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Examination Material Requirements Semester Two 2010

Please Complete and Return this form to your local Examination Office with 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 ANSW

3. Examination Paper

Y ☒ Can students retain the examination paper at the conclusion of the examination?

☒ 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 Wishart Ext: 1252

Signature: Date: 23-9.10

5. Proof Reader Details

Name: P D BARON Ext: 1297

Signature: Date: 29-9-10

6. Authorised Staff

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

Name: DAVID WISHART Name: DIANNE EAMES

Name: LISA JONES Name: ROSA NACO
HELEN OAM.

LA TROBE UNIVERSITY

SEMESTER TWO EXAMINATION PERIOD

2010

Student ID: ☐☐☐☐☐☐☐☐ **Seat Number:** ☐☐☐

Unit Code: LST2LBA Paper No: 1

Unit Name: Law of Business Association

Paper Name: Final

Reading Time: 30 minutes

Writing Time: 3 hours

No. of Pages (including cover sheet): 9

OFFICE USE ONLY (FACULTY/SCHOOL STAFF):					
CAMPUS	☐ AW	☒ BE	☐ BU	☐ MI	☐ SH

ALLOWABLE MATERIALS

Number	Description
102	**Open book, including electronic dictionary**
92	**Students may make notes during reading time (not on script books or multiple choice answer sheets)**

INSTRUCTIONS TO CANDIDATES

1. This examination is in three parts:
   i. Part A: This is a set of 20 multiple choice questions, worth 1 mark each. You may tear off the answer sheet at the back of the examination paper. Write your student number on the answer sheet. Circle the appropriate letter for each question.
   ii. Part B: This comprises three questions worth 10 marks each. Answer all questions.
   iii. Part C: Answer ONE of the two questions in Part C. It is worth 20 marks.
2. This examination is worth 70 marks, being 70% of the marks for the course.

This paper MUST NOT BE REMOVED from the examination venue

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]

Under the High Court decision in *Re Wakim*, which courts have the power to hear corporate law matters?

a. Federal courts only.
b. State courts only.
c. Both State and federal courts.
d. Neither federal nor State courts.

Question 2. [1 mark]

Complete the following statement by choosing the correct option.
Company law seeks to regulate the relationship between:

a. Participants in the company.
b. The company and the state.
c. The company and those with whom the company has dealings.
d. All of the above.

Question 3. [1 mark]

What is the difference between a "company" and a "corporation"?

a. A company and a corporation are the same thing.
b. A company is a type of corporation which is formed under the *Corporations Act 2001* (Cth).
c. A corporation is a type of company which is formed under the *Corporations Act 2001* (Cth).
d. A corporation is a type of company which has separate legal personality.

Question 4. [1 mark]

Choose the correct ending to the following statement:
A company may be liable for the tortious wrongdoings of:

a. Employees, if these wrongdoings occur in the course of employment;
b. Members, if these wrongdoings occur at the member's home address;
c. Criminals, if these wrongdoings occur within Australia;
d. Creditors, if these wrongdoings occur in the course of insolvency.

Question 5. [1 mark]

Smiters Pty Ltd wants to increase its shareholder base by the issue of more shares. Which statement best states how shares may be offered? They may be offered

a. personally to a restricted number of persons.
b. to the public, as long as there is no prospectus or other disclosure document.
c. to the public, as long as they are not advertised.
d. to existing shareholders and employees only.

Question 6. [1 mark]

Which statement about meetings of members is not true of <u>all</u> proprietary companies with multiple members?

a. General meetings may be called by a director.
b. General meetings require 21 days notice (unless short notice is agreed).
c. General meetings may be requisitioned by 5% of the members.
d. A resolution may be passed by circulating it to be signed by all members.

Question 7. [1 mark]

Assume Nan and Big Ted choose to use a company for their business. Big Ted owns a shop. Can he sell it to the company for double its value? Choose the best answer:

a. No.
b. Only with the approval of the Court.
c. Yes, because the company is a separate legal entity.
d. Yes, because the company is a separate legal entity, but only with full disclosure.

Question 8. [1 mark].

Where a director has a conflict of interest, the Corporations Act requires him or her to:

a. Disclose the interest to ASIC;
b. Resign from the company;
c. Write a letter of apology to the members;
d. Disclose the interest to the Board.

Question 9. [1 mark]

Which of the following statement is **NOT TRUE** with regard to share buybacks?

a. Share buy-backs result in a reduction of share capital
b. Share buy-backs are not permitted under the *Corporations Act 2001*
c. Share buy-backs are transactions by which a company buys back its own shares from existing shareholders
d. Share buy-backs are permitted if they do not materially prejudice a company's ability to pay its creditors

Question 10. [1 mark]

According to the authority of *The Bell Group Ltd (in liq) v Westpac Banking Corp (no 9)* (2008) 70 ACSR 1 what particular duty does a director owe where a company is insolvent or approaching insolvency?

a. A duty to protect company assets by concealing or falsifying information;
b. A duty to act bona fide in the interests of the company by considering the interests of creditors;
c. A duty to allow members to enforce their personal right against the company;
d. A duty to avoid a conflict of interest.

Question 11. [1 mark]

Choose the correct ending for the following statement:
If Jo purchases some equipment on behalf of a company before it is registered:

a. the contract binds the company and Jo is not liable.
b. the company can ratify the contract, in which case Jo is no longer liable on the contract.
c. the company can ratify the contract, in which case Jo remains liable on the contract.
d. the company cannot ratify the contract and the contract is void.

Question 12. [1 mark]

Consider the following statements –

A. Each partner has a right to take an active part in the management of a partnership.
B. The partners are jointly and severally liable for the contractual obligations of the partnership.
C. Retiring partners can never be liable for debts of the partnership.
D. Any partner can call for the dissolution of a partnership.

Which of the following apply to a simple partnership formed in Victoria?

a. A and B
b. A and C
c. A and D
d. all four statements

Question 13. [1 mark]

Which of the following is **not** true about a floating charge?

a. A floating charge floats over the assets allowing the company to dispose of them in the normal course of business and replace them with assets of the same class
b. A floating charge document may provide crystallization on the happening of some specified event
c. On crystallization the floating charge becomes a fixed charge over the assets at that time
d. A floating charge created by a company does not have to be registered with the ASIC

Question 14. [1 mark]

Section 588G of the Corporations Act –

a. involves liability for insolvent trading by directors of companies
b. states that a proprietary company is liable for its debts
c. determines which transactions are voidable when a company becomes insolvent
d. outlines a liquidator's power

Question 15 [1 mark]

The Business Judgment Rule applies to:

a. The duty to avoid conflicts of interest
b. The duty to act for a proper purpose and *bona fide* for the benefit of the company as a whole
c. The duty to act with care and diligence
d. All of the above duties.

Question 16 [1 mark]

The directors of a company intentionally engage in transactions which deprive workers of their employees entitlements. What is the best avenue of redress for the workers?

a. An action under Part 2F.1
b. An action under Part 5.8A
c. An action under Part 2F.1A
d. An action under sec 1324

Question 17 [1 mark]

Who administers a public company's internal affairs?

a. ASIC
b. APRA
c. ACCC
d. The company Secretary

Question 18. [1 mark]

What is the source of directors' duties?

a. Corporations legislation
b. the General Law
c. a. and b.
d. neither a nor b

Question 19. [1 mark]

Which is paid **first** in a winding-up:

a. An amount secured by a registered charge.
b. A Court-ordered payment to a tort victim.
c. An unsecured creditor.
d. A member's share of the net assets.

Question .20

[1 mark]

Which is paid **last** in a winding-up:

a. An amount secured by a registered charge.
b. A Court-ordered payment to a tort victim.
c. An unsecured creditor.
d. A member's share of the net assets.

[Part B over]

Part B

Students should answer **all three (3)** questions in Part B. This Part is worth 30 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]

Jenny, Carla and David were the members of the Board of Glamour Ltd. The Chief Executive Officer of the company, Brian, is known as a 'bit of a ladies' man'. Despite receiving 8 complaints from company staff alleging Brian has made improper advances towards them, nothing is done by the Board to address Brian's behaviour. The complainants are told to 'just tell Brian to go away. He means no harm'. The Board throws a number of parties in which a great deal of alcohol is consumed and Jenny, Carla and David witness conduct by Brian that could be characterised as sexual harassment. Reportedly, the 3 directors just laugh on each occassion and remark it was just a case of 'Brian being Brian'. However, a woman present at the most recent party has brought an action for assault against Brian and the company. Can the company be liable for Brian's conduct?

Question 2 [10 marks]

Would the case law on piercing the corporate veil have helped the victims of asbestos related diseases recover from James Hardie Ltd (NL)? In your response indicate what cases would provide useful precedents. Also consider what law reform might resolve such situations.

Question 3 [10 marks]

A football club incorporated as a company has been fined, had premierships cancelled, premiership payments deducted and has been excluded form premiership points for the rest of the season. Assume this was an unfair punishment for the wrong the club committed and that the company has a good case against the company that runs the Premiership. Four of the ten directors of the football club decide to sue. The other six directors do not want the club to sue. What legal action can the four directors take and what would they have to demonstrate in order to take legal action?

[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]

Millie bought two shares in Ruff Pty Ltd for $100,000. Millie, now a non-executive director of Ruff Pty Ltd, is unhappy with the state of affairs of the company. The following events have occurred:

- Ruff Pty Ltd's revenue has increased 200%
- Millie has received no dividends to date and James and John, the two executive directors of Ruff Pty Ltd, have decided to pay no dividends this year
- James and John have voted themselves a large pay rise and bonus
- James and John have arranged for Ruff Pty Ltd to lease two expensive cars for their exclusive use.

Millie attends her first directors' meeting and questions the dividend policy and asks that her objection to the lease of the cars be recorded.

James and John decide to remove Millie from the board. They hold a members' meeting and remove Millie from the board. They then send Millie a letter offering to buy her shares for $100,000. Millie is happy to sell her shares but thinks that the price offered is too low.

Advise Millie.

OR

Question 2. [20 marks]

Marcus was a director of a small proprietary company. The company had given Marcus several low interest loans to buy a house and land for private purposes. In late 2004, the company began experiencing financial difficulties but continued to trade. At a meeting in December 2004, Marcus and a newly-appointed director, Barton, resolved to release Marcus from all his debts to the company. Subsequently, a deed of release was properly executed by the company. Barton had been appointed in haste, was unfamiliar with the company's affairs and was prepared to follow Marcus' advice as to his duties.

In March 2005 the company went into liquidation and a liquidator was appointed. The liquidator discovered that two years before, Marcus had given a personal guarantee to the ANZ Bank for a loan of $50,000 to the company. In both January and February 2005, a sum of $25,000 had been paid to the ANZ Bank in satisfaction of the loan. The liquidator also discovered that the company had probably been insolvent for at least six months.

In view of these facts discuss the actions that could be brought by the liquidator.

[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 this 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
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14.	a	b	c	d
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