



UNIVERSITY  
OF  
JOHANNESBURG

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|--------------------------|---|
| <b><u>FACULTY</u></b>    | : Law   |
| <b><u>DEPARTMENT</u></b> | : Mercantile Law                              |
| <b><u>CAMPUS</u></b>     | : APK   |
| <b><u>MODULE</u></b>     | : KPR0011/BEL41A0<br>BUSINESS ENTERPRISES LAW |
| <b><u>SEMESTER</u></b>   | : First                                       |
| <b><u>EXAM</u></b>       | : May 2019                                    |

|                           |  |                       |               |
|---------------------------|--|-----------------------|---------------|
| <b><u>DATE</u></b>        | : 25 May 2019                              | <b><u>SESSION</u></b> | : 08:30-10:30 |
| <b><u>ASSESSOR(S)</u></b> | Prof KE van der Linde<br>: Mrs S Lawrenson |                       |               |
| <b><u>MODERATOR</u></b>   | : Dr T Joubert (UP)                        |                       |               |
| <b><u>DURATION</u></b>    | : 2 HOURS                                  | <b><u>MARKS</u></b>   | : [70]        |

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NUMBER OF PAGES: [3 PAGES]

INSTRUCTIONS:

1. Answer all questions in the SCRIPT provided.
  2. Write legibly.
  3. Number your answers carefully.
  4. Leave a line open between each answer (for example, between questions 1.1 and 1.2).
  5. Do NOT make use of "SMS or WhatsApp speak."
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**QUESTION 1****[5]**

One of your friends has seen the name 'Motoway (Pty) Ltd RF' and asks you whether this means that Motoway is a retirement fund. Explain to your friend what the expression 'RF' at the end of that company's name stands for; what it indicates; and what effect it has.

**QUESTION 2****[10]**

Evian Financial Holdings Ltd sells shares to the public, the investments of which are used for the development of property. The company has numerous subsidiaries. The various companies in the group are managed by separate boards of directors and there is a clear separation between the different assets of the companies. James purchases shares in Evian Financial Holdings Ltd. The rights attached to these shares give a right of exclusive use to a certain house in Waterfall Estate, which is usually reserved for managing directors. The directors of the company subsequently have a change of heart in relation to the sale of those shares and after the agreement is concluded they decide to transfer the shares to different companies throughout the group. When James attempts to enforce the contract against Evian Financial Holdings Ltd the directors aver that they are unable to transfer the shares because the shares are not held by the company any longer. It is clear that the directors of Evian Financial Holdings Ltd have an improper influence over the directors of the subsidiary companies in the group. James approaches the court for relief asking the court to disregard the separate legal personality of the companies in the group.

Discuss whether James will be successful with a claim to **pierce the corporate veil**. Refer to case law and relevant statutory provisions in your answer.

**QUESTION 3****[5]**

Vern holds 40% of the general voting rights in Salt (Pty) Ltd as shareholder. He can also direct the exercise of the voting rights of Busi, another shareholder, in terms of an option to acquire her shares. Busi holds 15% of the general voting rights in Salt (Pty) Ltd. Vern is also the sole shareholder and director of Pepper (Pty) Ltd, in which he holds all the general voting rights. Explain the relationships between Vern and Salt (Pty) Ltd; Vern and Pepper (Pty) Ltd; and Salt (Pty) Ltd and Pepper (Pty) Ltd with reference to relevant definitions of the Companies Act 71 of 2008.

**QUESTION 4****[12]**

The memorandum of incorporation of Red (Pty) Ltd provides that the company is entitled to issue 500 shares. It has issued all these shares. The board now wants to offer each shareholder a choice between receiving a cash amount of R20 per share or another free share for every 10 shares held by him or her. Advise the board fully on the requirements for this transaction.

**QUESTION 5****[10]**

Industry4U Ltd is listed on the JSE Ltd. It wants to expand its business by acquiring control of Generation3 Ltd, one of its competitors. Industry4U Ltd approaches the shareholders of Generation3 Ltd with an offer to exchange their Generation3 Ltd shares for new listed shares

to be issued in Industry4U Ltd. Explain whether Industry4U Ltd is making an offer to the public and, if so, whether it needs to issue a prospectus.

**QUESTION 6****[10]**

Pablo is a director of Picasso (Pty) Ltd, a graphic design company. The company needs to buy a new laser printer and he asks Frida, one of the senior graphic designers, to investigate the different options. She recommends the Starprint E60 and Pablo orders one for Picasso (Pty) Ltd. Unfortunately, the new printer soon malfunctions and Pablo discovers that the Starprint E60 is an old generation printer which is incompatible with the advanced software used by Picasso (Pty) Ltd. They have to buy a much more expensive printer and the client whose work was delayed when the Starprint E60 malfunctioned sues them for damages. Vincent, the majority shareholder of Picasso (Pty) Ltd, is adamant that Pablo has breached his duties to the company and should be held personally liable. Advise Pablo in this regard.

**QUESTION 7****[10]**

The boards of Red Ltd and Yellow Ltd have agreed that the two companies will transfer all of their assets and liabilities to a new company that will be called Orange Ltd. Both Red Ltd and Yellow Ltd will be deregistered and their shareholders will receive shares in Orange Ltd. Explain the nature of this transaction and the requirements that must be satisfied.

**QUESTION 8****[8]**

Brick (Pty) Ltd and Mortar (Pty) Ltd incorporated a joint venture company (JV) named Brick-n-Mortar (Pty) Ltd in which Brick (Pty) Ltd holds 49% and Mortar (Pty) Ltd 51% of the shares. The purpose of Brick-n-Mortar (Pty) Ltd is to render services in the construction industry. Brick (Pty) Ltd has now discovered that Mortar (Pty) Ltd is being investigated by the Competition Commission for price fixing over a period prior to the formation of Brick-n-Mortar (Pty) Ltd. The damage this could do to the reputation of Mortar (Pty) Ltd and consequently also to Brick-n-Mortar (Pty) Ltd has led to Brick (Pty) Ltd regretting its association with Mortar (Pty) Ltd. However, it has spent a considerable sum of money on advisors in setting up the structure and Brick-n-Mortar (Pty) Ltd has further incurred costs in tendering for several large projects. Brick (Pty) Ltd would thus not like to exit from the joint venture. It argues that Mortar's conduct is not only harming Brick-n-Mortar (Pty) Ltd but is also prejudicial to it as a shareholder. Advise Brick (Pty) Ltd regarding the appropriate remedy, explain the requirements and identify relevant orders the court could make in the particular circumstances.

**TOTAL****[70]**



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| <b><u>EXAM</u></b>       | : SSA July 2019                               |

**ASSESSOR(S)** : Prof KE van der Linde  
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**QUESTION 1****[10]**

The memorandum of incorporation of Simla (Pty) Ltd provides that the company does not have the capacity to purchase or own immovable property. The board of directors of Simla (Pty) Ltd concludes a contract in terms of which the company purchases a potato farm. Explain whether the contract is binding on Simla (Pty) Ltd and, if so, what rights a shareholder will have in this regard.

**QUESTION 2****[8]**

Thabo approaches you for advice regarding the possibility of holding Lebo liable for the debts of Blue (Pty) Ltd. Thabo granted a loan of R500 000 to Blue (Pty) Ltd to enable the company to expand its business, but the company has now gone into liquidation and is unable to pay Thabo back. Thabo found out that Lebo, who is the only shareholder and director of Blue (Pty) Ltd, used most of the money to pay for renovations to her home. Blue (Pty) Ltd never kept proper accounting records and had been trading in insolvent circumstances for almost a year before the liquidation.

Compare the two-pronged test in *Hülse-Reutter v Gödde* 2001 4 SA 1336 (SCA) with the requirements of section 20(9) of the Companies Act 71 of 2008 and advise Thabo of his chances of success. (You may refer to any other relevant case law on this topic, but do not discuss any possible breach of fiduciary duties.)

**QUESTION 3****[5]**

Naomi holds 60% of the general voting rights in Green Cube (Pty) Ltd and is the sole shareholder and director of Arctic (Pty) Ltd. Explain the relationship between these two companies and briefly refer to two consequences of this relationship.

**QUESTION 4****[5]**

Sara appoints Sureshni to act as her proxy in the general meeting of English Red (Pty) Ltd. The memorandum of incorporation of English Red (Pty) Ltd requires proxy appointment forms to be submitted to the company at least 48 hours before the commencement of the meeting in order to be valid. Sara submits the form to the company a few hours before the meeting begins, and Sureshni is not allowed to vote at the meeting as a result hereof. Sara argues that any resolutions taken at the meeting are invalid because Sureshni was not allowed to vote.

Advise Sara whether, in light of recent case law, there is any basis for having these resolutions overturned.

**QUESTION 5****[12]**

Gold Ltd has issued 100 voting ordinary shares (Class A). The board of directors has been approached by Metals (Pty) Ltd, a shareholder of 7 Class A shares in Gold Ltd. Metals (Pty) Ltd wants to dispose of its shares in Gold Ltd. The board of Gold Ltd would like Gold Ltd to repurchase the shares held by Metals (Pty) Ltd.

- (a) Explain the requirements for and implications of the proposed transaction. (7)

- (b) Explain how the requirements in (a) above would differ if Gold Ltd's only subsidiary, Silver (Pty) Ltd, which currently holds 2 of the 100 class A shares in Gold Ltd, were to purchase the shares from Metals (Pty) Ltd. (5)

**QUESTION 6****[10]**

Green Ltd carries on the business of plastic recycling. Ronald is a non-executive director of Green Ltd. His wife Lucy recently inherited some shares in Jade (Pty) Ltd which is in the glass recycling business. Ronald receives notice of a board meeting and notices that the agenda includes an item: "Possible expansion of business - invitation to tender for glass recycling contract". It appears that one of Green Ltd's large plastic recycling clients has now invited Green Ltd to submit a tender to also handle glass recycling in future. Jade (Pty) Ltd has apparently also been invited to submit a tender. Advise Ronald on the correct way of handling this situation in order to avoid breaching his duties as director.

**QUESTION 7****[5]**

Lavender Ltd wants to issue further shares in order to fund expansion of its business. It intends offering the shares first to existing shareholders. The board approaches you to advise them on whether this might be an offer to the public and, if so, how they could structure the offer to avoid having to issue a prospectus. (Lavender Ltd is not listed on an exchange.)

**QUESTION 8****[15]**

Gnome (Pty) Ltd owns a factory that manufactures garden ornaments. The shareholders are Happy, who holds 80% of the shares and is also the only director, and Grumpy, who holds the remaining 20% of the shares. Happy wants the company to sell the factory and the business as a going concern and invest the money in shares in an online business which shows remarkable growth potential. She feels that the new business will be less labour intensive and also more profitable, because garden ornaments are becoming less popular and the company's profits have been steadily declining. Grumpy is not convinced and thinks that with new creative direction, the profitability of the existing business can be restored. She does not want to hold shares in a passive investment company and feels that Happy's conduct is unfair. She would prefer buying out Happy as a shareholder and becoming the only shareholder and director of Gnome (Pty) Ltd.

- (a) Assess whether Gnome (Pty) Ltd will be able to sell the factory and business without Grumpy's approval. If your conclusion is that this is possible, explain whether Happy can proceed with the sale based on a board resolution or, if not, what process needs to be followed. (5)
- (b) Explain whether Grumpy will be able to force Gnome (Pty) Ltd to pay out the value of her shares if the sale does go through, and briefly set out the procedural requirements she will have to follow. (You need not include any time periods.) (5)
- (c) Advise Grumpy of a remedy she might use to prevent the sale and acquire Happy's shares in Gnome (Pty) Ltd and explain what she will have to prove. (5)

**TOTAL****[70]**