



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW, BUSINESS INTELLIGENCE AND ECONOMICS

DEPARTMENT OF LAW AND LEGAL SERVICES

EXAMINATION PAPER

MODULE CODE : LLB 321
MODULE TITLE : COMPANY AND CORPORATE LAW
SPECIAL REQUIREMENTS:
DURATION : 3 HOURS
LEVEL : 3.2
DATE : 07 DEC 2023

Internal Examiner

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INSTRUCTIONS

1. Answer ALL questions.
2. Do not separate subsections of questions.
3. Refer to case law, statute and/or any relevant authority, where applicable. Underline all your references to cases and statutory provisions.
4. Pay careful attention to marks allocated.
5. WRITE LEGIBLY. If in doubt as to whether your hand writing is easy to read, consider writing some of your words or points in large caps.

QUESTION 1

The Companies and Other Business Entities Act [Chapter 24:31] (the COBE Act) came into force on 13 February 2020. Among other objectives, the COBE Act repealed the Companies Act [Chapter 24:03] (the old Companies Act) and the Private Business Corporations Act [Chapter 24:11]. Various legal scholars have argued that the enactment of the COBE Act was long overdue as the old Companies Act was archaic and no longer in sync with contemporary company law challenges. With reference to credible authorities, discuss in detail any four objectives of the COBE Act. Your response should focus on how the legislature sought to achieve the said objectives and any shortcomings that could be encountered either in implementing or in interpreting related provisions of the COBE Act. **[20 marks]**

QUESTION 2

In the corporate law of Zimbabwe, the veil of incorporation will be lifted (or pierced) in several instances. Enumerate those instances and explain what happens in each one of them. In your response, by referring to case authority and other relevant sources of law discuss whether lifting the corporate veil is the same as piercing the corporate veil.

[15 marks]

QUESTION 3

- (a) Write an essay on the content and effect of the 'business judgment rule' as set out in the Companies and Other Business Entities Act [Chapter 24:31] 4 of 2019.

[15 marks]

- (b) Silus, Rodgers and Joel are law graduates of the Zimbabwe Ezekiel Guti University who have been close friends from their days in primary and secondary school. In 2007, after working for approximately five years, they decided to establish a computer products manufacturing and distribution company under the name "Sirojo Computers (Pvt) Ltd" (SCL). The three friends were the founding shareholders and directors of SCL. In addition, Silus became the Chief Executive Officer (CEO) of SCL, Rodgers was appointed Chief Financial Officer (CFO), and Joel took up the position of Chief Marketing Officer (CMO). In order to secure operating capital, they obtained a loan of US\$150 000 from First Capital Bank based on their personal reputation and a business proposal prepared for SCL by a firm of business consultants. Between 2008 and December 2011, SCL flourished and accordingly, over that four-year period, paid out substantial amounts as dividends to Silus, Rodgers and Joel. However as a result of Silus' wrongdoing,

the company has lost over US\$20 000. Silus is a very close friend of Rodgers and as such Rodgers is not really worried about taking any legal action against Silus. Joel intends to institute derivative litigation on behalf of the company.

Advice Joel on whether he can legally commence derivative action on behalf of the company. In your response, you must critically discuss all the relevant *locus standi* aspects that Joel must comply with. **[20 marks]**

QUESTION 4

Section 57 of the Companies and Other Business Entities Act [Chapter 24:31] (the COBE Act) deals with personal financial interest in respect of a matter to be considered at a meeting of the board of directors of a company. Discuss the procedure that a person who has a personal financial interest in respect of a matter to be considered at a meeting of the board of the company must take. With references to illustrations/examples of transactions involving conflict of interests in the COBE Act, include as part of your discussion aspects of the directors' duty of loyalty and duty to disclose conflicts of interests. **[15 marks]**

QUESTION 5

Kitsiyatota Limited was incorporated in the year 2021 under relevant provisions of the Companies and Other Business Entities Act [Chapter 24:31] 4 of 2019. The Memorandum of Association of Kitsiyatota Limited specifies the following objects:

- Produce, sell or lend on hire, railway carriages and wagons,
- Carry on the business of mechanical engineers and general contractors,
- Purchase, lease, sell and work mines and
- Purchase and sell as agents, coal, timber, metals among other things.

The directors of Kitsiyatota Limited enter into a contract with another company Domboremari Limited for financing the construction of a railway line in Bindura. Furthermore, the company ratifies this act of the directors by passing a special resolution. Subsequently, the company repudiated the contract as being ultra vires. However, Domboremari Limited sued Kitsiyatota Limited for damages for breach of contract since the contract was well within the meaning of the term 'general contractors' and the shareholders had ratified it.

Advise Kitsiyatota Limited. **[15 marks]**

o/sopm