

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2009

TITLE OF PAPER : COMPANY LAW AND PARTNERSHIPS

COURSE CODE : L303

TIME ALLOWED : THREE HOURS

INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS

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INVIGILATOR**

QUESTION 1

The memorandum of association of Profit Galore (Pty) Ltd provides that the 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 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 Profit Galore (Pty) Ltd will be bound by the contract. Consider also, whether your answer would be different if Zakhe, an ordinary director of the company, had concluded the contract without being appointed by the board, and without the necessary authorisation in a general meeting.
[25 marks]

QUESTION 2

Discuss the concept of "lifting the corporate veil". With the use of decided cases, define the circumstances under which the court will lift the corporate veil.

(25 marks)

QUESTION 3

(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)

[Total: 25 marks]

QUESTION 4

Gabi and Dineo enter into a partnership for the packaging and distribution of cigarettes. Gabi contributes E5,000.00, whilst Dineo agrees to manage the business. The partners agree that the profits will be shared in the following manner.

Gabi will be entitled to the first E10,000.00, and thereafter, Gabi and Dineo will share the balance equally.

(a) Consider whether a valid partnership agreement has been concluded with reference only to the requirement that the partnership must intend to make a profit in which each of them may expect to share. [5 marks]

(b) Because of the increasing health consciousness of the public, the net losses of the partnership at the end of the business amount to E20,000.00. Assuming that a valid partnership agreement exists, in what proportions will the net losses be shared?

Would your response be different if the partners had not agreed on the way in which the profits would be shared? [5 marks]

(c) Is a partnership a separate legal entity? Using case law exhibit the factors that help identify a separate legal entity. [10 marks]

[Total: 25 Marks]

QUESTION 5

(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. [5 marks]

(d) Who must sign the memorandum of association, and what information should be included in the memorandum. [10 marks]

[Total: 25 marks]

QUESTION 6

Outline some of the grounds on which the courts may order the winding up of a company. In support of your response, refer to decided cases.

[25 Marks]