



COLLEGE OF BUSINESS, PEACE, LEADERSHIP AND GOVERNANCE

COMPANY LAW MAC 205

END OF FIRST SEMESTER EXAMINATIONS

APRIL/MAY 2018

LECTURER: (Mr 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.

Section A

Question 1

Dickson and his wife Brenda Moyo own the entire share capital of Suffer (Pvt) Ltd, a company duly incorporated and operating in Zimbabwe since 2000. The company manufactures children's clothing both for the domestic and export market. For the first six years since incorporation, the company was a huge success, but in the last two years, its fortunes have nosedived because of the dire economic situation facing the country. The company owes a lot of money to Machira (Pvt) Ltd, a supplier of yarn and other products used in the manufacture of clothing. The supplier is threatening to seize a house and a prestigious car, which are owned by Dickson and Brenda Moyo in their personal capacities. In order to manage a very bad financial situation, the company is now involved in smuggling activities across the borders with Mozambique and Zambia. One day Dickson is caught by the police smuggling some bales of clothing materials from Mozambique. The authorities through the police seek to make Dickson and Brenda personally liable for the company's illegal activities.

Required:

Explain the likely attitude of the courts towards:

- (a) The attempt by Machira (Pvt) Ltd to seize the personal assets of Dickson and Brenda Moyo; (10marks)
- (b) The proposed personal liability of the directors for the company's illegal activities. (10marks)
- c) What would have been your answer if the two directors had signed personal guarantees to Machira (Pvt) Ltd whereby they accepted liability for the company's debts "howsoever arising" as co-principal debtors of the company? [5marks]

Section B

Question 2

In the case of *Agribank v Nickstate Investments* it was held that where directors use the corporate personality to defraud creditors, the courts will on a proper case disregard the corporate personality of the company and attach liability on the directors."

Explain five instances under the act and five under the common law where the corporate veil may be pierced by the courts. [25]

Question 3

Three friends Kay, Chris and Tumie agree to set up a company to manufacture spaceship toys. They agree that the company is to be called Noto (Pvt) Ltd and that

Kay and Chris will each have 35% shareholding while Tumie will have 30%. All three will be directors.

Prior to the formation of the company they agree in writing that;

- i) Chris will do the necessary legal work to form the company.
- ii) Kay will sell her existing offices to the company for \$60 000.

The company is formed and the first board meeting is held. Chris presents his account for professional work done. The board feels the charges are excessive and refuses to pay the account. The board further tells Kay that an independent survey of her offices had established that they had defects and the realistic value of the building is \$50 000. The board refuses to proceed with the purchase of the offices.

Advise Kay, Chris and Tumie on the following issues:

- a) When the company is formed what are the main documents which need to be submitted to and approved by the registrar of companies? [3]
- b) How far are the company and the individual members of the board contractually liable to Chris and Kay on the above transactions? [10]
- c) What formalities if any will be necessary before and after the formation of the company to give effect to the agreements entered by Chris, Kay and Tumie? [6]
- d) What was the decision in *Kelner v Baxter*? [6]

Question 4

- a) What changes if any did section 12 of the Companies Act introduce to the *Ultra -Vires* doctrine in Zimbabwean company law? [12]
- b) In what circumstances would you advise a client to register a company as a public limited company as opposed to a private limited company? [6]
- c) The Company Act imposes liability for misstatements made in a prospectus. Explain the nature of liability and the company officer to whom that liability is imposed. [7]

Question 5

"A director must show high levels of integrity and honesty in handling the company affairs." Discuss the fiduciary and statutory responsibilities of a director in company law. [25]

Question 6

The concept of majority rule as it was understood under the common law in Company Law has been diluted a great deal by statute. Discuss with support from case law and the Company Act. [25]

Question 7

- a) Explain what is meant by corporate personality and "lifting the corporate veil" of incorporation in relation to companies limited by shares? [15]
- b) Distinguish between a share and a debenture? [5]
- c) What are the two major duties of a promoter in company law? [5]

End of Paper