
Answers

Section B

- 1 (a) The learner driver failed to stop at a stop sign and under normal circumstances, this would indicate negligence, or *culpa*, which must be proved in order to establish liability. An accomplished and licensed driver would be expected to exhibit more care and attention when approaching a stop sign.

In light of the fact that John was a learner driver taking his first lessons in driving, the standard of care which is applied to him is that of a trainee driver taking his first lessons in driving.

Andrew the driving instructor was grossly negligent in not properly supervising the trainee driver. A reasonable driving instructor would not have fallen asleep whilst supervising a trainee driver.

He or she would have foreseen the possibility of harm being occasioned to the plaintiff, if their trainee driver was not properly supervised. *Peattie and Others v Clan Syndicate* (1984) and *Mills v Farmery* (1989).

Finally the driving school, Quick Licence Driving School, is vicariously liable for the delicts of its employee. In *Gwande v Matonhodze & Another* (2002), the court noted that the position of Zimbabwean law is that an employer is liable for the delicts of their employee committed in the course of their duty or service.

- (b) Since the brakes of Dennis's car were defective and as a result the damages became more, it is a case of contributory negligence on his part.

Zimbabwean law requires that in cases involving contributory negligence damages are to be reduced to an extent deemed just and equitable if the fault of the claimant contributed to their damages, *Koen v Keates* (1989).

Therefore Dennis can only recover damages up to 50% of the total cost.

- 2 (a) The articles (and the memorandum) when registered bind the company and its members as if they have been executed under seal by the members and the members had agreed to observe them. In other words, once the articles are registered, each member is bound to the company and each member is bound to the other members. However, neither the company nor the members are bound to outsiders.

- (b) The articles can be altered by the company by a special resolution at a general meeting, i.e. a resolution passed by a three quarters majority of those present in person or by proxy and entitled to vote at a meeting of which at least 21 days' notice has been given specifying the intention to propose the resolution 'as a special resolution'.

- (c) Where the articles are amended and they exceed the memorandum or introduce an illegality, they would be ultra vires the memorandum. In other words that amendment would be void and of no force or effect.

- 3 (a) For Mukaka Bottles (Pvt) Ltd to be able to facilitate the purchase of 5,000 qualification shares by the new director, the company needed to give him a loan for the purchase of its own shares in terms of s.73.

The prohibition against the provision of financial assistance for the purchase of a company's own shares is embedded in the law. Historically the object was to prevent the diminution or reduction of a company's capital in an illegal way (s.73).

For the company to be able to lawfully provide financial assistance for the purchase of its own shares, a special resolution should be passed to that effect. It must also be clear that the company's assets exceed its liabilities and it is in a financial position to provide the said assistance.

- (b) Since the shares were sold at a profit of \$100,000, this amount should be credited to the share premium account in terms of Section 74. The law strictly lays down the limited uses to which the share premium account can be applied.

- 4 (a) It is important to note that directors owe several duties to the company both at common law and in terms of the Companies Act, Chapter 24:03. Directors owe their duties to the company and not to individual shareholders. Directors must act *bona fide* in the interests of the company and must not exercise their powers for any collateral purpose. A director who by use of their position makes a secret profit is liable to account for that profit. It is often said that directors owe a duty of utmost good faith to the company. In addition, a director must exercise reasonable care and such skill as might be reasonably be expected of a person of their knowledge and experience.

There are numerous provisions of the Companies Act, Chapter 24:03 which it is the duty of directors to carry out and they may be liable to penalties if they fail to perform them. Among these duties they must:

1. See that proper accounts are kept.
2. Keep a register of members, directors and secretary.
3. Call an annual general meeting every year within the proper time.
4. Send to the Registrar copies of special resolutions.
5. Keep a register of mortgages and charges, etc.

- (b) Alice breached the law by not disclosing her personal interest in the management firm, Sharp Skills (Pvt) Ltd. Where a director (Alice in this case) finds herself in a position where her duty to the company and her personal interests conflict, any contract concerned is voidable at the instance of the company (*Aberdeen Railway Company v Blackie Brothers* (1854)).

Section 186 of the Companies Act, Chapter 24:03 states that:

'it shall be the duty of a director of a company who is in any way whether directly or indirectly interested in a contract or proposed contract with the company to declare the nature and full extent of his interest at a meeting of the directors of the company.'

Since Alice did not disclose her interest in the contract in terms of the law, the contract can be rescinded at the behest of Human Capital (Pvt) Ltd.

- 5 (a)** Insider dealing involves information which relates to the securities themselves or to the state of the company which issued them. The information must be specific and precise and in addition the information must not be in the public domain. If the information had been made public, it would likely have a significant effect on the price of the securities, for example, falling or rising profits or decisions to pay a higher dividend than expected or a lower one or no dividend at all.
- (b)** In order to be guilty of the offence of insider dealing, the individual concerned must be an insider or alternatively the person must have the information and must know that they have it from an inside source. A person would have information from an inside source if they had the information through being a director, employee or shareholder of a company or by having access to it by reason of employment, e.g. as an auditor of the company.

In light of the developments at First Allied Financial Services Limited, Christine is guilty of insider dealing because at the time she made the decision to sell her shares, she knew that the company was in danger of making heavy losses.

Emma sold her shares in the course of normal trading and the looming crisis was unknown to her and therefore she is not guilty of insider trading.

Section A

1–45 One or two marks per question. Total marks 70.

Section B

- 1** (a) 3–4 marks A good answer which clearly defines the liability of all the parties involved.
1–2 marks An average answer.
- (b) 1–2 marks A correct answer which identifies the contributory negligence of Dennis.
- 2** (a) 2 marks An accurate answer.
- (b) 2 marks An accurate answer.
- (c) 2 marks An accurate answer.
- 3** (a) 3–4 marks The answer would show that a special resolution is needed in terms of s.73 Companies Act (Chapter 24:03) to enable the company to provide financial assistance for the purchase of its own shares.
1–2 marks An average answer.
- (b) 1–2 marks A correct answer would identify the need to assign the profit to the share premium account.
- 4** (a) 2–3 marks A good answer which outlines the duties of a director.
1 mark An average answer.
- (b) 2–3 marks A good answer which outlines the duties of a director.
1 mark An average answer.
- 5** (a) 2 marks An accurate answer.
- (b) 3–4 marks Correct answer shows that Christine is liable for insider dealing and Emma is not.
1–2 marks An average answer.