



**UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS**

FACULTY OF LAW

FINAL EXAMINATION: NOVEMBER 2019

SUBJECT NAME: COMMERCIAL LAW 1B DURATION: 120 minutes

**SUBJECT CODE: KMR1B21 MARKS: 80
COL41B1**

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THIS PAPER RUNS TO 5 (FIVE) PAGES

GENERAL INSTRUCTIONS TO STUDENTS

1. Answer all the questions in your script.
2. Write clearly and legibly.
3. Number your answers carefully.
4. Leave a line open between each answer (for example, between questions 1.1 and 1.2).
5. Ensure the correct use of grammar and spelling.

SECTION A

QUESTION 1

- 1.1 Distinguish between a testamentary trust and an *inter vivos* trust. (4)
- 1.2 Provide a definition of the term 'prospectus'. (3)
- 1.3 Explain when a member of a Close Corporation may be held personally liable for the debts of the Close Corporation. (1)
- 1.4 What is meant by being classified "ineligible" to be director of a company and provide two (2) examples of who is considered ineligible to be director? (3)
- 1.5 Distinguish between an alternate director and a temporary director. (4)
- 1.6 Define a universal partnership. (3)
- 1.7 Identify the three (3) types of fundamental transactions under the Companies Act 71 of 2008. (3)
- 1.8 Briefly explain whether it is possible to incorporate a Close Corporation today. (3)
- 1.9 What is the main purpose of the Takeover Regulation Panel? (1)

SUB-TOTAL

[25]

SECTION B

QUESTION 1

Desmond is the Chief Executive Officer (the "CEO") of Big Joe Ltd. According to the company's financial statements, Big Joe Ltd has been generating good profit consistently for the past five years. As a result of this impressive performance, they attract several investors who wish to do a business project

with the company. Desmond establishes a project with Minecraft Ltd. Although Big Joe Ltd makes a profit from the project with Minecraft, Desmond secretly steals some of the money for his own account. He uses the money to pay his son's school fees and plans to pay the company back in the future without telling anyone else in Big Joe Ltd. Before Desmond can repay the money, the shareholders find out that he has been taking money from the company's profits for his own benefit and believe that Desmond has grossly abused his position as a director. As a result of his actions, the shareholders believe Desmond has breached his fiduciary duties and wish to declare him a delinquent.

In particular, advise the shareholders on the following:

- 1.1 Explain the fiduciary duties of a director (3)
- 1.2 Explain what is an order of delinquency? (2)
- 1.3 Provide three (2) persons, other than the shareholders, who may bring an application to declare Desmond a delinquent. (2)
- 1.4 Advise the shareholders whether Desmond may be declared a delinquent (3)
- 1.5 If the shareholders wish to remove Desmond as a Director rather than declaring him a delinquent, explain the steps that need to be taken by the shareholders to remove him as a director. (6)
- 1.6 Explain to Desmond what remedy he may have available should he be wrongfully removed as a director. (1)
- 1.5 List any three (3) ways in which a vacancy may arise on the board of directors. (3)

[Subtotal 20 marks]

QUESTION 2

Yash and Shreya wish to establish a business trust as they have heard this is an easy business entity to use to protect certain assets. Explain the following:

- 2.1 List the three parties to a trust. (3)
- 2.2 Provide a definition of a business trust. (2)
- 2.3 List any three (3) duties of a trustee. (3)

[Subtotal 8 marks]

QUESTION 3

Verusha and Kubash work at different companies. They are both pharmacists in Johannesburg. They come across an opportunity to provide healthcare services to a community in Soweto for a period of one (1) year. Verusha has experience in dispensing medication, while Kubash has experience in administering vaccinations. They would like to work together only on this project and go their separate ways once the project is completed. Verusha and Kubash would like to establish a formal working relationship, but are not sure how to go about it.

Advise Verusha and Kubash on the following:

- 3.1 What is the most appropriate partnership for them to use in this instance? Provide a definition of this type of partnership (4)
- 3.2 Further advise Verusha and Kubash of the key essentials that their partnership must have in order to be legally recognised as a partnership. (4)
- 3.3. Explain the four (4) duties that Verusha and Kubash owe towards each other in their partnership. (4)

[Subtotal 12 marks]

QUESTION 4

Wellness Ltd and Health Ltd are seeking to merge their two companies into a new company called Vitality Ltd. Resh, a shareholder of Wellness Ltd, is unhappy with the proposed merger of the two companies because Health Ltd disposes of medical waste in a way that is harmful to the environment. Resh is a well-known activist and does not want to associate herself with the practices of Health Ltd. Resh approaches you for advice.

Write an **email** to Resh in which you advise the following:

- 4.1 Which remedy in terms of the Companies Act 71 of 2008 is available to Resh in order to exit the company? (1)
- 4.2. Briefly define the remedy identified in 2.1. above. (4)
- 4.3 Explain to Resh the procedural steps that she must follow to exercise her rights in terms of the remedy mentioned in **2.1.** (8)

A further 1 marks format

A further 1 marks for spelling and grammar.

[Subtotal 15 marks]

GRAND TOTAL

[80]
