

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

B. COMM (HONOURS) ACCOUNTING AND FINANCE

COMPANY LAW : CIN 2106

NOVEMBER/DECEMBER 2004 FIRST SEMESTER EXAMINATION

DURATION : 3 HOURS

Instructions to Candidates

1. Answer all questions

Question 1

- (a) “The lifting of the corporate veil is possible and may be necessary in order to prove who is responsible for the activities, decisions and control of a company”

R P Crees v Woodpecker Industries (Pvt) Ltd 1975 (1) RLR at page 151

Under what circumstances are courts in Zimbabwe likely to lift the corporate veil?
[15 marks]

- (b) Name the types of companies that can be formed in terms of the Companies Act [Chapter 24:03] **[3 marks]**
- (c) Name the sources of Zimbabwean Company law. **[2 marks]**

Question 2

The documents for the incorporation of XYZ Ltd were lodged with the Registrar of Companies on 24 January 2004. On 31 January 2004 the future directors of XYZ Ltd signed a contract with ABC Ltd to erect an office building. According to the Registrar, the incorporation date of XYZ Ltd is 7 February 2004.

Discuss how XYZ Ltd could be bound to the contract in terms of:

- i) the common law
- ii) the provision of the Companies Act

[20 marks]

Question 3

The main objects clause of the memorandum of association of Softex (Pvt) Ltd provides that the company is to be active in all facets of the computer industry. The

articles of association of the company provide that the management and control of the company is vested in the board of directors which has the power to delegate its authority to a director. The articles further provide that any contract concluded by any individual director which exceeds the value of Z\$50 million requires the prior approval of the company in a general meeting.

- (a) The board of directors of Softex (Pvt) Ltd delegates its authority to Peter, an Ordinary director of the company. Peter concludes a contract to the value of Z\$100 million for the purchase of computer programmes without obtaining the prior approval of the company in a general meeting. Consider whether the contract is binding on the company. Also consider whether your answer would be any different if the same contract had been concluded by John, another ordinary director of the company who had not had any authority delegated to him by the board of directors.
- (b) The board of directors concludes a contract to purchase a race-horse for Sandy for Z\$60 million. Sandy had previously dealt with the company and is aware that its main business is the computer industry. In its first race, the horse comes out stone last – much to the distress
- (c) of the board of directors, and in particular, of Moses, a member of Softex (Pvt) Ltd. Advise Softex (Pvt) Ltd whether the company is bound to the contract and whether Moses has any remedies.

[20 marks]

Question 4

- (a) Derek is interested in buying shares in Town Taxi Ltd. However, he does not have the means to buy these shares and approaches Town Taxi Ltd with the following suggestion:

Town Taxi should buy his luxury motor-vehicle with a market value of Z\$40 million for Z\$160 million. He will then undertake to buy Z\$120 million of Town Taxi's shares. Town Taxi approaches you for legal advice on the validity of this transaction. You should refer to all relevant common law principles. Statutory provisions and relevant case law.

[15 marks]

- (b) Discuss the rule of Foss v Harbottle.

[5 marks]

Question 5

- (a) Briefly name the common law rules on capital maintenance (maintenance of share capital). **[3 marks]**
- (b) Briefly describe the relationship which arises between the memorandum of association, the articles of association and:

- i) the members '*inter se*'
- ii) the company and director/s.

[7 marks]

- (c) Name the ways in which a person may be authorized to act on behalf of the company. [4 marks]

- (d) Discuss the case of Salomon v Salomon and Co Ltd [1897] AC 22 HL. Your answer should include a summary of the facts of this case and its importance to the field of Company law. [6 marks]

TOTAL : 100 MARKS

END OF EXAMINATION PAPER!!!