



**AFRICA
UNIVERSITY**

A United Methodist-affiliated institution

COLLEGE OF BUSINESS PEACE LEADERSHIP AND GOVERNANCE

COURSE TITLE:	COMPANY LAW MAC 205
SEMESTER 2 :	FINAL EXAMINATION
LECTURER :	MR C. MUNGUMA
TIME :	3 HOURS

INSTRUCTIONS

- | |
|---|
| 1. Answer four [4] questions. |
| 2. You must answer all questions from section A and any three questions from section B. |
| 3. Start each question on a new page. |
| 4. The marks allocated to each question are shown at the end of the question. |
| 5. Neat, logical and systematic presentations will earn you credit. |

SECTION A

All candidates must answer this question.

1. Five friends Dennis, James, Kelvin, Peter and Sylvester, who are all qualified chemists, decide to launch a pharmaceutical company called Great Pharm Limited. 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 (IPO) for purposes of raising some capital the five promoters 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 20 cents. Two shareholders, John and Mickey decide to sue the company's five directors for misrepresentation and other relief.

You are required to explain John and Mickey's prospects of success in their intended litigation against the company's promoters. (15 marks)

- b) In the above case how many shares did the memorandum of the company authorise. (2)
- c) Other than promoters who else can be liable on the basis of misrepresentations made in the prospectus? (4)
- c) Briefly discuss the duty of good faith as it applies to a promoter. (4)

SECTION B

Answer any **three** questions from this section.

2. (a) Explain the concept of separate legal personality of a company limited by shares in company law. [9]
 b) "While majority shareholders in companies had a lot of power under the common law. The current Companies Act has gone a long way in empowering the minority shareholders from being abused by the majority" Discuss how the Companies Act has reduced the powers of the majority in Company law. [10]
 c) List and explain 6 differences between a co-operative society and a partnership. [6]

3. a) "Under the common law a company could not carry out any *ultra-vires* transaction because if it did so the act would be void." Discuss this principle showing the impact it had to innocent third parties having business dealings with the company. [25]

4. Discuss the fiduciary obligations of directors in companies that they govern showing if those obligations are justified or not. [25]

5. (a) What are the major documents that are filed at the company registry when registering a private company [6]
 b) What are the available remedies for a party who has suffered loss as result of the following misrepresentations in a prospectus?
 i) Fraudulent misrepresentations.
 ii) Breach of warranty
 iii) Negligent misrepresentations. (16)
 c) Differentiate between shares and debentures (3)

6. a) The Companies Act provide many instances of 'piercing the corporate veil of incorporation'. Discuss instances where the Act places personal liability on directors or other officers of the company. (12)
 b) Explain the statutory formalities that a company wishing to adopt a pre-incorporation contract is supposed to take in Zimbabwe. (7)
 c) What are the major differences between English common law and Roman Dutch law on pre-incorporation contracts? (6)

END OF PAPER