of the nightclub. Mr Orthodox approaches you for legal advice and requires you to advise him on the following:
- 1 1 1 Is the contract concluded by Mr Hoodlum and Mr Brothel valid and enforceable against the company? Give reasons for your answer. (5)
- 1.1.2 Are there any remedies available to him as shareholder in the case where the company has already concluded the contract? Give reasons for your answer. (5)
- 1.1.3 Are there any remedies available to him as shareholder in the case where the company and its directors are still contemplating the conclusion of the contract? Also discuss whether Mr Brothel may have any claims against the company or its directors in such a case. Give reasons for your answer. (5)
- [15]**
- 1 2 The Companies Act 71 of 2008 introduces the solvency and liquidity test which directors of companies must apply prior to embarking on certain actions or transactions. With reference to this statement you are required to do the following:

**[TURN OVER]**

- 1.2.1 Explain the requirements of the solvency and liquidity test as set out in section 4 of the Companies Act 71 of 2008. (5)
- 1.2.2 List the actions or transactions to which the solvency and liquidity test must be applied. (5)
- [10]**

## QUESTION 2

- 2.1 Siphso, a director of Blue Bells Limited, a company which is listed on the Johannesburg Stock Exchange, comes to see you for advice. He informs you that Blue Bells Limited, a subsidiary of ABC Limited, which is also listed on the Johannesburg Stock Exchange, wishes to have voting power on decisions made by ABC Limited. He also tells you that Blue Bells Limited would like to acquire 26% of the shares in ABC Limited.

Siphso further informs you that he was advised by his friend, Jonathan, who is doing his articles at an auditing firm, that ABC Limited would be required to prepare consolidated financial statements. Siphso does not know what consolidated financial statements are and whether or not these would have to be prepared by ABC Limited.

Advise Siphso on the following.

- 2.1.1 Whether Blue Bells Limited may acquire 26% of the shares in ABC Limited and whether it may have voting power on resolutions adopted at general meetings of ABC Limited if it acquires any shares in ABC Limited. (5)
- 2.1.2 What consolidated financial statements are and whether Jonathan is correct in that consolidated financial statements would have to be prepared by ABC Limited. (5)
- [10]**
- 2.2 With reference to examples, discuss the difference between affected and fundamental transactions under the Companies Act 71 of 2008. In your answer you should also discuss the role and the significance of the Takeover Regulation Panel under the Companies Act 71 of 2008.

The mark allocation for this questions is as follow

- the difference between fundamental and affected transactions (5)
  - examples of fundamental transactions (3)
  - examples of affected transactions (3)
  - the role and significance of the Takeover Regulation Panel (4)
- [15]**

## QUESTION 3

- 3.1 The directors of Koma Business Solutions (Pty) Ltd discover that Mpho, one of their co-directors, has been redirecting company funds from the accounts of Koma Business Solutions (Pty) Ltd to his personal account. They also discover that these illicit transactions have been taking place undetected for a period of five years. The directors of Koma Business Solutions (Pty) Ltd decide to press criminal charges of fraud and theft.

**[TURN OVER]**

- 3 1 1 Consider whether under the circumstances of this case the board will have grounds to successfully obtain a delinquency order against Mpho in terms of the Companies Act (7)
- 3.1 2 Discuss requirements to be satisfied in order to have an order of delinquency rescinded or set aside (3)
- [10]**

- 3 2 Nomsa and Jacky have recently bought shares in Neo Enterprises (Pty) Ltd. Their shares entitle them each to 20% of voting rights in the issued shares. The company has realised good profits for the 2013 financial period, and as a result, the board of directors propose a merger with Aloewell (Pty) Ltd. Nomsa and Jacky are informed that a resolution of shareholders adopted at a properly constituted meeting is required to effect a merger. Delia, who holds 30% of the voting rights in Neo Enterprises (Pty) Ltd wants to abstain from voting because she is opposed to the merger, whereas Nomsa and Jacky intend to vote in favour of it. The remaining 30% of the voting rights in Neo Enterprises is held by various minority shareholders.

Since Nomsa and Jacky are not familiar with company law, they approach you for advice on the following.

- 3 2 1 Discuss the requirements for the approval of this proposed transaction (5)
- 3.2 2 Explain what is meant by an ordinary resolution in terms of the Companies Act 71 of 2008 and state the requirements of an ordinary resolution. (2)
- 3 2 3 The requirements for a notice to convene a meeting of shareholders (8)
- [15]**

#### QUESTION 4

- 4.1 Mothibi is the director of a printing company, Print Your Paper (Pty) Ltd, which specialises in the printing of academic journals. Mothibi is concerned about the trend to move away from publishing hard copies of journals towards publishing academic journals electronically. Although Print Your Paper (Pty) Ltd is not insolvent and does not have cash flow problems, he is considering entering into an agreement with the creditors of Print Your Paper (Pty) Ltd in terms of which Print your Paper (Pty) Ltd offers to pay 80% of all creditors' claims against the company in full and final settlement. Mothibi knows the offer will be accepted by most of the creditors, but a small minority might reject the offer. Mothibi approaches you for legal advice in order to establish whether there is a specific procedure in the Companies Act 2008 that makes it possible to make the settlement agreement binding on all creditors if the offer to creditors is accepted by most of them. In your opinion to Mothibi you must:

- 4 1.1 Clearly suggest and name a suitable procedure by referring to the requirements that must be met (You do not have to discuss the contents of the documentation.) (8)
- 4.1.2 Discuss the effects of such a transaction, if approved, and the requirements that need to be met after approval. (7)
- [15]**

4.2

- 4 2 1 Name four insider-trading offences provided for in the Financial Markets Act (4)  
4 2 2 Fully explain who (which persons) can be held liable for insider trading offences. (6)  
[10]

**TOTAL: [100]**

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