

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2010

COURSE NAME : **COMPANY LAW AND PARTNERSHIPS**

COURSE CODE : **L303**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS : **1. ANSWER A TOTAL OF FOUR QUESTIONS INCLUDING QUESTION ONE.**

2. QUESTION ONE IS COMPULSORY

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

QUESTION 1 (COMPULSORY)

Sakhile is a member of Liveletfu (Pty) Ltd. formed in July 2004, and Sakhile acquired forty percent of its shareholding at its inception. Ten other people held the balance of the shares.

At the end of the company's first quarter, some of the members together with the Board of Directors, expressed displeasure at the extent of Sakhile's shareholding in the Company, especially because of her conservative approach to business. Owing to her voting power, she managed to veto several proposals that were presented to the shareholders for consideration. Consequently, the Board of Directors in concert with two members of the company initiated a fresh issue of shares in terms of which Sakhile's majority position was diluted when the matter was tabled at a general meeting. Sakhile was not afforded an opportunity to vote on it by the Chairman of the Board.

Further, Sakhile received information that the Simunye Country Club has offered a two year contract to the company to provide for its clients. The contract was rejected by Liveletfu (Pty) Ltd., without good reasons being advanced. Sakhile also learnt that a partnership was formed by two members of Liveletfu (Pty) Ltd's Board of Directors which took advantage of this contract. The Board of directors took a complacent view to this, and no one seemed interested in having the decision challenged.

Sakhile has brought these problems to you for assistance. Give an opinion, highlighting the key areas where she should seek redress, and the type of action she may institute in order to obtain the redress suggested. Make reference to decided cases. (25 marks)

QUESTION 2

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

Maxwell will be entitled to the first E10,000.00 whereafter Maxwell and Gabi will share the balance thereof equally.

- a) Consider whether a valid partnership agreement has been concluded with reference only to the requirement that the partners must intend to make a profit in which each of the partners may expect to share.
- b) Because of the increasing health consciousness of the public, the net losses of the partnership at the end of the fiscal year of the business amount to E20,000.00. Assuming that a valid partnership agreement exists, in what proportion will the net losses 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)

QUESTION 3

Outline some of the grounds on which the court may order the winding up of a Company. In support of your response, refer to case law. (25 marks)

QUESTION 4

The articles of association of Khetwa (Pty) Ltd appoint Mr Mabilisa as the company's attorney and determine that he should transact all the legal business of the company at the normal recommended tariff. Three years later the company ceases to use Mr Mabilisa's legal services.

Will Mr Mabilisa succeed in an action against the company for breach of contract? (25 marks)

QUESTION 5

Discuss the Ultra Vires Doctrine as it applies to our Company law with a view to its impact on the law of Agency and the doctrine of constructive notice. (25 marks)

QUESTION 6

What are pre-incorporation contracts? Critically examine the position of the law relating to these contract in Swaziland, comparing it to the position that obtains in South Africa. (25 marks)