

LML4806

May/June 2017

COMPANY LAW

Duration 2 Hours

100 Marks

EXAMINATION PANEL AS APPOINTED BY THE DEPARTMENT.

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 4 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**[20]**

- 1 1 Themba lives in Knysna. He is a shareholder of Electrotech Limited. He receives notice of an annual general meeting of Electrotech Limited to be held in Pretoria. He cannot attend the meeting on that day, but he feels strongly about certain of the proposed resolutions set out in the notice of the meeting, and wants to express his views on these matters to the board of directors. Themba also wishes to vote against certain of the resolutions which the company proposes to pass. Advise Themba of two methods under the Companies Act 71 of 2008 that he could use to exercise his right to vote and to express his views at the annual general meeting of Electrotech Limited. (10)
- 1 2 Pele (Pty) Ltd calls a meeting of its shareholders to vote on the proposed merger of the company with another company. The notice of the meeting does not state the record date. Discuss the relevance of the record date in this instance, and the consequences of the failure to specify the record date in the notice of the meeting. (10)

QUESTION 2**[30]**

- 2 1 Oliver is an experienced quantity surveyor and he has extensive knowledge of the valuation of immovable property. He is a director of Exclusive Properties (Pty) Ltd, a company that buys and sells properties at a profit. The only other director of the company is Sammy, who is a qualified accountant and the managing director of Exclusive Properties (Pty) Ltd.

One day Sammy phones Oliver to tell him of a proposal to invest in a new property development that is situated in a rural area. Oliver warns Sammy that the potential for losses is always higher in rural areas. Oliver seeks a professional second opinion on the proposal from his friend Ebrahim who is also a qualified quantity surveyor. Ebrahim informs Oliver that the specific area is not stable and the land could sink at any time. When Oliver conveys this information to Sammy, Sammy is adamant and insists that they must act swiftly and invest in the property development before the opportunity to invest is lost. Under pressure, Oliver agrees that the company should take the risk and Exclusive Properties (Pty) Ltd accordingly invests in the property development.

After six months it becomes clear that the development is a failure. A part of the building has collapsed due to the unstable soil content. The loss incurred by the company is approximately R4 million. Oliver and Sammy approach you for legal advice on the matter.

- 2 1.1 With reference to the Companies Act 71 of 2008 and with reference to the respective areas of expertise of Oliver and Sammy, separately advise each of Oliver and Sammy whether they have breached their duty of care, skill and diligence. (15)
- 2 2.2 Assuming that a legal action for a breach of the duty of care, skill and diligence is instituted against Oliver and Sammy, with reference to the Companies Act 71 of 2008 separately advise each of them whether they will be able to rely successfully on the business judgment rule. Give full reasons for your advice. (15)

QUESTION 3**[30]**

- 3 1 Mark is a successful businessman and has recently incorporated Coachella Limited, a newly established soft-drinks company that manufactures a variety of flavoured soft-drinks. The company's subsidiary, Rani Limited, focuses on the supply and distribution of Coachella Limited's manufactured products. Mark is unsure about who is required to appoint the first

members of the audit committee. He is also unsure about whether the following persons would qualify to be appointed as members of the audit committee:

- Ezra, the executive director of Coachella Limited,
- Busi, the non-executive director of Coachella Limited;
- David, a material supplier of plastic bottles to Coachella Limited, and
- Leila, a qualified auditor and also the wife of Ezra

Mark also wishes to know whether Rani Limited is required to appoint an audit committee

With reference to the relevant provisions of the Companies Act 71 of 2008, advise Mark on the following issues:

- 3.1.1 the persons who must appoint the first members of the audit committee of Coachella Limited; (3)
- 3.1.2 whether Ezra, Busi, David and Leila may validly be appointed to the audit committee, giving full reasons for your advice; and (10)
- 3.1.3 whether an audit committee must be appointed for Rani Limited (2)

- 3.2 Development Properties (Pty) Ltd owns an office building in Johannesburg valued by its auditors in the previous financial year at R18 million and two buildings in Cape Town valued at R4 million and R5 million respectively

The board of directors decided that they should focus on acquiring more properties in Cape Town. Since the company has received an offer of R20 million for the building in Johannesburg, the directors want to accept the offer. The board regards the decision to sell the property as a management decision that they can take on their own, but one of the shareholders disagrees.

- 3.2.1 With reference to the Companies Act 71 of 2008, fully advise the board whether they may contract to sell the Johannesburg property without involving the shareholders of the company, and whether they need to comply with any specific statutory requirements (10)
- 3.2.2 Two shareholders of the company who are unhappy about the proposed sale of the Johannesburg property, have indicated that if the sale goes ahead, they will no longer be interested in owning shares in the company and that they will expect the company to buy their shares. The directors of Development Properties (Pty) Ltd want to know if these shareholders can force the company to buy their shares. With reference to the Companies Act 71 of 2008, advise the directors whether these two shareholders may force Development Properties (Pty) Ltd to buy their shares (5)

QUESTION 4

[20]

- 4.1 Mahlangu Roadworks (Pty) Ltd was awarded a contract by a provincial government to upgrade and to repair a number of secondary roads in the province. The company completed the work months ago but has still not received payment from the provincial government. As a result, the company is struggling to pay its employees and has not paid other creditors when payment was due. It has also exhausted its credit facilities at the bank.

The company's managing director, Mr Mahlangu, believes that the board should immediately adopt a resolution to place the company under business rescue because some creditors have threatened to apply for liquidation of the company if they do not get paid. He fears that once an

application for a liquidation order has been filed with the court, and certainly if a liquidation order is issued by the court, business rescue will no longer be possible

Mr Mahlangu is also worried because the company leases most of the heavy-duty equipment it uses and although the company has managed to keep up the payments for this equipment up to now, he is not sure for how much longer this will be possible. If the company misses any payment the lessors may cancel the lease and remove their equipment.

Advise Mr Mahlangu on the following aspects:

- 4.1.1 With reference to the Companies Act 71 of 2008 and relevant case law, discuss whether the board of directors may commence business rescue proceedings (assuming that Mahlangu Roadworks (Pty) Ltd is financially distressed) after liquidation proceedings have been initiated against Mahlangu Roadworks (Pty) Ltd. Discuss further whether Mahlangu Roadworks (Pty) Ltd may be placed under business rescue by any other party after a liquidation application has already been instituted against the company as well as after a liquidation order has been issued against the company. (8)
- 4.1.2 Assuming that the company is financially distressed, discuss whether, instead of going down the route of business rescue, the company may enter into a compromise arrangement with its creditors and thereby prevent dissolution of the company if a liquidation order is issued, and what such a procedure would entail. (6)
- 4.1.3 Assuming Mahlangu Roadworks (Pty) Ltd is placed under business rescue, explain to what extent the business rescue practitioner may prevent the lessors of the heavy-duty equipment from cancelling the lease contracts and re-possessing the heavy-duty equipment if the company misses any payment. (6)

TOTAL: [100]

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