



**FACULTY OF MANAGEMENT AND ADMINISTRATION**

**COURSE TITLE: COMPANY LAW –MAC 205**

**SEMESTER 1: FINAL EXAMINATION-NOVEMBER/ DECEMBER 2013**

**LECTURER: MRS M MANDINGWA**

**TIME: 3 HOURS**

**INSTRUCTIONS**

Answer all questions in Section A , any two questions in Section B and any one question in section C

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The marks allocated to each question are shown at the end of the question.

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Credit will be awarded for logical, systematic and neat presentations. Show all working.

**Section A Answer all questions in this section**

1. Define what a company is. [1]
2. List 4 circumstances under which the corporate veil of a company will be lifted. [4]
3. Explain the usefulness of the ultra-vires doctrine. [2]
4. Explain in what circumstances a promoter is deemed to be an agent of a company to be formed. [1]
5. Under what circumstances are pre-incorporation contracts enforceable. [2]
6. Explain the concept of majority rule v minority rule. [2]
7. "Directors are not employees of a company but are rather contractors". Explain this statement with regards the concept of remuneration of directors. [2]
8. What are the consequences of misstatements in the prospectus? [2]
9. Distinguish between Judicial management and liquidation. [3]
10. Explain the concept of preference shares. [1]

**SECTION B**

11. Siyaso Pvt Ltd, is a company incorporated in terms of the Companies Act Chapter 24:03. In the Memorandum of Association its main objects clause is stated as "to acquire and carry on business of furniture production." However there is a rider that allows the company to do all such business and things as may be included or conducive to the attainment of the main object. Siyaso (Pvt) Ltd decides to sponsor 2 under privileged students at Africa University and to give the same bursaries in the sum of US\$10 000.00 each. Ruchiyo is a minority shareholder and objects saying that the activity is ultra-vires the memorandum. He applies to court for an interdict barring the company from passing a resolution to that effect. The application is filed with the courts and Ruchiyo is cited as the Applicant. Batsiranai and his wife are the other shareholders in the company. They claim that they are the majority shareholders and they hold more than 70% of the shares.

***Advise Ruchiyo fully.*** [10]

12. Zizhou Enterprises Ltd through its directors leaves the control of the investments of separate funds in their managing director Tichapfuma. Tichapfuma is highly qualified. Over the years he demonstrated to the company that he is a financier of high repute. He is known to be the best friends of one of the directors of the competing company. It's being rumoured that he was awarded a contract in his personal capacity by the competing company. It has also come to light that he has been in the habit of allowing a company run by his wife to supply Zhou enterprises all the bearings needed to keep their workshops running.

At the end of the year audit it is discovered that Tichapfuma had defrauded the company of large sums of money. Shareholders believe that the directors had been negligent in leaving the control of investment in the hands of Tichapfuma

***Comment fully*** [10]

13. Mr. Masedze is a director of Kugona Holdings Ltd. The company is involved in constructing bridges in Manicaland. As a director he makes sure that the company that supplies construction materials is that in which his wife has a controlling share. This goes on until the issue is brought to light at a shareholders meeting. At the shareholders' meeting, the issue of Mr Masedze's removal is on the agenda as well as the issue that directors of Kugona Holdings should be paid a monthly salary in order to compensate them for their services to the company.

In addition there is an issue of advancing loans to the directors and also of giving directors tax free allowances.

Mr. Masedze objects to the manner in which the issue of his removal has been brought to the meeting. He insists on a notice having been circulated before the issue was tabulated an agenda.

***Discuss the propriety or otherwise of the issues raised within Kugona Holdings Ltd. [10]***

**SECTION C – Answer any one question from this section.**

14 “ The principle of separate legal personality is one which has been long established and it is firmly entrenched in our laws, its consequences are far reaching and well known and have to some extent been imported into the Foss v Harbottle ruling.” Discuss this statement. [20]

15. Pre-Incorporation contracts violate the common law principles of agency”. Discuss this statement. [20]

16. “The ultra vires doctrine is a doctrine that makes it difficult for companies to be innovative and respond to changes in the economy for survival”. Discuss this statement. [20]