

LML4806

May/June 2014

COMPANY LAW

Duration 2 Hours

100 Marks

EXAMINERS :

FIRST

SECOND

MR PM LEHLOENYA

PROF A LOUBSER

Closed book examination.

This examination question paper remains the property of the University of South Africa and may not be removed from the examination venue.

This paper consists of 3 pages

ANSWER ALL QUESTIONS**QUESTION 1**

Tom, Jerry, Garfield, and Mickey form a new company with the name Cat and Mouse Limited. Tom is appointed as an executive director of the company, while Jerry, Garfield, and Mickey are appointed as non-executive directors of the company. They have been informed that the company must appoint an audit committee and decide that they will all be members of the audit committee. They also wish to appoint Minnie, the company secretary, to sit on the audit committee. With reference to the Companies Act 71 of 2008, advise Tom and Jerry of the following:

- 1 Who is required to appoint the first members of the audit committee? (2)
 2. May Tom, Jerry, Mickey and Minnie be members of the audit committee? (5)
 - 3 Briefly discuss the duties that the audit committee is required by the Companies Act 71 of 2008 to perform in Cat and Mouse Limited (3)
- [10]**

QUESTION 2

Peter, Nonhlanhla and Simon are the directors of Nguni Hide Tanneries Ltd, a company which tans and sells the hides of Nguni cattle. The board is considering the repurchase of some of its own shares by the company, or by using a subsidiary of the company to accomplish this. They are not sure if the company may do this, and if so, how to go about it and they consult you for advice. Advise them on the position regarding:

[TURN OVER]

- the repurchase of its own shares by the company itself, and
 - by using a subsidiary, and,
 - the consequences should they not comply with the requirements of the Companies Act, 2008 in this regard
- [15]**

QUESTION 3

Tlou is a director of Animal Park Ltd, a listed public company. Tlou and his friend Tau keep regular e-mail contact. Tlou knows that Tau usually reads his e-mails at 7h00 every day. Tlou sent Tau a message at 6h00 saying that Animal Park Ltd will post good results and that the results will be published at 10h00 on the same day. On that particular day, Tau, for some unknown reason, only read his e-mails at 9:30. However, at 9h00, Tau had instructed his broker, Phiri, to buy 1000 shares in Animal Park Ltd because he had a feeling that the company was going to publish good results. Discuss whether Tau and Tlou have committed any of the insider trading offences under the Financial Markets Act of 2012.

[10]

QUESTION 4

Batau Ltd is an unlisted mining public company that has over 1000 shareholders. One of its current shareholders, Mbedzi (Pty) Ltd, wishes to acquire all the issued shares in the company.

The board of directors of Mbedzi (Pty) Ltd has heard that all the shareholders except Lerato, who holds 9% of the issued shares in Batau Ltd, are very keen on selling their shares.

Mbedzi (Pty) Ltd does not wish to acquire anything less than 100% ownership of Batau Ltd but the board of directors of Mbedzi (Pty) Ltd does not wish to structure the deal as a scheme of arrangement.

You are required to give legal advice to Mbedzi (Pty) Ltd on the rules that regulate such a transaction and how it could structure an offer to ensure that it would not have to acquire less than all the issued shares.

[15]

QUESTION 5

Discuss and explain fully the meaning and implication of the term "adequate consideration" in section 40 of the Companies Act, 2008.

[10]

QUESTION 6

Discuss the various types of shareholders' meetings under the Companies Act 71 of 2008 and the various methods by which such shareholders' meetings may be convened under the Companies Act 71 of 2008. Further discuss the consequences and prescribed procedures under the Companies Act 71 of 2008 if a company fails to convene a shareholders' meeting.

[15]

QUESTION 7

Meropa Ltd holds 20% of the voting shares in Motheo Ltd, while Thebe Ltd holds 25% of the voting shares in the same company. The remaining 55% of the voting shares in Motheo Ltd are held by Molemo Ltd.

Explain what is meant by "a group of companies" and whether a principal-subsidary relationship exists between Motheo Ltd and any of the other three companies. [10]

QUESTION 8

Samson was recently appointed as a business rescue practitioner for Rubber Tyres and Tracks (Pty) Ltd. Some of the affected persons in the company are unhappy because Samson has started drafting the business rescue plan without consulting them. Advise Samson regarding the following matters

- (a) Is he compelled to consult any persons before drafting the business rescue plan? (3)
 - (b) The Companies Act of 2008 prescribes the contents of a business rescue plan. Name the four parts into which the plan must be divided and give one example of the items or aspects that must be included in each of the parts respectively (8)
 - (c) Explain the requirements of section 152 of the Act for the business rescue plan to be finally and validly approved at the meeting called for this purpose. (4)
- [15]**

TOTAL: [100]