

Course Code: L502/303 (S) 2005

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**SUPPLEMENTARY EXAMINATION PAPER, JULY 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)**

Asibambisane Co. (Pty) Ltd is an investment company which has been in existence for six years. At the helm of the company are four directors: Buhle, Nhlanhla, Sabelo and Vuka. The Chairperson, Buhle is an LL.B/B.Com graduate from UNISWA; she is the Managing Director of SWAKI Investment Co. Nhlanhla is a corporate lawyer in a leading firm of attorneys in Mbabane, whilst Sabelo is a messenger at the Fire and Emergency Services at Matsapha. Vuka's encounter with the classroom was very short lived because he left school after completing grade three.

Two months ago the Board of Directors of the Swaziland National Provident Fund decided to put the fund up for sale following years of losses in its operations. Asibambisane was immediately interested in this deal and dispatched Buhle and Nhlanhla to enter into negotiations with the fund. Three weeks into the negotiations, the two directors reported to the full board of their company that the deal was not worth their while, and should therefore be abandoned. This recommendation was endorsed. Actually, the basis of this recommendation was the financial realities of Asibambisane, which could not afford the E4 million price tag required by the Fund. Some six weeks after this decision, the Chairman of the Board of the Fund approached Nhlanhla with a new deal. This was only in relation to the terms of payment of the purchase price. When Nhlanhla expressed her excitement over the new offer and promised to report this to her principals as soon as possible, she was informed that the deal was being made to her in her personal capacity. After talking to her husband and Buhle about it, Nhlanhla acquired sixty percent shareholding in the Fund with the other forty percent going to her husband and Buhle.

Meanwhile, the Articles of Association of Asibambisane provided that during the absence of any number of directors on official business, the remaining director(s) had full board powers to commit the company in any deal whatsoever, so long as the same was in conformity with the Memorandum of Association. During the absence of all the other three directors of the company, Vuka was approached by Zizwe, the Managing Director of a Furniture company with a view to supplying the furniture requirements of Asibambisane. Although the terms suggested by Zizwe were clearly outrageous and not in any way beneficial to the interests of Asibambisane, Vuka exercising full board powers approved the contract as a result of which the company is now in serious financial difficulties. However, the deal fell within the confines of the company's Memorandum of Association.

Identify all the issues raised in this factual situation and advise the parties; particularly the board of directors of Asibambisane, of their respective rights and duties.

[40 MARKS]

**QUESTION 2**

Mduduzi has been retrenched by UNISWA following the restructuring of the institution. He has received a retrenchment package of E15 000 (fifteen thousand). He is aware that it will be very difficult for him to secure alternative employment, considering his age. He has decided to try his

luck in the business world. He is also aware that he may not achieve his business idea on just the money received as terminal benefits, which means he will have to raise more capital in order to realise his dream. Although Mduduzi has no previous experience in business management, he would not like to lose control of the business to other people, even if they are close friends. Furthermore, he is keen on an arrangement that will not put his personal estate at risk. Mduduzi has very little trust in other people, especially where money is concerned, and for this reason, he is anxious to avoid a framework that would confer power on those involved with him in business to commit the business in transactions that have not received prior consideration by all the stakeholders.

In light of Mduduzi's personal circumstances advise him on the suitable business organisation which he should opt for. Indicate to him other advantages of the enterprise that you have selected which he may not have thought of. You may need to tell him why other business enterprises may not be suitable, and in this regard, you will need to refer to decided cases in support of your choice. You should further advise him on the advantages, if any, that may be available to him if his business is formed in South Africa instead of Swaziland.

[20 marks]

### **QUESTION 3**

- (a) With the use of decided cases define the concept of a "promoter" and supplement your definition with an explanatory note. [10 marks]
- (b) Define the concept of a "prospectus" and set out the requirements for its registration with the Registrar of Companies as contained in Section 78 of the Companies Act 7/1912.

[Total: 20 marks]

### **QUESTION 4**

- (a) Discuss the requirements for a pre-incorporation contract. [10 marks]
- (b) Briefly discuss the three legal relationships that arise from the constitution of a company. [10 marks]

[Total: 20 marks]

### **QUESTION 5**

Bongani had been running a bottle store and a grocery business for two years when he met and married Sazi. Their marriage was out of community of property. Bongani who was permanently employed by SIDC and earned several promotions there. Consequently, he had very little time for the business and naturally Sazi, who was a housewife, assumed responsibility over the management of the business. Some eight years into the marriage, the couple began to experience marital discord: the work load at the office made it difficult for Bongani to pay regular attention to his wife. Furthermore, Bongani was also engaged in an extra-marital affair with Thandi, a Secretary at SIDC.

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With the help of a private investigator, Sazi conclusively established that her husband had committed adultery and had compromised his marital vows.

Sazi initiated divorce proceedings against Bongani. The court granted the decree of divorce two days after Bongani had travelled to the USA to pursue a twelve months management course on the instructions of his employer.

Meanwhile, Sazi continued to run the business and continued to draw fifty percent of the business profits and deposited same into her personal bank account, whilst depositing the balance into Bongani's bank account. Whilst Bongani was away, Sazi bought a neighbouring bottle store at E500 000 (five hundred thousand emalangeni) and resold it to the business she was running for E750 000 (seven hundred and fifty thousand emalangeni).

On Bongani's return, Sazi handed over the management of the business to him. At the end of the month, she demanded payment of fifty percent of the business's profits which Bongani refused to pay. Further, when Bongani learnt of the fact that the other bottle store had been purchased from Sazi at E750 000 whilst she had only paid E500 000 for it, he sought to recover the difference from her.

Identify the issues raised herein and advise the parties of their respective rights and duties. In support of your arguments, make reference to decided cases.

[20 marks]

**QUESTION 6**

(a) What is the essence of the Ultra Vires doctrine in our Company Law.

[10 marks]

(b) Discuss "Just and Equitable" as a ground for the winding up of a company. Ensure you mention the situations in which the courts have seen fit to grant winding up orders on the ground that it was "just and equitable" to do so.

[10 marks]

[Total: 20 marks]

**QUESTION 7**

Write NOTES on the following:

(a) The allotment of shares

[5 marks]

(b) The concept of a share.

[5 marks]

(c) The usual contents and aim of the Memorandum of Association.

[10 marks]

[Total: 20 marks]