INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.

2. This paper contains four questions. Unless otherwise indicated, references to the Companies Act are to the Companies Act 71 of 2008.

3. This paper consists of THREE (3) pages. Please ensure that you have all the pages.

4. Answer any three (3) questions. All questions carry equal marks. Where a question is divided into parts, marks have not been allocated to those parts, and the answer to the question will be marked as a whole.

5. Where appropriate, refer in your answers to relevant decided cases.

6. This is a closed book examination; no materials of any kind may be brought into the examination venue or consulted during the examination.
QUESTION 1

Discuss the concept of the gross or unconscionable abuse of juristic personality as a ground for piercing the corporate veil as envisaged in section 65 of the Close Corporations Act 69 of 1984 and section 20(9) of the Companies Act 71 of 2008 and the manner in which this concept was explained and applied in Airport Cold Storage (Pty) Ltd v Ebrahim 2008 (2) SA 303 (C) and in the judgment of the Supreme Court of Appeal in this case and also in Ex parte Gore NO [2013] ZAWCHC 9. Include in your answer a discussion of the remedy, under section 20(9), mentioned above, of piercing the veil as articulated in the judgment in Ex parte Gore. 

(Do not discuss any of the common law grounds for piercing the veil and do not discuss the piercing of the veil in terms of section 424 of the Companies Act 61 of 1973).

[Total Q1: 20 Marks]

QUESTION 2

Discuss, with reference to the common law and the Companies Act 71 of 2008, each of the following duties of directors, and also discuss in each instance whether ratification of a breach of the duty is possible and how such ratification would be accomplished:

a) the duty to act bona fide in the interests of the company;
b) the duty to exercise powers for a proper purpose;
c) the duty to exercise care and skill, and the relevance in this regard of the “business judgement” rule.

[Total Q2: 20 Marks]

QUESTION 3

Explain the legal principles that determine the circumstances in which the board of directors acting collectively, or the chairman of the board of directors, or the managing director, or an ordinary director, or the company secretary has actual authority or ostensible authority (and explain the concept of “ostensible authority”) to enter into contracts that are binding on the company. Go on to explain the potential liability of an agent of the company, at common law, for breach of warranty of authority

[Total Q3: 20 Marks]
QUESTION 4

Discuss each of the following:

a) the principle laid down in *Salomon v Salomon and Co Ltd* [1897] AC 22 that a company is a legal *persona* in its own right and the manner in which the principle was applied in that case.

b) whether the *Salomon* principle has been accepted by the South African courts; and

c) whether the principles laid down in *Salomon’s* case apply also to a "one-man company" ie a company where the same person is both the sole shareholder and the sole director. In the case of such a “one-man company” is it true to say that the sole shareholder is also the owner of property owned by the company? If not, then explain the legal relationship between the sole shareholder, the company and the property in question.

*(Do not discuss lifting or piercing the corporate veil.)*

[Total Q4: 20 Marks]

TOTAL FOR PAPER: 60 MARKS