

THE INDEPENDENT EXAMINATIONS COMMITTEE

GENERAL LEGAL COUNCIL

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PROFESSIONAL LAW COURSE/POST-CALL COURSE

DATE: WEDNESDAY, 10TH APRIL 2019
SUBJECT: COMPANY LAW & PRACTICE
TIME ALLOWED: THREE (3) HOURS 10:00am – 1:00pm

(25 marks)

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions **very carefully** before beginning your answers.
2. Answer **ANY FOUR (4)** questions.
3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.
4. **Do not** write or sign your name in the Answer Booklet. **Write your Index Number only.**
5. Adhere strictly to the instructions on the front cover of your Answer Booklet

QUESTION 1

Justice Anokye sitting at the High Court at Wenchi recently opined as follows:

“The power of the High Court to order a meeting of a Company under section 162 of the Companies Act, 1963 (Act 179) is absolute and the court can exercise its discretion whenever it thinks an appropriate case has been made to justify the intervention of the court.”

With the aid of decided cases, comment on this statement.

(25 marks)

QUESTION 2

Under the Regulations of Sassyanda Venture Limited, Kusi-Brefo who held the Class B shares, was also a director. The other director was Prof James Allotey who also held Class A shares of the Company and a majority shareholder. In his capacity as a director the Regulations gave the Class B shares holder a right to appoint 2 directors whenever there is a vacancy and remove any of the two directors as he deems fit.

There have been allegations on Godhubby FM that one of the directors, Mr. Lawson, appointed by the Class B shareholder as an Executive Director was a serial philanderer. These rumours, in the view of the Class A shareholder (the majority shareholder) was bringing the company into disrepute. In spite of the demands of the Class A shareholder, Kusi-Brefo refused to remove the director. The Class A shareholder proceeded to serve notice on the director of its intention to remove him at a forthcoming EGM. Mrs Duffuor and Yvonne Adole, the other two directors of the board, euphemistically referred to as the "women's group", want Mr. Lawson dismissed.

Discuss the rights of Kusi-Brefo, Prof James Allotey, the "women's group" and Mr Lawson in this whole Godhubby FM rumour saga.

(25 marks)

QUESTION 3

Kwamina Mensah and his dad L.L. Mensah are the only shareholders of Darls Clothing Ltd. It is registered with a stated capital of \$1.2m and Thomas Kyei and his brother Nana Kwasi are the only two directors. The company owns a property with an unexpired leasehold interest of 85 years, but the shareholders want to sell off the company for \$2.2m. Charles Kendall, a British national, expressed interest in acquiring the company, especially because of its 85-year unexpired lease in the landed property. His local agent, Hagar Arthur has told the directors that their money is ready and ready to take over the board of Darl's Clothing Ltd.

As the Company's lawyer advise the Company on:

how to go about the sale to Charles Kendall; draft the necessary Resolutions for Appointment of Directors and approval of share transfer; and how to realize the complete exit of the former actors as well as the take-over of the new owners and officers

(25 marks)

QUESTION 4

On February 1, 2011, Yaw Agyei, a holder of 70% of the issued shares of Paradise Limited sent a text message to the Secretary of the Company asking him to arrange an Extraordinary General Meeting of the Company. On February 6th, 2011, the Secretary proceeded to issues notices of a meeting of the Company to be held of February 25, 2011. The notice stated that the meeting was to discuss "emerging business opportunities".

Issah Alata, Kwame Poku and Ama Buor, the three directors of the Company were having lunch at a top restaurant in town, when Kojo Kyei the 30% shareholder of the Company angrily walked in waving a copy of the notice of the meeting and demanded an explanation. The three directors decided over lunch that "it was more important to allow the meeting to proceed than to be concerned about mundane issues of procedure."

On February 18, Kojo Kyei received a text message from Yaw Agyei informing him that if he does not pay for the outstanding liability on his shares by February 20, he should not attempt to attend the meeting. Kojo stayed away from the meeting.

At the meeting, the following resolutions were proposed and passed:

- (i) Issuance of additional shares to Yaw Agyei;
- (ii) Revaluation of the outstanding liability on Kojo Kyei's shares to reflect the current market value; and
- (iii) Purchase by the company of 31% of the shares of Yaw Agyei from a loan to be obtained from Sikaman Bank.

Kojo Kyei is aggrieved and has come to you for advice. Consider the issues arising and advise him.

(25 marks)

QUESTION 5

Ama Adoma is a 60% shareholder of Big Impex Limited. Ben Allotey holds 10,000 preference shares in the company, with entitlement to a preferential dividend of 10% of profits for each year. Adoma also holds 10,000 redeemable preference shares issued by the Company.

Adoma has been facing severe financial constraints and has not managed to pay for all her shares. Adoma, acting as an agent for her uncle, sold a tract of land to Big Impex Limited. Adoma earned a hefty commission and used part of it to pay for the outstanding liability on her shares. Yaw Bob, a minority shareholder of the business is unhappy about the transaction and claims that it did not make commercial sense for the Company to buy the land from Adoma since it has no use for it and the price was far above the current market price for similar properties.

Big Impex Limited has been struggling. Its financial results have not been impressive and it has not managed to create any surplus over the last 5 financial years. Adoma sent the following proposals to the directors:

- (i) distribution of certain assets of the company to the shareholders in proportion to their existing shareholding;
- (ii) redemption of the redeemable preference shares through an overdraft facility from the Company's bankers; and

(iii) a bonus issue to boost the morale of shareholders.

Ben Allotey has also written to the Company reminding the Company that any attempt to subvert his interest and entitlement to accumulated dividends would be robustly resisted.

The directors of Big Impex Limited have come to you for advice. Consider the issues arising and advise them.

(25 marks)

QUESTION 6

What is Duomatic principle. Give instances when it cannot be applied in corporate governance as dictated by the Companies Act 1963, Act 179

(25 marks)

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QUESTION 1

Justice Anokye sitting at the High Court at Wunduchi recently opined as follows:

"The power of the High Court to order a meeting of a Company under section 182 of the Companies Act, 1963 (Act 179) is absolute and the court can exercise its discretion whenever it thinks an appropriate case has been made to justify the intervention of the court."

With the aid of decided cases, comment on this statement.

(25 marks)

QUESTION 2

Under the Regulations of Sassyanda Venture Limited, Kwesi-Brafu who held the Class B shares, was also a director. The other director was Prof James Allotey who held the Class A shares of the Company and a majority shareholder. In his capacity as a director the Regulations gave the Class B shares holder a right to appoint 2 inspectors whenever there is a vacancy and remove any of the inspectors as he deemed fit.