

SASP1

Examination Material Requirements Semester Two 2010

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TWO MASTER COPIES of the Examination Paper

1. Examination Details

Study Package Code: LST2LBA Paper No: 1
Paper Title: LAW OF BUSINESS ASSOCIATION
Location: Bendigo
Study Period: Semester 2
Reading Time: 0:30 Writing Time: 3:00

2. Allowable Materials

102 OPEN BOOK, INCLUDING ELECTRONIC DICTIONARY

92 STUDENTS MAY MAKE NOTES DURING READING TIME (NOT ON SCRIPT BOOKS OR MULTIPLE CHOICE ANSWERS)

3. Examination Paper

- ☐ Y ☒ X Can students retain the examination paper at the conclusion of the examination?
☒ X ☐ N Can the examination paper be placed in the library?

NB: Examination Papers will only be provided to the Library after the corresponding Supplementary/Special Examination period

4. Unit Coordinator Details

Name: David Wishant Ext: 1252
Signature: [Signature] Date: 23 - 9 - 10

5. Proof Reader Details

Name: P J BARON Ext: 1297
Signature: [Signature] Date: 29-9-10

6. Authorised Staff

The following Staff are authorised to collect examination papers for this unit

Name: DAVID WISHANT

Name: DIANNE EMES

Name: LISA JONES

Name: ROSA NACO
HELEN OAM.

Part A

This Part of the examination consists of **twenty (20) multiple choice** questions, each worth one (1) mark. The suggested time for completion is fifty minutes; that is, two minutes and thirty seconds for each question. Be very careful not to spend too much time on this section.

Students should circle the most appropriate answer to each question in Part A on the Part A answer sheet provided at the end of this examination paper. You may tear the answer sheet off the examination paper. Remember to **write your student number** in the space provided at the top of the answer sheet.

Answer **all twenty (20)** questions from Part A. This Part is worth 20 marks.

Question 1.

[1 mark]

A company has gone into voluntary administration. A person with a floating charge over a small portion of the company's assets:

- a. Cannot enforce their charge.
- b. Can enforce their charge.
- c. Cannot enforce their charge but can enforce the debt which it secures.
- d. Can sack the voluntary administrator.

Question 2.

[1 mark]

As a general rule, who decides whether the company will issue shares?

- a. The members in general meeting.
- b. The board of directors.
- c. The annual general meeting.
- d. None of the above.

Question 3.

[1 mark]

Which of the following is **not** a reason why a receiver might be appointed?

- a. During an investigation by the Australian Securities and Investments Commission (ASIC) into a possible breach of the *Corporations Act 2001* (Cth).
- b. To wind up the company.
- c. As a remedy in an oppression action.
- d. To enforce a secured creditor's security.

Question 4.

[1 mark]

The liquidator must distribute funds to the following persons:

- 1. The shareholders.
- 2. The employees.
- 3. The unsecured creditors.
- 4. The liquidator's own costs.

In which order should they be distributed?

- a. 1, 2, 3, 4.
- b. 4, 2, 3, 1.
- c. 2, 4, 3, 1.
- d. 2, 3, 4, 1.

Question 5.

[1 mark]

Which of the following is a situation in which the corporate veil is **not** likely to be lifted?

- a. The company is being used to avoid an existing obligation.
- b. The company trades while insolvent.
- c. The company provides financial assistance for the purchase of its shares.
- d. The company passes a resolution to pay a CEO a \$5 million bonus after the company makes a record profit.

Question 6.

[1 mark]

Which of the following statements is **true** about a proprietary company?

- a. It can have an unlimited number of members.
- b. It must have at least two directors.
- c. It is not subject to any audit requirements.
- d. It can have gross revenue of more than \$25 million, gross assets of more than 12.5 million and more than 50 full time staff.

Question 7.

[1 mark]

Which of the following companies **cannot** now be newly registered?

- a. Company limited by shares.
- b. Company limited by guarantee.
- c. Company limited by shares and guarantee.
- d. Unlimited company.

Question 8.

[1 mark]

Section 140(1) does **not** provide for the enforcement as a contract of a company's constitutions between (choose the best answer):

- a. Shareholder and shareholder.
- b. Company and shareholder.
- c. Shareholder and director.
- d. Company and director.

Question 9.

[1 mark]

Which of the following statements about the content of the *Corporations Act 2001* (Cth) is **true**?

- a. The *Corporations Act* is itself only a brief piece of legislation. The specific details are contained in the *Corporations Regulations*.
- b. The *Corporations Act* is lengthy legislation, divided into Chapters, and the Chapters into Parts, Divisions and sections.
- c. The *Corporations Act* does not regulate fundraising by companies.
- d. The *Corporations Act* does not regulate financial services, products and markets.

Question 10.

[1 mark]

Which of the following statements about the nature of a share is **correct**?

- a. A share is real property.
- b. A share is transferrable as provided by the company's Constitution.
- c. A share entitles the holder to vote on resolutions at a general meeting.
- d. All of the above.

Question 11.

. [1 mark]

Which of the following **cannot** bring an action for oppression under ss 232 and 233 of the Corporations Act?

- a. All current members or past members.
- b. A person authorised by ASIC.
- c. A past member removed from the register due to a selective buy-back.
- d. A person who has inherited shares under a Will.

Question 12.

[1 mark]

In order for a liquidator of a company to void transaction, three of the following four matters may have to be established. Which matter is **not** required for any of the forms of voidable transaction?

- a. That the company was insolvent when the payment was made or became insolvent by reason of the transaction.
- b. That the payment was made within 6 months of winding up.
- c. That the payment resulted in the creditor receiving more than would be received in a winding up.
- d. That the payment was an unreasonable payment to any officer of the company.

Question 13.

[1 mark]

Which of the following statements about debt capital is **not** true?

- a. A shareholder may also be an unsecured creditor of the Company.
- b. Secured creditors generally have priority of payment over unsecured creditors in a distribution of a company's assets.
- c. A secured loan is one in respect of which the company has given special rights over its property to a creditor that can be used by a creditor to recover the amount owed. An unsecured loan does not have these special rights over the company's property.
- d. An unsecured loan is one in respect of which the company has given special rights over its property to a creditor that can be used by a creditor to recover the amount owed. A secured loan does not have these special rights over the company's property.

Question 14.

[1 mark]

Which of the following **is** a proper purpose in relation to a decision to issue new shares in a company?

- a. To dilute the shareholding of a member.
- b. To entrench control of the company in certain shareholders.
- c. To strengthen control of the company by the directors.
- d. To enter into a joint venture with another company.

Question 15.

[1 mark]

Which of the following statements is **false** about dividends?

- a. Directors have discretion when it comes to payment of dividends.
- b. Non-payment of dividends though the company makes huge profits may amount to oppression.
- c. Dividends can be paid otherwise than out of profits.
- d. A dividend immediately becomes a debt the moment the company fixes the amount or time for payment of dividend.

Question 16.

[1 mark]

Section 181 of the Corporations Act 2001 (Cth) requires directors and officers:

1. To act in good faith.
2. To act diligently.
3. To act in the best interests of the company.
4. To act for a proper purpose.

Which of these statements is correct?

- a. 1 and 2.
- b. 1, 2 and 3
- c. 1, 3 and 4.
- d. 2, 3 and 4.

Question 17.

[1 mark]

A director may call a general meeting of the company if:

- a. The replaceable rule in s249C applies.
- b. The company has a constitution which gives the director this right.
- c. The company is a listed company.
- d. All of the above.

Question 18.

[1 mark]

Which of the following resolutions is **least** likely to breach the equitable limitation on majority voting power?

- a. A resolution passed by the majority to improperly take away the company's property.
- b. A resolution passed by the majority to prevent the company from bringing legal proceedings against the majority.
- c. A resolution passed by the majority which will benefit the majority without disadvantaging the minority.
- d. A resolution passed by the majority to amend the constitution to force the minority to sell their shares.

Question 19.

[1 mark]

Which of the following statements is **true**:

- a. While not compulsory, it is advisable to register a floating charge over the assets of a company with ASIC.
- b. A company cannot deal with the assets subject to a floating charge without the consent of the lender.
- c. On default, a floating charge crystallises and becomes a fixed charge.
- d. A later registered charge has priority over an earlier registered charge.

Question 20.

[1 mark]

Which of the following will result in an outsider dealing with a company **not** being able to rely on the statutory assumptions contained in section 129 of the *Corporations Act 2001*:

- a. Deliberately keeping one's eyes shut to the possibility that the assumptions were wrong.
- b. Failing to make enquiries that would usually or customarily be made by a person in the outsider's position.
- c. Suspicion of the possibility that the assumptions were wrong.
- d. Any of the above

Part B

Students should answer **all three (3)** questions in Part B. This Part is worth 30 marks. Each question is worth 10 marks.

The suggested time for completion of Part B is one hour and fifteen minutes; that is, 25 minutes for each question.

Students should refer to relevant statutory provisions and/or case law wherever possible.

Question 1

[10 marks]

Jack Black was the governing director of White Pty Ltd. He allotted shares in the company to his two sons Grey and Beige. He also authorised the sale of certain equipment belonging to the company to himself at a gross undervalue and afterwards sold that equipment at an enormous profit.

Black's daughters, who are also shareholders in White Pty Ltd have commenced proceedings against their father's conduct. First, they claim that their father should account to the company for the profit mentioned above. Second, they want the allotment set aside on the basis that it was made by their father simply to ensure that they would not gain control of the company.

Jack Black has refused to surrender the profit which he has made. He also says that it was in the company's best interest to ensure that his daughters never gained control.

Advise the parties on the likely outcome of the legal proceedings. Assume the Court has granted the sisters leave under sec 237 to bring proceedings in the company's name.

Question 2

[10 marks]

Discuss the relevance of section 181 to the position of victims of torts committed by the company. In your discussion consider:

- The extent to which in its current formulation it forces directors to act to the disadvantage of tort victims.
- Whether it should be amended.
- In what way it should be amended.

Question 3

[10 marks]

Describe the circumstances in which a company may be liable for criminally wrongful conduct by a chief executive officer. Is sexual harassment by a chief executive officer at an office Christmas party one such circumstance, assuming it is a criminal offence? Would the company be liable for such conduct to the victim if the conduct amounts to a civil tort?

[Part C over]

Part C

Students should answer **one (1)** question from Part C. This Part is worth 20 marks. The suggested time for completion is 45 minutes.

Question 1

[20 marks]

Jane and Bob had been running a boat-building business through a company "National Boat Builders Pty Ltd" for over 25 years. Both Bob and Jane were directors and shareholders with Bob holding 76 of the 100 issued ordinary shares and Jane holding the remaining 24 issued shares. Last year Bob died, leaving his shares to his son Michael.

Michael is not a 'hands on' manager like his father and Jane is concerned that the business is rapidly deteriorating through Michael's neglect. Jane also suspects that the company is paying Michael a large management fee which the company can't sustain. Jane can't verify either of these concerns as Michael refuses to give her access to the company books.

Michael has indicated to Jane that he has negotiated the sale of the boat building business of the company to another company. Michael is the majority shareholder of the proposed purchaser. National Boat Builders will then switch its focus to aircraft detailing (a hobby of Michael's, but an activity in which the company has never been involved).

He says a resolution ratifying the sale and approving a modification of the objects set out in the company's constitution to record the proposed change in business activity has been passed. Jane did not receive any notice of any meeting of members being held. Jane does not agree with either of the proposed changes.

Advise Jane of the remedies that might be available to her personally.

OR

Question 3.

[20 marks]

Peter and Pyne are members of Discord Ltd, a public company limited by shares. They hold 6 percent of the company's issued share capital. They are strongly of the view that John, one of the directors of the company, should be immediately removed. However, Peter and Pyne are aware that John has support among the other directors, who will prevent the board of directors convening a meeting to consider John's removal. The replaceable rules of the company provide that a director shall not be removed before the expiration of his/her term of office without the authority of a special resolution of the company.

- (a) Advise the procedure to be followed by Peter and Pyne to convene a general meeting of shareholders to remove John as a director of the company.
- (b) Advise the nature of the resolution to be passed, and the notice required to be given for convening a meeting of shareholders, for the removal of John a director of the company.
- (c) Assume that Peter and Pyne are successful in their bid to remove John and the board agrees to appoint Fred in his place. Advise the board of its powers appoint new directors.

[End of examination]

Multiple Choice Answer Sheet

Circle your answer (a, b, c, or d) against the relevant question numbers. **Do not forget to enter your student number on the sheet.**

Student ID:

Seat Number:

- | | | | | |
|-----|---|---|---|---|
| 1. | a | b | c | d |
| 2. | a | b | c | d |
| 3. | a | b | c | d |
| 4. | a | b | c | d |
| 5. | a | b | c | d |
| 6. | a | b | c | d |
| 7. | a | b | c | d |
| 8. | a | b | c | d |
| 9. | a | b | c | d |
| 10. | a | b | c | d |
| 11. | a | b | c | d |
| 12. | a | b | c | d |
| 13. | a | b | c | d |
| 14. | a | b | c | d |
| 15. | a | b | c | d |
| 16. | a | b | c | d |
| 17. | a | b | c | d |
| 18. | a | b | c | d |
| 19. | a | b | c | d |
| 20. | a | b | c | d |