

LML4806

October/November 2017

COMPANY LAW

Duration 2 Hours

100 Marks

EXAMINERS .

FIRST

SECOND

EXTERNAL

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PROF DM FARISANI

PROF MF CASSIM

Partial/limited open book examination. Specified material as indicated on examination paper, permissible.

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

Instructions:

This paper consists of 3 pages.

ANSWER ALL QUESTIONS.

Students may bring a clean copy of *Juta's Pocket Statutes: Companies Act 71 of 2008 and Regulations*, into the exam venue.

No other versions of the Companies Act 71 of 2008 may be brought into the exam venue.

QUESTION 1**[30]**

- 1 1 The shareholders of Injabulo (Pty) Ltd, a black economic empowerment company, are scheduled to hold a shareholders' meeting at 09:00, at the Head Office of the company. Injabulo (Pty) Ltd has 20 shareholders. At 10:00, 11 shareholders are present at the meeting. They are able to exercise, in aggregate, 24% of all the voting rights that are entitled to be exercised in respect of the matters to be decided at the meeting.

Two of the shareholders of the company have indicated to the chairperson that they will attend the meeting, but are delayed in traffic due to bad weather. These two shareholders each hold 2% of the voting rights in Injabulo (Pty) Ltd.

The chairperson of the board of directors consults you, as the secretary of the company, on whether the shareholders' meeting may proceed. With reference to the Companies Act 71 of 2008, advise the chairperson of the board of directors of his options in these circumstances. (15)

- 1 2 Sifiso, a former director of Lerato (Pty) Ltd ("the company"), was convicted of fraud during his term of office as a director of the company. He was sentenced to 12 months' imprisonment without the option of a fine by the High Court. He was therefore disqualified to act as a director of the company and was accordingly removed from office one year ago. However, Sifiso believes that he has since been rehabilitated and wishes to be reinstated as a director of the company. Sifiso and Lukas are the only shareholders of the company. Sifiso has decided to apply to court for permission to be allowed to act as a director of the company despite his disqualification. Lukas is strongly opposed to Sifiso being reinstated as director of the company. With reference to the Companies Act 71 of 2008 and relevant case law, advise Sifiso on his prospects of success in obtaining such a court order. (15)

QUESTION 2**[20]**

- 2.1 Discuss the doctrine of constructive notice and the exceptions which apply to it. (10)
- 2.2 Tom (Pty) Ltd holds 25% of the voting shares in Pluto (Pty) Ltd, while Jerry (Pty) Ltd holds 20% of the voting shares in Pluto (Pty) Ltd. The remaining 55% of the voting shares in Pluto (Pty) Ltd are held by Mickey (Pty) Ltd.

Explain what is meant by a "group of companies" and discuss the factors one would consider to determine whether a company is a subsidiary company. Also explain the concept of a wholly-owned subsidiary. Indicate by giving reasons for your answer, whether Pluto (Pty) Ltd is a subsidiary of Tom (Pty) Ltd, Jerry (Pty) Ltd and/or Mickey (Pty) Ltd. (10)

QUESTION 3**[35]**

- 3 1 The directors of Smarties (Pty) Ltd, M & M (Pty) Ltd and Wine Gums Galore (Pty) Ltd decide that it would be in the best interests of the respective companies to amalgamate or merge into one new company, Sweets for All (Pty) Ltd. Advise the directors of the respective companies whether such an amalgamation or merger is permitted in terms of the Companies Act of 2008, and if so, of the requirements for such amalgamation or merger. Also explain the effect of an amalgamation or merger. (15)

3.2 Sandwich Delight (Pty) Ltd provides sandwiches to office outlets in Cape Town. The company is financially distressed and is under business rescue. The company buys its bread from a local bakery, Cape Bakeries (Pty) Ltd. They have since found that they can make sandwiches at a much lower cost by baking the bread themselves instead of purchasing it from Cape Bakeries (Pty) Ltd.

3.2.1 Discuss whether business rescue proceedings will enable Sandwich Delight (Pty) Ltd to cancel its contract with Cape Bakeries (Pty) Ltd, and whether Sandwich Delight (Pty) Ltd will be liable for breach of contract if they do so. (10)

3.2.2 Sandwich Delight (Pty) Ltd has appointed Andile as business rescue practitioner. Andile is believed to be an excellent choice by the company as he is a former director of the company and a good friend of the current directors. Discuss whether Andile will qualify as a business rescue practitioner of Sandwich Delight (Pty) Ltd in terms of the Companies Act 71 of 2008. (5)

3.2.3 After 11 months Sandwich Delight (Pty) Ltd is still under business rescue. The directors are concerned whether this is permissible under the Companies Act 71 of 2008. Advise the directors of Sandwich Delight (Pty) Ltd of the circumstances under the Companies Act 71 of 2008 when it would be acceptable for business rescue to endure for a period of 11 months or longer. (5)

QUESTION 4

[15]

Thandeka is the secretary of Vervyslim Ltd, a company that manufactures slimming tablets. At a board meeting at which Thandeka is required to take down minutes, the board discusses the development of a revolutionary new manufacturing process for slimming tablets. Thandeka realises that the implementation of the new procedure will influence the profitability of the company positively. She informs her mother, Veronica, of the new manufacturing process. Veronica immediately contacts her broker, Sam, and instructs him to purchase shares in Vervyslim Ltd on her behalf. Veronica also buys shares through Sam for her son, Phineas. Thandeka further advises her friend Bongani to buy shares in Vervyslim Ltd. However, Bongani decides not to buy the shares, because Thandeka will not tell her why she should buy the shares. Beauty, Bongani's sister, overhears part of the conversation between Thandeka and Bongani. When she asks Thandeka whether she should buy shares in Vervyslim Ltd, Thandeka tells her that she should not buy shares in Vervyslim Ltd, because she dislikes Beauty. When the new manufacturing process is implemented, the price of the shares of Vervyslim Ltd increases dramatically.

Explain whether Thandeka, Veronica, Sam, Phineas and Bongani can be held liable for any offences under the Financial Markets Act 19 of 2012 regulating insider trading. Do not include a discussion of the definitions of an "insider" or "insider trading" in your answer and do not discuss the defences to the insider trading offences. (15)

TOTAL: [100]

THE END