

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

COMPANY AND CORPORATE LAW - LLB 306

DURATION: 3 HOURS

15 NOV 2019

INSTRUCTIONS TO CANDIDATES

1. Answer **four** questions.
2. Answer **all** Questions in Section A.
3. Choose **any three** question from Section B.
4. The exam has 100 marks.

Materials allowed in exam

The Zimbabwean Companies Act.

INFORMATION FOR CANDIDATES

1. Notes, handouts and textbooks are not allowed into the examination.
2. Cellphones are not allowed into the examination room.
3. Begin each answer to a full question on a fresh page.

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

SECTION A

Question One

Rudo, Chipo, Thomas and Blessing are in a partnership business where they produce and sell traditional alcoholic beverages which they brand as 'Stupor Mahewu'. Blessing adopts the status of a silent partner because as a Bishop in one of the Zionist movements, she is not supposed to be involved with anything related to alcohol.

However, the parties often rely on Blessing's influence to borrow money on behalf of the partnership leveraging on her influence as a trusted and respected Bishop. On one occasion, Blessing borrowed \$50, 000 from Thabo on behalf of the partnership business without being authorised to do so. The loan was repayable after one year.

When the partnership members discovered that Blessing had borrowed this money they advised her to return the money. However, Blessing disregarded this advice and used the money to further invest in the growth of the Stupor Mahewu business.

One year has now passed and Thabo wants his money. When Thabo confront the partnership members for repayment of his money, the partnership members tell him to claim this money from Blessing in her individual capacity since she was unauthorized to borrow money on behalf of the partnership.

Thabo contends that he was unaware of this limitation on Blessing's authority hence the parties had a duty to inform him when they discovered about the transaction. Furthermore, Thabo alleges that he is aware that Blessing was a member of the partnership and that the partnership members would frequently authorize Blessing to borrow money on behalf of the partnership.

i) In light of the facts above, advise Thabo about his prospects of success in reclaiming his money from this partnership business. [25]

ii) Compare and Contrast the differences and similarities between a company and a partnership. [15]

SECTION B

Question Two

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" program were seriously disrupting the company's productivity. Without discussing it with anyone, Bheki purchased an electricity generator on behalf of the company from Blue Power 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.

Blue Power 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".

Blue Power 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 applicability of the Turquand rule, given that Bheki was not only a director but chairman of the board of directors.

Give full advice to Blue Power Generators (Pvt) Ltd. [20]

Question Three

Directors of a company may personally become liable to outside parties even when they enter into contracts on behalf of the company? [20]

Question Four

"A company is a fictitious being, endowed with legal personality. It requires agents in order to fulfil its objectives." With reference to decided cases and legislation, discuss the fiduciary obligations of directors and instances where the separate legal personality of a company will be lifted. [20]

Question Five

Raymond Nyoni is the Chief Operations Officer (COO) at Global-Tech (Pvt) Ltd which is a leading mobile technology company. He is responsible for managing the day to day business of this company. In a bid to enhance the company's operations in the rural parts of Zimbabwe, Global-tech decide to procure the services of a consultant to design a brand marketing strategy to improve Global-Tech's visibility in the outskirts of Zimbabwe.

Raymond Nyoni acting as the COO of Global-Tech decide to procure the services of Linda Ncube who happens to be his business partner in a small cross-border trading business. The company's directors pass a resolution to endorse Raymond's decision to engage Linda for this task. Global-tech then formally enters into a consultant agreement with Linda and both parties agree that Linda will be paid \$5 000-00 for designing this marketing strategy. Linda is excited and decides to voluntarily cede a 10% stake to in their cross-border trading business as a sign of appreciation to Raymond.

One month down the line, the company security guard discovers that Raymond and Linda have an existing business relationship and upon further inquiry, he also discovers that Linda ceded 10% stake to Raymond in their cross-border trading partnership. The security guard brings these findings to the company directors who are deeply saddened by this development.

The company directors call for a meeting and interrogate both Raymond and Linda who agree to the findings. The company wants to terminate both the consultant agreement and Raymond's contract as the COO. Raymond argues that he is not a director and owes no duty to the company, he further testifies that he received the 10% stake voluntarily from Linda and that their business relationship is not a matter of concern to the company since this is a personal relationship.

Global tech approaches you seeking advice as to whether or not Raymond is indeed a director in terms of the Companies Act; and if so whether or not he breached the duties he owes to the company? [20]

Question Six

"The Memorandum of Association ('MoA') is unnecessary, irrelevant and serves no purpose at all in the execution of the company's objectives."

With reference to the above quote, critically discuss the legal effect of the MoA in relation to the capacity of a company in Zimbabwean Law. [20]