



UNIVERSITY  
OF  
JOHANNESBURG

<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 BUSINESS ENTERPRISES LAW
<b><u>SEMESTER</u></b>	: First
<b><u>EXAM</u></b>	: SSA July 2019

**ASSESSOR(S)** : Prof KE van der Linde  
: Mrs S Lawrenson

**MODERATOR** : Dr T Joubert (UP)

**DURATION** : 2 HOURS

**MARKS** : [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 question 1 and question 2).

**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]**