

**UNIVERSITY OF FORT HARE
NELSON MANDELA SCHOOL OF LAW
(East London Campus)**

Law of Business Entities A
LMB 311E

**DEGREE EXAMINATIONS
June 2023**

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Time: 3 Hours

Subject: Law of Business Entities A

Marks: 100

**This paper consists of (3) pages including the
cover page**

Internal Examiner: Adv S Muthugulu-Ugoda

Internal Moderator: Prof P Osode

INSTRUCTIONS

Answer all questions and make reference to legal authorities.

Question 1

(30 Marks)

Section 19(1) of the Companies Act 71 of 2008 reinforces the common-law position as outlined, in that it provides: ‘From the date and time that the incorporation of a company is registered, ... the company – (a) is a juristic person ...’.

This statutory provision brings the law into line with accepted judicial pronouncements, particularly that of Innes CJ in *Dadoo v Krugersdorp Municipal Council*:

“A registered company is a legal persona distinct from the members who compose it ... Nor is the position affected by the circumstance that a controlling interest in the concern may be held by a single member. This conception of the existence of the company as a separate entity distinct from its founders is no merely artificial technical thing. It is a matter of substance; property vested in the company is not, and cannot be, regarded as vested in all or any of its members.”

Using the above statement as your point of departure, discuss the principle of the separate legal personality of the company, and the consequences flowing from it.

Question 2

(25 Marks)

Morgan decides to go into a partnership with his brother, Stanley, to sell goods in a general store near Mdantsane. In terms of the arrangement, Morgan will contribute R5 000 and Stanley will run the shop. After a while Morgan notices that Stanley is taking some of the goods home with him for personal use. As a result, they fought, and now Morgan doesn't want to continue the business with Stanley; and decides to consult a legal practitioner. Advise Morgan.

Question 3

(25 Marks)

The Memorandum of Incorporation of Brand 2 Africa Ltd provides that the management and control of the company are vested in the board of directors, which has the power to delegate its authority to any director of the company. This power of delegation was never exercised by the board but Edery, a director of Brand 2 Africa, enters into a contract on behalf of the company with Craig.

- (a) Under what circumstances, if any, will Brand 2 Africa Ltd be bound by the contract?(10)
- (b) Explain the extent to which the legal capacity of Brand 2 Africa Ltd would be relevant to your answer in (a) above. (10)
- (c) Is the *Ultra vires* doctrine dead and buried? Explain Fully. (5)

Question 4

(20 marks)

You are acting on behalf of a client who wants to incorporate a company and plans to name it A Pick and Pay Stores (Pty) (Ltd) @. Advise your client whether or not he will be able to do so. In your answer discuss the case of *Lucky Star Ltd v Lucky Brands (Pty) Ltd* 2017 (2) SA 588 (SCA), *Peregrine Group (Pty) Ltd v Peregrine Holdings Ltd* 2000 (1) SA 187 (W), *Asiza (Pty) Ltd v Azisa Media CC* 2002 (4) SA 377 (C).

Total: 100 Marks