

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2006

TITLE OF PAPER : COMPANY LAW AND PARTNERSHIPS

COURSE CODE : L 303/L502

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS :

- 1. ANSWER FOUR (4) QUESTIONS INCLUDING QUESTION ONE.**
- 2. QUESTION ONE IS COMPULSORY**

QUESTION 1 (Compulsory)

The Now Properties Company (Pty) Ltd was incorporated in January, 2003. The objects of the company have been stated in the memorandum of association as follows:

- i) To buy and sell land and houses.
- ii) To engage in the construction industry.
- iii) To do any other act incidental to the attainment of the foregoing objects.
- iv)

In May 2003, the Board of the company met and adopted a resolution approving a loan of E1 million to Swazi Construction Company (Pty) Ltd, a company which supplies building materials to the construction industry in the country. In reaching this decision the board would yield a 30% interest, and a preferential allocation of cement, iron rods, and other building materials from Swazi Construction company (Pty) Ltd.

Three of the shareholders have objected to the loan, arguing that it falls completely beyond the capacity of the company.

Write a legal opinion in which you discuss the merits of the case of the three shareholders.

[25 MARKS]

QUESTION 2

(a) Define the concept of “promoter” and support your definition by means of an explanatory note. (15 marks)

(b) Define the concept of “prospectus” and set out the requirements for its registration with the registrar of companies as contained in Section 78 of the Companies Act, 1912. (10 marks)

[25 MARKS]

QUESTION 3

Explain the concept of “Dividends” and discuss the main rules of company law dealing with the declaration and payment of dividends.

[25 MARKS]

QUESTION 4

Mr. Shongwe, a prominent businessman, and five of his associates, decide to float a company in order to manufacture clothes. Long before the company is registered, Mr. Shongwe comes into a position to buy machinery for this venture at a huge discount. However, he is told that the price will be raised substantially if he does not purchase the

machinery within two days. Neither Mr. Shongwe, or his associates can afford to buy the machinery on behalf of the company not yet incorporated, in such a way that the company would later become liable to pay the purchase price after its incorporation.

Advise the parties, advising them how different their position will be once the Companies Bill, 2004 is finally passed as law.

[25 MARKS]

QUESTION 5

Discuss when a company may be wound up by the court.

[25 MARKS]

QUESTION 6

(a) Outline the main reasons why a company would want to alter its objects, and describe how the objects can be altered in terms of the Companies Act of 1912.

(15 marks)

(b) Can a Company or any of its members be bound to outsiders by its articles of association? Substantiate your response by referring to a specific judgement.

(10 marks)

[25 MARKS]

QUESTION 7

(a) Write short notes on the Turquand Case.

(15 marks)

(b) Write an explanatory note on the issue of Debentures.

(10 marks)

[25 MARKS]