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 (3) questions. All questions carry equal marks. Where a question is divided into parts, separate marks are not allocated to those parts, and the 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 three (3) pages.
QUESTION ONE

Discuss the circumstances in which, at common law, the courts will "lift or pierce the veil of incorporation"; include in your answer a full discussion of the decision in *Cape Pacific Ltd v LCI (Pty) Ltd* 1995 (4) SA 790 (A). Compare and contrast the judgment in this case with the judgment in *Botha v van Niekerk* 1983 (3) SA 513 (W) and include in your answer a discussion of any other judicial decisions involving a lifting or piercing of the corporate veil in terms of common law principles.

(Do not discuss any of the statutory grounds for lifting the veil under the Companies Act 61 of 1973 or the Companies Act 71 of 2008, nor under the Close Corporations Act 69 of 1984.)

[20 marks]

QUESTION TWO

The Companies Act 71 of 2008 provides in section 163 that –

(1) A shareholder or a director of a company may apply to a court for relief if –

(a) any act or omission of the company, or a related person, has had a result that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant;

(b) the business of the company, or a related person, is being or has been carried on or conducted in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the applicant ...

(2) Upon considering an application in terms of subsection (1), the court may make any interim or final order it considers fit...

Discuss, in the light of the similar provisions of the Companies Act 61 of 1973 and case law the kinds of conduct that the courts may regard as falling within the scope of sub-sections (1)(a) – (b) above, and the kind of order the court may make under sub-section (2).

[20 marks]
QUESTION THREE

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 in section 20(9) of the Companies Act 71 of 2008 and explain the manner in which this concept was applied in *Airport Cold Storage (Pty) Ltd v Ebrahim* 2008 (2) SA 303 (C) (and in the Supreme Court of Appeal decision in that case) and in *Ex parte Gore NO* [2013] ZAWCHC 9. Include in your answer a discussion of the particular remedy, under section 20(9), mentioned above, for piercing the corporate veil that was granted in *Ex parte Gore*.

[20 marks]

QUESTION FOUR

Critically discuss the meaning of the phrase ‘reasonable prospect of rescuing a company’ as envisaged in section 131(4)(a) of the Companies Act 71 of 2008 which deals with business rescue.

[20 marks]

[TOTAL FOR THE PAPER: 60 MARKS]