

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

Department of Private law

Entrepreneurship law (LLB210)

June examination 2018

3HOURS

12 JUNE 2018

Instructions

- (i) Answer one questions from section A.
- (ii) Answer two questions from section B.
- (iii) Each question carries 25 marks.
- (iv) Students may bring into the exam un-annotated and clean texts of applicable legislation and the 2013 Zimbabwean Constitution. Copies with notes inside shall not be allowed and may be confiscated. No student can share his/her copy with another.
- (v) Number your answers accordingly

NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING UNTIL INSTRUCTED TO DO SO.

Section A

Answer one Question from this Section

Question 1

With reference to decided cases and legislation, discuss the fiduciary obligations of directors and instances where the separate legal personality of a company can be lifted.

{25 Marks}

Question 2

Assume that you are a board member of Butcherbird Limited that is about to list on the stock exchange. As directors you are supposed to allocate yourselves roles that are in line with corporate governance. The board is composed of both the executive and non-executive directors.

Discuss the following processes in your company and ensure that they are in line with the corporate governance code.

- (i). The role and function of the board and its committees. **(5 marks)**
- (ii). The composition and performance evaluation of the board and its committees. **(5 marks)**
- (iii). The board appointment process. **(5 marks)**
- (iv). Director development. **(5 marks)**
- (v). Remuneration of directors, senior executives and company secretaries. **(5 marks)**

{Total 25 Marks}

Section B

Answer Two Questions from this Section

Question 3

The Memorandum of Association of R and B Construction company Ltd provides that only the board of directors, or any person authorised by the board, has the power to conclude contracts on behalf of the company and any transaction that exceeds 100 000 must first be authorised by the company in a general meeting by way of an ordinary resolution.

Mr Ainsworth, one of the directors, is authorised by the board of directors to act on behalf of the company. Mr Ainsworth concludes a contract to the value of 120 000 with Mr Smith for the purchase of building material, but without prior authorisation by the company in a general meeting.

(a) In the context of the above facts, discuss the position in law where the company enters into a contract with third parties. {10}

(b) Discuss the binding nature of the contract entered into between Mr Smith and Mr Ainsworth? {10}

(c) Suppose Mr Smith knew about the provisions of the Memorandum of Association; would your answer differ from the one in (b)? {5}

{Total 25 Marks}

Question 4

Kimberly is a promoter of Incredible Furniture Pty Ltd. In June 2017, he entered into a contract with P D Real Estate for the sale of a six-hectare farm in Mazoe. This farm was going to be owned and used by Incredible Furniture Pty Ltd once it was incorporated. In May 2018, Incredible Furniture was registered and incorporated in accordance with the laws of Zimbabwe.

Advise Incredible Furniture Pty Ltd on its rights regarding the above contract that it concluded before it was incorporated.

{25 Marks}

Question 6

Paula is one of the directors of T and T (Pvt) Ltd which builds houses for purposes of selling and renting them. She has been the director of the company for ten years. At the beginning of last year,

she and her husband started making dog kennels and backyard wood cottages which they intend to sell locally. She has not informed the company about this as she does not see the need to do so. For the timber and building materials they use the same suppliers as that of T and T (Pvt) Ltd. Towards the end of last year, the board of directors including Paula decided not to buy timber and other building material from that supplier since its business was closing. Paula and her husband went and purchased a lot of timber from the same supplier.

a) T and T (Pvt) Ltd is now struggling to purchase timber because of financial constraints and Paula offers to sell the timber to the company on credit. Paula and her husband make 100% profit from the credit sale.

Critically analyse the fiduciary duty that Paula is subjected to by being the company director of T and T (Pvt) Ltd. **{15 Marks}**

b) Identify and discuss three remedies that are available for the company in the event that Paula's actions are found to be unlawful. **{10 Marks}**

END OF PAPER