

NATIONAL UNIVERSITY OF LESOTHO

FACULTY OF LAW

LL.B. EXAMINATION

L582 – LAW OF BUSINESS ASSOCIATIONS

JUNE 2023

100 MARKS

3 HOURS

Instructions:

1. Answer any **FOUR (4)** questions.
 2. Refer to relevant statutory provisions and case law where applicable.
 3. All answers must be numbered correctly.
 4. Indicate the number of answer booklets submitted in front of the answer booklet.
 5. It is in the candidate's interest to write legibly.
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Question 1

- (a) Smart Steelmakers Ltd is a public company, which is duly registered and doing business in Lesotho. It is a construction company whose registered address is in Maseru. It commenced trading in 2001 as a private limited liability company, which converted into a public company in 2013. It was registered on the Maseru Stock Exchange in February 2014 after launching a successful Initial Public Offer (IPO) to the investing public. Between 2014 and 2019, the company only made modest profits and did not declare a dividend. However, for the 2022 financial year, the company made M100 million profit (after tax) and the Board of Directors decided to put aside M70 million to boost reserves and M30 million for dividends. The majority of the shareholders were extremely unhappy over this development. At the Annual General Meeting that was held on 23 May 2023, the majority shareholders decided to reallocate half of the profits (M50 million) towards dividends and the other half (M50 million) towards the company's reserves.

Advise the Board of Directors on the legality of the shareholders' resolution to increase the dividend amount.

(15 Marks)

- (b) In relation to the law of partnership, explain the differences between a limited partnership and an unlimited partnership.

(10 Marks)

[25 MARKS]

Question 2

- (a) Distinguish between a share and a debenture. (10 Marks)

(b) Discuss any three (3) principles governing the business of Cooperatives in Lesotho and their significance.

(15 Marks)

[25 MARKS]

Question 3

(a) Examine the importance of the rule in *Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189 and its exceptions, and show how it protects the rights of shareholders in Lesotho.

(10 Marks)

(b) Discuss any three (3) characteristics of a partnership business.

(15 Marks)

[25 MARKS]

Question 4

The *Companies Act* 18 of 2011 and the *Insolvency Act* 9 of 2022 introduced a number of important new concepts and far-reaching changes to company law in Lesotho.

Discuss any five (5) of the changes that were brought into effect. In the course of your answer, show how the identified changes enhance the ease of doing business and the potential to attract foreign investors.

[25 MARKS]

Question 5

On 10 March 2020, John Brown and his four associates decided to establish a public company. John Brown was the promoter. After the company, Sunshine Mines Ltd, was

incorporated and obtained a certificate of incorporation, it also secured a licence to commence business in its line of trade in accordance with the laws of Lesotho. A prospectus was issued shortly after incorporation inviting members of the public to subscribe for the shares of the company. The prospectus listed John Brown and his four associates as the directors of the company, and stated that the company had discovered vast deposits of platinum deposits in Quthing district. This was confirmed by John Brown and his four associates on national TV and Radio on 21 October 2022. As a result, the cheapest class of shares of the company started trading at M15 500 per share. On 22 October 2022, Mr Cele bought 5,000 shares through a stockbroking firm. A few weeks later, however, it was confirmed that Sunshine Mines Ltd had not discovered platinum but iron ore and coal. The directors of the company issued a passionate public apology. Regardless of the apology, the value of the shares of Sunshine Mines Ltd dropped. The cheapest class of shares dropped in value, from M15 500 to M2 000 per share. Mr Cele and other shareholders had a deep sense of grievance.

The company convened an extraordinary meeting to discuss the new development. In the course of the deliberations, it also turns out that in 2012, John Brown was removed, by the High Court of Lesotho, from the position of a liquidator of Star Ltd, a company that was financially distressed and in the process of liquidation. The allegations against John Brown were that he failed to account, fully, the money he received from the company's debtors. Mr Cele and other shareholders approached you for legal insights.

With reference to relevant statutory provisions and/or case law, explain whether:

(a) John Brown and his associates were liable for misstatements in the prospectus.

(15 Marks)

(b) John Brown was eligible to spearhead the process to establish Sunshine Mines Ltd and to be a director of the company?

(10 Marks)

[25 MARKS]

Question 6

(a) Identify and discuss the modes of commencing business rescue proceedings in terms of the *Insolvency Act 9 of 2022* and their effectiveness.

(10 Marks)

(b) In the tradition of their founders, cooperative members believe in ethical values, which underpin the success of any cooperative society. Over the years, the ethical values were developed and also transplanted into the legal regime governing cooperative societies in Lesotho.

Identify any three (3) ethical values that are required for a successful cooperative society and explain how they contribute to transforming cooperative societies in Lesotho.

(15 Marks)

[25 MARKS]