



**UNIVERSITY OF JOHANNESBURG  
KINGSWAY CAMPUS**

**FACULTY OF LAW**

**SUPPLEMENTARY EXAMINATION: JANUARY 2022**

**SUBJECT NAME: COMMERCIAL LAW 1B DURATION: 120 minutes**

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

**EXAMINERS: Mr Sershiv Reddy  
Mr Jentley Lenong  
Mr Cayle Lupton**

**MODERATOR: Prof Juanitta Calitz**

**THIS PAPER RUNS TO 5 (FIVE) PAGES**

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**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 Explain whether a primary offering of listed securities must be accompanied by a registered prospectus. (2)
- 1.2 Can a primary offer of securities to the public constitute an initial public offering? Provide a reason for your answer. (2)
- 1.3 Provide a definition for a legal trust (2)
- 1.4 Explain what a universal partnership is. (3)
- 1.5 What type of trust allows the trustee to trade with the assets? (1)

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<b>SUBTOTAL SECTION A</b>	<b>[10]</b>
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### SECTION B

#### QUESTION 1

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:

- 1.1 Which remedy in terms of the Companies Act 71 of 2008 is available to Resh in order to exit the company? (1)
- 1.2. Briefly define the remedy identified in 1.1. above. (3)
- 1.3 Explain to Resh the procedural steps that she must follow to exercise her rights in terms of the remedy mentioned in **1.1.** (8)

**A further 1 marks format**

**A further 1 marks for spelling and grammar.**

**[Subtotal 14 marks]**

**QUESTION 2**

Yash and Shreya wish to establish a Close Corporation as they have heard this is an easy business entity to use. They try and create a new Close Corporation but have been informed that they are not allowed to do so. They are upset by this information and come to you for advice.

2.1 Explain to Yash and Shreya whether they are able to use a Close Corporation as a business entity today. Explain your answer. (4)

2.2 If Yash and Shreya are able to become members of a Close Corporation, explain two circumstances will a court order be required so they cease to be a member of that close corporation? (4)

2.3 Explain whether Yash and Shreya may be held liable for the debts of the Close Corporation (4)

**[Subtotal 12 marks]**

**QUESTION 3**

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 does research as to which project he thinks will best benefit the company. He takes 2 months to come to a decision after going through each investors’ financial performance and how long they generally take to finish a project. The project will be over two years and the investors will provide money to implement the plan. Desmond chooses Dab Ltd for the project as he believes they will be the best company for this job and the project will bring more money for Big Joe Ltd. Dab Ltd has over 20 years of experience and has completed many business projects with big companies. Six months after the project has started, the project fails and Big Joe Ltd begins to lose out on the investment. This leads to the company losing about 80% of its market value, resulting in heavy financial loss. Kam, the company secretary, calls in Desmond as the director in charge of the project to explain his actions in

appointing Dab Ltd on the project. Desmond is frustrated and comes to you for legal advice.

**In particular, advise Desmond on the following:**

- 3.1 What duty does Desmond owe to Big Joe Ltd as a director of the company? (1)
- 3.2 Explain what this duty entails (3)
- 3.3 Explain whether Desmond will be found to breach this duty by applying the facts to your answer (8)
- 3.4 For this question only, what would happen if Desmond should be found guilty of breaching his fiduciary and explain how this will affect his position as a director. (5)

**Subtotal [17]**

#### **QUESTION 4**

Ahmed and Moira are directors in Coaching Ltd. The company has performed well in the financial year and wishes to appoint a new director that would help the company achieve its targets of providing educational training to staff members in educational institutions. The company's target is to train 100 staff members per week. They advertise the post over social media and in the newspaper. Thulane is 16 years old and wishes to apply for the position as a director in Coaching Ltd.

Answer the following questions:

- 4.1 Will Thulane be able to be appointed as a director in Coaching Ltd? Briefly give reasons for your answer. (3)
- 4.2 Should Thulane be appointed as a director of the company and he fails to reach the company's weekly targets because he is too lazy and the shareholder's wish to remove him from being a director, explain the process of his removal by the shareholders. Marks awarded for application. (10)

- 4.3 Instead of being removed as a director, advise Thulane whether he could be placed on probation. (4)

**[Subtotal 17 marks]**

**QUESTION 5**

Penny, Bernadette and Amy are partners in a CheeseCake factory. Penny provides the ingredients for the cheesecakes, Bernadette bakes them and Amy contributes R20 000 to the partnership. At the beginning of the partnership, Penny, Bernadette and Amy agree that Amy will operate as a silent partner and will never be liable for any losses beyond her fixed contribution.

Answer the following questions:

- 5.1 Explain what type of partnership Penny, Bernadette and Amy have entered into. (4)
- 5.2 Advise the partners why the partnership will come to an end should one partner leave. (3)
- 5.3 What is the effect of a valid and authorised contract that Penny will enter into on behalf of the partnership? (3)

**Subtotal 10**

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<b>SUBTOTAL SECTION B</b>	<b>[70]</b>
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<b>GRAND TOTAL</b>	<b>[80]</b>
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