

LML4806
LML406T

May/June 2011

COMPANY LAW (LLB)

Duration 2 Hours

100 Marks

EXAMINERS :

FIRST :

SECOND :

ADV MR MODIBA

MR HGJ BEUKES

This paper consists of 3 pages.

ANSWER ALL QUESTIONS.

QUESTION 1

- 1.1 Zonke and Mse are ordinary shareholders in Marothodi Ltd. They each hold 5% of the voting rights in the company. They are unhappy with the way the company is being managed by its current board of directors and want to have the current board replaced by a new board. They want to demand that a shareholders' meeting be convened for the purpose of proposing a resolution for the removal of the current board of directors.

Advise Zonke and Mse whether they have the right to demand that a shareholders' meeting be convened and if so, what requirements must be met. (10)

- 1.2 The board of directors of Metallica Ltd wants to propose a resolution for the voluntary winding-up of the company following its failure to make profit for three consecutive years. The proposed resolution needs to be approved by the shareholders, but the board is faced with the problem that the shareholders of Metallica Ltd are scattered all over the world, making it difficult to find a location and time convenient for all the shareholders.

Advise the board of directors of Metallica Ltd regarding the type of resolution required for a voluntary winding-up of a solvent company and what this type of resolution entails. Also advise the board how a resolution can be adopted without conducting a meeting. (10)

[20]

QUESTION 2

- 2.1 In a shareholders' meeting, Siphon, Mokete and Johan were appointed as directors of CSK Electronics Ltd. Siphon, Mokete and Johan verbally accepted their appointments, however, only Siphon delivered a written consent accepting the position of director to the company. The board of directors then authorised the publication of false and misleading financial statements.

Explain whether Mokete and Johan will be liable as directors. Refer to relevant case law. (8)

- 2.2 Tin Can Breweries Ltd was recently incorporated. The company's board of directors is not sure whether the company is obliged to appoint a company secretary; who may and may not be appointed as company secretary; and what the duties of a company secretary are.

Advise the board of directors of Tin Can Breweries Ltd whether the company is obliged to appoint a company secretary; who may **NOT** be appointed as company secretary; and what the duties of a company secretary are. (12)

[20]

QUESTION 3

The Memorandum of Incorporation of Zama-zama Ltd provides that only two of the company's directors, Stix and Mafethe, can bind the company in contracts valued in excess of R100 000. Nazo, another director of Zama-zama Ltd, concludes a contract on behalf of the company with Boogie to the value of R250 000. Boogie has only recently resigned as the company secretary of Zama-zama Ltd.

Advise the board of directors of Zama-zama Ltd whether the company is bound to the contract concluded by Nazo. [15]

QUESTION 4

- 4.1 Denali Ltd owns a warehouse in Kyalami worth R60 million. The value of all the company's assets, including the warehouse in Kyalami, amounts to R100 million. The board of directors of Denali Ltd wants to sell the warehouse.

Advise the board of directors of Denali Ltd on the procedure that needs to be followed in order to sell the warehouse. You need **NOT** discuss "affected transactions". (7)

- 4.2 Just Us (Pty) Ltd is a small, but successful catering company. The company is now being sued for damages by a client whose guests contracted food poisoning after being served food provided by Just Us (Pty) Ltd. If the client is successful, Just Us (Pty) Ltd will not be able to pay all its debts.

Advise the board of directors of Just Us (Pty) Ltd whether the circumstances of the company are of such nature that the company qualifies for business rescue proceedings; explain the business rescue procedure; and also explain how affected persons are protected against abuse of business rescue proceedings. (13)

[20]

QUESTION 5

Debbie is the personal assistant of the managing director of Toys4Me Ltd, a listed company that develops and distributes toys. She is required to take minutes at a meeting of the board of directors where the development of a new toy is discussed. Debbie realises that when the company starts to distribute the new toy, it will have a positive effect on the company's profitability. She tells her husband, Patrick about the meeting and the new toy.

Patrick immediately instructs his broker to buy shares in Toys4Me Ltd. When Debbie hears what her husband has done, she advises her friend, Zonke, to buy shares in Toys4Me Ltd. When Zonke asks her why she should do this, Debbie simply replies: "Because I say so". However, Zonke does not act on Debbie's advice. When Toys4Me Ltd starts to distribute the new toy, the price of the company's shares rises considerably and Patrick sells his shares at a considerable profit.

Consider whether any criminal proceedings could be brought against Debbie, Patrick and Zonke under the insider trading provisions in the Securities Services Act of 2004. Your answer should include a discussion of the meaning of 'insider' and 'inside information'. You do **NOT** have to discuss the civil action.

[15]

QUESTION 6

Barbara has approached two of the shareholders of Clocks Ltd to acquire their shares in the company. If she acquires these shares, she will have enough shares to control 35% of the voting rights in the company. Barbara is then approached by one of the other shareholders of the company and informed that if she acquires these shares, she will be required to make an offer to all the remaining shareholders of the company to acquire their shares at the same price.

Advise Barbara whether it is true that she will be required to make such offer; the basis upon which she will be required to make such offer; as well as the procedure that she will have to follow. [10]

TOTAL: [100]