

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2008

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

COURSE CODE : **L303**

TIME ALLOWED : **THREE HOURS**

INSTRUCTIONS : **1. ANSWER FOUR QUESTIONS**

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INVIGILATOR**

QUESTION 1

- (a) Lihle, Simile and Khaya run a computer business as partners. One of the stipulations in the partnership agreement is that no partner is entitled to conclude a contract on behalf of the partnership for more than E10,000 without the prior written consent and approval of the other partners. Simile purchases computers for the shop for E12,000 without the necessary consent, or even knowledge of Lihle and Khaya. Lihle and Khaya do not even want the computers and deny any liability under this agreement based on the lack of authority of Simile. The seller wishes to know whether the partnership can be held to the contract.

Advise him fully, giving reasons for your response.

[20 marks]

- (b) List the essentialia of a partnership agreement.

[5 marks]

QUESTION 2

Sharon has no previous business experience, she is keen on forming business concern which will not put her personal estate in jeopardy. She is also 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 Sharon's personal circumstances, advise her on the suitable business concern which she should form. Indicate the advantage and disadvantages of the enterprise that 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; explaining to her what advantages may be open to her if her business enterprise is formed in South Africa as opposed to Swaziland.

[Total: 25 marks]

QUESTION 3

Sipho Sibisi has been involved in the real estate business for a number of years. Recently he purchased a shopping complex in Mhlume, and his intention was to convert it into an ultra-modern banking facility. Two months after the purchase, the whole complex was burnt to the ground, but because it was insured, Sipho received adequate compensation for it from his insurance company.

Two weeks later, his own residence was also gutted by fire, under very mysterious circumstances. The residence was also insured, and Sipho collected another payment from the insurance company. With the proceeds from the two fire policies from the aforementioned properties, Sipho 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 thereafter, Siphon incorporated a new company, Siphon and Associates (Pty) Ltd, to which he sold his shopping complex at a reasonable price. He then proceeded to secure a fire policy for the shopping complex on behalf of the complex. When he negotiated the policy with the insurance company, he did not disclose to it that he held ninety-three percent (93%) of the shares in this company and that a previous attempt to obtain fire coverage in his own name for the very same complex had been declined by the insurer.

A month later, the shopping complex was gutted by fire. Siphon on behalf of the company (Siphon & Associates (PTY) Ltd) claimed for the loss suffered as a result of the fire. The insurance company refused to pay, arguing that had it known that Siphon was a majority shareholder in the company, it would not have issued the fire policy.

Siphon argues that the policy was issued to the company and not to him. Furthermore, that the assets of the company were not his own, despite the fact that he is a majority shareholder.

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

[25 marks]

QUESTION 4

- (a) Explain and illustrate the legal remedies available against the promoter who has breached his fiduciary duties. [15 marks]
- (b) Discuss the nature and liability of a promoter for misstatements in a prospectus [10 marks]
[TOTAL: 25 MARKS]

QUESTION 5

- (a) Discuss the types of meetings a company may have and the proceedings to be adopted prior to the meetings. [10 marks]
- (b) Since holding companies and their subsidiaries enjoy a separate legal existence, briefly outline the duty owed by a nominee director who sits on the board of directors of a subsidiary company. [15 marks]
[TOTAL: 25 marks]

QUESTION 6

- (a) The articles of association of Khulani (Pty) Ltd appointed Ms. Reid as the company's auditor, and that she would act in this position at the usual recommended tariff. Ten years down the line, the company ceased to make use of Ms. Reid's auditing services. A disgruntled Ms. Reid has now approached you for advice, as she wishes to institute proceedings against Khulani (Pty) Ltd for breach of contract.

Advise her on her prospects of success in the action against the company. [15 marks]

- (b) Discuss the three legal relationships which arise from the constitution of a company.

[10 marks]

[TOTAL: 25 MARKS]