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NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL. B FINAL EXAMINATIONS
L582: LAW OF BUSINESS ASSOCIATIONS

MAY 2017

MARKS 100

TIME 3 HOURS

INSTRUCTIONS

1. Answer (4) FOUR questions.
2. All questions carry equal marks.
3. Answer each question on a fresh page.

QUESTION 1

Big Boss is a public company in the mining industry in Lesotho. Big Boss wishes to have the company listed on the Maseru Securities Market. In the prospectus, the company stated that, " the company has discovered a booming market in the European Union member countries for its minerals."

Big Boss has never marketed its minerals in the European Union member countries.

Teboho one of the directors has even suggested that the company should include in the prospectus an audited financial statement of the past year as the company made a profit then. The company is currently running at a loss.

As the board secretary advise the board on the following:

- a) The provisions of the Companies Act No 18 of 2011 and the Capital Markets Regulations of 2014 on the contents of a prospectus.

15 Marks

- b) The legal consequences on both the company and its directors for publishing untrue statements in a prospectus.

10 Marks

[25 MARKS]

QUESTION 2

- a) Discuss the doctrine of "capital maintenance" and its importance regarding the regulation of companies

10 Marks

- b) Discuss the provisions of the Companies Act No 18 of 2011 on capital maintenance.

10 Marks

- c) Explain the importance of the solvency test in the maintenance of a company's capital.

5 Marks

[25 MARKS]

QUESTION 3

Atang, Neo and Puleng are directors and shareholders in a successful project management company. After incorporation, the company was successful but no dividends were paid as all the profits were ploughed back into the company.

In 2016 Neo had an argument with Atang and Puleng over matters of management of the company. After this argument, Atang and Puleng made all the business decisions in advance and outvoted Neo at all the directors' meetings.

Recently, Atang and Puleng have voted to remove Neo as a director at a general meeting and have also voted to distribute the profits by increasing the directors' salaries to M100,000 per annum and excluding Neo in this distribution.

Advise Neo on his rights and remedies.

[25 MARKS]

QUESTION 4

Discuss each of the following:

- a) The principle laid down in **Salomon v Salomon and Co Ltd [1897] AC 22** that a company is a legal persona in its own right and the manner in which the principle was applied in that case.

15 Marks

- b) The different types of meetings as provided for under the Companies Act of 2011.

10 Marks

[25 MARKS]

QUESTION 5

- a) Critically discuss the enforceability of Pre-incorporation contracts under the common law and The Companies Act No 18 of 2011.

15 Marks

- b) Discuss the liability of promoters under the Common law and the Companies Act No 18 of 2011.

10 Marks

[25 MARKS]

QUESTION 6

Thabo and Thabang run an auditing firm south of Maseru. When they started their business, they verbally agreed to share their profits equally. Nothing was reduced to writing at that stage. After one year of trading, Thabo and Thabang decided to legitimise their business that is get a traders license and registering with tax authorities. During the process of registration, the tax authorities urged Thabo and Thabang to sign an agreement containing the terms of their firm. They duly complied, but this was never registered in terms of appropriate laws of Lesotho. After five years of running the business together, Thabo and Thabang fought over a girl. As a result of their fight, their business deteriorated.

Thabo then re-registered the auditing firm as a company in which he was the shareholder. When the registration process was completed, Thabo wrote a letter to Thabang informing him that he is dismissed with immediate effect.

Thabang has approached you for advice claiming that he is a partner and not an employee, and that Thabo has no right to dismiss him.

You are required to advise Thabang.

[25 MARKS]