



**HERBERT CHITEPO SCHOOL OF LAW AND BUSINESS
SCIENCE**

DEPARTMENT OF MANAGEMENT AND HOSPITALITY

MAIN EXAMINATION

BACHELOR OF COMMERCE	PART 2 SEMESTER 1
COURSE	CORPORATE LAW AND PRACTISE
CODE	HBM218
DATE	2024
DURATION	3 HOURS

GREAT ZIMBABWE UNIVERSITY
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**AUTHORISED MATERIALS: UNANNOTATED COPY OF THE
COMPANIES AND OTHER BUSINESS ENTITIES ACT (CHAPTER 24:31)**

INSTRUCTIONS TO CANDIDATES

- 1. THE PAPER COMPRISES 5 QUESTIONS.**
- 2. YOU ARE REQUIRED TO ANSWER ANY FOUR QUESTIONS.**
- 3. BEGIN THE ANSWER TO EACH QUESTION ON A FRESH PAGE OF THE ANSWER BOOKLET.**
- 4. CANDIDATES WILL OBTAIN CREDIT FOR CITING RELEVANT CASES AND SECTIONS OF THE ACT.**

1.1 With reference to the Companies and Other Business Entities Act and case law, discuss circumstances under which the Registrar of Companies may refuse to register the proposed name of a company. [10 Marks]

1.2 Discuss the concept of limited liability in company law. [10 Marks]

1.3 What are the advantages under the Companies and Other Business Entities Act (Chapter 24:31) of operating a business through a private company instead of a public one. [5 Marks]

Total Marks 25

2.1 Malilangwe (Pty) Ltd (the company) specialises in providing game management and veld rehabilitation services. The company's registered office is situated in Chiredzi, Masvingo Province. John, Sarah, Vusi and Aubrey are the directors of the company. To ensure that the company does not deviate from its core business of providing game management and veld rehabilitation services, the following clauses were inserted into the company's Memorandum of Incorporation:

“Capacity

- *The company may not participate in any trade or transactions other than for purposes of the provision of game management and veld rehabilitation services.*
- *The company may not enter any transaction for the purchase or sale of immovable property outside the borders of the Masvingo province.”*

While on holiday in Bulawayo, Sarah spotted a holiday flat for sale and thought it would be a great investment for the company. Without the knowledge of the shareholders and directors, Sarah immediately arranged an appointment with the owner of the holiday flat, Tayob, and concluded an agreement for the purchase of the holiday flat at a price of R1 000 000 on behalf of the company. The shareholders and the other directors object to the transaction.

2.1 Advise the board of directors whether Independent Game Services (Pty) Ltd can escape liability for performance in terms of the contract concluded by Sarah and Tayob on the ground that the transaction falls beyond the capacity of the company. [6 Marks]

2.2 Explain whether Independent Game Services (Pty) Ltd and its shareholders would be able to hold Sarah personally liable, on any basis, for the conclusion of the contract. [6 Marks]

2.3 Discuss the relevant section of the Companies and Other Business Entities Act that appears to be a codification of the common-law Turquand rule and highlight the similarities and the differences between the provisions of that particular section and the common-law Turquand rule. [8 Marks]

2.4 Describe a shadow director and whether he can be held liable for breach of fiduciary duties. [5 Marks]

[Total Marks 25]

3.1 Chris, Barbara and Tumo are directors of Zero Degrees (Pty) Ltd. Chris is regarded as a savvy businessman, whose sharp negotiation skills have earned the company good profits since the company was incorporated ten years ago. Chris is approached by Ben, a director of Ninety Nine Degrees (Pty) ltd to make his negotiation skills available on a government contract that promises to yield substantial profits for Ninety Nine Degrees (Pty) ltd and to Chris in his personal capacity. Zero Degrees (Pty) Ltd has also made a bid on the contract. Chris agrees, and proceeds to render his services to Ninety Nine Degrees (Pty) Ltd.

In your opinion, does Chris have an obligation to tell the board of Zero Degrees (Pty) Ltd about his personal gains, or is this a case of ‘every person for himself’? [10 Marks]

3.2 Tshepo is the director of Healthyheart Ltd, a company that manufactures cholesterol medication. One of Tshepo’s functions is to manage the company’s distribution of manufactured products to its clients. In September, Tshepo requested information from the company’s various factories on the demand for the company’s products during the preceding year, as well as the projected demand for its products in 2023. It was reported that the demand in 2023 would probably not exceed the demand during 2022, because a patent for one of the

company's most profitable cholesterol products would prescribe in December 2022. As a result of this information, Tshepo did not make provision for any extension of Healthyheart Ltd's distribution network. In November 2022 one of Healthyheart Ltd's main competitors lost all its manufacturing plants due to an explosion. Consequently, the demand for Healthyheart Ltd's products rose substantially and the distribution network could not meet this demand. Healthyheart Ltd had to make use of outside contractors to extend distribution, which led to lower profits. The board of directors of Healthyheart Ltd wants to institute action against Tshepo for breach of his duty of care and skill. Advise the board of directors on the company's chances of success, keeping in mind the common law, relevant case law and the provisions of the Companies and Other Business Entities Act. In your answer you must also include a discussion of the business judgement rule.

[15 Marks]

[Total Marks 25]

4.1 Discuss the doctrine of constructive notice and the exceptions which apply to it. [10 Marks]

4.2 Who controls the company between the board of directors and the shareholders? Reference must be made to the common law and the Act? [15 Marks]

[Total: 25 Marks]

5. Explain by reference to statutory and common law examples what is meant by the term 'piercing the veil of incorporation' and the circumstances under which this measure can be taken. [25 Marks]