

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

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SUPPLEMENTARY EXAMINATION PAPER, JULY 2011

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

COURSE CODE : **L303**

TIME ALLOWED : **THREE HOURS**

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

2. QUESTION ONE (1) IS COMPULSORY.

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QUESTION 1 (Compulsory)

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Max and Phila are friends and they conclude a Partnership which is geared at packaging and distributing cigarettes. Max contributes E50,000.00, whilst Phila agrees to manage the business. The partners agree that the profits will be shared as follows:

Max will be entitled to the first E10,000.00, whereafter he and Phila will share the balance 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 partner 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 financial year 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? (10 marks)

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

[TOTAL: 25 MARKS]

QUESTION 2

Lusito and Lenhle have operated a small manufacturing partnership in Manzini for the past 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 3

Discuss the legal grounds upon which a court may order that a company be wound up. Illustrate your response with decided cases. (25 marks)

QUESTION 4

- (a) Discuss the requirements of a pre-incorporation contract. (10 marks)
- (b) Define the concept of a share. (5 marks)
- (c) Explain when a company will be deemed unable to pay its debts. (5 marks)
- (d) Who must sign the memorandum of association, and what information should be included in the memorandum. (5 marks)

[TOTAL: 25 MARKS]

QUESTION 5

It has been said that the Ultra Vires Doctrine is domesticated in memorandum jurisdictions, although even in these jurisdictions it is now being altered. State how this amendment of the doctrine has been effected in our jurisdiction, giving some of the reasons for its review.

(25 marks)

QUESTION 6

- (a) The articles of Association of Vikelwe (Pty) LTD, appoint Veli Mamba as the company; auditor and provide that she should act in this capacity at the usual recommended tariff. Five years later, the company ceases to make use of Veli's auditing services. She now wishes to sue the company for breach of contract.

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

- (b) Discuss the nature of the liability of a promoter for misstatements in a prospectus. (10 marks)

[TOTAL: 25 MARKS]