



PAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE, HUMAN SCIENCES AND EDUCATION
DEPARTMENT OF SOCIAL SCIENCES

QUALIFICATION : BACHELOR OF ACCOUNTING	
QUALIFICATION CODE: 07BOAC; 07BACC	LEVEL: 6
COURSE CODE: CPL 511SS	COURSE NAME: COMPANY LAW
SESSION: JUNE 2022	PAPER: THEORY AND CASE STUDIES
DURATION: 3 HOURS	MARKS: 100

FIRST OPPORTUNITY EXAMINATION	
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MODERATOR	Ester Kuugongelwa

INSTRUCTIONS
<ol style="list-style-type: none">1. The paper has 5 main questions.2. ALL the questions are compulsory.3. Read carefully before answering.4. Number the answers clearly and according to the structure in the examination question paper.5. Use full sentences and proper paragraphs when answering questions. The inappropriate use of bullet-points will be penalised, as will poor spelling and grammar and illegible handwriting.

ANNEXURE

Selected Extracts: Companies Act 28 / 2004
(11 pages)

PERMISSIBLE MATERIAL

Calculator

THIS QUESTION PAPER CONSISTS OF 10 PAGES
(Including this front page, excluding Annexures)

QUESTION 1

Choose the correct answer from the given options in each of the following questions. Only write down the correct letter next to the corresponding question number. USE BLOCK CAPITAL LETTERS.

- 1.1 When may a juristic person acting as trustee of a trust become a member of a Close Corporation?
- A. Never, because only natural persons may become members of a Close Corporation.
 - B. If it is a testamentary trust where all the beneficiaries are natural persons, and the trustee is not directly or indirectly controlled by the beneficiaries.
 - C. If it is an *inter vivos* testamentary trust where all the beneficiaries are natural persons and the trustee is not directly or indirectly controlled by the beneficiaries.
 - D. If the juristic person is acting in its capacity and is not directly or indirectly controlled by the beneficiaries.
- 1.2 The minimum number of people required to incorporate a non-profit association is:
- A. Two
 - B. Seven
 - C. One
 - D. Ten
- 1.3 If a person takes part in the management of a Close Corporation while being disqualified from doing so:
- A. All members of the corporation become personally liable for all debts incurred by the corporation
 - B. That person becomes personally liable for all debts incurred by the corporation
 - C. That person becomes jointly and severally liable with the corporation for all debts incurred by the corporation
 - D. None of the above
- 1.4 Funny Company Limited appoints Nici as their Chief Executive Officer (CEO). A few years ago prior to her appointment, Nici was found guilty on charges of corruption and sentenced to pay a fine of N\$ 50 000 or serve 5 years imprisonment. She paid the fine. Nici attends meetings of the board of directors but does not have voting rights. Nici enters into a lucrative deal with Nambia Limited (Nambia). Six months after the contract was signed, Nambia realises that this deal is not to their favour and wants to cancel the contract. Advise Nambia.
- A. Nambia can cancel the contract because Nici is obviously corrupt.
 - B. Nambia is bound to the contract because, as CEO of Funny Company Limited, Nici had implied authority to represent them.
 - C. Nambia can cancel the contract because Nici needs the approval of court to be appointed as a director.
 - D. Nambia is bound to the contract because companies have unlimited capacity to enter into contracts.

- 1.5 A “round robin” resolution is:
- A. A resolution signed by the majority of the members of a public company.
 - B. A written agreement signed by all the directors of a company.
 - C. A written resolution signed by the majority of the directors.
 - D. None of the above.
- 1.6 The Directors of Midgard (Pty) Ltd wish to convene their annual general meeting. At this meeting they intend replacing their external auditors. The notices informing members of the meeting are hand delivered to the members of the company on Monday, 1 November 2021. The meeting cannot be held before:
- A. 17 November 2021
 - B. 21 November 2021
 - C. 23 November 2021
 - D. 29 November 2021
- 1.7 Choose the most correct statement:
- A. Directors can remove the external auditors whenever they wish to do so
 - B. External auditors can only ever be removed at the Annual General Meeting of a company
 - C. Shareholders can remove the external auditors whenever they wish to do so
 - D. In most instances external auditors can only be removed at the Annual General Meeting of a company
- 1.8 Mrs Muronga is a director of Earthworks (Pty) Ltd, a company that manufactures and sells pottery. She prefers working for herself and intends resigning from the company to start a similar business. She is unsure whether she may make use of the company's client list compiled over a number of years, to inform potential clients of her new business. Advise Mrs Muronga whether she can do this.
- A. She may use the information, because she will just be informing people about her new business, and they can decide for themselves whether they want to support her or not.
 - B. She may not, because using confidential information for her own benefit will exceed the limitations of her power.
 - C. She may, because a director's fiduciary obligation towards the company arises by virtue of his/her occupation of the office of director, and as such does not continue after resignation.
 - D. She may not, because where a director acquired confidential information while owing a fiduciary duty to the company, the director can be held to account even after resignation.
- 1.9 A distinguishing feature of companies is that ...
- A. There is a separation between ownership and management
 - B. Companies are listed on the Namibian Stock Exchange
 - C. Companies can have up to 50 shareholders
 - D. All of the above

1.10 Tom, Dick and Harry are members of Fishfarm CC. In terms of the founding statement, the principal business of the corporation is to conduct aquaculture-farming operations. The association agreement provides that only Tom has the authority to represent the corporation in the conduct of business, but that for any contract where the value of such contracts exceeds N\$500 000 he must first obtain the permission of Dick and Harry.

Tom concludes a contract with Mr Scaly, a businessman of ill-repute, in terms of which he buys a racehorse for the corporation for an amount of N\$100 000. A week later the horse dies. Dick and Harry are furious when they find out about the purchase.

Choose the MOST CORRECT STATEMENT.

- A. Fishfarm CC will be bound by the contract because all members of a Close Corporation have implied authority.
- B. Mr Scaly can hold Tom jointly and severally liable.
- C. Fishfarm CC must ratify the contract and claim their damages from Tom.
- D. Fishfarm CC is not bound to the contract, because there was no express authority.

1.11 Tuafeni wants to purchase 100% of the member's interest in Stein Street Thirty Close Corporation. The corporation is the owner of a house in Windhoek. The bank is prepared to lend the purchase price for the member's interest to Tuafeni, provided that he can provide security for the repayment of the loan. Tuafeni does not own any property. What can be done?

- A. Nothing. He must just find the money somewhere else.
- B. The Close Corporation can lend him the money, if there is written consent of all the other members.
- C. The Close Corporation can borrow the money from the bank and a bond can be registered over the corporation's house as security, provided that the members consent to this in writing, and the corporation is both solvent and liquid.
- D. Tuafeni can borrow the money from the bank and a bond can be registered over the corporation's house as security, provided that the members consent to this in writing, and the corporation is both solvent and liquid.

1.12 Okathimeti Ltd needs to appoint an auditor for the 2021/22 financial year. All the candidates are qualified to act as auditors in terms of the respective legislation. The candidates are:

- Cecilia, an employee of Okathimeti
- Ndina, a minority shareholder of Okathimeti
- Khula, a member of Whk Nominees CC, a close corporation that performs secretarial work for Okathimeti
- Siegrid, who resigned as a director of Okathimeti in April 2021

Which of the candidates can be appointed as auditor of Okathimeti Ltd?

- A. None of the candidates.
- B. Ndina and Khula.
- C. Ndina.
- D. Siegrid.

- 1.13 The following is NOT a requirement for an Incorporated Association not for Gain:
- A. It must be formed for a lawful purpose
 - B. No dividends may be paid to its members
 - C. On dissolution the remaining assets will be distributed amongst the founding members
 - D. Its profits and income must be applied to promote its main object
- 1.14 The main difference between a company and a close corporation is that:
- A. A company has shareholders, and a close corporation has members
 - B. A company must always have at least two shareholders whereas a close corporation only needs to have one
 - C. A close corporation is not a juristic person
 - D. None of the above
- 1.15 Four Company Law students at NUST are discussing companies incorporated in terms of Section 60(b) of the Companies Act.
- Melody* says that in these types of companies the directors are jointly and severally liable for the contractual debts and liabilities of the company
- Tawanda* says that in these types of companies the directors are jointly and severally liable for the debts and liabilities of the company incurred during their term of office
- Toini* says that in these types of companies the directors are personally liable for the debts and liabilities of the company incurred during their term of office
- Lefika* says that in these types of companies the directors are jointly and severally liable for the contractual debts and liabilities of the company incurred during their term of office
- Whose opinion is the MOST CORRECT?
- A. Melody
 - B. Tawanda
 - C. Toini
 - D. Lefika
- 1.16 In terms of the Companies Act companies are deemed to have the capacity and powers of a natural person of full capacity in so far as a juristic person can exercise those powers. This means that:
- A. A company is incapable of performing acts that are regarded as inherently human
 - B. A company does not exist as an entity in a physical sense and must act through its organs or agents
 - C. A company has unlimited capacity to take part in commercial activities
 - D. All of the above

QUESTION 1 CONTINUES ON THE FOLLOWING PAGE

- 1.17 An important difference between section 188 and section 189 of the Companies Act is that:
- A. Section 188 refers to shareholders and Section 189 refers to members
 - B. Section 188 cannot be changed in the constitution of a company
 - C. Section 188 refers to issued share capital and Section 189 refers to members with voting rights
 - D. Section 188 refers to members with voting rights and Section 189 refers to issued share capital
- 1.18 In terms of the Companies Act shares may only be issued at a discount if:
- A. The market value of existing issued shares is less than their nominal value
 - B. All the members agree
 - C. Such issue is bona fide and in the interest of the company
 - D. None of the above
- 1.19 The articles of association of Maerua (Pty) Ltd provide that for as long as two of its directors, Magogo and Blackie, are members of the company no resolution taken by the members will be of any effect unless Magogo and Blackie, or whomever of them is at that time a member of the company, has voted in favour of the resolution. At a meeting of the company, Blackie is removed as a director by majority vote under section 228 of the Companies Act. He was present at the meeting but voted against the resolution. Blackie wants to apply to court for an order setting aside his removal as director and declaring that he is still a director of the company. Advise him in this regard.
- A. Blackie will be successful in his court action because the constitution of a company constitutes a binding contract between the company, its members and directors.
 - B. Blackie will not be successful in his court action because the Companies Act provides that a director can be removed “notwithstanding anything in its memorandum or articles or in any agreement between it and any director”.
 - C. Blackie will not be successful in his action because he did not have a separate contract of employment with the company.
 - D. Blackie will not be successful in his court action because a director cannot act against the company.

QUESTION 1 CONTINUES ON THE FOLLOWING PAGE

- 1.20 Ndakola sells her business to Cash & Carry (Pty) Ltd, in which Ndakola and her sister Tulela are the only shareholders. As purchase price for the business, Ndakola receives 380 shares and secured debentures issued by the company. Her sister holds 20 shares. Ndakola is also appointed as the managing director of Cash & Carry (Pty) Ltd. A couple of years later Cash & Carry (Pty) Ltd is liquidated. There are insufficient assets to pay both Ndakola's secured debentures and the ordinary creditors. The ordinary creditors are of the opinion that, rather than being treated as a secured creditor, Ndakola should be held personally liable for their debts.
- A. The creditors are correct, because Ndakola is a majority shareholder.
 - B. The creditors are correct, because although a company is a juristic person, Ndakola's actions were fraudulent, dishonest and improper.
 - C. The creditors are incorrect, because Ndakola and Tulela are both shareholders, and must pay the debt *pro rata*.
 - D. The creditors are incorrect, because a company is a juristic person and has its own rights and duties.

Two marks each [40]

QUESTION 2

Briefly answer the following questions.

- 2.1 What are the requirements for a company to pay dividends to its members? (3)
- 2.2 Indicate whether the following statement is TRUE or FALSE. Motivate your answer.
"All shareholders are members of a company, but not all members of a company are shareholders." (4)
- 2.3 Indicate whether the following statement is TRUE or FALSE. Motivate your answer.
"In terms of the Companies Act, 2004, it is a requirement that a company must ratify a pre-incorporation contract. This means that ratification is compulsory, and a company will always become bound to the contract." (3)
- 2.4 What are the requirements for the ratification of a member of a Close Corporation's breach of her fiduciary duty? (3)
- 2.5 Name the two main types of companies. (2)

[15]

Question 3 follows on the next page



QUESTION 3

The shareholding of Sunday Morning (Pty) Ltd is as follows:

Armin:	50% Class A Ordinary Shares with a par value of N\$1 each
Bella:	30% Class A Ordinary Shares with a par value of N\$1 each
Charles:	9% Class A Ordinary Shares with a par value of N\$1 each
Dodo:	6% Class A Ordinary Shares with a par value of N\$1 each
Ella:	5% Class A Ordinary Shares with a par value of N\$1 each
Frits:	100% Class B Redeemable Preference Shares with a par value of N\$1 each

The directors are Armin, Bella, and Charles. Armin is the Chairperson of the Board of Directors. All dividends due to the preference shareholder have been fully paid to date.

In each of the following instances indicate whether the resolution described therein has been properly adopted at a general meeting of members:

Only state YES or NO. You do not have to motivate your answers.

- 3.1 Notice of the AGM was delivered to the shareholders on 1 May 2022. The meeting took place on 23 May 2022. At the meeting the shareholders all vote in favour of replacing the company's external auditors.
- 3.2 Dodo and Ella call a meeting in terms of Section 188 of the Companies Act, 2004. Charles, Dodo and Ella are present at the meeting. Dodo and Ella vote in favour of an ordinary resolution instructing the Board of Directors to provide them with certain information concerning an intended transaction by the Board.
- 3.3 The Board of Directors convene a Special General Meeting at short notice. Dodo objects to the short notice, but the meeting goes ahead. All the other members vote in favour of the resolution tabled.
- 3.4 A meeting is convened to adopt a special resolution amending the percentage dividends payable to the preference shareholders. All the Class A shareholders are present and vote in favour of the resolution. Frits was not invited to the meeting.
- 3.5 A meeting is convened to adopt a resolution amending the company's constitution to allow the company to buy back shares in terms of Section 89 of the Company's Act, 2004. Bella, Charles, Dodo and Ella are present. Voting takes place by show of hands. Charles, Dodo and Ella vote in favour of the resolution.

Two marks each [10]

Question 4 follows on the next page

QUESTION 4

Dowell (Pty) Ltd (Dowell) discover that their financial manager, Mr. Innocent, has been defrauding the company over a period of three years. Dowell has lost millions of dollars. Mr. Innocent has left the country and the losses cannot be recovered from him.

The directors of Dowell are of the opinion that if their auditors had made proper enquiries during the annual audit, the fraud would have been detected and the losses averted. They allege that the auditors were grossly negligent and wish to institute legal action against the auditors.

Advise Dowell on the possible actions that can be instituted and what they will need to prove to succeed.

[10]

QUESTION 5

Design Incorporated (Pty) Ltd. was registered on 1 February 2020 with Ndjavera and Ismael as founding shareholders and directors. Tuhafeni joined the company as shareholder and director on 1 June 2021. Ndjavera is the Managing Director. The main business of the Company is interior design and the sale of exclusive furniture.

The articles of the company contain (*inter alia*) the following provisions:

- i. directors can only be removed by way of a special resolution;
- ii. all contracts entered into by the company must be signed by at least two directors;
- iii. no director will be held liable for any damage caused by his/her negligence or breach of trust;
- iv. shareholders may only sell their shares to outsiders with the consent of the existing shareholders.

In January 2022 Ismael, while on official company business, was involved in a car accident with Mr X, and the Court subsequently ruled that Ismael was negligent and that Interiors Incorporated (Pty) Ltd. is vicariously liable for Mr X's damages suffered as a result of this accident.

In February 2022 Ndjavera, without consulting her fellow directors, entered into an oral contract with a well-known Namibian designer to design and manufacture an exclusive range of furniture for the Company. When the shareholders find out about this they call for a general meeting and adopt an ordinary resolution removing her as director.

Tuhafeni is now sick and tired of this mess; he resigns as director and sells his shares to his sister, without the consent of the existing shareholders. When the Company Secretary refuses to transfer the shares Peter claims that the particular provision in the articles stating that shareholders may only sell their shares to outsiders with the consent of the existing shareholders has never been brought to his attention and that he is accordingly not bound thereby.

Answer the following questions based on the above facts:

- 5.1 Can the Company hold Ismael liable for the damages paid to Mr X or will he be protected by the provisions of clause iii quoted above? (5)
- 5.2 Is the company bound to the contract that Ndjavera entered into with the well-known Namibian designer? (5)
- 5.3 Is the removal of Ndjavera by way of an ordinary resolution valid? (5)
- 5.4 Is Tuhafeni bound by the provision in the articles stating that shareholders may only sell their shares to outsiders with the consent of the existing shareholders? (7)
- 5.5 Can Tuhafeni be held jointly and severally liable for Mr X's damages? (3)
- [25]**

TOTAL MARKS: 100

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