

LML4806

May/June 2012

COMPANY LAW

Duration 2 Hours

100 Marks

EXAMINERS
FIRST
SECONDMRS M BEKINK
MR HGJ BEUKES

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This paper consists of 3 pages

ANSWER ALL QUESTIONS**QUESTION 1**

Mr Davis is a shareholder in Coffee Delight Ltd, a recently incorporated company trading in imported coffee. Coffee Delight Ltd is holding its first annual general meeting since its incorporation. Due to business commitments Mr Davis is unable to attend this meeting and has appointed Mr Behalf to act on his behalf.

- 1.1 Advise Mr Davis on the procedure to be followed in order to appoint someone to attend and participate in the meeting on his behalf. Also explain the rights of the person appointed. (10)
- 1.2 Mr Davis' business commitments are cancelled at the last minute and he decides to attend the meeting. Advise Mr Davis on his rights in terms of the Companies Act 71 of 2008 to suspend or revoke the appointment of Mr Behalf. (5)
- [15]

QUESTION 2

James is the director of LeatherMaker Ltd, a company that manufactures leather products. James has been a director of the company since its incorporation in 1997. According to a shareholders' agreement James will be allowed to serve as director of the company for life. James has recently failed to fulfill his duties as director and the shareholders would like to remove him as director. James believes that this is not possible due to the said agreement.

Advise the shareholders on their chances of success to remove James as director, by referring to the situation under the Companies Act 61 of 1973, relevant case law, as well as the situation under the Companies Act 71 of 2008. (10)

[10]

[TURN OVER]

QUESTION 3

Samson, a director of Fitness Extreme (Pty) Ltd, is mandated by the board of directors to enter into negotiations with Enduro Sports Ltd to the effect that Fitness Extreme (Pty) Ltd will manage the installation and maintenance of all Enduro Sports Ltd's sport equipment for the next 5 years. During the negotiations, the directors of Enduro Sports Ltd state clearly that they do not want to do business with Fitness Extreme (Pty) Ltd, but that they are very keen to do business with Samson personally. Samson resigns as director of Fitness Extreme (Pty) Ltd, incorporates a new company and a few months thereafter enters into a contract with Enduro Sports Ltd to the effect that he will manage the installation and maintenance of all Enduro Sports Ltd's sport equipment.

Explain, with reference to the Companies Act 71 of 2008 and relevant case law, whether Samson has breached his duties towards Fitness Extreme (Pty) Ltd. (15)

[15]

QUESTION 4

4.1 Michael and Joe are the only two directors and shareholders of Arony (Pty) Ltd. Michael holds 12 of the 20 issued shares in the company, while Joe holds 8 of the shares. Michael proposes that the company issues 20 more shares to his brother Nathan. Joe objects to this proposal and argues that he should first be afforded an opportunity to subscribe to the new shares.

Advise Joe whether he is entitled to first be afforded an opportunity to subscribe to the new shares. Also indicate whether there are any exceptions to the general rule. (10)

4.2 Sally (Pty) Ltd has recently purchased non-voting preference shares amounting to 52% of the equity capital of Monet Ltd.

a) Explain whether Monet Ltd is a subsidiary of Sally (Pty) Ltd in terms of the provisions of the Companies Act 71 of 2008. (5)

b) Suppose that Monet Ltd is a subsidiary of Sally (Pty) Ltd. Advise the board of directors of Sally (Pty) Ltd about the legal consequences of a group of companies, with specific reference to financial statements and fiduciary duties between companies in a group. (5)

QUESTION 5

5.1 The board of directors of Mountaineers (Pty) Ltd concluded a contract for the rent of very expensive mountain climbing equipment from Extreme Ltd. The board has since found out that the same equipment is available at a much lower rate from another company. Greta, one of the directors of Mountaineers (Pty) Ltd, suggests that, in view of the fact that the company is financially distressed, the board of directors should consider business rescue proceedings to enable them to cancel the contract with Extreme Ltd.

Advise the board of directors of Mountaineers (Pty) Ltd on the requirements to be met in order for a company to qualify for business rescue proceedings, how these rescue proceedings may be commenced and whether such proceedings will enable the company to cancel the contract with Extreme Ltd. (15)

- 5.2 Brian has been appointed as the business rescue practitioner of Mountaineers (Pty) Ltd. The shareholders are, however, unhappy with the way he has been conducting the business rescue proceedings and wants him to be replaced.

Advise the shareholders of Mountaineers (Pty) Ltd on the requirements that must be met by a person in order to be appointed as a business rescue practitioner of a specific company, as well as the grounds for removal of a business rescue practitioner in terms of section 139(2) of the Companies Act 71 of 2008.

(10)

[25]

QUESTION 6

Mary is an executive director of Rock and Roll Ltd, a listed company that organises and hosts national and international rock concerts. In response to a direct question from an investment analyst, Gabriel, Mary states that the company would not meet certain analysts' forecasts, as Lady Gaga will no longer be coming to South Africa to perform. Gabriel encourages Steve to dispose of his shares in Rock and Roll Ltd. However, Steve does not act on his advice. Gabriel also discloses the information to his wife, Roxy, who sells all her shares in Rock and Roll Ltd just before the information becomes public knowledge and the price of the company's shares decreases.

Explain whether Gabriel, Steve, Roxy and Mary have committed any offences under the legislation regulating insider trading. Your answer should include a discussion of the meaning of 'insider' and 'inside information'. You do not have to discuss the civil action.

(15)

[15]**TOTAL: [100]**