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NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

PGD IN LABOUR LAW (CONCILIATION AND ARBITRATION)

FINAL EXAMINATIONS

LPD 109-3 - BOARD GOVERNANCE

MAY 2018

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

1. Answer **FOUR (4)** questions in all.
2. All questions carry equal marks.

QUESTION 1

Likotsi Ltd is a recently established company where two shareholders/directors have set up a biotechnology business. The company forecasts high growth prospects and is managed by an experienced and ambitious team who are capable of turning their business plan into reality. Ms Meharo, an employee of Phaphamang Capital, provider of venture capital funds to this biotechnology start-up, has been invited to sit on the Board of Directors of Likotsi Ltd.

Advise Ms Meharo on the following issues:

- (a) Ms Meharo is concerned that the company's affairs are being handled in a relatively informal manner. She has asked for advice on her position as a non-executive director (NED) given that Joe Soap and Joe Bloggs are the executive directors of Likotsi Ltd? **10 marks**

- (b) Ms Meharo asks you to list and summarise the common law fiduciary duties of directors? **10 Marks**

- (c) Ms Meharo has heard that company directors occasionally use company assets for personal purposes unrelated to the company's business. Briefly explain why some of these transactions are legally prohibited and for the benefit of whom? **5 Marks**

[25 MARKS]

QUESTION 2

In his book *Meetings and Secretarial Practice in South Africa*, F.C. Collier at page 14 says:

It may be said, indeed, that by vesting the chairmanship in their appointee, the members give him the whole of regulating themselves

as individuals. But that is not to say that a chairman may pluck powers from the air. He is not the meeting, but its legislator, as it were, and since even legislation may be held to be *ultra vires*, so also may a chairman erroneously claim powers which he does not possess. ... Only if the meeting, by voting, gives the chairman power to adjourn may he do so in the name of the meeting. Such power is properly implied when a meeting has become so unruly as to cease to be a meeting. It is, indeed, doubtful if even a majority may effectively resolve to adjourn unless it can be proved that adjournment was in the best interests of the meeting (*Catesby v. Burnett*, 1916). When a meeting is in fact improperly adjourned even with the consent of the majority, the result may be to permit the business being validly carried on by the minority, if such minority constitutes a quorum and properly elects a chairman. It has, however, been held in *National Dwellings Society v. Sykes*, 1894, that where a meeting has the power of adjournment, a majority vote is sufficient to exercise that power.

Discuss the common law powers of a chairman.

[25 MARKS]

QUESTION 3

A secretary owes duties to an association which are based in common law. A secretary would be regarded in common law as having fiduciary duties to the association. "Fiduciary duties" is a term used by the law to describe the duties where one person is bound to exercise rights and powers in good faith for the benefit of another.

Discuss the common law powers and duties of a secretary.

[25 MARKS]

QUESTION 4

Discuss the influence of the Australian Model of Corporate Governance: - the purpose of the principles and recommendations of the ASX [25 MARKS]

QUESTION 5

Combining the board responsibilities and roles produces a matrix which defines the work of the Board.

Discuss the responsibilities and roles of the boards [25 MARKS]

QUESTION 6

The solid foundation of any successful company is its people. Employees represent a source of knowledge and ideas, but oftentimes that resource remains untapped. Involving employees in the decision-making process not only empowers them to contribute to the success of an organization, but also saves the company time and money, in increased productivity and reduced outsourcing.

Discuss the theories that underlie employee participation in decision-making (PDM). [25 MARKS]