

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

B.COMM. (HONOURS) DEGREE ACCOUNTING AND FINANCE

COMPANY LAW II : CIN 2206

AUGUST SUPPLEMENTARY EXAMINATION

TIME : 3 HOURS

INSTRUCTIONS TO CANDIDATES

1. Answer 4 questions only
2. All question carry equal marks
3. Include relevant case law in your answers.

Question 1

On the 7th August R travelled in the same aircraft with B from Johannesburg in the Republic of South Africa to Windhoek in Namibia. During the Flight R and B engaged in conversation, in the course of which R told B that a private company Shrugwe Diamonds (Pvt) Ltd, in which he had an interest, was developing a diamond mine near Shrugwe and that it would be converted to a public company during February of the following year. He offered to sell shares in the public company to B. B was interested and at the suggestion of R met the latter at the hotel where he was staying. A lengthy discussion ensued after which B agreed to buy 1000 shares at \$5 (Namibian) per share, amounting to \$5 000 (Namibian), which B paid to R.

R is arrested on his return to Zimbabwe and charged with contravention of Section 64 of the Companies Act.

Advise R. Support your advice with reference to decided cases. **[25 marks]**

Question 2

(a) Set out the requirements that must be complied with in respect of a pre-incorporation contract in order for the company on behalf of which it is entered into to be bound thereby and benefit from it. **[18 marks]**

(b) What is a capital redemption reserve and how is it financed? **[7 marks]**

Question 3

Answer either:

(a) N is a managing director of a company and also an ordinary shareholder of a large number of shares. In addition he had control of the votes of a relative who as a

matter of habit voted with him and the votes of family trust. This gave him control of the company. Relations between N and A, his nephew, who is a director of the company, have become strained. As a result of being forced to resign from the trusts his control of the company is threatened. The directors (A dissenting) under powers granted by the articles resolved that certain accumulated profits be capitalized and distributed to shareholders in the form of bonus shares. One effect of this arrangement was to ensure N's continued control of the company.

A wishes to challenge the validity of this resolution. He consults you. Advise him citing decided cases in support of your advice.

OR alternatively answer:

- (b) Set out the rule in Foss v Harbottle and its relevance to the provisions of the Companies Act in regard to the protection of minorities in terms of the provisions of Section 196 of the Act. [25 marks]

Question 4

Set out clearly the duties of both a provisional and final judicial manager as these are provided for in the Companies Act (Chapter 24:03) referring to decided cases to explain the ambit of these duties. [25 marks]

Question 5

Set out clearly the grounds upon which a company may be wound up by the court as set out in Section 206 of the Companies Act (Chapter 24:03) referring to decided cases to indicate the limits within which the court will exercise its discretion. [25 marks]

END OF EXAMINATION PAPER