



COLLEGE OF BUSINESS, PEACE, LEADERSHIP AND GOVERNANCE

COMPANY LAW MAC205

END OF FIRST SEMESTER EXAMINATIONS

NOVEMBER/DECEMBER 2019

LECTURER: (C. Munguma)

DURATION: (3 HRS)

INSTRUCTIONS

1. Section A is compulsory for all candidates.

2. Answer any three questions from section B.

3. Answers to questions must be supported by valid legal sources.

Question 1

Three friends Dennis, James and Sylvester, who are all qualified chemists, decide to launch a Pharmaceutical company called Ponesai Vanhu Ltd. The company has an authorised share capital of 1,000,000 shares divided into 1,000,000 shares of \$1 each. Prior to the company launching a public share offer (PSO) for purposes of raising some of the company's much needed capital the three friends who are all directors of the company issued a prospectus in accordance with the requirements of the Companies Act (Chapter 24:03). The prospectus among many other statements makes the following declarations under the heading;

"The Company's Trading Prospects"

1. That the company had already secured lines of credit from a reputable overseas bank for purposes of securing state of the art plant and equipment for manufacturing drugs.
2. That the company had secured export orders from customers in three neighbouring countries."

It turns out that discussions with the overseas bank and potential customers from the three neighbouring countries are still on-going and are unlikely to be concluded satisfactorily any time soon. When this information comes to light the company's shares, which had started trading at \$10.00 each are now worth only 50 cents each. Two shareholders, Innocent and Ndapusa decide to sue the company's three directors for misrepresentation.

Required:

- a) In relation to company law, analyse Innocent and Ndapusa's prospects of success in their intended litigation against the company's three directors. (10 marks)
- b) Assuming the three friends had sold some old equipment to the company for \$1 million that they had acquired from Caps Pharmaceuticals Ltd for a paltry \$300,000 just two months back, would the three directors be liable for that if the prospectus did not disclose that sale transaction? [10marks]
- c) From the facts given above what other role did the tree friends play in the formation of Ponesai Vanhu Ltd? [5 marks]

Question 2

"The concept of a separate corporate legal personality is absolute and admits of no exceptions in its application in company law." Discuss the correctness or otherwise of this statement with the aid of case law and statutory provisions. [25marks]

Question 3

- a) Explain the major advantages of forming a company as opposed to other business models particularly the following:
 - i) a partnership,

- ii) sole proprietorship,
 - iii) co-operative and
 - iv) private business corporation. [12marks]
- b) Explain three responsibilities imposed by the Companies Act to a promoter that are meant to protect the investing public. [6 marks]
- c) The case of *Dadoo Ltd v Krugersdorp Municipality* is well known in Zimbabwean company law. Explain why the case is well known. [7 marks]

Question 4

Discuss the powers that are given to minority shareholders by the Companies Act to safeguard them from being unfairly treated by the board and majority shareholders through:

- a) The Common law [10marks]
- b) Statute [15 marks]

Question 5

5A

- i) What changes if any did the Companies Act introduce to the Ultra -Vires doctrine in Zimbabwean company law which were not recognised under the common law? [20 marks]
- ii) Explain the main differences between Roman Dutch law and English Law with regard to pre-incorporation contracts entered into by promoters. [5 marks]

OR

5B

- i) Discuss the key aspects of the ultra vires and the constructive notice doctrine showing how it prejudiced third parties having dealings with an incorporated company. [15 marks]
- ii) Discuss the key interventions that were brought by the Company Act to the two doctrines? [10 marks]

Question 6

“Section 318 of the Companies Act creates personal liability for directors and former directors of a company who behave in certain circumstances. This is one of the circumstances where there is a negation of the concept of corporate personality.” State the circumstances and the type of liability created by the section on directors or past directors of a company and any defence that such a director or person may raise. [20marks]

Briefly analyse the duty of good faith as it applies to company directors. [5marks]

END OF PAPER