

**NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY
BACHELOR OF COMMERCE HONOURS DEGREE**

COMPANY LAW II - CIN 2206

APRIL/MAY 2006 SECOND SEMESTER EXAMINATION

DURATION : 3 HOURS

Instructions to Candidates

ANSWER ALL THE QUESTIONS.

SUBSTANTIATE YOUR ANSWERS WITH REFERENCE TO APPROPRIATE AUTHORITY WHERE POSSIBLE.

QUESTION 1

- a) Colleen is the auditor of Newpress Ltd. She audited the latest financial statements of the company and reported that these financial statements fairly represent the financial position of the company. Newpress Ltd used these statements to obtain an overdraft facility of Z\$10 billion from Finbank Ltd. Encouraged by the financial success of Newpress Ltd as evidenced by the financial statements, StarPress (Pvt) Ltd, a Shareholder of Newpress Ltd, increased its shareholding in Newpress Ltd. It now Appears that the financial statements did not fairly represent the financial position of Of Newpress Ltd and that, contrary to the situation reflected by the statements, the Company was in serious financial difficulties. Moreover, it has now come to light that Getrude, one of the directors of Newpress Ltd, had misappropriated company funds by Submitting false expense accounts and further, that a loan made by Newpress Ltd to Getrude was not disclosed in the financial statements. This was not detected during the Audit carried out by Colleen.
- i) Advise Colleen on her potential liability to Finbank Ltd, StarPress (Pvt) Ltd and Newpress Ltd. Also express a motivated opinion on the prospect of Colleen Being held liable.
- ii) Explain the legal position regarding the loan made to Getrude.

[25 Marks]

QUESTION TWO

a) Wonder (Pty) Ltd was incorporated in January 2003 and in terms of its articles the company would have two directors who would hold office for five years. Gordon and Samuel were appointed in the articles as the first two directors. When Gordon died in May 2003, Harry was appointed as director in his place in terms of a separate contract With the company. His period of office was also five years. 2 years later, in January 2005, Cleopas was appointed as a director of the company. In January 2006, Harry was of the view that the company should be wound-up. The other directors did not agree. Harry was then removed from office by a resolution in terms of Section 175 of the Companies Act.

- i) Firstly, comment on the sequence and legality of events that took place as set out.
- ii) Secondly, fully explain whether there is merit in Harry's argument that his dismissal was invalid and that he is entitled to claim damages in respect of the unexpired term of his appointment.

[15 Marks]

b) In each of the following instances, briefly explain whether X is entitled to be appointed as a director of a company:

- i) X was convicted in 2003 of Forgery and Theft by False Pretences and sentenced to a fine of Z\$1 million dollars, which fine he paid.
- ii) X is 19 years of age.
- iii) X suffers from epilepsy and receives constant medication.
- iv) In 2000, the liabilities of X's estate exceeded his assets and he was declared insolvent by the High Court. X has done nothing since then.
- v) In 2001, X was named as an executor in a written will for Y. Contrary to the provisions of the will, X distributed the property of the deceased estate to persons other than the beneficiaries stated in the will. X is now removed, by application to court, as an executor.

[10 Marks]

[TOTAL: 25 Marks]

QUESTION THREE

a) Set out under what circumstances a company will be held liable for mis-statements appearing in the prospectus, and what defences are available to persons who may be held liable.

[12 Marks]

b) Section 91 of the Companies Act deals with variation of rights attaching to shares. Explain the operation of this provision.

[8 marks]

c) In terms of Section 126 of the Companies Act, an extraordinary general meeting of a company may be held. State how this may take place and for what purpose such a meeting may occur.

[5 Marks]

[TOTAL: 25 Marks]

QUESTION FOUR

a) Craig is the managing director of Oilcam (Pty) Ltd, the only company in Zimbabwe that reclaims used motor oil. The specific process used in this regard is unique. During the course of his duties, Craig has become an expert in the application of this process. Craig has knowledge of certain tenders submitted by Oilcam (Pty) Ltd to the Zimbabwe Taxi Association for the recovery of a large quantity of used motor oil. He Resigns as managing director of Oilcam (Pty) Ltd and forms a private company OilZim (Pty) Ltd, which also has as its main object the recovery of used motor oil. Oil Zim (Pty) Ltd also submits a tender to the Zimbabwe Taxi Association for the Recovery of the used oil. The tender submitted by OilZim (Pty) Ltd comes to the Attention of Nicolette, who has now been appointed as the new managing director of Of Oilcam (Pty) Ltd.

Advise Nicolette on the legal position of Oilcam (Pty) Ltd.

[8 marks]

b) Describe the main sections of the Cadbury Report dealing with Corporate Governance. Your answer must include a definition of 'Corporate Governance'.

[7 marks]

c) 5 medical practitioners who are in partnership registered a company to acquire certain immovable property. The company then leased this property to the doctors. All of the 5 partners acquired shares in the company and became directors. Later The partnership was dissolved and three of the shareholders of the company gave Notice to remove Ted, and Catherine (the other shareholders) as directors'. Ted and Catherine refuse to step down. What action could the 3 shareholders possibly Use? Fully Explain.

[10 Marks]

[TOTAL: 25 Marks]

*****END OF EXAMINATION PAPER*****