

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B FINAL EXAMINATIONS

L 582-LAW OF BUSINESS ASSOCIATIONS

MAY, 2018

MARKS: 100

TIME: 3HRS

INSTRUCTIONS:

1. Answer any **FOUR** (4) questions.
2. All questions carry equal marks.
3. Underline decided cases that you refer to in support of your arguments.

QUESTION 1

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 legitimize their business i.e. get a traders license and register with the tax authorities. During the process of registration, the tax authorities urged Thabo and Thabang to sign an agreement containing the terms of their partnership. They duly complied, but this was never registered in terms of the 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 relationship deteriorated. Thabo then re-registered the auditing firm as a company in which he was the sole 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. His argument is that he is a partner not an employee and as such, Thabo has no right to dismiss him.

Advise Thabang.

[25 Marks]

QUESTION 2

Thabo, Thabiso, Lineo, 'Mathabo, Lesholu and Nthatisi wish to set up a Greek restaurant business called 'Zorbas'. They enter into an oral agreement in terms of which it is agreed that:

- I. Thabo will be the head chef of the restaurant, and will be entitled to 20% of the profits of the business;
- II. Thabiso will be the manager and restaurant host, and will be entitled to 20% of the profits of the business. Thabiso will not share the net losses of the business;

- III. Lineo will allow use of her property, rent-free, as business premises and will receive salary of M 10, 000.00 per month for accounting services rendered to the partnership;
- IV. 'Mathabo will finance the business by contributing an amount of M 100, 000.00 but will not participate in the management of the business. She will receive 30% of the profits of the business and her liabilities to the debts of the business will only be limited to M 100, 000.00;
- V. Lesholu will loan an amount to the tune of M 500, 000.00 to the partnership which is repayable with interest in the form of 10% of the business profits; and
- VI. Nthatisi will be the head waitress of the restaurant and will be remunerated at a rate of M 7, 000.00 per month.

- a) Has a valid partnership agreement been established, and if so, between which parties? 5 Marks
- b) Assume that a partnership has been formed. Thabo, without informing his partners or obtaining their consent, enters into an agreement with Xing Long (Pty) Ltd for the purchase of new restaurant furniture and signs the agreement of sale Thabo on behalf of Zorbas. Discuss whether the partnership will be bound by the agreement 5 Marks
- c) Would your answer to (b) above differ if the partners had discussed whether they should purchase new restaurant furniture and the other partners disapproved the idea and instructed Thabo not to do so? Explain your answer. 5 Marks
- d) Zorbas fails to pay Xing Long (Pty) Ltd the purchase price of M 200, 000.00. Xing Long (Pty) Ltd wishes to institute an action for payment of this amount. Advise Xing Long (Pty) Ltd whether legal proceedings may be instituted against the partnership in its own name or whether the legal proceedings must be instituted against the partners. (5 Marks)
- e) Lesholu eventually goes insolvent; explain the consequences of his insolvency. 5 Marks

[25 Marks]

Question 3

Maatla (Pty) Ltd is a company duly incorporated in terms of the laws of Lesotho. Mahlatsi and Garland are two of the three directors of Maatla (Pty) Ltd. Both these directors incorporate Matla-a-Letsatsi (Pty) Ltd which directly competes with Maatla. At times, they divert funds and/or business of Maatla to Matla-a-Letsatsi.

Phoka, who is also a minority shareholder of Maatla (Pty) Ltd and also a director is not happy with the way Maatla's business is being conducted. He has now approached you for assistance.

Advise Phoka. Your advice should show whether Phoka has a cause of action.

[25 Marks]

Question 4

Critically discuss the following statement:

The courts did not have a general discretion to disregard a company's separate legal personality whenever they considered it just or convenient to do so, they did not lightly disregard a company's separate legal personality, but strove to give effect to it. However, where...other policy consideration came into play...the need to preserve the separate legal personality of a company had to be balanced against policy considerations favoring the piercing of the corporate veil.

Die Dros (Pty) Ltd & Another v Telefon Beverages CC 2003 (4) SA 207.

[25 Marks]

Question 5

Write short notes on the following:

- | | |
|-----------------------------|---------|
| a) Share capital | 5 Marks |
| b) Authorised share capital | 5 Marks |
| c) Issued share capital | 5 Marks |
| d) Preference shares | 5 Marks |
| e) Redeemable shares | 5 Marks |

[25 Marks]

QUESTION 6

With the aid of decided cases, critically examine the fiduciary duties of the company directors.

[25 Marks]

END