

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2008

TITLE OF PAPER : **COMPANY LAW AND PARTNERSHIP**

COURSE CODE : **L303**

TIME ALLOWED : **THREE HOURS**

INSTRUCTIONS : **1. ANSWER FOUR (4) QUESTIONS**

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

QUESTION 1

- (a) Discuss the legal consequences if a Company's name is not correctly stated on the company's cheques. [5 marks]
- (b) What grounds does the Companies Act 7/1912 provide for a person to apply to the court for an order that a company change its name?

Briefly explain the factors the courts may take into account when considering whether to grant such an application. [10 marks]

- (c) Define the concept of a "promoter", supplement your definition by means of an explanatory note. [10 marks]

[Total: 25 marks]

QUESTION 2

- (a) Mr. Shongwe a prominent businessman and his five associates decide to float a company in order to manufacture clothing. Four months before the company is registered, Mr. Shongwe comes into the 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, nor any of his associates can afford the purchase price. They wish to know whether one or more of them can immediately 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.

[Total: 25 marks]

QUESTION 3

- (a) Discuss fully the contractual effect of the memorandum and articles of association, as regards the members of the company and the directors. [10 marks]
- (b) Discuss the decision of COMET Electrical Wholesalers (Pty) Ltd v SA TV cabling & wiring (Pty) Ltd 1977 (4) SA 254 (w).
In light of the consequences of S85 of the Companies Act 7/1912, do you think this is good law or not? Give reasons for your response, substantiating your response with reference to decided cases and/or examples. [15 marks]

[Total: 25 marks]

QUESTION 4

Vika is the Managing Director of Builders Limited. The memorandum of association of this company clearly stipulates that the main business of Builders Limited Construction, is property development. However, the company is now exporting mineral water to Europe. The Board of Directors instructs Vika to approach Sisonkhe Bank for a loan of E500,000.00 in order to purchase stock so as to meet customer demands. The Board of Directors takes the decision to borrow the money knowing full well that Builders Limited will not be able to repay the money, as it is in financial difficulties. This information is not passed on to Sisonkhe Bank and it proceeds to loan Builders Limited the E500,000.00. Now Builders Limited has been put under liquidation.

Advise the Bank.

[25 marks]

QUESTION 5

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 6

- (a) Discuss the concept of liquidation of companies giving details regarding the grounds upon which the court may wind up a company. Illustrate your response by making reference to decided cases.

[25 marks]