



FACULTY OF COMMERCE

ZIMBABWE EZEKIEL GUTI UNIVERSITY

Company Law and Practice

CAC 201

November examination 30 NOVEMBER 2018

**Instructions**

- (i) Answer all questions in section A. All questions in this section are compulsory. Each question carries 25 marks.
- (ii) Answer any two questions from section B. Each question carries 25 marks.
- (iii) 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 is allowed to share his/her copy with another.
- (iv) Number your answers accordingly

## **SECTION A**

### **Question 1**

Differentiate between these concepts in Company law

- (a) A special resolution and an ordinary resolution.
- (b) Memorandum of association and Articles of association.
- (c) A prospectus and a quorum
- (d) Share capital and capital
- (e) A debenture holder and a shareholder

[25]

### **Question 2**

. A share is

“.. the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders inter se in accordance with the Companies Act ..... The contract contained in the Articles of Association is one of the original incidents of the share ....”

In light of the above, distinguish between preference shares and ordinary shares highlighting how they vary in terms of the rights they offer.

[25]

## **SECTION B**

### **ANSWER TWO QUESTIONS ONLY**

#### **Question 3**

The Articles of Association of Mohammed Mussa (Pvt) Ltd provides for the appointment of a managing director (but do not specify the powers of such an appointee) and also provides that the board of directors can delegate any or all of their powers to one or more directors or officers of the company. Two directors at a meeting of a board of directors constitute a quorum.

Mohammed Mussa (Pvt) Ltd is a trading company, engaged in the manufacturing of furniture. It has five directors namely Paul, Jerry, Melissa, Bheki and Edwin. Bheki is the chairman of the board of directors. Paul was appointed managing director by a contract in terms of which he was to work full-time for the company, but a month ago he became seriously ill and has been in hospital for the past four weeks. Without being asked to do so, and without any formal resolution being passed by the board of directors, Bheki (who, apart from his duties as chairman of the board of directors, is a non-executive director who previously only attended board meetings and took no

further part in the company's affairs) has for the past four weeks been working nine-to-five for the company, carrying out Paul's duties, sitting at his desk and also taking his phone calls.

During the course of those four weeks, constant power failures caused by ZESA's "load-shedding" programme were seriously disrupting the company's manufacturing program. Without discussing it with anyone, Bheki purchased an electricity generator on behalf of the company from Bluepower Generators (Pvt) Ltd, at a price of \$8 000, signed the order on behalf of the company, and the generator was delivered to the company a few days ago.

Bluepower Generators (Pvt) Ltd is now demanding payment of the \$8 000. The other directors of Mohammed Mussa (Pvt) Ltd are very unhappy at Bheki's purchase of the generator, which they believe was too expensive and not suited to the company's needs. Those directors have now instructed the company's attorney to write to Bluepower Generators (Pvt) Ltd saying that Mohammed Mussa (Pvt) Ltd is not bound to the contract for the purchase of the generator, "firstly, because the purchase was ultra vires the company, secondly because Bheki had no authority to enter into a contract to purchase the generator on behalf of the company, and thirdly because Mohammed Mussa (Pvt) Ltd is not bound to the contract in terms of the rule in *Royal British Bank v Turquand*".

Bluepower Generators (Pvt) Ltd have brought the attorney's letter to you, and have asked you for advice as to whether the contract for the purchase of the generator is binding on Mohammed Mussa (Pvt) Ltd, and whether there is any legal substance to the attorney's letter in relation to the point of ultra vires, lack of authority, and the non-application of the *Turquand* rule. It must be noted that that Bheki was not only a director but chairman of the board of directors.

Give full advice to Bluepower Generators (Pvt) Ltd.

#### **Question 4**

Chicken Ling is a fast food outlet which has operated in Harare for the past five years. This food outlet's speciality is curry and the most popular dish is a spicy chicken curry and chips. The food outlet is very popular and it has a very loyal group of supporters. You are approached by Mr Madziro, the owner, of the food outlet. He is very worried as he has received a letter from the Chicken Inn a chain of fast food outlets ordering him to stop using the name Chicken Ling for his food outlets as they claim that consumers may believe that Chicken Inn is linked to the Chicken Ling chain of food outlets because of the use of the 'Chicken' and how the second word rhymes.

Chicken Ling's signboard has white and grey letters against a red background with a picture of a smiling chicken giving a double thumbs-up, in contrast to Chicken Inn's

red and yellow "C" logo. Chicken Ling also serves only grilled chicken when Chicken Inn serves deep fat fried chicken. Mr Madziro does not believe that Chicken Ling is passing itself off as being associated with Chicken Inn as he believes that they are offering two very different types of chicken.

4 (a) Advise Mr Madziro on whether, and why, Chicken Inn may be successful in a claim for passing off in unlawful competition. (15 marks)

4. (b) Imagine that Ling is in fact Mr Madziro's first name and that the food outlet is, in fact, named after him? Explain whether your advice changes in light of this realisation. Make reference to relevant cases. (10 marks)

### Question 5

A function which a promoter frequently has to perform is to enter into contracts in advance on behalf of the company he is about to create. In English Common Law it is not possible to contract on behalf of a non-existent person. Even in our law which does allow it in the form of *stipulatio alteri* there are certain disadvantages, the principal one being that the person who negotiates the contract on behalf of the as yet, non-existent other person (in this context a company yet to be formed) must do so as principal in the hope that the company will ratify and adopt the contract when it is formed. From a business point of view, it is obviously necessary to have such contracts lined up in advance.

Evaluate the doctrine of *stipulatio alteri* clearly highlighting its challenges and advantages. (25)

### Question 6

A company may be wound up because it is no longer needed or because it cannot continue to operate due to lack of money. It may be thus wound up voluntarily by its owners or compulsory by its creditors. It may also be struck off the Register as a result of error.

The death of a company is accompanied by certain formalities. Discuss whether and how the life of a sick company can be restored. (25)