



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW, BUSINESS INTELLIGENCE AND ECONOMICS

DEPARTMENT OF LAW AND LEGAL SERVICES
EXAMINATION PAPER

COURSE CODE : LLB 321
COURSE TITLE : Company and Corporate Law
SPECIAL REQUIREMENTS : None
DURATION : 3 Hours
LEVEL : 3.2
DATE : 25 NOV 2024

INSTRUCTIONS TO CANDIDATES:

1. No cell phones are allowed in the examination venue
2. Answer ALL questions.
3. Do not separate subsections of questions.
4. Refer to case law, statute and/or any relevant authority, where applicable.
5. Pay careful attention to marks allocated.
6. 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 one

Vancemore (Pvt) Ltd. was incorporated under the Companies and Other business Entities Act [*Chapter 24:31*] (the COBE Act). Mr Duncan is the founder and majority shareholder of the company. The company had been thriving for many years, but due to unforeseen circumstances, it suffered significant financial losses, leaving it unable to repay its debts. In an attempt to save the company, Mr Duncan sought financial assistance from the Green Bank. The bank agreed to lend Vancemore (Pvt) Ltd. a substantial amount of money, subject to certain conditions. One of the conditions was that Vancemore (Pvt) Ltd. must obtain approval from its members for the loan.

At an extraordinary general meeting (EGM) of the shareholders, held in terms of section 167 of the COBE Act, the loan proposal was put forward for approval. The resolution was passed by a majority of the shareholders, including Mr Duncan, who held the majority of the shares. However, after the loan was obtained, it was discovered that Mr. Duncan, in his capacity as a director of Vancemore (Pvt) Ltd., had used the loan funds for his personal benefit instead of utilising them for the company's operations. As a result, the company's financial situation deteriorated further, and it became insolvent. The liquidator appointed to wind up the affairs of Vancemore (Pvt) Ltd. now seeks to hold Mr Duncan personally liable for the misappropriation of loan funds. Mr Duncan argues that he cannot be held personally liable due to the separate legal personality of the company.

Analyse the legal principles established in the above scenario, making reference to relevant authorities (statutory provisions and case law). In your response, consider the following aspects:

- a) The separate legal personality of a company and its implications on liability. **(9 marks)**
- b) The doctrine of indoor management and its application to the loan approval **(9 marks)**
- c) The circumstances under which the courts may disregard the separate legal personality of a company and impose personal liability on its directors and officers. **[7 marks]**

[25 marks]

Question two

Lerato and Givemore formed a company (the consortium) in order to secure various tenders for road surfacing contracts from Naruto Construction Ltd. The consortium consisted of four entities namely Togarapano (Pvt) Ltd, Thembelani Trading (Pvt) Ltd (Thembelani), Mberengwa Trading (Pvt) Ltd and Salinx (Pvt) Ltd. Dumza is also a director of Salinx (Pvt) Ltd. The consortium had issued share capital of 100 shares and each entity was allotted 25 shares. The agreement between the four entities also provided for arbitration in the event of a dispute or difference arising between the parties.

According to Lerato, in 2018 the consortium was awarded certain road surfacing contracts by Naruto Construction Ltd. The actual contractor was Asphalt Services (Asphalt). Asphalt would do the work and invoice the consortium, and the consortium would in turn invoice Naruto Construction Ltd. The company instructed Naruto Construction Ltd to make payments into Asphalt's bank account because the company did not yet have its own bank account. On 1 April 2018, a pre-payment of US\$9 400 928.07 was made into Asphalt's bank account. Work to the value of US\$11 490 092.84 was performed, leaving a balance of US\$2 089 164.77 which was to be paid into Asphalt's bank account. This amount was not paid into Asphalt's bank account. Instead, Thembelani's member, Mr Chaga, and Dumza fraudulently arranged for this amount to be paid into Thembelani's account with Second Capital Bank. The money has since been withdrawn from Thembelani's bank account.

Lerato said that in terms of written instructions to Second Capital Bank, any official documents were to be signed by both directors of the company. Naruto Construction Ltd provided a document to the company which was endorsed by Second Capital Bank, verifying that the bank account of the company had been changed to an account which was held by Thembelani. In the particulars of claim in the action, it is alleged that Second Capital Bank owed the company a duty of care to ensure that an account that was endorsed as that of the company, was indeed the account of the company. This duty of

care was allegedly breached by endorsing Naruto Construction Ltd's "supplier information sheet" by affixing its stamp to the document.

Lerato initially pursued a criminal charge against Dumza. He appeared in the Court and the matter was postponed from time to time, the last dates being 13-15 June 2022 for trial. Lerato knows Dumza's residential address but says that he avoids contact with his former business associates and keeps a low profile. In particular, he has avoided communication between him and Dumza in relation to the company's financial crisis caused by him. Lerato says that there is no purpose in trying to make contact with him because he would, as a result of his conduct, be hostile and not inclined to pursue the company's civil claim. When he was previously asked when he was going to pay the balance of the payment on the contract, he offered to explain the next day but did not do so. Despite ongoing attempts to meet with Dumza in his capacity as a director of the company in order to obtain the necessary resolution to institute the action, he has refused to make himself available for a directors' meeting or to communicate in relation to the company's claim.

Advise Lerato if he can pursue a personal remedy or any remedies on behalf of the company. In your response, kindly specify all the *locus standi* requirements that must be complied with by the applicant in instituting the said remedy. **[25 marks]**

Question three

Sidney, Rodwell and John 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, Sidney became the Chief Executive Officer (CEO) of SCL, Rodwell was appointed Chief Financial Officer (CFO), and John took up the position of Chief Marketing Officer (CMO).

In order to secure operating capital, they obtained a loan of US\$150 000 from Second Capital Bank based on their personal reputation and a business proposal prepared for SCL by a firm of business consultants. Between January 2009 and December 2013, SCL flourished and accordingly, over that four-year period, paid out substantial amounts as dividends to Sidney, Rodwell and John. In the course of business operations, Sidney concluded a contract with Tamuka Logistics, a company that he knew was facing serious financial challenges. Four months after the conclusion of the contract, Tamuka logistics was liquidated. As a result of Sidney's conduct, SCL has lost over US\$20 000 which it cannot recover from Tamuka Logistics. Sidney is a very close friend of Rodwell and as such Rodwell is not really worried about taking any legal action against Sidney. John intends to institute derivative litigation on behalf of the company.

Discuss whether Sidney breached the duty to act in the best interests of the company and whether he could successfully invoke the business judgment rule? **[25 marks]**

Question four

Tasty Ltd is a catering company in Zimbabwe that has been facing financial difficulties due to declining sales and increasing debts. The company's directors believe that the business can be turned around with appropriate measures. They are considering initiating the corporate rescue process to avoid liquidation and preserve the company's operations and jobs.

- (a) Based on this scenario, explain the concept of corporate rescue and the key steps involved in initiating the process. **(15 marks)**
- (b) Tipper Ltd., a road construction company in Zimbabwe, is facing severe financial distress and is considering entering into corporate rescue proceedings under the Insolvency Act [*Chapter 6: 07*]. The company is particularly interested in the moratorium period that comes into effect during corporate rescue.

Explain in detail the concept of a moratorium in the context of corporate rescue proceedings under Zimbabwean company law. Include the concept's key features, as well as its effects on the rights and interests of creditors and employees. **[10 marks]**

[25 marks]

GRAND TOTAL 100 MARKS

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