

LML4806

October/November 2013

COMPANY LAW

Duration 3 Hours

100 Marks

EXAMINATION PANEL AS APPOINTED BY THE DEPARTMENT.

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This paper consists of 3 pages

ANSWER ALL QUESTIONS.**QUESTION 1**

Lesego is a director of One Stop Groceries (Pty) Ltd. When the company needed to appoint a new marketing agent to advertise its products in Gauteng, Lesego persuaded the board to appoint The Best CC by convincing them that The Best CC would be ideal for this task. However, Lesego did not disclose the fact that his brother had a substantial member's interest in The Best CC. The Best CC was appointed but a few months later it became clear that the company had suffered substantial losses in Gauteng because its products were not being advertised effectively, since The Best CC had no experience in this type of work. A number of One Stop Groceries (Pty) Ltd's shareholders now want to hold the company's directors liable for breach of their duty to act in the best interest of the company and their duty of care, skill and diligence by appointing an inexperienced close corporation as their marketing agent.

Advise Lesego and the other directors of One Stop Groceries (Pty) Ltd on whether they can escape liability on the basis of the business judgment rule. [10]

QUESTION 2

Gary is a preference shareholder of Fast Cricket Balls Ltd, a company that manufactures South African cricket balls. The preference shares do not confer the right to vote. The company is under severe pressure as a result of competition from India. Consequently, the demand for South African cricket balls has decreased to such an extent that a resolution has been proposed for the winding-up of Fast Cricket Balls Ltd. Gary is very upset about the proposed resolution.

Advise him on whether he has the right to vote on the proposed resolution. [10]

[TURN OVER]

QUESTION 3

Manjane (Pty) Ltd has 14 shareholders who each hold 1 share in the company. Vintos Ltd is one of the shareholders that holds 1 share in Manjane (Pty) Ltd. Vintos Ltd wishes to make an offer to acquire all the issued shares in the Manjane (Pty) Ltd and has decided to offer each of the other shareholders R1 million for their respective shares. The board of Vintos Ltd has heard that all the shareholders except one are very keen to sell their shares. However, Vintos Ltd does not wish to acquire anything less than 100% ownership of Manjane (Pty) Ltd. The board of Vintos Ltd does not wish to structure the deal as a scheme of arrangement.

Advise Vintos 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. [10]

QUESTION 4

The board of directors of Wanabee Ltd wants to issue shares to some of its employees to express their appreciation for their loyal and hard work during the past ten years. The employees have to render future services in return for the shares. One of the directors of Wanabee Ltd, Sandile, is however very concerned that this would not amount to "adequate consideration" in terms of the Companies Act 71 of 2008 and that the directors will incur liability should they proceed to do so.

Advise Sandile on whether the issue of shares in return for future services will amount to "adequate consideration" in terms of the Companies Act 71 of 2008 and also on the possibility of the directors incurring liability for their actions. [15]

QUESTION 5

Rafia is approached to become a director of Enter (Pty) Ltd. A friend tells Rafia that he believes Enter (Pty) Ltd is a member of a group of companies. This worries Rafia, who is convinced that apart from the fact that the group has its own separate legal personality, there are other consequences that flow from the existence of a group of companies.

Rafia approaches you with a request to provide her with an explanation how to determine whether a company is a subsidiary of another company, and to advise her about the legal consequences that flow from the existence of a group of companies. Advise Rafia accordingly. [20]

QUESTION 6

Shaydi (Pty) Ltd, a road construction company, concluded a five year contract with the Department of Public Works to build toll roads. This contract was the company's major source of income. At the end of the five year period, the Department of Public Works decided not to renew the contract due to the public opinion on toll roads. Shaydi (Pty) Ltd was left in a financial dilemma which resulted in its board filing a resolution to commence business rescue proceedings.

The trade union representing the employees of Shaydi (Pty) Ltd is worried that the business rescue proceedings might cause job losses and forfeiture of their members' salaries

Advise the trade union movement on the effects of business rescue proceedings on employment contracts, remuneration of employees and the rights of employees to participate in the business rescue proceedings
[10]

QUESTION 7

The board of directors of Giveme Ltd has taken a resolution to issue some of its shares to.

- (a) its existing directors and their spouses, and
- (b) in pursuance of an employee share scheme

The board is however uncertain whether they need to obtain the approval of the shareholders of the company for the resolution. Advise the board of directors of Giveme Ltd on whether the resolution needs to be approved by the shareholders of the company
[10]

QUESTION 8

Samson who is the legal advisor of Bulk Shares Ltd, a public listed company, sees correspondence between Mat, the managing director of the company, and a business associate while going through some of the legal documents pertaining to a proposed new investment. From the correspondence it is clear that Bulk Shares Ltd is in the process of concluding a multi-million rand deal with a major role player in the mining industry, and that the share price of Bulk Shares Ltd will rise considerably once this news is made public. Samson immediately phones his brother Jo to tell him the news. Jo however, cannot afford to purchase shares as he is a student. Samson also tells his girlfriend Patty, who immediately buys 200 shares to sell at a profit when the share price rises. Samson also buys 200 shares which he intends to sell at a later date. Two months later, after the conclusion of the deal and a drastic rise in the share price, Patty sells her shares in Bulk Shares Ltd at a 40% profit. Samson decides not to sell his shares just yet

Explain whether Patty, Samson and Jo 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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