



MANICALAND STATE UNIVERSITY OF APPLIED SCIENCES

FACULTY OF AGRI BUSINESS AND APPLIED SOCIAL SCIENCES

DEPARTMENT: APPLIED BUSINESS SCIENCES

MODULE: COMPANY LAW AND PRACTICE

CODE: BMAN 213

SESSIONAL EXAMINATIONS

MAY/JUNE 2023

DURATION: 3 HOURS

EXAMINER: MR S. SIZIBA

INSTRUCTIONS

1. Answer *all* questions in Section A
2. Answer *any three* questions in Section B.
3. Start each question on a fresh page
4. Total marks 100

*Additional material(s): Unmarked copy of Companies and
Other Businesses Entities Act 24:31*

SECTION A:

(Answer all questions in this section. Section A carries 40 marks)

Question 1

Nhimbe (Plc) Ltd is a company incorporated in terms of the laws of Zimbabwe. Its shareholders are Mr McCaw, a New Zealander; Mr Smith, a British national and Mr Westerhuizen, a South African National. The company employs 1000 native Zimbabweans and is a renowned construction and civil engineering firm both nationally and within the SADC countries. A certain local authority floated tender inviting bids from individuals and companies for the resurfacing of tarred road in the town. Nhimbe (Pvt) Ltd tendered its bid. The tender was awarded to XYZ (Pvt) Ltd, a company incorporated in terms of the laws of Zimbabwe and whose shareholders are all indigenous Zimbabweans. XYZ (Pvt) Ltd have no experience in civil engineering or road construction and its profile states that it is in housing construction business. Not satisfied with the awarding of tender, ABC made an inquiry. Despite its tender meeting all the specifications and technically being the best, the decision not to award it the tender was based on the fact that its shareholders were '*all white*' hence awarding a white owned company a tender was against the spirit of the indigenisation and empowerment policy. The company felt hard done by the local authorities' reasons and approaches you for legal advice.

Required:

a) Explain the following terms as used in the passage;

- i) indigenisation (2 marks)
- ii) company incorporation (3 marks)
- iii) tender (3 marks)

b) Integrate the role of a promoter in the incorporation of a company like Nhimbe Plc company. (10 marks)

c) Explain the procedures involved in company registration under Zimbabwean law. (10 marks)

d) Advise ABC Ltd on the merits of their case. (12 marks)

[Total marks:40]

Section B: (60 marks)

Attempt any three questions

Question 2

The capital of a company must be preserved and this has been the traditional view of company law. In modern times this rule has been modified. **Explain this historical rule and how it has been modified over the years . Make reference to Companies and other Businesses Entities Act 24:31.** (20 marks)

Question 3

Joseph, a recent graduate from Manicaland State University of Applied Sciences (MSUAS), participated in the preparation of the prospectus of A & B Computers (Pvt) Ltd. He then entered into a contract with Roofs and Rooms Real Estate for the lease of premises at 10 Hebert Chitepo Street, Mutare. Joseph also contracted with Mutare Computers (Pvt) Ltd, a company which supplies computer hardware and accessories. Mutare Computers supplied 50 desktop computers at 10 Herbert Chitepo Street, Mutare which is A&B Computers (Pvt) Ltd.'s stated business address. When the company was finally incorporated, it was served with a letter of demand from Mutare Computers (Pvt) Ltd's lawyers claiming that it owes its clients for the supplied computers. In addition, Roofs and Rooms claimed rentals from A & in terms of the lease signed by Joseph.

Discuss, with reference to legal authority, whether A&B can be held liable for debts incurred before it was formed. [20 marks]

Question 4

Gabriel Soropa is a member of Rusere Limited, a company which manufactures agricultural chemicals. Since incorporation in 2018 to date, the company has not held a general meeting of its members nor has not held a general meeting of its members nor has it filed any returns with the office of the Registrar of companies. The latest audit statement for the company shows that the liabilities exceed its assets and it is unable to pay its debts. Moreover, the factory which constitutes its principal assets was destroyed in a recent fire. It was not insured. The directors of Rusere Limited recently resolved to purchase a luxury BMW car for the Managing Director.

Required

You are approached by Gabriel, as a concerned shareholder. Advise Gabriel on:

- a. His legal position in these circumstances. (10 marks)
- b. The probable consequences to the company in respect of the above facts. (10 marks)

Question 5

The objective of the provision(s) in the Companies and Other Businesses Entities Act, Chapter 24:31 prohibiting certain categories of persons from holding office of the director in a company, is to ensure the protection of the shareholders and the public generally. The management of companies should not be in the hands of unscrupulous or disreputable persons.

Interrogate this statement with reference statute and case law. (20 marks)

Question 6

Kenneth has just inherited a green grocer's shop from a deceased aunt. His late aunt was running her business as a sole trader. Kenneth has some previous experience in running a business. He used to work as the head till operator for Nhapitapi Bakeries but was dismissed after stealing some money from the till. Kenneth was subsequently convicted of theft and was imprisoned for an effective six months without the option of a fine. Kenneth has now decided to set up his own private company to run the green grocery business with himself as the sole shareholder and director.

Required:

Advise Kenneth on the following:

- (a) the procedure required to form the company. (5marks)
- (b) the documents that must be submitted. (7 marks)
- (c) any legal problems he may face as a result of his conviction. (8 marks)

[Total marks: 20]

END OF EXAMINATION!