

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2009

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

COURSE CODE : **L303**

TIME ALLOWED : **THREE HOURS**

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

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INVIGILATOR**

QUESTION 1

What are pre-incorporation contracts? Critically analyze the position of the law relating to this kind of contract in Swaziland, comparing it to that which obtains in South Africa.

[25 marks]

QUESTION 2

- (a) The articles of association of Khulani Maswati (Pty) Ltd appoint Mr. Mhlanga as the company's attorney, and provide that he will act in this capacity at the usual recommended tariff. Seven years later, the company ceases to make use of Mr. Mhlanga's legal services. He now wishes to sue Khulani Maswati (Pty) Ltd for breach of contract.

Advise him on his chances of success in an action against the company. (15 marks)

- (b) Discuss the three legal relationships arising from the constitution of a company. (10 marks)

[Total: 25 marks]

QUESTION 3

Simo, Vika and Muhle concluded a Partnership contract in terms of which they will plant, process and sell cotton. After a year of successful trading, they opt to expand their business by purchasing more land to be able to plant more cotton. They eventually buy a farm from Mr. Mhlongo in the Shiselweni Region. Two months later, Muhle and Vika learn that Simo made a deal with Mr. Mhlongo that he will convince his two partners to buy the farm at an inflated price, if Mr. Mhlongo will pay him half the difference between the price he originally wanted (E350,000), and the (E450,000) for which the partners bought the farm.

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

[25 marks]

QUESTION 4

- (a) Discuss the appointment and duties of the Company Secretary. What is his relationship towards the company. (15 marks)

- (b) Discuss the nature of the liability of a promoter for misstatements in a prospectus.

(10 marks)

[Total: 25 marks]

QUESTION 5

Lenhle and Siphetho have operated a small manufacturing partnership in Manzini for the past five (5) years. Owing to the success of their business, they have since established two other plants in Siteki and Mhlume respectively. The net worth of all three plants is now Two Million Emalangeni.

On account of the potential of their business, the partners are now desirous of incorporating a public company to take over their business. They also intend to buy a farm for the rearing of livestock with the ultimate aim of diversifying into the meat industry.

Advise the partners on the steps they must take to incorporate their company. You are also expected to explain to them the rationale behind the specification of certain requirements which must be met before a newly incorporated company may commence business.

[25 marks]

QUESTION 6

Lihle is the Managing Director of Builder's Paradise limited. The memorandum of association of this company clearly stipulates that the main business of Builder's Paradise Limited is construction and property development. However, the company is now exporting mineral water to Europe. The Board of directors instructs Lihle to approach Tfutukani Bank for a loan of Two Million Emalangeni in order to purchase stock so as to meet customer demands.

The Board of Directors takes this decision to borrow the money knowing full well that Builder's Paradise Limited will not be able to repay the money, as it is in financial dire straits. This information is not passed on to Tfutukani Bank, and it proceeds to loan the company the Two Million Emalangeni. Now Builder's Paradise has been put under liquidation.

Discuss the legal issues that arise from this scenario.

[25 marks]