



**UNIVERSITY OF JOHANNESBURG  
KINGSWAY CAMPUS**

**FACULTY OF LAW**

**FINAL EXAMINATION: 12 NOVEMBER 2018**

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

**SUBJECT CODE: KMR1B21 MARKS: 70  
COL41B1**

**EXAMINERS:** Mr Siyambonga Heleba  
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**MODERATOR: Prof Juanitta Calitz**

THIS PAPER RUNS TO 4 (FOUR) 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 Distinguish between a testamentary trust and an *inter vivos* trust. (4)
- 1.2 Provide a definition of the term 'prospectus'. (3)
- 1.3 Identify two circumstances under which a director may be placed under probation. (3)
- 1.4 What is meant by being "ineligible" to be director of a company and provide two examples of who is ineligible to be director? (3)
- 1.5 Distinguish between an executive and non-executive director (4)
- 1.6 Identify two differences between the duties of a manager and that of a director. (4)
- 1.7 Discuss the legal status of Close Corporations under the Companies Act 71 of 2008. (4)
- 1.8 Define a universal partnership. (2)
- 1.9 Identify the three (3) types of fundamental transactions under the Companies Act 71 of 2008. (3)
- 1.10 Under which circumstances will a court order that a person ceases to be a member of a close corporation? (3)

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**SUB-TOTAL**

**[33]**

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## **SECTION B**

### **QUESTION 1**

Tinashe is the Chief Executive Officer (the “CEO”) of Lengomso Holdings Ltd. Tinashe, whilst acting as a director of Lengomso Holdings Ltd, grossly abused his position of director. According to the company’s financial statements Lengomso Holdings has been generating good profit consistently for the past 10 years. As a result of this impressive performance, the company has attracted substantial investments from a range of institutional investors including pension funds and state own companies. However, a recent of audit by new external auditors reveals that the company has in fact been artificially inflating profits by 20% for the past 6 years with the knowledge of the CEO. The consequences of this revelation leads to the company losing about 80% of its market value, resulting in heavy financial loses for the investors. Because of a very close relationship with the employees, Tinashe claims that he was not aware of the artificial inflating of profits. However, Billy, a trade union representative, is appalled by the actions of Tinashe. He wants to action against Tinashe on behalf of the company’s employees. The company informs Billy that he has no right to demand the removal of the CEO. Billy is frustrated and comes to you for legal advice.

In particular, advise Billy on the following:

- 1.1 What application may be brought by Billy in court, as a trade union representative? (2)
- 1.2 Whether the application mentioned in **1.1** above has any chance of success? (5)
- 1.3 Explain the effect of the court order on his position as director mentioned in 1.1.? (2)

**[Subtotal 9 marks]**

## QUESTION 2

Greenfields Ltd and Redrunners Ltd are seeking to merge their two companies into a new company called Purple Pitch Ltd. Jane, a shareholder of Greenfields Ltd, is unhappy with the proposed merger of the two companies because the production techniques of Redrunners Ltd are not environmentally friendly. Jane is a well-known environmental activist and does not want to associate herself with the practices of Redrunners Ltd. Jane approaches you for advice.

Write a **letter** to Jane in which you confirm the following:

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

**A further 2 marks format**

**A further 2 marks for spelling and grammar.**

**[Subtotal 17 marks]**

## QUESTION 3

Amanda and Senzo are old friends from varsity and live in Qunu, in the Eastern Cape. They have heard of government's plan to build a dam in their community as part of government's rural development strategy. Amanda has experience in book-keeping, given her accountancy background, while Senzo has digging equipment. They would like to work together on this project only and go separate ways once the project is completed. Amanda and Senzo would like to establish a formal working relationship but are not sure how to go about it.

Advise Amanda and Senzo on the following:

3.1 What is the most appropriate business vehicle for them to use in this instance? Also state the specific name (type) of the business vehicle mentioned. (2)

3.2 Further advise Amanda and Senzo what features their working relationship must have in order to be legally recognised as the business vehicle mentioned in 1.1. (5)

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<b>TOTAL</b>	<b>[11]</b>
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<b>GRAND TOTAL</b>	<b>[70]</b>
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