NAMIBIA 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: JULY 2022	**PAPER:** THEORY AND CASE STUDIES
DURATION: 3 HOURS	**MARKS:** 100

SUPPLEMENTARY EXAMINATION	
EXAMINER(S)	Mariette Hanekom
MODERATOR	Ester Kuugongelwa

INSTRUCTIONS

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 MEMORANDUM CONSISTS OF 9 PAGES
(Including this front page, excluding annexure)

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 A unanimous resolution is: (Choose the most correct statement)

A. A resolution signed by the majority of the members of a public company.

B. A resolution signed by all the members of a public company.

C. A resolution signed by all the members of a private company.

D. A resolution taken by all the members of a company, who are fully aware of what is being done and agree thereto.

1.2 Sunny Day (Pty) Ltd has both ordinary and preference shareholders. All dividends due to the preference shareholders are fully paid up to date. The directors of Sunny Day (Pty) Ltd call a general meeting of shareholders to seek approval to sell the building of the company at a value below market value. This will have the effect of considerably reducing the market value of the shares. CHOOSE THE MOST CORRECT OPTION:

A. They cannot do this because the shareholders may not intervene in the business of the company.

B. The preference shareholders must be invited to the meeting because this affects their class rights.

C. The preference shareholders do not have to be invited to the meeting because this does not affect their class rights.

D. The written consent of 75% of shareholders is required to sell fixed property.

1.3 In terms of the Companies Act 28/2004 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 these answers.

1.4 In the context of corporate governance, "apply and explain" means that:

A. Companies can choose which of the principles contained in King IV they want to apply to the company.

B. Companies do not have to apply the principles contained in King IV if they believe that it would be in the best interest of the company.

C. Companies should provide a narrative account in which they explain how the corporate governance principles were applied.

D. Companies should apply the principles contained in King IV and give a narrative account of how this was done.

QUESTION 1 CONTINUES ON THE NEXT PAGE

1.5 A director's duty of reasonable care, skill and diligence entails that:
   A. A director must comply with his/her fiduciary duty of care and skill.
   B. All directors must be highly qualified.
   C. It is misleading to classify company directors for purposes of ascertaining their duties to the company.
   D. A director must act according to the standard of a reasonably diligent person having the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as those carried out by that director in relation to the company.

1.6 The Articles of Association of Yellow (Pty) Ltd vests the general management and the control of the company in the directors, subject thereto that any transaction in excess of N$1 million must be approved by resolution of the shareholders. At a general meeting of Yellow (Pty) Ltd a resolution was passed by the shareholders that the directors should be instructed to sell the company's fixed property for N$2 million. The directors were given instructions to find a suitable purchaser. The directors feel that the sale of the property will jeopardize the company's competitiveness. Advise the directors as to whether they are obliged to follow the instructions of the general meeting.
   A. They have to follow the instructions because it is in excess of N$1 million.
   B. They have to follow the instructions because the shareholders own the company and appointed them.
   C. They do not have to follow the instructions, because there is a separation between ownership and management.
   D. They do not have to follow the instructions, because the articles of association of the company mandates the board of directors to manage the company.

1.7 Holders of cumulative preference shares ...
   A. Have a right to receive an annual dividend payment and can institute action against the company if their dividend is not paid.
   B. Can redeem their shares.
   C. All of the above
   D. None of the above

1.8 The principles that underpin a director's duty to avoid a conflict of interest are:
   A. The no-conflict rule, the no-profit rule, and the corporate opportunity rule.
   B. The duty not to usurp any contract, information or other opportunities that properly belongs to the company.
   C. That a director may not exceed the limitations of his/her power, must maintain an unfettered discretion, and should exercise their powers for the purpose for which they were conferred.
   D. Confidentiality, competence, and independence.

QUESTION 1 CONTINUES ON THE NEXT PAGE

1.9 If a close corporation is converted to a company:

A. The former members of the close corporation become personally liable for all the debts thereof

B. All debts of the close corporation become payable immediately

C. The juristic person continues to exist, only in a different format

D. The close corporation must be liquidated

1.10 The rationale behind certain persons being disqualified as auditors for a company is:

A. Auditors should be diligent and reliable

B. Auditors should provide checks and balances

C. Auditors should have the required skill and objectivity

D. None of the above

1.11 Although the Founding Statement of a Close Corporation states its main business and object as "furniture removal" the members enter into an agreement for the purchase of a racehorse. The seller can hold the Close Corporation to the agreement only if:

A. The horse wins its first race.

B. Never. The agreement is illegal.

C. None of these answers.

D. They can rely on ostensible authority.

1.12 Choose the MOST correct statement.

A. The association agreement of a Close Corporation is a binding contract between the corporation and its members and between the members themselves.

B. The association agreement of a Close Corporation is a binding contract between the corporation and its members and between the members in their capacity as members.

C. The association agreement of a Close Corporation is not a public document and third parties are not allowed to have access thereto.

D. The association agreement of a Close Corporation is a binding contract and will determine who may represent the corporation and who may not.

1.13 Miss Muffet Close Corporation decides to lend the amount of N$10 000 to Dick to enable him to purchase a member's interest in the corporation. Harry, who holds a 10% member's interest in Miss Muffet Close Corporation, realises that the payment will render the close corporation insolvent. He warns the other members of the corporation not to pay over the money and refuses to sign a consent. The other members ignore him. The potential legal consequences of this are that:

A. The members of the Close Corporation can be held jointly and severally liable for all the debts of the corporation.

B. Dick must pay back the money.

C. Harry will not be held liable, because he took all reasonable steps to prevent the payment.

D. Both A and C.

1.14 In terms of corporate governance, "accountability" refers to:

A. The obligation to answer for the execution of responsibilities

B. Having a self-regulating business model that helps a company be socially accountable

C. The way in which companies are governed, controlled, and directed

D. The quality of being honest and having strong moral principles

1.15 A director's duty of reasonable care, skill and diligence entails that:

A. A director must comply with his/her fiduciary duty of care and skill.

B. All directors must be highly qualified.

C. A director must handle the property of the company with the utmost care.

D. A director must act according to the standard of a reasonably diligent person having the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as those carried out by that director in relation to the company.

1.16 The articles of Tileinge (Pty) Ltd require each director to hold at least 15 ordinary shares in the company. The members of the company decide to appoint Mr Amungenga, who is not a shareholder, as Director: Legal Affairs. Six months later Mr Amungenga informs his co-directors that he has not yet managed to raise the money to buy the required shares. They decide to give him the necessary shares "as appreciation for services rendered." What is the effect of Mr Amungenga not being able to buy the shares? May the co-directors give Mr Amungenga appreciation shares?

A. Yes, because the Companies Act does not require a director to be a shareholder and companies are not obliged to require that its directors must also be shareholders in the company. The company can therefore simply waive this requirement.

B. They can give the shares to Mr Amungenga. These shares will then be deferred shares, which are issued to remunerate promoters for services rendered in the formation of the company (founders' shares).

C. If a share qualification is required, every director must comply with it within two months of his/her appointment. Mr Amungenga must therefore resign as director for a while, after which he can be reappointed and the two-month period will start to run afresh.

D. Mr Amungenga must resign and cannot be reappointed until he has managed to buy these shares; he can be held legally liable for the market value of the shares given to him.

1.17 Random Company (Pty) Ltd has 5 shareholders who are also directors of the company. All the shareholders agree to change the constitution of the company to provide that Random Company (Pty) Ltd never has to hold an Annual General Meeting (AGM). CHOOSE THE MOST CORRECT OPTION:

A. Since they all agree, they can make this decision by way of unanimous assent.

B. This will require a special resolution.

C. This will be illegal.

D. A company does not have to hold an AGM if 75% of the shareholders agree thereto in writing.

1.18 A company that has been registered for more than 5 years must hold its Annual General Meeting

A. Within 18 months from the date of its registration
B. Not later than nine months after the end of each financial year
C. Within 15 months of the date of the preceding annual general meeting, but not later than 9 months after the end of each financial year
D. Not later than nine months after the end of each financial year, but at least 15 months after the date of the preceding annual general meeting.

1.19 We can describe shares as rights of action entitling their owners, amongst other things, to:

A. Dividends every financial year
B. Profits acquired in a financial year
C. A certain portion of the company assets
D. None of the above

1.20 The following is NOT a characteristic of a public company:

A. Its shares are freely transferable
B. It must comply with comprehensive provisions regarding the compulsory disclosure of information to the public
C. the quorum for a general meeting of a private company is at least two members entitled to vote present in person or by proxy
D. None of the above

Two marks each **[40]**

QUESTION 2

Briefly answer the following questions.

2.1 List the rules that govern payments to members of a Close Corporation. (3)

2.2 How does a change in the composition of the members of a firm of auditors affect the firm's appointment as auditors of a company? (3)

2.3 What are the main differences between the redemption of preference shares and a company buying back its own shares in terms of section 89 of the Companies Act, 2004? (4)

2.4 What is the difference between authorised and issued share capital? (3)

2.5 Which two basic types of companies can be formed in terms of the Companies Act 28 of 2004? (2)

[15]

QUESTION 3

The shareholding of Sunday Morning (Pty) Ltd is a 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:

3.1 On 1 May Armin, without consulting with anybody else, telephones all the shareholders and invites them to a Special General Meeting. The meeting takes place on 23 May 2022. Armin, Bella and Charles are present. At the meeting they all vote in favour of selling the building belonging to the company.

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 a special resolution instructing the Board of Directors to provide them with certain information concerning an intended transaction by the Board. Voting takes place by poll.

3.3 A meeting is convened to adopt a special resolution. Charles, Dodo and Ella are present, and all vote in favour of adopting the resolution tabled.

3.4 A meeting is convened to adopt a special resolution approving the sale of the company's immovable property. This will have the result of significantly reducing the value of all the shares in the company. 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, Ella and Frits are present. Voting takes place by poll. Charles, Dodo, Ella and Frits vote in favour of the resolution.

Two marks each **[10]**

QUESTION 4 FOLLOWS ON THE NEXT PAGE

QUESTION 4

The issued share capital of Josua (Ltd) (a public company listed on the Namibian Stock Exchange) consists of 50 000 ordinary shares with a par value of N$10 each and 15 000 class B non-redeemable preference shares with a par value of N$15 each. Josua (Ltd) wants to increase the dividend potential of its ordinary shares by repurchasing 50% of the preference shares in terms of section 89 of the Companies Act 28 of 2004.

Advise the directors of Josua (Ltd) on the procedure to be followed.

[15]

QUESTION 5

Andiswe registers a private company, Andis (Pty) Ltd. He holds 40% of the shares and his three sons hold 20% each. In the Articles of Association it is stipulated that he (Andiswe) will be serve as a director of the company "for the rest of his natural life". The Articles of Association further provide that directors can only be removed by way of a special resolution adopted at an Annual General Meeting of the company. Andiswe also enters into a contract of employment with the company in terms of which he is appointed as Managing Director at a substantial salary per month.

After three years Andiswe purchased a farm in his own name after the company (Andis (Pty) Ltd), which was anxious to acquire the farm, could not reach finality with the sellers. He purchased the farm through an agent for N$3 million and thereafter sold it to the company for N$8 million. (The farm transaction) In this regard he claimed that the sellers were not prepared to do business with the company and structuring the transaction in this manner was the only way in which the company could obtain ownership of the farm.

This causes a huge family dispute and Andiswe's three sons decide that they want to get rid of him and take over the company. His sons convene a general meeting of the company. Andiswe and his sons are all present at this meeting and after a discussion which lasted long into the night, all three of his sons vote in favour of an ordinary resolution removing their father as director.

Answer the following questions:

NOTE: Read all the questions carefully before you start answering!

5.1 Can Andiswe rely on the provisions of the Articles of Association stating that he will serve as a director of the company "for the rest of his natural life" and/or his contract of employment to prevent his removal? (7)

QUESTION 5 CONTINUES ON THE NEXT PAGE

5.2 Is his removal by way of an ordinary resolution at a general meeting (which was not the Annual General Meeting) valid? (6)

5.3 Can the company institute legal action against Andiswe regarding the farm transaction? (5)

5.4 Andiswe alleges that his contract of employment contains a clause stating that "no director shall be liable to the company for any loss caused by his/her negligence, default, breach of duty or breach of trust". Can he rely on this clause to escape liability? (2)

[20]

TOTAL MARKS: 100