

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

Joe Ngcobo has been a member of the Board of Directors of the Mona Investments Company Ltd for the last ten years. During this period, Joe only attended three meetings out of the forty ordinary and emergency meetings called by the Board. At the most recent of the Board meetings, Mr. Mike Meyer, one of the directors disclosed that a rival company, Diva Investments Co. Ltd. was planning to purchase more shares in their company. He explained that with this development, there was a strong possibility that the present board would lose control of the company and eventually be voted out. He therefore moved a resolution doubling the share capital of the company, and the board unanimously adopted it. All fresh issues were taken up by members of the board and their nominees.

At the same meeting, it was disclosed that Mr. Naidoo, an expatriate farmer had decided to leave the country, and that he was selling his fifty hectare farm and two hundred head of cattle at a bargain price. The company had been made an offer. The next day, Mr. Joe Ngcobo held private negotiations with Mr. Naidoo who agreed to sell him the farm and the cattle at a bargain price of E20,000.00. Joe has resold only the cattle to a nearby butchery for the sum of E25,000.00.

Ms. Nosi Parker, a young investigative journalist has published an article in the business section of the Times of Swaziland disclosing all facts surrounding the fresh issue of shares and the farm deal.

Discuss all the legal issues and advise both the companies on legal remedies, if any, available to them.

[25 MARKS]

### **QUESTION 2**

Nathi, Vusi and Khulekani conclude a partnership agreement in terms of which they will plant, process and sell tobacco. After a year of successful trading, they decide to expand their business by purchasing more land to be able to plant more tobacco. They eventually buy a farm from Mr. Big Liar, in the Piggs Peak area. Four months after the purchase of the farm, Nathi and Vusi learn that Khulekani made a secret profit of E50,000.00 because Khulekani made a deal with Mr. Big Liar that he will convince his partners to buy the farm at an inflated price, if Mr. Big Liar will pay him half the difference between the price he originally wanted (E350,000.00) and the inflated price (E450,000.00) for which the partnership bought the farm.

Discuss the rights and duties of the partners in the partnership, as well as the enforcement of their rights, and their powers of representation in terms of the above facts.

[25 MARKS]

### **QUESTION 3**

Discuss the concept of "Lifting the Corporate Veil" with the use of decided cases, define the circumstances under which the courts will lift the corporate veil.

[25 MARKS]

### **QUESTION 4**

(a) You are approached by a client who wishes to be advised whether a business he intends to embark on should be undertaken as a partnership (he has seven associates who are anxious to join him in the venture), or as a private company. Write an opinion in which you highlight the main differences between these two forms of business undertaking.

(b) Write a brief note on the memorandum of association of a private company, in particular explaining:

i. Its Usual content (6 marks)

ii. Its aim (6 marks)

[25 MARKS]

### **QUESTION 5**

(a) The memorandum of Protea (Pty) Ltd provides that the main object of the company is the manufacture of a tar mixture for the construction of roads. The articles of association of the company provide that only the board of directors or any person appointed by the board is entitled to conclude contracts on behalf of the company. The articles further provide that any contract which involves the expenditure of more than E100,000.00 must first be authorised by the company in a general meeting. The Board of Directors of the company, concludes a contract for the purchase of equipment that will be used in the process of manufacturing the tar mixture. The contract price is E200,000.00. The contract was concluded without the necessary authorisation by the general meeting.

Consider whether Protea (Pty) Ltd will be bound by the contract. Consider also, whether your answer would be different if Michael, an ordinary director of the company, had concluded the contract without being appointed by the board and without the necessary authorisation of the company in a general meeting.

[25 MARKS]

### **QUESTION 6**

(a) Discuss the requirements of a pre-incorporation contract. (10 marks)

(b) Discuss the appointment and duties of the Company Secretary, making reference to the Secretary's relationship to the company, and dealings with outsiders.

(15 marks)

(c) Explain when a company will be deemed unable to pay its debts. (.5 marks)  
[25 MARKS]

**QUESTION 7**

- (a) Who may become a member of a company, and who may not become a member?  
(5 marks)
- (b) Define the concept of a share.  
(5 marks)
- (c) Write on the allotment of shares.  
(10 marks)
- (d) Who must sign the memorandum of Association, and what information should be included in the memorandum.  
(5 marks)  
[25 MARKS]