UNIVERSITY OF JOHANNESBURG



FACULTY OF LAW (AUCKLAND PARK CAMPUS)

SUBMISSION OF FINAL EXAMINATION PAPERS JUNE/JULY 2017

	III	
MOD	ULENAME: Business Enter	prises Law
MODULE CODE: KPR 0011 BEL 4A01		
LECTURER (S): Faadhil Adams		
HEAD OF DEPARTMENT: Prof KE Van der Linde		
EXIT MODULE: YES) NO		
FOR EXIT MODULES: MS J Katzew (WITS)		
EXTERNAL MODERATOR FORM ATTACHED:		
INSTRUCTIONS: 1. How many of the following items will be required <u>per student?</u>		
	Examination script (4 pages)	2
	Scanner sheet	
	Other(please specify)	·
2.	How many students are still attending lectures (with a view to the number of examination papers required)?	
SIGNATURE OF LECTURER:		Adem
DATE:		19/05/2017
SIGNATURE AS HEAD OF DEPARTMENT (AS INTERNAL MODERATOR)		Modhio
DATE:		22-5-2017
FOR ADMINISTRATIVE PURPOSES:		
Noted:		Date:



FACULTY

: LAW

SUBJECT

: BUSINESS ENTERPRISES LAW

CODE

: KPR0011/BEL41A0

DATE

: EXAMINATION

MAY 2017

DURATION

2 HOURS

TOTAL MARKS : 65

EXAMINER

: MR F ADAMS

<u>MODERATOR</u>

: MS J KATZEW (WITS)

NUMBER OF PAGES : SEVEN (7) PAGES

INSTRUCTIONS TO CANDIDATES:

- 1. Answer all questions in your SCRIPT.
- 2. Write legibly.
- 3. Number your answers carefully.
- In longer questions, please write in paragraphs. You also need to comply with the 4. general English grammar and spelling rules.
- 5. Read the questions carefully and answer the question that is being asked.
- 6. Unless stipulated otherwise, assume that the default provisions of the Companies Act of 2008, the Close Corporations Act of 1984 or the common law apply, where relevant.

QUESTION 1 [18]

Study the excerpt from the Memorandum of Incorporation (MOI) of Double Shot (full name omitted) and answer the questions that follow. The default provisions of the Companies Act apply unless stipulated otherwise. Your answers should refer to the relevant clause in the MOI, where necessary.

ARTICLE 3 - SECURITIES OF THE COMPANY

- 3.1 The Company authorises an initial share capital as set out below:
- 3.1.1 Authorised Shares
- 3.1.2 The Company authorises the issue of no more than 500 000 ordinary shares, designated "Class A Ordinary Shares", each of which entitles the holder to -
 - participate in any proportionate distribution to the Shareholders; and
- 3.1.3 The Company authorises the issue of no more than 200 000 preference shares, designated "Class B Preference Shares", each of which entitles the holder to
 - an annual distribution of R10, with cumulative effect, to be paid in priority to any proportionate distribution in respect of class A ordinary shares
 - a prior right to the return of the consideration paid in respect of that share when the Company is dissolved, but not to any further right to share in the net assets
 - vote only on resolutions for the winding-up of the Company
- 3.2 The right to transfer shares is restricted in the manner hereinafter prescribed and recognised by the Companies Act; any invitation to the public to subscribe for any shares and any debentures of the Company is prohibited; a share of the Company does not have a nominal or par value, subject to Item 6 of Schedule 5; the Company is prohibited by the Companies Act and the Memorandum of Incorporation to issue shares to itself; and the authorised shares of the Company have no rights associated with they until they have been issued.

- 3.3 The Company must not make an offer to the public of any of its securities and an issued share must not be transferred to any person other than—
 - (a) the company, or a related person;
 - (b) a shareholder of the Company or a person related to a shareholder of the company.
 - (c) a personal representative of the shareholder or the shareholder's estate;
 - (d) a beneficiary of the shareholder's estate; or
 - (e) another person approved by the company before the transfer is affected.
- 3.4 The pre-emptive right of the Company's shareholders to be offered and to subscribe for additional shares, as set out in section 39, is not limited, negated or restricted in any manner contemplated in section 39(3), or subject to any conditions contemplated in that section.
- 3.5 This Memorandum of Incorporation does not limit or restrict the authority of the Company's Board of Directors to
 - (a) authorise the company to issue secured or unsecured debt instruments, as set out in section 43(2);
 - (b) grant special privileges with any debt instrument issued by the Company as set out in s 43(3);
 - (c) authorise the company to grant financial assistance to the company in relation to the subscription of any option or securities of the company or a related or inter-related company, as set out in section 44;
 - (d)approve the issuing of any authorised shares of the Company as capitalisation shares as set out in section 47(1); or
 - (e) resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation share as set out in s 47(1).

Questions

- 1.1 Indicate the type of Company that Double Shot is and provide reasons for your answer. (2)
- 1.2 Indicate, with reasons, whether this company may apply for a listing of its securities on the JSE Ltd without amending its MOI. (4)

- 1.3 Suppose that the company currently has 20 ordinary shareholders, each holding 10 000 shares. How many shareholders, at a minimum, must request a meeting of shareholders before such a meeting must be held? (2)
- 1.4 Suppose that the company currently has 20 ordinary shareholders, each holding 10 000 shares. How many shareholders constitute a quorum for purposes of convening a general meeting of shareholders? (2)
- 1.5 Consider whether the MOI currently authorises redeemable preference shares. (2)
- 1.6 Consider whether the board of directors may, without any further approval, amend the right of Class B Preference Shareholders to vote on the dissolution of the Company.
 (2)
- 1.7 Comment on whether the two classes of shares comply with the entrenched rights set out in the Companies Act of 2008. (4)

QUESTION 2 [12]

Tamara is an artist who had a business making and selling art. As the demand for her art grew, she decided to open up other branches and expand the business. She also decided to incorporate a company, Bohemian Enterprises (Pty) Limited, to run the business. She sold the business to this new company.

She received the purchase price by way of 20 000 shares of R2 each and secured debentures (ie a secured loan made by Tamara to the company) to the value of R 20 000. The only other shareholder was her wife who held 10 shares.

A year later Bohemian Enterprise (Pty) Limited experienced financial difficulties and was liquidated (declared insolvent). After it was wound up, the company had only sufficient funds to pay Tamara in terms of the secured debentures. Six months earlier Mr Concerned had sold stationary to Bohemian Enterprises (Pty) Limited and was owed an amount of R10 000.

Although Bohemian Enterprises (Pty) Ltd had a bank account at Value Bank Ltd, Tamara preferred to deposit the company's income into her personal account. Further, she often used money belonging to the company to pay personal loans stating: 'It's all my money any way!'

(a) Advise Mr Concerned of any common law basis for holding Tamara liable for the debts of Bohemian Enterprises (Pty) Ltd. You must refer to all relevant case law in your answer.

(8)

(b) Briefly advise Mr Concerned of any provision of the Companies Act 71 of 2008 that may be used to hold Tamara liable for the debts of Bohemian Enterprises (Pty) Ltd. Briefly refer to case law in your answer.

(4)

QUESTION 3 [10]

Thabo, Ernst and Eesa are the sole shareholders of Mercantile Traders (Pty) Ltd. They hold an equal amount of all the shares issued by the company. The company is very successful and has many diverse assets. Among these assets are various other companies in which the company has diverse shareholdings. One such company is Steel Construction (Pty) Ltd, a company in which Mercantile Traders (Pty) Ltd owns 65% of the issued shares and voting rights. On the completion of one of the company's housing projects in which 150 houses were built, the directors of Steel Construction (Pty) Ltd decide to transfer one of the houses to Thabo for the use of his Mother (Naledi), who would like to move to Johannesburg from Limpopo.

(a) Explain whether this transaction is allowed, and if so, discuss the requirements in terms of the Companies Act that must be complied with in order for the transaction to be valid. You answer should include the definition of "distribution".

(8)

(b) Would your answer differ if Mercantile Traders (Pty) Ltd held only 45% of all the issued shares in Steel Construction (Pty) Ltd.

(2)

QUESTION 4 [10]

Orlando is the Chief Executive Officer (CEO) of Pirates (Pty) Ltd, a business which operates a football club in the Premier Soccer League of South Africa. Orlando has vast experience in the football industry and has been the director of the company for 15 years. He is also a qualified medical doctor. Among his other duties, is the vital function of negotiating all contracts for the purchase of players. He does this on the basis of reports submitted to him by the coach of the team, the Scouting Committee, and the Player Performance Committee as well as the team's medical examiner. Orlando negotiates the purchase of one particular player called Lionel Ronaldo. The player is touted as the next superstar and represents by far the biggest expenditure ever spent on one player by the club. Six months after the

purchase of the player, the player has a heart attack and is unable to continue playing football. The heart attack was caused by an underlying condition that was referred to in the medical examiner's report. The club has lost millions because of the loss of the playing ability of Lionel Ronaldo.

- (a) Advise the company on whether Orlando has breached any of the duties owed to the company in terms of the Companies Act of 2008, and if so, which duties. Do not refer to the common law in your answer. (5)
- (b) Advise Orlando on whether he complies with the requirements of section 76(4) and whether there is a reasonable chance that he would be successful in invoking the business judgement rule.

(5)

QUESTION 5 [10]

Apollo Brush Manufacturers (Pty) Ltd is a company whose primary business consists of a factory that produces various brushware products for the local market. The factory has an extensive range of machinery that comprises the assets of the company. As a result of an economic downturn the company decides to sell one of its machines. One of the shareholders has heard about the negotiations and is opposed to the idea. He says that the machine that the directors want to sell forms the backbone of the company's manufacturing business and is worth more than all the other machinery put together. He says that the machine that the directors want to sell undoubtedly involves more than half the value of the company's assets.

(a) Identify this transaction and explain the requirements that need to be satisfied.

(5)

(b) Explain how a shareholder who is opposed to the transaction will be protected should the transaction be approved

(5)

QUESTION 6 [5]

Singobile, Faatima and Busi operate a catering business in the form of a close corporation (CC). Singobile enters into a contract for the supply of a year's flour from a particular supplier. Faatima and Busi are very upset when they become aware of the transaction, as they are not satisfied with the quality of the supplier's products.

(a) Faatima and Busi feel that the corporation should not be bound to the agreement as the majority of members did not approve of it. Explain to Faatima and Busi why the corporation will be bound to the agreement.

(3)

(b) Would your answer differ if Sinqobile's authority is limited in the cooperation agreement, so that she may only contract on behalf of the CC when she has at least one of the other members' consent?

(2)

TOTAL [65]