

LML4806

October/November 2011

COMPANY LAW (LLB)

Duration 2 Hours

100 Marks

EXAMINERS
FIRST
SECONDADV MR MODIBA
MR HGJ BEUKES

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This paper consists of 3 pages

ANSWER ALL QUESTIONS.**QUESTION 1**

Mr Cele is a shareholder in Secunda Ltd, a recently incorporated company trading in computer software. Secunda Ltd is holding its first annual general meeting since its incorporation. Due to business commitments Mr Cele is unable to attend this meeting

- 1 1 Advise Mr Cele on the procedure to follow in order to appoint someone to attend and participate in the meeting on his behalf. You should also indicate the rights of the person appointed (5)
- 1 2 Advise Mr Cele on the issues that must be dealt with in the annual general meeting in terms of the Companies Act 71 of 2008. (5)

[10]**QUESTION 2**

Fatima is the director of Indica Ltd, a company that manufactures pharmaceutical products. One of Fatima's functions is to manage the company's distribution of manufactured products to its clients. In October 2010 Fatima requested information from the company's various factories on the demand for the company's products during the preceding year, as well as the projected demand for its products in 2011. It was reported that the demand in 2011 would probably not exceed the demand during 2010, because a patent for one of the company's most profitable products would prescribe in December 2010.

As a result of this information, Fatima did not make provision for any extension of Indica Ltd's distribution network. In August 2011 one of Indica Ltd's main competitors lost all its manufacturing plants in a hurricane. Consequently, the demand for Indica Ltd's products rose substantially and the distribution network could not meet this demand. Indica Ltd had to make use of outside contractors to extend distribution, which led to lower profits.

[TURN OVER]

The board of directors of Indica Ltd wants to institute action against Fatima for breach of her duty of care and skill.

Advise the board of directors on the company's chances of success, keeping in mind the common law, relevant case law and the provisions of the Companies Act 71 of 2008. In your answer you must also include a discussion of the business judgement rule. [15]

QUESTION 3

Maite is a preference shareholder of Deendale Ltd, a company that manufactures fabric for the clothing industry. The company's preference shares do not confer the right to vote. The clothing industry has recently been under severe pressure as a result of competition from the Far East. Consequently, the demand for fabric has decreased to such an extent that a resolution has been proposed for the winding-up of Deendale Ltd. Maite is very upset about the proposed resolution.

Advise Maite whether she has the right to vote on the proposed resolution. Refer to relevant case law. [10]

QUESTION 4

Tik Ltd, Tak Ltd and Tuk Ltd, all independent companies, have voting rights in Axe Ltd. Tik Ltd and Tak Ltd each hold 40% of Axe Ltd's voting shares, while Tuk Ltd holds the remaining 20%.

Explain whether a principal-subsidary relationship exists between Axe Ltd and any of the other companies. [10]

QUESTION 5

The board of directors of Nexus Ltd intends to sell some of the company's property as part of the company's strategy for restructuring. The property earmarked to be sold comprises 60% of the company's assets.

Advise the board of directors of Nexus Ltd on the procedure that must be followed before the company's property may be sold. [10]

QUESTION 6

Moroela (Pty) Ltd has 12 shareholders who each hold 1 share in the company. Pintos Ltd holds 1 share in Maroela (Pty) Ltd. Pintos Ltd wishes to make an offer to acquire all the issued shares in the Maroela (Pty) Ltd and has decided it will offer each other shareholder R1 million. The board of Pintos Ltd has heard that all the shareholders except one are very keen to sell their shares. However, Pintos Ltd does not wish to acquire anything less than 100% ownership of Maroela (Pty) Ltd. The board of Pintos Ltd does not wish to structure the deal as a scheme of arrangement

Advise Pintos Ltd regarding the rules which 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]

[TURN OVER]

QUESTION 7

Explain the circumstances under which business rescue proceedings may be initiated, how business rescue proceedings may be commenced, as well as the rights of an affected person and the powers of the court during business rescue proceedings [15]

QUESTION 8

Shareese is the librarian for a large firm of attorneys. The library at the law firm houses a large reading room, which is sometimes used as a meeting room. One morning Shareese overhears a conversation between two of the firm's attorneys who represent Settler Foods Ltd, a listed company. Settler Foods Ltd was summoned before the Competition Tribunal to answer to allegations of price fixing of foodstuffs. Shareese can gather from the conversation between the attorneys that Settler Foods Ltd will have no choice but to admit to the price fixing, which might mean that the company will have to pay 10 per cent of their annual turnover to the Competition Commission. This will have a detrimental effect on the share price of Settler Foods Ltd.

Shareese phones her friend, Sizwe, who is a stock broker. Shareese says the following to Sizwe: "Don't ask me how I know, but now is not a good time to have Settler Foods' shares". Sizwe immediately sells all shares held in Settler Foods Ltd on behalf of his clients and he instructs all other clients not to buy shares in the company

Shareese also tells her girlfriend, Patti, what she has heard, but Patti does not act on the information.

Discuss which of these parties might incur criminal as well as civil liability for insider trading in terms of the Securities Services Act 36 of 2004. [15]

TOTAL: [100]