

LML4806

May/June 2015

COMPANY LAW

Duration 2 Hours

100 Marks

EXAMINATION PANEL AS APPOINTED BY THE DEPARTMENT

Closed book examination

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This paper consists of 4 pages

ANSWER ALL THE QUESTIONS**QUESTION 1**

- 1.1 Johan is a director of Cellular Computers (Pty) Ltd ("the company"). The company's main business is the installation of computers. Johan is mandated by the company's board to enter into contractual negotiations with Computer Systems Ltd. The negotiations entail Cellular Computers (Pty) Ltd conducting computer installations for Computer Systems Ltd for the next five (5) years.

During the negotiations, the directors of Computer Systems Ltd withdraw from any further negotiations with Cellular Computers (Pty) Ltd. However, Computer Systems Ltd states that it is keen to do business with Johan only. On the basis of this, Johan tenders his resignation to Cellular Computers (Pty) Ltd and incorporates a new company, named Computer Solutions (Pty) Ltd, of which he is the sole shareholder and director. A few weeks after the incorporation of Computer Solutions (Pty) Ltd, it concludes a lucrative contract with Cellular Computers (Pty) Ltd for the installation of computers.

Explain with reference to the Companies Act 71 of 2008 and relevant case law, whether Johan is in breach of any legal duties he has or had towards Computer Systems Ltd (10)

- 1.2 Phiwe is one of the shareholders of GEP Fund Ltd. GEP Fund Ltd is a subsidiary of Global Investments Ltd. The legal manager of GEP Fund Ltd informs Phiwe that Global Investments Ltd has both a social and ethics committee and an audit committee. Advise Phiwe on when a company would need to appoint an audit committee and specifically whether or not GEP Ltd would have to appoint an audit committee. You need to explain to Phiwe who must appoint the first and subsequent members of the audit committee and the composition of the members of the audit committee. Also give examples of persons who would not be eligible to serve on the audit committee. (10)

[20]**[TURN OVER]**

QUESTION 2

2 1 Fruity (Pty) Ltd ("Fruity") recently released its financial statements which reflected a huge profit. As a result, several investors are keen to purchase shares in Fruity. Kamo, who is currently not a shareholder, approaches Fruity. The board of directors of Fruity resolves to issue some shares in Fruity to Kamo, but on condition that payment shall be made before or when the shares are issued. Piet, one of the prescribed officers and shareholders of Fruity, is opposed to his brother, Kamo, purchasing the shares. He believes that he (Piet), together with Fruity's other shareholders, must be consulted on the matter or first be afforded an opportunity to subscribe for the shares. The board is also concerned that its resolution to issue the shares to Kamo may contravene certain provisions of the Companies Act 71 of 2008.

2 1 1 Advise Piet on whether he is entitled to be consulted on the matter and whether he has the right to be first afforded an opportunity to subscribe for the new shares in Fruity. (10)

2 1 2 Irrespective of your answer to 2 1 1, advise the board of directors on whether it may issue the shares to Kamo without obtaining shareholder approval (5)

2 2 Fly-High (Pty) Ltd ("the company") is a company incorporated for the purpose of manufacturing and distributing electrical appliances. In terms of its memorandum of incorporation, the company is to exclusively deal in electrical appliances. Since the loss of one of its major clients, the company has been experiencing financial difficulties. Basil, one of the company's directors, enters into a contract with Rugs-for-Sale Ltd for the purchase of oriental carpets. The intention of the board is to venture into the business of oriental carpets, because, according to the board, these carpets are fashionable and profitable.

At the time of the conclusion of the contract with Rugs-for-Sale Ltd, Basil was authorised by the company's board of directors. The memorandum of incorporation of the company specifically prohibits the company from dealing in any other business that is not related to the manufacture and distribution of electrical appliances. In reply to a letter, in which a demand for the payment of the oriental carpets is made by Rugs-for-Sale Ltd, the company raises the defence that the contract between the company and Rugs-for-Sale Ltd is void because the company's business is limited to trading in electrical appliances by the MOI.

Give your legal opinion, substantiated with the relevant authority, on the following aspects of the stated facts in question 2 2 above.

2 2 1 Would the contract between the company and Rugs-for-Sale Ltd be valid and enforceable? (5)

2 2 2 Would the company or the shareholders of the company be able to hold the board members of the company personally liable, on any basis, for the conclusion of the contract? (5)

2 2 3 Explain the circumstances under which a company should have the suffix "RF" next to its name and whether Fly-High (Pty) Ltd would have been bound to the contract if its name had this suffix at the time of the conclusion of the contract (5)

[30]

QUESTION 3

- 3 1 Briefly discuss each of the fundamental transactions provided for in Chapter 5 of the Companies Act 71 of 2008. Also explain under what circumstances these transactions would constitute affected transactions. You need not refer to the requirements that need to be satisfied in order for a company to enter into any of these transactions and you need not discuss affected transactions that are not also fundamental transactions (15)
- 3 2 Section 1 of the Companies Act 71 of 2008 defines a group of companies as " a holding company and all of its subsidiaries ". Briefly discuss any (5) five legal consequences for a group of companies (10)
- [25]**

QUESTION 4

- 4 1 Mohape is the chief executive officer of Big Education Ltd, a listed company, manufacturing educational PC games for children. The company is on the verge of introducing a new educational package which includes e-books and smart phones which will revolutionise learning in primary schools. The company has not yet made any public announcement about this new invention. Only Mohape and the managing director Mapitsi, know about this invention. Mapitsi's personal assistant, Edith, saw the documents containing this confidential information about the invention when she was asked to file documents. Edith told Bethu about the content of the documents and at a later stage, without explaining why, told Patricia to take all her savings and immediately buy shares in Big Education Ltd, which Bethu did. Mandla, Bethu's husband, bought 3 000 shares in Big Education Ltd without discussing any matters relating to the shares with Bethu. Edith bought 1 000 shares in Big Education Ltd. Once the invention was announced publicly, the price of the company's shares immediately increased by 15%.

Discuss whether Edith, Bethu and Mandla committed any offences under the legislation regulating insider trading. You do not have to discuss the sanctions for the offences (15)

- 4 2 Vital Vitality (Pty) Ltd is being wound up. Vital Vitality (Pty) Ltd has ten (10) creditors, three (3) of which are secured creditors and the remaining seven (7) are concurrent creditors. The liquidator suggests that Vital Vitality (Pty) Ltd enter into an agreement of compromise with its creditors. Vital Vitality (Pty) Ltd owns both movable and immovable property, but it is highly unlikely that these assets, once liquidated, will cover the amounts owing to the creditors.

Advise Vital Vitality (Pty) Ltd about what information should be contained in Parts A (list four (4) examples), B (list four (4) examples) and C (list two (2) examples) of the offer proposing the section 155 compromise. Each example of the type of information that should be contained in the offer will count one (1) mark (10)

[25]

TOTAL: [100]

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