DURATION: 3 HOURS                          TOTAL MARKS: 70

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**INSTRUCTIONS:**

1. Students are requested, in their own interests, to write legibly.
2. This paper consists of FOURTEEN (14) pages. Please ensure that you have them all.
3. You are required to answer ALL Questions.
4. Please note that SECTIONS A and B must be answered in one book. SECTION C must be answered in a separate book.
SECTION A

Question 1

A partnership may be dissolved on the following grounds:
  i. effluxion of a period of time;
  ii. order of Court granted upon application made by a partner(s);
  iii. end of undertaking and mutual agreement to end partnership;
  iv. insolvency.

(A) Statements i and ii are correct;
(B) Statements i and iii are correct;
(C) Statement iii only is correct;
(D) All of the above;
(E) None of the above.

[Total Q1: 2 marks]

Question 2

Which of the following can be classified as the essentials of partnership?
  i. partnerships are formed by women only;
  ii. partners are not expected to contribute;
  iii. partners must share profit equally;
  iv. partnership contract must be legitimate;
  v. the purpose of the partnership is for the joint benefit of all the partners.

(A) Statements i and ii only;
(B) Statements ii, iii and iv only;
(C) Statements i, iii and v only;
(D) Statements i, ii, iii and iv only;
(E) All of the above.

[Total Q2: 2 marks]
Question 3

Which of the following statements are correct? The legal formalities that are required for a valid partnership are that the:

i. partners must comply with the rule of law;
ii. partnership agreement must be reduced to writing;
iii. partners are prohibited from formulating their own rules;
iv. rules that are formulated by the partners are legally binding on the partners once signed;
v. contracts concluded orally and impliedly are equally binding on partners.

(A) Statements i, iv and v
(B) Statements iii and iv
(C) Statements i and iii
(D) Statement i only
(E) Statement iv only.

[Total Q3: 2 marks]

Question 4

The relationship between partners should be based on uberrimae fidei. This means that the:

i. partners must act in bad faith towards one another;
ii. partners must always disclose information;
iii. partnership agreement and conduct should be based on mutual trust and accountability;
iv. partners should avoid conflict of interest;
v. partners must act in good faith at all times.

(A) Statements i and iii are correct;
(B) Statements i, iii and iv are correct;
(C) Statements ii, iii and iv and v are correct;
(D) None of the above is correct;
(E) All of the above.

[Total Q4: 2 marks]
Question 5

Which of the following is not an advantage of a Close Corporation (CC)?

i. A CC is a simple and relatively affordable to register;
ii. A CC is legally complicated to register and its annual financial statement must be audited;
iii. The income distributed to members of a CC are exempted from normal income tax;
iv. In a CC there is no separate board of directors;
v. The members of a CC are not required to hold annual general meetings.

(A) Statements i and iii are incorrect;
(B) Statement ii is incorrect;
(C) Statements i, iii, iv and v are incorrect;
(D) None of the above;
(E) All of the above.

[Total Q5: 2 marks]

Question 6

Which of the following is not a duty that is imposed on partners?

i. the duty to disclose full information to their fellow partners;
ii. the duty to account to their fellow partners for all benefits received;
iii. the duty of partners to act in good faith inter se;
iv. the partner’s duty to disclose when he or she enters into a business venture unrelated to the partnership business.

(A) Statement iv only;
(B) Statements ii and iii only;
(C) Statement i and ii only;
(D) None of the above;
(E) All of the above.

[Total Q6: 2 marks]
Question 7

Which of the following statements concerning Close Corporations (CC) are correct?

i. The owners of a CC are called ‘members’;
ii. Only natural persons may be members of a CC, companies cannot be members;
iii. Each owner is issued with a certificate that is signed by or on behalf of every member;
iv. The certificate (referred to above) must state the member’s current percentage interest in the corporation;
v. The members’ interest in the CC is not explained as a percentage of the total capital invested in the CC business.

(A) Statements i, ii, iii and iv;
(B) Statements i, iii and iv;
(C) Statement v only;
(D) None of the above;
(E) All of the above.

[Total Q7: 2 marks]

Question 8

Which of the following statements is/are correct?

i. A public company is a state owned company that is either listed as a public entity in Schedule 2 or 3 of the Public finance Management Act or is owned by a municipality;
ii. A public company’s shares may be offered to the public and are freely transferable ;
iii. A Public company’s name ends in SOC;
iv. A personal liability company is a private (profit) company used mainly by professional associations such as attorneys, entrepreneurs and stockbrokers who wish to exploit some of the advantages of corporate personality ;
v. A personal liability company’s memorandum of incorporation must state that the directors are not liable for debts incurred during their term of office .
(A) i and ii;
(B) ii, iv and v;
(A) i, ii and iv;
(B) ii and iv;
(C) None of the above.

[Total Q8: 2 marks]

**Question 9**

Which of the following statements is/are incorrect?

i. Non-profit companies must have as at least one of their objectives in a public benefit object or an object relating to one or more cultural or social activities or communal or group interest;

ii. All assets and income of a non-profit company must be used to further the company’s stated objectives;

iii. When a non-profit company is being wound up or dissolved any excess money should be divided between the shareholders;

iv. Close Corporations may still be created in terms of the 2008 Companies Act provided their members intend on converting the Close Corporation into a company under the 2008 Companies Act;

v. An external company may be a profit company or a non-profit company.

(A) i and ii;
(B) iii and iv;
(C) iii, iv and v;
(D) iv and v;
(E) All of the above.

[Total Q9: 2 marks]
Question 10

Which of the following statements is/are correct?

i. A state owned company is considered a non-profit company;
ii. In the case of *Sonnenberg McLoughlin Inc v Spiro* 2004(1) SA 90(C) it was held that although directors of a personal liability company could be held jointly and severally liable for debt incurred during their period of office, they cannot be held liable by the company for debts that had been paid by the company during their period of office;
iii. For the purposes of an external company, a company is deemed to conduct business or non-profit activities solely on the grounds that it has established and maintained a bank account in South Africa;
iv. An external company must maintain at least one office in South Africa;
v. A domestic company is a foreign company whose registration has been transferred to South Africa in terms of the 2008 Companies Act.

(A) All of the above;
(B) ii, iii and v;
(C) None of the above;
(D) ii only;
(E) ii and iv.

[Total Q10: 2 marks]
Question 11

Which of the following statements is/are incorrect?

i. Directors must be employees of the company;
ii. The business judgment test allows a director to show that he or she has not contravened his or her duties owed to the company;
iii. A director is under a duty to communicate to the board of directors any information that comes to the directors’ attention, unless the director reasonably believes that the information is; immaterial to the company, generally available to the public or known to the other directors;
iv. A company can undertake to not hold a director liable for a breach of fiduciary duty only where the company’s memorandum of incorporation allows for such exemption;
v. A company may not directly or indirectly pay any fine imposed on a director of a company who has been convicted of an offence in terms of national legislation.

(A) None of the above;
(B) i and ii;
(C) iv and v;
(D) i and iv.
(E) i, ii and iii.

[Total Q11: 2 marks]

Question 12

Which of the following statements is/ are correct?

i. For the purposes of section 75 of the 2008 Companies Act, a related person includes persons who live together;
ii. When assessing whether a director has acted with the required degree of care, skill and diligence, the director must pass a subjective and objective test;
iii. The 2008 Companies Act has codified the common law directors’ duties meaning that the common law in this respect is no longer applicable;
iv. If a director is the only director of company and he or she holds all the beneficial interest of all issued securities in the company then he does not have to disclose his personal financial interest;
v. During business rescue procedures creditors are permitted to form a creditors’ committee which may consult with the business rescue practitioner during the development of a business rescue plan.

(A) i; ii, iv and v;
(B) All of the above;
(C) iii;
(D) ii, iii, iv and v;
(E) None of the above.

[Total Q12: 2 marks]

Question 13

Which of the following statements is correct?

i. The concept of business rescue purports to freeze the assets of a company so that they can be divided among the creditors;
ii. Managers are under the same duties as directors;
iii. The only way to terminate business rescue proceedings is by an order of court;
iv. During the business rescue proceedings a director is relieved from his or her duties in terms of section 75 of the 2008 Companies Act;
v. A company is considered financially distressed for the purposes of business rescue if it reasonably likely that it will become insolvent immediately in the next 12 months.

(A) i;
(B) i; ii and iv;
(C) iv;
(D) iv and v;
(E) None of the above

[Total Q13: 2 marks]
Question 14

Which of the following is incorrect?

i. Companies that cannot be saved by business rescue will be liquidated;

ii. A profit company is incorporated for the purposes of gain for its shareholders;

iii. A compromise is an agreement between a company and its creditors in terms of which the creditors agree to accept less than their full claims against the company;

iv. If the business rescue practitioner dies or resigns then the business’s rescue proceedings will become null and void;

vi. The 2008 Companies Act requires that a business rescue practitioner must not be disqualified from acting as a director of a company.

(A) None of the above;
(B) iii and iv;
(C) iv;
(D) i and v;
(E) iv and v.

[Total Q14: 2 marks]
Question 15

In the case of *Robinson v Randfontien Estates Gold Mining Co Ltd* 1921 AD 168 the court held:

i. That court described the restricted transferability of shares as an essential attribute to a private company;

ii. That the shareholders’ right to transfer shares must to restricted in the company's articles;

iii. That the purpose of personal liability companies is to allow a private company to include in its memorandum of incorporation that the directors and past directors would be jointly and severally liable;

iv. That; 'where one man stands to another in a position of confidence involving a duty to protect the interest of that other he is not allowed to make a secret profit at the other’s expense or place him in a position where his personal interests conflict with his duty'.

(A) None of the above;
(B) i;
(C) i and ii;
(D) i; ii and iii;
(E) iv.

[Total Q15: 2 marks]

[TOTAL SECTION A: 30 MARKS]
SECTION B

Question 1

Set out the distinguishing features between a Partnership and a Close Corporation as a form of business enterprise.

[Total Q1: 6 marks]

Question 2

In *Michalow NO v Premier Milling Co Ltd* 1960 (2) SA 59 (W) the court held that, 'partnership estate' is a separate estate from the estate of the individual and partnership creditors are precluded from making claims against partners' private property. Explain the outcome of this decision in terms of Insolvency laws in South Africa.

[Total Q2: 6 marks]

Question 3

Describe the actions that have been designated by the legislature as 'acts of insolvency' in terms of the Insolvency Act. In the course of your answer, explain whether an act of insolvency is committed in the following cases.

(a) The debtor writes to the creditor: 'I am reluctant to settle your account immediately, because this would land me in financial difficulty. I would be grateful if you could give me an extension of a few months to allow me to consolidate my position.'

(b) The debtor writes to the creditor: 'I do not intend to dispute liability in this matter, but I am only prepared to offer you half of what you are claiming. This offer is made in full settlement of your claim.'
(c) The debtor has moved from Johannesburg to Cape Town for six months now, without informing any of his creditors. In addition, he has cancelled the lease on the flat he was occupying in Johannesburg prior to his departure.

(d) A return of service on a warrant of execution issued against the debtor states that the sheriff has, after a diligent search, failed to find sufficient disposable property belonging to the debtor to satisfy the judgment against him.

[Total Q3: 8 marks]

[TOTAL SECTION B: 20 MARKS]
SECTION C

PLEASE ANSWER THIS SECTION IN A SEPARATE ANSWER BOOK.

Question 1

With reference to of the Companies Act 2008, discuss the legal consequences of business rescue proceedings on a company.

[Total Q1: 15 marks]

Question 2

Explain the effect of the Companies Act 2008 on Close Corporations.

[Total Q2: 5 marks]

[TOTAL SECTION C: 20 MARKS]

TOTAL FOR PAPER: 70 MARKS