



UNIVERSITY OF JOHANNESBURG
KINGSWAY CAMPUS

FACULTY OF LAW

JULY SSA EXAMINATIONS 2020

SUBJECT NAME: Company Law

DURATION: 5 HOURS

SUBJECT CODE: CML9X1C

MARKS: 50

EXAMINERS: Prof KE van der Linde
External: Prof A Loubser (Unisa)

THIS PAPER RUNS TO 4 PAGES.

QUESTION 1

(a)

Grey (Pty) Ltd RF produces tea. Clause 8 of its memorandum of incorporation provides as follows: "Any agreement in terms of which the company binds itself as surety for the obligation of another must be approved in advance by an ordinary resolution of the shareholders. This provision may be amended only with unanimous shareholder approval." The notice of incorporation has drawn attention to the existence of clause 8.

Your client has discovered that the managing director has concluded three suretyships on behalf of Grey (Pty) Ltd RF over the past six months:

- (i) Grey (Pty) Ltd RF assumed liability towards Ready Bank Ltd as surety for a debt of Tom, a supplier to the company. No meeting was called, and no shareholder approval given for this transaction.
- (ii) Grey (Pty) Ltd RF assumed liability towards Willing Bank Ltd as surety for a debt of Rick, an employee. A shareholder meeting was called and the minutes state that the transaction was approved by ordinary resolution. However, it has now transpired that some of the proxies allowed to vote at the meeting had not been properly appointed in accordance with the Companies Act.
- (iii) Grey (Pty) Ltd RF assumed liability towards Silver (Pty) Ltd, a subsidiary of Grey (Pty) Ltd RF, as surety for a debt of Harry, a supplier to Silver (Pty) Ltd. Silver (Pty) Ltd holds 2 per cent of the shares in Grey (Pty) Ltd RF. A shareholder meeting was called and the minutes state that the transaction was

approved by ordinary resolution. However, it has now transpired that some of the proxies allowed to vote at the meeting had not been properly appointed in accordance with the Companies Act.

Evaluate whether each of the suretyships are binding on Grey (Pty) Ltd (RF). Note that the provisions of sections 44 and 45 of the Companies Act on financial assistance are not relevant to this question.

(15)

(b)

Comment briefly but critically on the judicial application of principles of company representation in recent case law of the Supreme Court of Appeal and Constitutional Court.

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QUESTION 2

(a)

A Blue, the managing director of Purple (Pty) Ltd RF has suggested that the company should reduce the number of shareholders by eliminating shareholders who hold less than 5% of the ordinary shares. These shareholders are B Mauve, C Red, D Yellow, and E Green, who each holds 4% of the shares; F Green, who holds 3% of the shares, and H Green, who holds 1% of the shares. This proposal by A Blue is supported by three of the remaining four directors, but S Orange, a non-executive director of Purple (Pty) Ltd RF has voted against it. S Orange does not hold any shares in Purple (Pty) Ltd RF, but she was appointed as a director by E, F, and H Green in terms of the following provision in the memorandum of incorporation:

“All shareholders who are direct descendants of the founder of this company, Dr Z Green, will have the right to jointly appoint one director to the board. This provision may not be amended or removed from the company’s constitution unless it is approved by a formal resolution of all the ordinary shareholders of the company.”

S Orange knows that this proposal would simultaneously eliminate the three remaining direct descendants of Dr Z Green. She knows that A Blue has long had an issue with this appointment right in the memorandum, especially since the Green shareholders hold only a small portion of the shares.

While the descendants of Dr Z Green are intent on keeping their shares, most of the other small shareholders do not mind selling their shares at a good price.

- (i) Explain what procedure in the Companies Act of 2008 could be used by the board to compel the unwilling shareholders to sell or surrender their shares to the company and whether it could succeed.
- (ii) Advise the unwilling shareholders what protection exists in the Act to resist the use of this procedure by the board.
- (iii) Further advise the Green shareholders, as well as S Orange, which, if any, of the remedies provided by the Act to protect their rights can be used to prevent the plans of the board from being carried out.
- (iv) Evaluate whether A Blue and the other directors who support the proposal might be violating the standard of conduct expected of a director.

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TOTAL [50]