

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

DEPARTMENT OF INSURANCE AND ACTUARIAL SCIENCE

BACHELOR OF COMMERCE HONOURS DEGREE

COMPANY LAW II – CIN 2206

FINAL EXAMINATION -MAY 2014

Duration : 3 hours

Instructions to candidates

- i.) Answer any **four** questions.
- ii.) Start the answer to each full question on a fresh page of the answer sheet.
- iii.) Questions may be written in any order, but must be legibly numbered.
- iv) The facts in this question paper are intended to be fictitious.
- v) Candidates **MUST NOT** bring or use a copy of the Companies Act (**Chapter 24:03**) in the examination.

Question 1

Ben Mpofu is a member of Ebenezer (Pvt) Ltd, a company registered in terms of the Companies Act(**Chapter 24:03**) and carrying its business activities in Zimbabwe. Mpofu has a 15% stake in the company's shareholding where the other two members Snob and Hawker own the remainder. On the 15th of January 2014 the company properly convened a general meeting and passed a special resolution approving the sale of the company's major assets or undertaking. Mpofu disagreed with the proposed sale of the company's undertaking on the grounds that the assets had not been properly valued. However, the other shareholders, who constituted the majority, advised him that the resolution was binding since it had been passed at a properly convened meeting of the shareholders. Alternatively, the shareholders intimated that if Mpofu still insisted on opposing the asset disposal deal, he was free to sell his shares, but to no one except them as per the

shareholder agreement relating to the disposal of shares, duly agreed to on the 26th of June 2006. According to that agreement a shareholder desirous of disposing of his shares would accord the other shareholders a right of first refusal. The value at which those shares would be disposed of will also be determined by the acquiring shareholders. Although Mporu did not object to the selling of his 15 % stake in protest against the company asset disposal deal, he strongly objected to the value attached to his shares and the arbitrary nature by which those shares were supposed to be disposed of. He further alleged corporate bullying by the majority shareholders in trying to coerce him to sell his shares and to submit to their unfavourable terms.

(a) Discuss the legal issues arising from the facts above and advise Mporu on the possible legal remedies, if any, available to him. [10 marks]

b) Discuss various challenges likely to be encountered by an aggrieved minority shareholder in trying to sue the majority shareholders. [5 marks]

c) In what ways is the rule in *Foss v Harbottle* related to the concept of legal personality as espoused in the monumental case of *Salomon v Salomon* (1897) AC 22? Explain your answer. [10 marks]

Total 25 marks

Question 2

a) Discuss the centrality of the Company Secretary's role to a company at common law and in terms of **Companies Act (Chapter 24:03)**. [10 marks]

b) To what extent are private companies not obliged to appoint auditors in terms of the Companies Act (Chapter 24:03)? [5 marks]

c) Outline the procedure for company reconstruction in terms of the **Companies Act (Chapter 24:03)**. [10 marks]

Total 25 marks

Question 3

Skyways (Pvt) Ltd is a company duly registered in Zimbabwe. The company has a staff compliment of over 5000 employees and has been operational for the past 25 years. Recently Skyways (Pvt) Ltd has been facing intense competition from certain regional companies namely Edgerigde (Pty) Ltd and Rooneybon (Pty) Ltd both from South Africa. Consequently, Skyways (Pvt) Ltd has had to endure a ballooning cost of operations and a persistently dwindling market share. In trying to find the solution for the ever mounting corporate woes of the company, Skyways shareholders convened an extraordinary general meeting in which amongst other issues resolved to dissolve the company because of the following reasons:

- i) Intense competition from regional competitors resulting in poor revenue generation;
- ii) Shareholders' lack of fresh strategies to steer the company forward;
- iii) Failure to settle creditors' debts despite the latter's proposal to turn the company's debt into equity.
- iv) That it was just and equitable in the circumstances to dissolve the company.

a) Give a reasoned legal opinion as to whether the liquidation of Skyways (Pvt) Ltd as per the shareholders' resolution, is the best option to adopt based on the given facts and the **Companies Act (Chapter 24:03)**. [10 marks]

b) Critically distinguish the processes of judicial management and liquidation of companies as provided for under the **Companies Act (Chapter 24:03)**. [15 marks]

Total 25 marks

Question 4

a) Explain how dissenting shareholders can fully protect their interests in the disposal of their shares under a scheme of arrangement to which they are opposed. [10 marks]

b) Explain ways through which the judicial management process can be abused to the detriment of creditors. [10 marks]

c) Give a critique of the meaning of the phrase “unable to pay its debts” as delineated under section 205 of the Companies Act (Chapter 24:03). [5 marks]

Total 25 marks

Question 5

Amos, Benedict and Charity drew a partnership deed under which they resolved to run an advertising business. Amos brought in his computer equipment, while Benedict brought in his advertising skills and Charity provided some organizational capabilities. The three agreed that the business will be for the joint benefit of everyone. However, they also agreed that since Benedict was to bring in some advertising skills, considered relevant and core to the business, he was to be the managing partner. They further agreed that Benedict will therefore reap the profit of the business just for the first two years while Amos and Charity will be salaried directing partners for the same period. Pursuant to the foregoing, they noted that, the arrangement was just an indulgence which did not amount to a waiver of their rights for good but temporarily in the spirit of collegiality.

On the issue of partnership accounts, the partners agreed that the partnership’s bank account shall be registered in the name of one Mr Robertson Cook, a business tycoon based in Angola. The partners arrived at this conclusion after discovering that by so doing the partnership will be able to cut or pay no tax at all to the state’s fiscal agent since the account will not only be offshore but will also be under a different person’s name. This arrangement was meant to boost the profits of the partnership without any deductions to the state.

On the partnership deed the partners also included a clause wherein they agreed that, the computer equipment brought by Amos will be construed for all intents and purposes, as a donation to the partnership. Since Charity was to bring in her organizational capabilities, the partners deemed it a naturalia and a less significant skill because everyone in the partnership was an organizer at one point or the other. The partners therefore resolved that Charity was to share losses of the partnership at 40 % while Benedict and Amos will share 30 % each.

In a bid to increase the protection afforded to the partnership, the partners agreed that in case of any lawsuit or sequestration proceedings, the managing partner Benedict will be sued on behalf of the partnership while the other partners will be free from liabilities as against third parties even if accrued through the business of the partnership. However, they will still be answerable to the managing partner and they will contribute towards any damages payable to any litigant.

a) Discuss the validity or otherwise of the partnership agreement concluded by Amos, Benedict and Charity based on the foregoing facts.

[15 marks]

b) Explain how the partnership estate and that of the partners is sequestrated. [5 marks]

c) Giving examples, discuss circumstances under when the naturalia of a partnership contract do not apply in a partnership agreement.

[5 marks]

Total 25marks

Question 6

a) To what extent is the right to strike provided for under the Labour Act (Chapter 28:01) and the new constitution of Zimbabwe? Explain your answer. [10 marks]

b) Distinguish between arbitration and conciliation processes of dispute resolution in Zimbabwe. [5 marks]

c) Justify the existence of non-statutory collective bargaining agreements despite the obvious weaknesses attendant to them. [5 marks]

d) Discuss the view that unlawful discrimination is prohibited under the Labour Act (Chapter 28:01) but lawful discrimination can be tolerated to some extent. [5 marks]

Total 25 marks

END OF EXAMINATION