



### **QUESTION 1**

Zola has no previous business experience, she is desirous of forming a business concern which will not put her personal estate in jeopardy. She is wary of getting into business with other people, and engaging in a venture that would bestow power on other people to enter into business contracts that have not received prior consideration of the stakeholders.

In light of Zola's personal circumstances, advise her on the suitable business organisation which she should form. Indicate to her the advantages and disadvantages of the enterprise you have selected. You may also need to provide guidance as to which other business enterprises are not suitable. Support your choice by referring to decided cases.

Further, Zola may want to know what advantages, if any, may be open to her if her business enterprise is formed in South Africa as opposed to Swaziland.

[25 MARKS]

### **QUESTION 2**

Discuss the legal grounds upon which the court may wind up a company. Illustrate your response by referring to decided cases.

[25 MARKS]

### **QUESTION 3**

Menzi has been involved in the real estate business for a number of years. Recently, he purchased a shopping complex in Manzini, which he intended to develop into an ultra-modern banking facility. Two months after this purchase, the entire complex was gutted down by fire, but since it was insured, Menzi received adequate compensation for it from his insurance company.

Two weeks later, his own residence was also burnt down in very mysterious circumstances. It too, was insured and thus Menzi collected another payment from the insurance company. With the proceeds from the fire policies for his two properties, Menzi bought a new shopping complex in Mbabane, for which he sought a new fire policy from his insurance company. However, the insurance company turned him down.

Soon after that, Menzi incorporated a new company, Menzi and Sons (Pty) Ltd, to which he sold his shopping complex for a reasonable price. He then proceeded to secure a fire policy for the shopping complex on behalf of the company. When he negotiated the policy with the insurance company, he failed to disclose that he held ninety-nine percent of the shares in this company and that a previous attempt to obtain a Fire policy in his own name for the very same shopping complex had been turned down.

A month later, a fire burnt the shopping complex to the ground. When Menzi, on behalf of the company, claimed compensation for this loss, the insurance company declined to pay, arguing that had it known that Menzi was a majority shareholder in the company, it would not have issued the fire policy. Menzi now argues that the policy was issued to the company and not to him. What is more, the assets of the company, he contends, were not necessarily his, in spite of the fact that he was a majority shareholder.

Identify the issues involved in this case, and give a legal opinion on the rights of the insurance company, Menzi, and Menzi and Sons (Pty) Ltd.

[25 MARKS]

#### **QUESTION 4**

Briefly discuss the following:

- |     |                      |              |
|-----|----------------------|--------------|
| (a) | Partnership          | (12 ½ marks) |
| (b) | Sole proprietorships | (12 ½ marks) |

[25 MARKS]

#### **QUESTION 5**

The separate legal personality adopted by a company upon incorporation is said to be one of the hallmarks of incorporation. What are the advantages of incorporation? Substantiate your response by referring to decided cases.

[25 MARKS]

#### **QUESTION 6**

Koko Trust Mining Co. (Pty) Ltd, was incorporated by two different companies. Muntu's Electronics Co. Ltd, and Tito Property Development Ltd. The objects clause of the company contained the following objects:

- (i) To run mining operations.
- (ii) To obtain prospecting and other mining licences on contractual basis.
- (iii) To do any other act necessary for the attainment of the above objects.

In the very first year of its existence, the company obtained its first prospecting licence from the Ministry of Natural Resources. Fourteen months later, it announced the discovery of large deposits of gold in the Mbuluzi area. Mining and Processing Plants were soon set up in Mbuluzi. The company enjoyed success for the first eight years. Suddenly, there was an unexpected fall in gold prices and the company soon lost some of its international markets to other competing companies. Within a year, things were so bad that the management informed the Board of Directors that an alternative would have to be found in order to save the company from folding up. The Board took a resolution to diversify its business activities. Accordingly, the director appointed by Muntu's

Electronics Co. put forward a proposal to involve the company in the buying and selling of television sets and other video equipment.

Since the company was already in financial difficulties, it approached the Swazi Bank for a loan facility. The latter granted the company a loan of E500,000.00. One shareholder who owns his own electronics company is clearly displeased with this development. His main argument is that the diversification undertaken by the company on the recommendation of the Board is beyond the capacity of the company. He has now approached you for legal assistance.

[25 MARKS]