

LML4806

October/November 2016

COMPANY LAW

Duration 2 Hours

100 Marks

EXAMINATION PANEL AS APPOINTED BY THE DEPARTMENT

Closed book examination

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Instructions:

This paper consists of 4 pages
ANSWER ALL QUESTIONS

QUESTION 1**[30]**

- 1 1 Shareholders' resolutions must usually be adopted at properly constituted meetings of the company's shareholders. However, the common-law principle of unanimous assent constitutes an exception to this rule. The Companies Act 71 of 2008 now also provides for another exception. Explain what these two exceptions entail. (5)
- 1 2 When it is found that the representative of a company did not have actual authority to represent the company in an agreement with a third party, the third party may under certain circumstances rely on the doctrine of estoppel to hold the company liable in terms of the agreement. Briefly state what a third party should allege and prove in order to hold a company liable to an agreement on the basis of the doctrine of estoppel. (5)
- 1 3 The Memorandum of Incorporation of many companies provides that the holders of preference shares do not have the right to vote at shareholders' meetings unless the company is in arrears with the payment of dividends to these preference shareholders. Explain with reference to authority whether a preference shareholder has the right to vote on a proposed resolution for the liquidation of the company even if the company is not in arrears with the payment of preferential dividends. (5)
- 1 4 Business rescue proceedings are regulated in Chapter 6 of the Companies Act 71 of 2008. Briefly explain the meaning of the term "business rescue" as found in section 128(1)(b) of the Companies Act 71 of 2008. (5)
- 1 5 Section 76(4) of the Companies Act 71 of 2008 introduced what is known as the business judgment rule. Explain the essence and the effect of section 76(4). (5)
- 1 6 Discuss the meaning of "control" in the context of a group of companies. (5)

QUESTION 2**[20]**

- 2 1 The board of directors of Springboard (Pty) Ltd is considering an offer from the board of Scapegoat (Pty) Ltd, a company involved in the same type of business, for the two companies to merge and consolidate their businesses because both companies are competing in a fairly small market. The proposal is that the two existing companies will cease to exist after the merger and a new company, Togetherness (Pty) Ltd, will hold all the assets and liabilities of the two merging companies.

The board of Springboard (Pty) Ltd suspects that a group of shareholders holding between 10% and 20% of the ordinary shares of Springboard (Pty) Ltd will be opposed to the merger because Springboard (Pty) Ltd is far more successful than Scapegoat (Pty) Ltd and they want to retain their shares in Springboard (Pty) Ltd. The board seeks your advice regarding the possibility of this group of shareholders being able to prevent the merger.

Fully explain to the board how (if at all) the shareholders opposed to the merger would be able to prevent the merger from taking place. (10)

- 2 2 Hemsworth Ltd is an unlisted public company trading in cellular networks. Due to a hefty penalty fee imposed by ICASA, for failing to disconnect deregistered yet active SIM cards, the company is in a poor financial state. As finance director of Hemsworth Ltd, Sebo advises the company that to regain its financial health, Hemsworth Ltd should issue new shares and offer these shares to the public. However, in so doing, the company should avoid revealing in its prospectus the true financial state of the company because this may have a detrimental effect on how the company is perceived by the public.

With reference to the relevant provisions of the Companies Act 71 of 2008 discuss the purpose of a prospectus and the legal consequences of the failure of Hemsworth Ltd to disclose the true financial state of the company in the issued prospectus (10)

QUESTION 3

[25]

- 3 1 Henry has been a non-executive director of Spectrolab (Pty) Ltd since 2010. He is also a director and sole shareholder of a management consultancy business, ConsultRight (Pty) Ltd. Spectrolab (Pty) Ltd is undergoing a process of internal restructuring. Without knowing of Henry's involvement with ConsultRight (Pty) Ltd, one of the other directors of Spectrolab (Pty) Ltd proposes to the board of directors of Spectrolab (Pty) Ltd that ConsultRight (Pty) Ltd should be approached for advice on the recruitment of key staff. The board of directors of Spectrolab (Pty) Ltd will be voting on this issue at the next board meeting which is scheduled for next week.
- 3 1 1 Henry seeks your advice. He wants to know whether he must disclose his interest in this matter to the board of directors of Spectrolab (Pty) Ltd and if so, what procedure he must adopt to do so (8)
- 3 1 2 Assume that Henry does not disclose his interest in this matter at the board meeting of Spectrolab (Pty) Ltd. Explain whether the contract between Spectrolab (Pty) Ltd and ConsultRight (Pty) Ltd will nonetheless be valid (7)
- 3 2 Richmond Global Enterprises Ltd is an outdoor advertising company. The company wishes to appoint a company secretary that will be based at its Head Office in Pretoria. Walter Sithole, who is a citizen of and resides in Namibia, is employed in Namibia as an IT Technician. Whilst on holiday in South Africa, Walter hears about this vacancy and intends applying for the position of company secretary.
- 3 2 1 Discuss whether Walter may be validly appointed as the company secretary of Richmond Global Enterprises Ltd (5)
- 3 2 2 Assume that Walter is appointed as the company secretary of Richmond Global Enterprises Ltd. Walter also runs a part-time business as an estate agent in Namibia. Walter has recently been accused of theft involving large sums of money received from his clients in trust. As a result of this accusation, the board of directors of Richmond Global Enterprises Ltd decides to remove Walter from office as the company secretary. Walter denies that he has committed theft. Advise Walter on the steps that he could take under the Companies Act 71 of 2008 following his removal from office if he disputes the reason for his removal from office (5)

QUESTION 4**[25]**

- 4.1 John, who is a director of ABC Ltd, a public listed company, receives a call from his good friend Peter, who is the chief executive officer of the company. Peter informs John that he has just been released on bail after being arrested on allegations of fraud and theft. The alleged offences were committed before Peter became the CEO of ABC Ltd, and are not linked in any way to the company. However, they realise that if the news of Peter's arrest becomes known it will have a negative effect on the reputation of ABC Ltd that will result in a material drop in the value of the company's shares. They therefore decide to keep it quiet for as long as they can.

John immediately calls his stockbroker and instructs him to sell 30% of John's shares in ABC Ltd and 40% of the shares in the company owned by his wife. When the stockbroker asks him for a reason for selling so many shares, John merely tells him that he has reason to believe that the share price of the company will drop in the next few weeks. The stockbroker, knowing that John is a director, realises that John must know that something bad has happened in the company and sells the shares as instructed by John. John only informs his wife about the situation after her shares have been sold when she demands an explanation for selling so many of her shares.

A few days later a newspaper reports about the arrest of Peter and the market price of shares in ABC Ltd drops 8%.

Fully discuss whether John, Peter, John's wife and the stockbroker have committed any of the offences relating to insider trading in terms of section 78 of the Financial Markets Act of 2012. **(Do not discuss the amounts for which any of them could be held liable.)** **(15)**

- 4.2 Discuss the difference between a "share" and a "debenture" and differentiate between the rights of ordinary shareholders and the holders of debentures in relation to a company. **(10)**

TOTAL: [100]**THE END**

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