

LML4806

October/November 2012

COMPANY LAW

Duration 2 Hours

100 Marks

EXAMINERS :

FIRST

SECOND

MRS M BEKINK

PROF A LOUBSER

Closed book examination.

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This paper consists of 3 pages

ANSWER ALL QUESTIONS.

QUESTION 1

Miya is a shareholder of Lovino Ltd, a recently incorporated company trading in imported fabrics. She and a few other shareholders want to call a shareholder's meeting to discuss certain matters of concern pertaining to the management of the company. One such concern is that a record date has not been set

1.1 Advise Miya on who has a right to call a shareholders' meeting. Also indicate to her the relevant points/aspects that should be taken into consideration when such a demand is made (10)

1.2 Explain to Miya the meaning of the words "record date", and the importance of the record date (5)
[15]

QUESTION 2

Moketo had been a director of Beta (Pty) Ltd, of which he and his brother Gilbert were the only two shareholders. He tried to circumvent certain regulations prohibiting the export of nutritional sport supplements by calling the consignment, natural vitamins. He was subsequently tried and was convicted of fraud in 2011. He was therefore disqualified to act as a director of the company and was removed from office. Moketo however believes that he has mended his wrongful way and wants to be reinstated as director of Beta (Pty) Ltd. He has made an application to court to be reinstated. Gilbert however, strongly objects to Moketo being reinstated as director.

Advise Mokeko on his chances of success, with reference to the common law, relevant case law and the provisions of the Companies Act 71 of 2008. [15]

QUESTION 3

Write a critical analysis of the changes effected by sections 19 and 20 of the Companies Act 71 of 2008 to the ultra vires doctrine in comparison with section 36 of the Companies Act 61 of 1973. Your answer should refer to the common law position, the 1973 Companies Act as well as the 2008 Companies Act. [20]

QUESTION 4

4.1 McNuggets Ltd issued shares for which the consideration was payable in future installments. The subscribers still owe the consideration for 5% of the shares originally allocated to them. The company now wants to waive the debt owed by each subscriber to the company as the company's yearly financials showed a huge profit.

Critically discuss the requirements that have to be met in terms of the Companies Act 71 of 2008 if the company wants to write off the outstanding part of the issue price (note you are not required to discuss financial assistance). (10)

4.2 Mug & Mug Ltd has been struggling to make profits in the last few years due to the financial downturn. The board of directors of Mug & Mug Ltd plans to implement a scheme of arrangement involving a consolidation of the company's securities into different classes with the aim of turning the company around. The decision to implement the scheme of arrangement follows a few weeks after the process of liquidating Mug & Mug Ltd was initiated. Advise the board of Mug & Mug Ltd on the nature and types of possible 'arrangements' and the legality of the particular scheme the board is proposing (10) [20]

QUESTION 5

Sapi Ltd, Samancor Ltd and Ramsis Ltd exist as a group of companies. Discuss the legal consequences that flow from the existence of a group of companies [10]

QUESTION 6

Mr Donald is the liquidator of Best Medicine (Pty) Ltd a pharmaceutical company that has been placed into liquidation after experiencing cash flow problems. Best Medicine (Pty) Ltd's cash flow problems were mainly caused by the failure of many of its customers, to regularly pay their debts owed to the company. Mr Donald estimates that the creditors of Best Medicine (Pty) Ltd will receive a dividend of 23c in the Rand after the finalisation of the liquidation process.

Mr Donald phones you and informs you that he has been approached by Mr Sibanda, a major shareholder of the company. Mr Sibanda proposed a compromise to Mr Donald in terms of which he is willing to pay on behalf of the company a dividend of 50c in the Rand to all the creditors of Best Medicine (Pty) Ltd for the full and final settlement of their claims against Best Medicine (Pty) Ltd. In exchange for the payment the liquidation order must be set aside.

Advise Mr Donald and Sibanda on the nature of the transaction and the applicable statutory provision/s of the *Companies Act 71 of 2008*. Your answer should include aspects of the nature of the transaction, the approval requirements as well as the procedure to be followed after the transaction has been approved by the meeting of creditors. [20]

TOTAL: [100]