UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

LML4806

May/June 2013

COMPANY LAW

Duration 2 Hours

100 Marks

EXAMINATION PANEL AS APPOINTED BY THE DEPARTMENT.

Closed book examination.

This paper consists of 4 pages

ANSWER ALL QUESTIONS.

QUESTION 1

1.1 Explain whether it is possible for a valid resolution of shareholders to be passed without convening a meeting of shareholders. Refer to the position in terms of the common law, case law as well as the Companies Act 71 of 2008. (10)

1.2 The shareholders' meeting of Noakes Ltd is attended by Ms Mthembu who holds 10% of the voting rights, Ms Farisani who holds 5% of the voting rights and Mr Lehloenya who holds 20% of the voting rights in the company. Advise whether a quorum has been met to allow the meeting to begin in terms of the Companies Act of 2008 (5)

[15]

QUESTION 2

Jack is one of five directors of Surfs Heaven (Pty) Ltd. The other directors are of the opinion that Jack is failing to fulfill his duties as director because he is surfing all the time. The board of directors has therefore taken a resolution to remove him as director Jack is very unhappy about this and believes that he is "promoting" the company by surfing regularly. He wants the matter to be reviewed.

(a) Advise Jack on the grounds upon which a director may be removed by the board of directors as well as on whether the matter may be reviewed

(b) Explain how your answer would have differed (if at all) if the board of directors of Surfs Heaven (Pty) Ltd consisted of only Jack and one other director? **[10]**

QUESTION 3

Mr Sibanda purchased a second-hand BMW Z4 motor vehicle on 1 November 2012 from TrustUs Ltd for R300 000-00. The salesperson informed Mr Sibanda that the company could also finance the purchase price of the motor vehicle and took him to the office of Mr Naidoo, "the head of motor vehicle finance" at the dealership. On Mr Naidoo's office door was a big advertisement which referred clients to Mr Naidoo should they wish to obtain motor financing. Mr Naidoo assisted Mr Sibanda to complete the necessary application form for the required finance which was accepted and signed by Mr Naidoo on behalf of TrustUs Ltd. One of the terms of the agreement was that the loan amount would be paid out to Mr Sibanda on 10 December 2012. On 11 December 2012 Mr Sibanda noticed that the loan amount had not been paid to him. He immediately phoned the dealership but was informed by Mr Kudumane the branch manager that the company was not under any obligation to pay out the loan amount to Mr Sibanda on the following grounds:

(a) Firstly, the agreement was void and unenforceable because the Memorandum of Incorporation of the company limited the amount that could be provided per transaction to R200 000-00 Mr Kudumane pointed out that Mr Sibanda should have known about this provision because the Memorandum of Incorporation of the company was available for inspection by Mr Sibanda at the premises of TrustUs Ltd.

(b) Secondly, the agreement is void and unenforceable because Mr Naidoo was not authorised to conclude the loan agreement on behalf of TrustUs Ltd.

Advise Mr Sibanda on his rights in this situation, including whether the loan agreement is valid and enforceable against TrustUs Ltd and whether he can compel the company to provide the finance as stated in the contract. In your answer you should also critically discuss the two grounds upon which the company relies to avoid liability. **[15]**

QUESTION 4

Gaby, an existing shareholder of the company, wants to buy more shares in Weinberg (Pty) Ltd. She intends to pay for the shares by selling her delivery truck to Weinberg (Pty) Ltd. The board of directors of Weinberg (Pty) Ltd is aware that Gaby wants to use the proceeds of the sale for the purchase of shares in the company. The company does not need the delivery truck now and the price is slightly higher than its true value but Gaby is a friend of the managing director and he has persuaded the board that they should assist her in acquiring more shares in the company because the company "can afford it" and "may possibly have some use for the truck sometime in the future".

Advise Weinberg (Pty) Ltd whether the company may purchase the delivery truck under these circumstances and whether there are any requirements that must be satisfied if the transaction is allowed.

Also indicate whether, and if so, how your answer would differ if the company needed the delivery truck and the purchase price of R 700 000 was a fair price.

In your answer also refer to relevant case law. **[15]**

QUESTION 5

Exit Ltd holds 85 of the shares in Enter (Pty) Ltd. It is Exit Ltd's wish to make Enter (Pty) Ltd a wholly-owned subsidiary. A scheme of arrangement in terms of section 114 of the Companies Act 2008 was proposed between Exit Ltd and the holders of the other 15 ordinary shares of Enter (Pty) Ltd. In terms of the proposed scheme of arrangement the holders of the other 15 ordinary shares would surrender their shares in Enter (Pty) Ltd in exchange for shares in Exit Ltd. At a meeting of the ordinary shareholders of Enter [Pty] Ltd, Lufuno, Lerato and Thando who together hold 10% of the voting rights in the remaining 15% of shares of Enter (Pty) Ltd not already held by Exit Ltd, voted against the scheme. Some of the other shareholders also voted against the proposal, but a sufficient number of the other holders of the voting rights in the remaining 15% of the shares who voted at the meeting, voted in favour of the scheme to have it approved.

Advise Lufuno, Lerato and Thando on their legal rights to attempt to prevent the implementation of the scheme of arrangement. **[15]**

QUESTION 6

Impossibly Thin (Pty) Ltd is a company that develops and sells slimming products They have 3 slimming products, Thin, Slender and Fit. Thin sells excellently and they derive 70% of their income there from. Slender only makes up 30% of their income Fit, is still being developed. All of a sudden three members of the public become severely ill, apparently because of using Thin, and are hospitalised. Impossibly Thin (Pty) Ltd receives bad press reports and Thin has to be withdrawn from the market until further tests and research have proven it safe. *Peter and Anne, the directors of Impossibly Thin (Pty) Ltd want your advice* as they have heard about business rescue proceedings and think that it may be appropriate in the circumstances to assist Impossibly Thin (Pty) Ltd to survive the next few months as the company's cash flow is severely affected by the withdrawal of Thin

Advise the board of directors of Impossibly Thin (Pty) Ltd on:

(a) What business rescue proceedings entail according to its definition in the Companies Act of 2008 and under what circumstances a company will be regarded as financially distressed. (6)

(b) Explain briefly to them how and under what circumstances they as directors can commence business rescue proceedings and whether Impossibly Thin (Pty) Ltd meets these requirements. (4)

(c) Explain briefly what the legal consequences of business rescue proceedings will be on legal proceedings against the company during the business rescue proceedings. (5)

[15]

QUESTION 7

Johannes is the managing director of Your Money Ltd, a listed company which provides financial advice The company is on the verge of introducing a creative new financial package combined with smart phone, and investment devices that will revolutionise electronic investment services and costs in South Africa The company has not as yet made any public announcement about this and only Johannes and his assistant manager William know about this information. However, William's secretary Maria saw the confidential documents on his desk and now also knows about this new product She has informed her sister Sarah and her brother Joel about this. Sarah did not act on this information as she did not have enough money to buy shares, but Maria and Joel bought 6000 and 5000 shares respectively. When the company announces this new product, the price of the company's shares increases by 12%.

Explain whether Maria, Sarah and Joel may incur civil liability 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 available sanctions or the criminal offences. **[15]**

TOTAL: [100]

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