

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER, MAY 2011**

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

**COURSE CODE** : **L303**

**TIME ALLOWED** : **THREE HOURS**

**INSTRUCTIONS** : **1. ANSWER ANY FOUR (4) QUESTIONS, INCLUDING QUESTION ONE.**

**2. QUESTION ONE IS COMPULSORY.**

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**QUESTION 1 (Compulsory)**

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Mike has been involved in the real estate business for a number of years. Recently, he bought a shopping complex in Manzini, which he intended to develop into an ultra-modern banking facility. Two months after this purchase, the entire complex was gutted down by fire, but since it was insured, Mike received adequate compensation for it from his insurers.

Two weeks later, his own residence was also burnt down in very mysterious circumstances. It too, was insured and thus Mike collected another payment from the insurance company. With the proceeds from fire policies for his two properties, Mike 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 after that, Mike incorporated a new company, Mike's Investments (Pty) LTD, to which he sold his shopping complex for a reasonable price. He then proceeded to secure a fire policy for the shopping complex on behalf of the company. When he negotiated the policy with the insurance company, he neglected to mention that he held ninety-five percent of the shares in this company, and also did not disclose that a previous attempt to obtain a fire policy in his own name for the very same shopping complex had been turned down.

A month later, a fire burnt the shopping complex to the ground. When Mike, on behalf of the company claimed compensation for this loss, the insurance company declined to pay, arguing that had it known that Mike was a majority shareholder in the company, it would not have issued the fire policy. Mike now argues that the policy was issued to the company and not to him. What is more, the assets of the company, he contends, were not necessarily his, in spite of the fact that he is a majority shareholder.

Identify the key issues in this case, and render a legal opinion on the rights of the Insurance Company, Mike, and Mike's Investments (Pty) LTD. [25 marks]

**QUESTION 2**

Briefly discuss what the Companies Act, 2009 provides for foreign companies. Consider the current law on these companies in Juxtaposition with the law provided for such companies in the Companies Act, 1912.

In your analysis, state whether there has been any marked improvement on the law regulating foreign companies, and whether in your opinion, there is a need to bolster up the safeguards which are provided by the law. In your response, do highlight why there is a need for these legal provisions in the first place. [25 marks]

**QUESTION 3**

Briefly discuss the following:

- (a) Sole Proprietorships (12 ½ marks)
- (b) Partnerships (12 ½ marks)
- [Total: 25 marks]

**QUESTION 4**

The Crown Properties Company (Pty) LTD was incorporated in February, 2000. Its objects have been stated in the memorandum of association as follows:

1. To buy and sell land and houses;
2. To engage in the construction industry;
3. To do any other act incidental to the attainment of the foregoing objects.

In May 2004, the board of directors met and adopted a resolution approving a loan of three million emalengeni to Country Folk Construction (Pty) LTD, a company which supplies building materials to the construction industry in the country. In reaching this decision, the board would yield a 30% interest, and a preferential allocation of cement, iron rods, and other building materials from Country Folk Construction (Pty) LTD.

Discuss the merits of the case of the aggrieved shareholders. (25 marks)

**QUESTION 5**

- (a) Discuss the requirements of a pre-incorporation contract according to the Companies Act, 2009. Compare these to those provided by the South African Statute of 2008. [10 marks]
- (b) What do you understand to be the gist of the concept of “Corporate Governance”? What does the King Report III recommend with regard to the manner in which a company ought to be managed, and the composition of the board of directors? [15 marks]
- [TOTAL MARKS: 25]

**QUESTION 6**

Joe Nhleko has been a member of the board of directors of Mona Investments LTD. For the last ten years during this period, Joe only attended three meetings out of forty ordinary and emergency meetings called by the board. At the most recent meeting, Mr. Mihla Ndlovu, one of the directors disclosed that Diva Investments Co. LTD, a rival company, was planning to purchase more shares in their company. He explained with this development, there was a very strong possibility that the present board would lose control of the company, and eventually be voted out. He therefore moved a resolution doubling the share capital of the company, and the board unanimously adopted it. All fresh issues were taken up by members of the board and their nominees.

At the same meeting, it was disclosed that Mr. Naidoo, an expatriate farmer had decided to relocate to Namibia, and was therefore selling his fifty hectare farm and two hundred head of cattle at a bargain price. The company had been made an offer. The next day, Mr. Joe Nhleko held private negotiations with Mr. Naidoo, who agreed to sell him the farm and the cattle at a bargain price of E200,000.00. Joe has resold the cattle to a nearby butchery for the price of E25,000.00.

Ms. Nosi Parker, an investigative Journalist has published an article in the business section of the Times of Swaziland disclosing all the facts surrounding the fresh issue of shares, and the farm deal.

Discuss all the legal issues, including what the law provides in relation to attendance of company meetings on the part of directors. Advise both the companies involved on the legal remedies, if any, that are available to them. [25 marks]