

Course Code: L502/303 (M) 2005

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER, MAY 2005**

**TITLE OF PAPER** : **COMPANY LAW**

**COURSE CODE** : **L502/L303**

**TIME ALLOWED** : **THREE (3) HOURS**

**INSTRUCTIONS** : **1. ANSWER A TOTAL OF FOUR (4) QUESTIONS INCLUDING QUESTION ONE.**  
**2. QUESTION ONE IS COMPULSORY.**

**DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.**

**QUESTION 1 (Compulsory)**

Sabelo has been the owner of a chain of butcheries in the country's two main cities for the past 6 years. Owing to the resounding success of the business, he has opted to convert his sole proprietorship into a private company. Mandla, his attorney, has been charged with the responsibility of drawing up the necessary documents for the registration of the company. Mandla has also agreed to take up one share valued at E1.00 (one lilangeni) from the company's five hundred shares. The company has only one object:

“To acquire, by purchase, lease or some other legitimate method approved by the board of directors, and operate abattoirs, butcheries as well as farms for the rearing of livestock and the pursuit of other suitable agricultural and farming activities”

In a tele-conversion, Sabelo informed Mandla that the name of the company would be Shangri-la Butcheries (Pty) Ltd. When Sabelo wanted to know how long it would take to successfully incorporate the company, Mandla informed him that “the whole thing would be fully operational as a corporate entity” within a week.

One week after the conversation between Sabelo and his attorney, the former met Cedric Sithole, a livestock farmer of many years. From their discussion, Sabelo learnt that Cedric could supply all the livestock requirements of the new company better than any other five suppliers combined. Further, Cedric was anxious to have an agreement sealed between the two parties on this that very same day. Consequently, Cedric was nominated in terms of the agreement between the two parties the sole supplier of all the company's livestock requirements. Sabelo signed this contract “for and on behalf of Shangri-la Butcheries (Pty) Ltd”. Livestock valued at E30 000 (thirty thousand emalangeni) was delivered by Cedric to Sabelo's business premises in terms of the agreement the following day. Sabelo paid only half of the total purchase price to Cedric. Mandla, as a prospective member of the company, was kept informed of these developments.

Two days later, Sabelo was advised by his attorney that it was not possible to register the company, because another company was already registered by the Registrar's office with the same name, Shangri-la Butcheries. Mandla, had also failed to secure a tax clearance certificate for Sabelo from the Income Tax Department, which is a prerequisite for valid registration of his company.

In a sudden turn of events the existing company known as Shangri-la Butcheries was de-registered for failing to comply with certain requirements of the Companies Act. Further, Sabelo had an opportunity to settle his debt with the Income Tax Department and as a result he was furnished with a Tax Clearance Certificate.

At this point Sabelo reactivated the registration process with Mandla who, however, indicated that he was no longer willing to become a member of the company. At this stage, Sicelo, a partner in Mandla's law firm, agreed, at Manda's request, to subscribe for ten shares in the company in order to satisfy the statutory requirements. Mandla successfully incorporated the company as Shangri-la Butcheries (Pty) Ltd. Sabelo resold the livestock purchased from Cedric to the new company for E120,000 (one hundred and twenty thousand emalangen), half of which was paid in cumulative preference shares and debentures.

Following a week-long mass stay away called by the Agricultural and Allied Workers Union, Sabelo's business incurred unusually heavy financial losses as a result of which almost all of its financial resources were exhausted. In order to contain the situation, an old friend, Delisa, was invited by both members to purchase shares in the company. With the proceeds of this fresh issue of shares, the company paid half of the purchase price of a second hand bus bought by the company from Zeeman's in Mbabane. Unfortunately, this new scheme did not work out.

Furthermore, Sicelo learnt for the first time that the livestock purchased "for and on behalf of Shangri-la Butcheries" were valued at only E30 000. Now the company is unable to settle its debts and it has been petitioned into bankruptcy.

Identify all the legal issues involved in this case and advise all the parties of their respective rights and obligations. In doing so, assume no knowledge of Bankruptcy Law or Creditor's priorities. Substantiate your response by making reference to decided cases. Consider whether your answer would have been different if this factual situation had arisen in South Africa.

[40 MARKS]

## QUESTION 2

Maxwell and Gabi enter into a Partnership for the packaging and distribution of cigarettes. Maxwell contributes E5 000 00 whilst Gabi agrees to manage the running of the business. The partners agree that the profits will be shared as follows:

Maxwell will be entitled to the first E10,000  
where after Maxwell and Gabi will share the balance thereof equally.

- (a) Consider whether a valid partnership agreement has been concluded with reference only to the requirement that the partners must intend to make a profit in which each of the partners may expect to share. [5 marks]
- (b) Because of the increasing health consciousness of the public, the net losses of the partnership at the end of the financial year of the business amount to E20,000. Assuming that a valid partnership agreement exists, in what proportions will the net losses be shared?

Would your response be different if the partners had not agreed on the way in which the profits would be shared? [5 marks]

- (c) Is a partnership a separate legal personality? Using case law exhibit the factors that help identify a separate legal entity. [10 marks]

[Total: 20 marks]

**QUESTION 3**

Outline some of the grounds on which the court may order the winding up of a company. In support of your response, refer to decided cases.

[20 marks]

**QUESTION 4**

Bosco and Joe have operated a small manufacturing partnership at Matsapha Industrial site for the past 2 years. Owing to the success of their business they have established another plant in Mbabane, which is also doing quite well. The net worth of the two plants is now E850,000.

On account of the potential of their business, the two partners are eager to incorporate a public company to take over their business. They also intend to buy a farm on which to rear chickens, with the ultimate goal of breaking into the poultry industry.

Advise the partners on the steps they ought to take to incorporate their company. You are also expected to explain to them the rationale behind the specifications of certain statutory requirements which must be met before a newly incorporated company commences business.

[20 marks]

**QUESTION 5**

Peter sells his business to Hot Properties (Pty) Ltd, in which Peter, his wife and his three children are the only shareholders. As purchase price for the business, Peter received 10,000 shares and secured debentures issued by the company. Peter is also appointed the Managing Director of Hot Properties (Pty) Ltd. Two years later Hot Properties (Pty)Ltd is liquidated. There are insufficient assets to pay both Peter's secured debentures and the ordinary creditors. Hot Properties (Pty) Ltd also owes money to various other creditors.

(a) The liquidator of Hot Properties (Pty) Ltd approaches you for legal advice. He is of the opinion that Hot Properties (Pty) Ltd is merely Peter in another guise and wants to know whether it is possible to hold Peter personally liable. Advise the liquidator and also discuss the position of the secured debentures. [10 marks]

(b) One of the ordinary creditors is of the opinion that it could be to his advantage to pierce the corporate veil. Explain what it means to Pierce the corporate veil and briefly explain when the courts may do so. [10 marks]

[Total: 20 marks]

**QUESTION 6**

Critically discuss the appointment and the function of the Company's Auditor in terms of our Law. Looking at the legislation provided in Botswana what loopholes do you see in our law, and what recommendations for reform would you suggest to the Swaziland Parliament?

[20 marks]

**QUESTION 7**

The articles of association of Khetwa (Pty) Ltd appoint Mr. Thobela as the company's attorney and determine that he should transact all the legal business of the company at the normal recommended tariff. Three years later the company ceases to use Mr. Thobela's legal services.

Will Mr. Thobela succeed in an action against the company for breach of contract?

[20 marks]