

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

SECOND SEMESTER FINAL EXAMINATION – MAY 2011

Duration : 3 Hours

Instructions to candidates

1. Answer **ANY FOUR** (4) questions.
 2. Refer to appropriate authority and decided cases where applicable.
 3. All questions carry equal marks.
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Question 1

- a) Miss Gava has been recently appointed a Company Secretary for Chadcomb (Pvt) Ltd, a company registered in terms of the laws of Zimbabwe. She being a recent graduate seems to be unsure of what the practical duties of a Company Secretary are. Her boss has run counter with her propositions several times. Troubled and not wanting to put her job on the line, a saddened and distraught Miss Gava approached you for advice.

Outline the duties of a Company Secretary for the benefit of Miss Gava.

[7 marks]

- b) Meanwhile, Miss Gava as a Company Secretary of Chadcomb (Pvt) Ltd has entered into a contract of sale with Mr Jimmy Rims. In terms of the contract Chadcomb (Pvt) Ltd had to supply two BMW cars to Mr Rims the purchaser. Pursuant to the contract, the company supplied a car and a motorcycle both BMW models. Mr Rims consequently sued the company for breach of contract. Chadcomb (Pvt) Ltd through its directors, argued that, the company had complied with the deal of sale and alternatively that, if Mr Rims insisted on his lawsuit the company was not bound at all because Miss Gava was a mere Company Secretary with no capacity to represent it. The directors argued that it could have been plausible if Miss Gava were a director herself.

Discuss the legal issues arising from the above facts, demonstrating in the process whether Chadcomb (Pvt) Ltd has any defence on the merits in terms of the law.

[8 marks]

c) Zero Mutual (Pvt) Ltd is a company incorporated in terms of the Company's Act of Zimbabwe. The company has seven shareholders. Amongst its shareholding structure the company has Fresh Produce Public Co as its member. Two months after incorporation the directors of Zero Mutual appointed Boomerang Chartered Accountants as its auditors, a partnership with a shareholding stake in Zero Mutual. Meanwhile, Boomerang has been denied access to the former accounts of the company on the ground that, the accounts do not concern them. As if that was not enough, the financial manager barred the auditing institution's representatives from attending a forthcoming Zero Mutual (Pvt) Ltd general meeting.

Discuss the legal issues arising from the facts above, indicating in the process whether an auditor was duly appointed.

[10 marks]

Total 25 marks

Question 2

a) Troubled Investments Ltd is a company registered and incorporated in terms of the Companies Act of Zimbabwe. Having fallen into financial distress, the company's directors proposed that, the company be merged with another one namely Goodlucky Alliance. The meeting to sanction the merger was convened and attended by one director and two section managers. The three individuals came up with a deed of merger which they proceeded to register with the Registrar of Companies. Meanwhile, the creditors of Troubled Investments Ltd challenged the merger decision on the ground of procedural irregularity. They approached the High Court seeking an order to set aside the merging arrangement.

Discuss the legal issues arising from the above facts, showing in the process whether the decision to merger was properly arrived at.

[15 marks]

b) Under the law of company reconstruction and arrangements:

- (i) What is a transferee company? (2 marks)
- (ii) What is the requirement regarding notices convening meetings for amalgamation purposes? (2 marks)
- (iii) What is the fate of liabilities of a transferor company? (2 marks)
- (iv) How are shares of members dissenting from scheme approved by majority acquired? (4 marks)

Total 25 marks

Question 3

a)“ A member of a company may apply to the court for an order in terms of section 196 of the Companies Act (Chapter 24:03), on the ground that the company’s affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some members, including himself...”

Discuss the above statement in relation to the Rule in *Foss v Harbottle* (1843)
[10 marks]

b) Explain the **two** concepts emerging from the Rule in *Foss v Harbottle* at the same time justifying the existence of the rule. [10 marks]

c)“The Rule in *Foss v Harbottle* is not so rigid that it cannot be twisted, because there are exceptions to the rule”

Explain the circumstances under which a minority shareholder can sue instead of a company. . [5 marks]

Total 25 marks

Question 4

- a) Define company winding up and explain the two stages involved in it. [3 marks]
- b) State two **modes** of company winding up. [2 marks]
- c) What is the purpose of the certificate attached to a petition in compulsory winding up? [2 marks]
- d) Distinguish between voluntary and compulsory winding up in relation to the following:
- i) Proof of claims against the company being wound up. [2 marks]
 - ii) Appointment of liquidator. [2 marks]
 - iii) Commencement of winding up procedure. [3 marks]
 - iv) Effect of winding up. [3 marks]

e) "A company may be compulsorily wound up if it is *unable to pay its debts* or if the court is of the opinion that it is *just and equitable* to do so"

Explain what is meant by the terms:

- i) Unable to pay its debts [2 marks]
- ii) Just and equitable [2 marks]

f) State **any four** persons disqualified for appointment as liquidator in terms of the Companies Act of Zimbabwe. [4 marks]

Total 25 marks

Question 5

- a) What is the purpose of placing a company under judicial management?
[3 marks]
- b) Outline the requirements for granting a provisional judicial management order.
[5 marks]
- c) What happens on the return day of a provisional judicial management order?
[2 marks]
- d) What shall be the use of the moneys realized by the judicial manager in the course of management? [3 marks]
- e) Outline the contents of the report which is prepared and laid before the separate meetings of the creditors and members, by the provisional judicial manager. (5 marks)
- f) What is the purpose of security given by a judicial manager on being appointed?
(2 marks)
- g) Outline the procedure for the appointment and the duties of a final judicial manager in terms of the Company's Act. (5 marks)

Total 25 marks

Question: 6

- a) Zanele, Nyasha and Siphon set out to form a partnership. The three drew a Partnership Deed in which they agreed that each member was to contribute \$2000 to the formation of the partnership. However only Zanele managed to raise the \$2000. Nyasha promised to work hard in the partnership through applying his unique computing skills whilst Siphon undertook to build the premises where the partnership business was to be conducted. The partnership had as its main objective, “*the promotion of dance and social networking in Africa and beyond*”. Meanwhile, Zanele argued and convinced the other partners that she was the only person entitled to benefits accruing to the partnership in the first one year because she was the sole “shareholder” who had contributed capital to the partnership. Six months down the line Siphon and Nyasha complained that the partnership was not functioning as they had expected since they were treated like mere paid servants by Zanele. To that end they sought its dissolution. Zanele challenged the proposed dissolution on the ground that the other partners were not the proper plaintiffs but mere sub-partners answerable to her.

Discuss the legal issues arising from the facts above, indicating in the process whether a partnership was formed. [15 marks]

- b) What is the difference between an essential and a natural element of a partnership agreement? [5 marks]
- c) Outline and explain **four** important *naturalia* of a partnership agreement. [5 marks]
- d) State any **two** ways through which a partnership can be dissolved. [2 marks]

Total 25 marks

Question 7

a) Outline any *five* duties of the employer under labour law. [5 marks]

b) Vhukani Madoda Private Limited is a vibrant clothing company in Bulawayo. On 17 February 2011, the management and the Workers Committee representatives met over a number of issues including:

- Salaries increase deadlock
- Nonpayment of transport allowances
- Barring of trade union officials from the workplace
- Immediate demotion of all Workers Committee members from their positions to cleaners.

None of the above issues were resolved. The employees decided to give the employer a notice of intention to go on strike. Upon expiration of the fourteen days, the employees then proceeded to go on strike. The employer responded on the 3rd day of the strike by issuing suspension letters to all employees and the reason for suspension was “*you engaged in unlawful collective job action*”. Within a day of dispatch of the letter a hearing was conducted and some employees were charged under the National Employment Code for insubordination and failure to provide service. The Workers Committee Representatives were charged under the Clothing Industrial Code of Conduct for “*inciting or being involved in an illegal strike*”. The rest of the workers were charged under the company’s Workplace Code of Conduct which was to be registered soon if agreed by the Workers Committee members. 100 employees of the 150 who took part in the strike were dismissed and their salaries which were due a day before the strike were forfeited.

i) Discuss whether the issues which the management and the workers failed to agree establish a legal basis for employees to go on strike. [5 marks]

ii) Discuss the legality of the strike. [3 marks]

iii) Was the employer’s actions and decisions in this case justified and fair in terms of the law? [5 marks]

iv) What remedies are available to the workers dismissed? [3 marks]

c) What is the difference between voluntary and compulsory arbitration? [4 marks]

Total 25 marks

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