

Fundamentals Level – Skills Module

Corporate and Business Law (South Africa)

Monday 8 June 2015



Time allowed: 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and MUST be attempted

Section B – ALL FIVE questions are compulsory and MUST be attempted

Do NOT open this paper until instructed by the supervisor.

You must NOT write in your answer booklet until instructed by the supervisor.

Do NOT record any of your answers on the exam paper.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (ZAF)

ACCA

Section B – ALL FIVE questions are compulsory and MUST be attempted

Please write your answers to all parts of these questions on the lined pages within the Candidate Answer Booklet.

- 1 Andre, Benjamin and Christine are three friends who wish to start their own catering company. While out driving, Andre finds the perfect office building. He wishes to purchase this building on behalf of the proposed company. Andre is, however, unsure about how he will be able to conclude a lease agreement for the office buildings as the catering company is not yet incorporated.

Required:

(a) **State and explain the option available to Andre under the Companies Act 2008, which will enable him to conclude the lease agreement.** (4 marks)

(b) **Explain whether Andre will be personally liable for any pre-incorporation contract.** (2 marks)

(6 marks)

- 2 Dana is the owner of a dental practice in Pretoria. She agreed to purchase a teeth whitening machine from Edwin and signed the contract without reading its terms. The contract contained an exclusion clause excluding liability for all kinds of defects in the machine. The machine proved to be totally defective. Dana purported to terminate the contract and also maintains that the contract is in conflict with the previous oral agreement between her and Edwin.

Required:

(a) **Explain whether Dana will be able to terminate the agreement in terms of the common law.** (4 marks)

(b) **Explain the parol evidence rule.** (2 marks)

(6 marks)

- 3 MM Coal Mines (Pty) Ltd is involved in the mining of coal in Limpopo. The mining resulted in underground water being polluted. The Minister of Water Affairs required that the company should supply information on the mining activities. The company failed to comply with this request and the minister obtained a court order ordering compliance. Despite this, the directors still fail to comply with the order. They are now facing an application for contempt of court. Subsequently, the directors have been advised by their legal counsel to all resign simultaneously. Eddie, one of the directors, is extremely concerned about the possibility of potential breach of his fiduciary duties and has sought independent legal advice.

Required:

(a) **Explain the meaning of ‘fiduciary’ in the context of directors’ duties.** (2 marks)

(b) **Explain whether or not the potential resignation of Eddie will result in a breach of his fiduciary duties as a director.** (4 marks)

(6 marks)

- 4 Gugu wants to buy shares in an information technology (IT) company. She does not have the necessary funds available to purchase the shares. She then offers to sell some computers to the company. She will use that money to purchase the shares. The company buys her computers at a value of R120,000, despite having recently bought 50 new computers and therefore not needing any more computers.

Required:

- (a) **State the meaning of 'financial assistance' as provided for in the Companies Act 2008.** (2 marks)
- (b) **Explain whether or not the directors of the IT company will be held liable for contravening the section on the prohibition of financial assistance in the Companies Act 2008.** (4 marks)

(6 marks)

- 5 Good Food (Pty) Ltd is a company which owns an upmarket restaurant. The business was never particularly successful and has never made a profit on which to declare dividends. Its directors, Joshua and Kris, have been ordering meat and other supplies on credit from Food Supplies Ltd for a long time. Joshua and Kris have been aware that Good Food (Pty) Ltd has been making huge losses but they nevertheless have persisted in living extravagant lifestyles and paying themselves excessive salaries. Two weeks before Good Food (Pty) Ltd was finally placed into liquidation, the company ordered goods and meat to the value of R50,000 on credit.

Required:

- (a) **Explain whether or not Joshua and Kris will be held liable under s.424 Companies Act 1973 for fraudulent and reckless trading.** (4 marks)
- (b) **Explain the consequences of a company trading in terms of the prohibited conduct in s.22 Companies Act 2008.** (2 marks)

(6 marks)

End of Question Paper