

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

SUPPLEMENTARY EXAMINATION -AUGUST2014

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

a) The hands off approach doctrine adopted in the case of *Levin v Field and Tweeds*1951(2)SA 410 (A) towards internal affairs of the company clearly demonstrates that it is difficult for minority shareholders to assert their rights particularly where their interests clash with those of the majority.

Discuss this view with reference to decided cases and any applicable provisions in the **Companies Act (Chapter 24:03)**. [15 marks]

b) Explain various situations in which the rule in *Foss v Harbottle*(1843) 2 Hare 461 applies to internal affairs of a company. [10 marks]

Total 25 marks

Question 2

a) Amad (Pvt) Ltd is a subsidiary of Aqua Holdings Ltd. Both companies are incorporated in terms of the laws of Zimbabwe. Amanzi (Pvt) Ltd has nine shareholders and none of whom is a public company. In a recent annual general meeting the shareholders of Amad (Pvt) Ltd resolved not to appoint any auditor for the company. The shareholders' reasoning for their decision was that Amad (Pvt) Ltd is a private company not obliged to appoint an auditor at law. Alternatively, the company pointed out that its shareholding was less than what the Companies Act provides to enable them to appoint an auditor.

Explain whether Amad (Pvt) Ltd.'s shareholders are correct at law in resolving not to appoint an auditor. [6 marks]

b) Explain the reasons for disqualifying the following from being appointed as company auditors in terms of the **Companies Act (Chapter 24:03)**:

(i) An officer of the company. [3 marks]

(ii) A body corporate. [3 marks]

(iii) A person who is an employer of the servant of the company. [3 marks]

c) Briefly explain the significance of an auditor's *rights to a company*. [5 marks]

d) "The company secretary, as an officer of the company, may be criminally liable with the directors for defaults"; per Helen Ashton, *The Company Secretary's Handbook*, 5th edition (2008) at page 5.

Explain the basis for the company secretary's liability for actions undertaken on behalf of the company. [5 marks]

Total 25 marks

Question 3

a) Hunters Ltd is a company duly incorporated in Botswana. The company is on an expansion drive aimed at providing services throughout the SADC region. Recently the directors of Hunters Ltd announced their company's intention to acquire a controlling interest in Major One (Pvt) Ltd a company incorporated in terms of the laws of Zimbabwe but currently experiencing viability challenges. However, Hunters Ltd.'s directors wish to avoid the onerous and costly procedure of purchasing Major One (Pvt) Ltd as a going concern. It was brought to their attention that the **Companies Act(Chapter 24:03)** has a simpler procedure that would enable them to reduce unnecessary costs.

Identify and explain the nature of the proposed transaction. [5 marks]

b) Advise the board of directors of Hunters Ltd regarding the procedure prescribed by the **Companies Act (Chapter 24:03)** so as to implement the proposed transaction.

[10 marks]

c) Briefly explain the following in relation to company reconstruction:

(i) Dissenting shareholders. [2 marks]

(ii) The fate of transferor's company's liabilities. [3 marks]

(iii) The manner of acquiring dissenting shareholders' shares. [5 marks]

Total 25 marks

Question 4

a) Outline the procedure for compulsory company winding up in Zimbabwe in terms of the **Companies Act (Chapter 24:03)** [10 marks]

b) Explain fully what is meant by the following grounds of winding up:

(i) If the company ceases to have any members. [3 marks]

(ii) If seventy five per centum of the paid-up share capital of the company has been lost or has become useless for the business of the company. [4 marks]

(iii) If the company is unable to pay its debts. [3 marks]

c) What are the similarities between voluntary and compulsory winding up? [5 marks]

Total 25 marks

Question 5

a) In terms of section 305 of the **Companies Act (Chapter 24:03)** the court may grant a final judicial management order if it appears to it that there is a reasonable probability that the company will become a successful concern.

What factors are taken into consideration by the court to come to such a decision?

[10 marks]

b) Explain the purpose of a security given by a provisional judicial manager on his appointment by the Master of the High court. [5 marks]

c) According to the case of *Jourbert v Tarry* **1925 TPD 227** the presence of *essentialia* in a contract would demonstrate whether it is a partnership agreement or act.

Giving relevant examples where applicable, distinguish between the *essentialia* and *naturalia* of a partnership contract. [5 marks]

d) List five ways through which a partnership agreement is dissolved. [5 marks]

Total 25marks

Question 6

a) Outline five rights of a worker. [5 marks]

b) Briefly explain the application of three types of employment codes of conduct operational in terms of Zimbabwean laws. [5 marks]

c) What are the advantages of having a Statutory Collective Bargaining agreement as employees in a particular industry? [5 marks]

d) Explain why arbitration is increasingly becoming the most preferred form of dispute resolution in Zimbabwe. [5 marks]

e) An employee can be lawfully dismissed from work for embarking on an illegal strike.

Explain what constitutes an illegal strike under the labour law of Zimbabwe. [5 marks]

Total 25 marks

END OF EXAMINATION