INSTRUCTIONS TO STUDENTS

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

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

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

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

5. This paper consists of four (4) pages.
At common law, a company had limited legal capacity, and the common law ultra vires doctrine decreed that, where a company entered into a transaction that was outside the scope of the objects clause in its memorandum of association, the act was void and unratifiable.

In the light of – and in comparison with – that historical concept of a company’s legal capacity, –YOU ARE REQUIRED TO –

(a) Explain what the legal capacity of a company is in terms of the Companies Act 71 of 2008; and

(b) Explain the legal consequences where a company enters into a transaction that infringes a limitation on its capacity set out in its memorandum of incorporation, for example, where it enters into a contract of a kind that the company’s memorandum of incorporation forbids it from entering into; and

(c) Explain the concept of a so-called “RF” company and the legal implications for an outsider who enters into a contract with a company whose name includes the abbreviation “RF”.

(No specific marks are allocated to parts (a), (b) and (c) of the question and your answer will be marked as a whole.)

[20 marks]
QUESTION TWO

The Companies Act 71 of 2008 provides in section 76 that a director of a company

"may not use the position of director or any information obtained while acting in
the capacity of director to gain an advantage for the director …"

Discuss the way in which the courts are likely to interpret this provision in the light of the
similar common law principle and the similar provision in the Companies Act 61 of 1973.
Include in your answer a discussion of the decision in *Regal Hastings Ltd v Gulliver*
[1942] 1 All ER 378 (HL) (and the significance in this regard of the so-called "rule in
*Keech v Sandford") and any other relevant cases.

[20 marks]

QUESTION THREE

Explain the legal principles that determine the circumstances in which
(a) a company’s board of directors acting collectively, or
(b) the chairman of the board of directors, or
(c) the managing director, or
(d) an ordinary director, or
(e) 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, at common law, for breach of
warranty of authority and the relevance of such liability in the context of company law.

[20 marks]
QUESTION FOUR

Discuss the potential imposition of personal liability for the debts of a company in terms of section 424 of the Companies Act 61 of 1973 in relation to fraudulent or reckless trading, with particular reference to the situation where the directors of a company allow it to continue incurring debts when it is already insolvent, and also discuss the extent, if any, to which section 424 remains relevant and potentially applicable after the coming into force of the Companies Act 71 of 2008.

[20 marks]

[TOTAL FOR PAPER: 60 MARKS]