

NATIONAL UNIVERSITY OF LESOTHO
LL. B DEGREE SUPPLEMENTARY EXAMINATIONS
L582- LAW OF BUSINESS ASSOCIATION

TIME: THREE HOURS

MARKS 100

JULY 2009

Instructions: Answer **ANY FOUR** questions. All questions carry equal marks.

QUESTION ONE

“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 favouring the piercing of the corporate veil.” *Die Dros (Pty) Lty & Anor. v Telefon Beveraves CC 2003 (4) SA 207.*

Discuss.

25 Marks

QUESTION TWO

Kelubo, Thabo and Lepate have been involved in a joint business venture for a number of years under the name and style of KTL Enterprises. They contributed their individual assets and were running the business like a joint estate. The business witnessed rapid growth. To meet the demands of their ever increasing customers, they borrowed a large sum of money from the bank secured with their business assets. In recent times, the business is undergoing a recession as demands have drastically diminished. The business is unable to raise sufficient funds for the repayment of the loan from the bank which is now due. The bank is threatening to initiate legal action against Kelubo, Thabo and Lepate to recover its money. For the first time, they realized that all that they have worked for over the years, including their personal assets could be lost if the bank’s threat is perfected. They have resolved that in future their personal assets must be shielded from the business assets. However, as laymen, they are ignorant of how to realize this goal. They have accordingly consulted you as their solicitor for advice.

Advise them on what to do and how to accomplish it.

25 marks

QUESTION THREE

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

25 Marks

QUESTION FOUR

“When I find a man who is bound to devote the whole of his time to the affairs of the company, to do all in his power to develop and extend the business of the company, not to

engage in any other business and who is engaged on the terms that his employment may be determined by the company by notice in writing, I find it impossible to say that he is not employed by the company". *Per Cohen J in Trussed Steel Concrete Co. v Green (1946) 1 Ch 115.*

To what extent does this assertion reflect the status of company directors?

25 Marks

QUESTION FIVE

L and M have been good friends and course mates in the University. Upon their graduation, they decided to float a law firm known as L&M Associates sharing profits and losses equally between them. The firm grew in popularity and has so much clientele. In the course of time the firm went into estate management and has a good number of property under its control. L who was a spinster got married and informed M that she could no longer run the firm with her as she was relocating to another city with her husband. M continued to run the firm in the firm's name. After the departure of L, the firm's clientele started dwindling as her good public relations had attracted so much goodwill to the firm. M came under financial pressure and on one occasion realized a substantial sum of money from a choice property belonging to Ntate H and misappropriated part of the money.

Ntate H instituted a legal action against L and M. L filed an objection for misjoinder as she is no longer part of the firm. M filed a counterclaim for an unpaid solicitor's fee for services previously rendered to Ntate H.

Discuss the legal issues involved.

25 marks